STATE OF THE PROFESSIONAL LINES MARKET

Differing conditions exist across the professional liability market, while the growing cyber market is divided between stand-alone and blended forms.

PROFESSIONAL

Professional liability is a tale of multiple markets. While miscellaneous professional lines continues to be extremely soft, challenges are seen among other areas of professional, including financial institutions, lawyers' professional, and public D&O.

"We've seen just about everything being offered in professional lines, except multiyear deals. That's the only discipline compared to the last time we had a market as soft as this," says Roddy Graham, managing director of the financial lines division of THB Group in London.

For financial institutions, severity remains a larger concern than frequency. The sector continues to face regulatory investigations, fines, and penalties, as well as new rules and regulations. Whenever there is a crisis in the financial institution or financial service sector, legislators push through new bills designed to protect consumers. Each new bill adds additional hurdles and potential for regulatory investigations against the institution. For example, in 2016, the U.S. Department of Labor (DOL) issued its final rule expanding the investment advice fiduciary definition under the Employee Retirement Income Security Act of 1974 (ERISA) and modifying prohibited transaction exemptions for investment activities in light of that expanded definition.

"Although the DOL assured companies that it will not pursue claims before 2018 if they are working in good faith to comply with the new rule, it is still a risk. Also, companies are still at risk from lawsuits by participants for the investment advice they received, even if the DOL does not take action," says David Weller, executive vice president, AmWINS Insurance Brokerage of California.

In public company D&O, the market is expected to remain tight, particularly for smaller accounts.

"The market is going to stay challenging for small publicly traded accounts. The insurers can't write a $5,000,000 limit for under $50,000 anymore and make money. We are also seeing continued underwriting discipline around merger and acquisitions," says David Lewison, senior vice president and national professional lines practice leader at AmWINS Group, Inc.

"The trend of directors being automatically sued every time a merger was announced has started to drop off. Recent court decisions have made M&A suits more difficult in Delaware, reduced the potential plaintiff firm fees and led to more dismissals of valuation based claims. That is definitely a trend to watch," says Lewison.

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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.

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CYBER

Interest in cyber insurance continues to grow, driven by headline-grabbing cyber-crimes and breaches, including the WannaCry and NotPetya ransomware viruses that made international news this year. Large logistics companies and a pharmaceutical company hit by viruses have reported hundreds of millions of dollars of related expenses to recover.

2017 also brought us the Equifax breach, impacting well over 100 million records. Like other breaches that could have been handled better, this incident has triggered the departure of executive officers.

"We're still learning about the wide range of impacts from this significant breach. What we can see is that their cyber limits were likely not large enough, and their D&O program is likely to get hit. We don't feel that the insured loss is large enough to cause a shift in the marketplace. There is ample capacity to handle a breach of that size, as long as there aren't multiple insured breaches of that magnitude," Lewison says.

Estimates of global cyber-crime costs are in the range of $400 billion per year, with the possibility of more than half a billion in losses in the next few years.

Although many stand-alone markets for the coverage exist, because the division between cyber and professional risk is sometimes unclear, placing coverage with a professional lines market on a consolidated form remains the best practice to avoid coverage gaps when an account has both E&O and cyber risk.

"If you write D&O and a cyber event triggers a D&O claim, how will that claim be handled? Will you have a denial of claim by both insurers? Coordination of coverage is key," says Lewison.

Complicating