AmWINS Group, Inc.

STATE OF THE PROFESSIONAL LINES MARKET - Q3 2019

Conditions vary widely across a diverse professional liability insurance sector, heightening the importance of partnering with a wholesaler that understands the marketplace.

DIRECTORS AND OFFICERS

The message for retailers in private D&O is that there has been a lot of movement into the E&S marketplace.

“Many deals have been shopped that haven’t been in the past. Standard lines insurers have been beaten up writing large companies and have either pulled out of the market or found underwriting discipline. As a result, we are seeing and writing more opportunities because we have wholesale markets that want to write them,” says David Lewison, National Professional Lines Practice Leader at AmWINS Group, Inc.

Public D&O can be done, but with greater difficulty than private. The challenge is greatest in IPOs, particularly in tech or biotech. “Brokers are getting a lot of rejections and having to go to different companies and new markets to place coverage. We are seeing programs made up of many more layers offered by lesser-known insurance companies,” says Lewison.

REPRESENTATIONS AND WARRANTIES

Despite increased merger and acquisition activity in recent years, representations and warranties (R&W) insurance is a competitive marketplace thanks to an increase in capacity. “There are more than 20 companies competing for business today, whereas there were fewer than eight only a few years ago,” says Kevin Dorse, Executive Vice President at AmWINS Brokerage of Georgia.

Rates have decreased over the last few years, with pricing quoted at 2% to 3% of the deal or even less for larger acquisitions. For merger deals of $50M to $500M, the retention is generally around 1%; for over $500M, it can be found for .75%.

“It is worth noting that less than half of M&A deals use R&W insurance, which means there is good opportunity for market growth,” says Dorse. “We are also seeing more interest in smaller deals from the market. Deals pricing from around $125,000 and up will be considered, which may provide an opportunity for retail agents that may not have handled R&W insurance in the past.

In a competitive market, there is also greater opportunity to obtain “clean” quotes without risk-appropriate exclusions for product liability and cyber liability. Additionally, brokers are having success obtaining additional coverage extensions, including but not limited to interim breach coverage (claims that come in before final close), erosion of retention coverage for uncovered claims, and “synthetic” pre-closing tax indemnity, in cases where the purchase agreement does not contain such an indemnity.

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CONTACT

To learn more about how AmWINS can help you place coverage for your clients, reach out to your local AmWINS broker.

LEGAL DISCLAIMER

ON YOUR TEAM.

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MEDICAL PROFESSIONAL

The medical professional liability market is noticeably hardening in 2019.

"We are seeing material firming in classes such as correctional healthcare, senior care, and drug and alcohol treatment facilities. The 2019 long-term care pricing increase projections of 5% to 35% appear to be conservative estimates in challenging venues," says Kevin Ryan, Senior Vice President – Healthcare at AmWINS Brokerage of Pennsylvania.

In long-term care, markets are increasing pricing and deductibles or withdrawing altogether, and carriers are taking a more conservative stance on drug and alcohol rehabilitation facilities.

"Underwriting overall has gotten more disciplined. No one is undercutting the market," says Don Tejeski, Senior Vice President at AmWINS Brokerage of Pennsylvania.

Coverage enhancements obtained by buyers during the soft market are slowly being removed, and carriers are adding exclusions to policies in response to the opioid crisis. Markets are also looking more closely at underwriting sexual misconduct exposure, asking more questions, and being more judicious on limits, with carriers that were offering up to $15M in the umbrella now often cutting limits to $5M and lower.

Faced with diminished underwriting appetite and increased submission flow, brokers need to work with underwriters early in the process for a successful outcome. "Underwriters are demanding more complete submissions and being more judicious about the brokers they are working with," says Philip Chester, Senior Vice President at AmWINS Brokerage of New England.

"Agents should be getting out ahead months in advance on their renewals to educate their clients on the state of the marketplace and prepare them for changes at renewal. The conversations regarding expectations for renewal should be had early in the renewal process with the underwriter. The markets are taking rate increases and increasing deductibles in classes such as long-term care, correctional (Beazley has changed their minimum deductible from $50,000 to $150,000), and hospitals," Chester says.

"Risk management has become increasingly more important as loss experience has a significant adverse effect on underwriting pricing," Ryan adds. "Insureds who value risk management as a top priority often see a direct favorable correlation in their renewal offerings, thereby limiting disruption."

Going forward, this difficult market will continue to harden in several areas. "We have seen claims severity occur in venues that historically had been fairly benign. Several underwriters are re-evaluating their territorial appetite based on recent large verdicts," Chester says.

LAWYERS AND TITLE AGENTS

Small law firms (one to five partners) continue to be challenging to place. A notable change is that larger firms (100-plus) have become more difficult, as well.

"Large law firm writers are getting hit by significant losses. One market sold its book and the underwriters went to another carrier. However, there is still plenty of capacity for firms in the 15 to 75-partner range," says Lewison.

Title agents are currently enjoying favorable market conditions. Having dealt with a hard market after the real estate bubble burst a decade ago, this sector has returned to premium levels last seen in 2006. "There is a concern with cyber in particular with title agents, but the losses just haven't materialized yet," Lewison says.

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FINANCIAL INSTITUTIONS

Cyber is a key concern in the financial sector, as well. While electronic crime and social engineering are ever-present threats in the industry, regulatory bodies are also increasing cyber-related scrutiny of financial firms. Motivated to protect investors who may not be fully aware of cyber risks, the SEC's Office of Compliance Inspections and Examinations (OCIE) has emphasized cybersecurity as one of its priorities in 2019. Firms found to be non-compliant with standard best practices regarding information security may be at risk for increased fines, penalties and regulatory actions.

In professional lines overall, the financial sector has been a soft market for several years. There are, however, some signs of change.

"Some underwriters have seemed more reluctant to offer two-year terms or guaranteed renewals in the FI space – for banks, in particular – but they are still available. We are also seeing increased retentions and restriction of large-capacity plays. Underwriters seem to generally be employing a more cautious and careful approach in this space than we have seen in recent years," says Megan North, Assistant Vice President—Professional Lines at AmWINS Brokerage of Washington.

The rise of the use of digital currency is also affecting financial risks. Asset management firms that have portfolios of traditional investments and elect to add a cryptocurrency index fund (or similar alternative class) may encounter difficulty in procuring E&O from their traditional insurance partners.

"Many insurers are cautious when it comes to exposures relating to crypto or alternative currencies and are beholden to underwriting guidelines or reinsurance treaties that restrict their ability to participate in that space," says North.

In general, underwriters are most interested in writing crypto E&O coverage that correlates to well understood cyber risk around the protection of databases and networks.

"Coverage associated with errors in moving crypto currency around concerns underwriters," Lewison says. "You can find coverage, but it takes a great deal of outreach to do so."

CONSTRUCTION PROFESSIONAL

In an industry dominated by property and bodily injury exposure, economic losses have not historically been of paramount concern. This attitude has changed, and we are seeing an uptick in requests for professional coverage within the construction space. Driven largely by contractual requirements – especially for firms working with municipalities and within the real estate sector—many contractors and construction professionals are seeking E&O coverage for their services.

The exposures facing these insureds are also changing. Although contractors and design/engineering firms have traditionally held separate roles within construction projects, developers and other project owners are now placing more responsibility on contractors regarding construction management, design supervision and delegation, hiring of subcontractors, and other obligations. This change serves to blur the burden of responsibility—and ultimately, liability—when something goes wrong. It also heightens the need for unique and even manuscripted product solutions within the construction professional liability space.

In response, the markets have developed the coverage and forms to respond more acutely to construction related E&O risks, and many are adding coverages such as rectification, natural resource damage, and others. Additionally, dedicated forms for artisan contractors and developers are emerging to provide options for clients who previously felt there was not an appropriate home for their needs.

As a result of the developing exposures, awareness of risk, and development of solutions for that risk, this market continues to grow.

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CANNABIS

With more states legalizing either medical or recreational marijuana, the cannabis professional liability marketplace is becoming an area of potential opportunity for brokers. Businesses in this market fall into many different categories, including agricultural operations, laboratories, distributors and retailers, and each will find different levels of appetite in the market.

“We have markets that are looking to write certain segments, such as the supporting businesses, but not the front-line risks,” Lewison says. “Some markets are willing to write testing labs that evaluate potency, quality, and safety of products. Others focus on growers or agricultural consultants helping the growers. Then there are cyber markets that focus on the technology risk behind cannabis operations in general and the apps they offer to consumers. It’s a very diverse market and, for brokers doing business in a state that has legalized cannabis, it’s a very interesting and potentially lucrative market to specialize in.”

RENEWAL PRICING TRENDS—PROFESSIONAL LINES RENEWALS, ROLLING QUARTERLY

Source: AmWINS professional lines account data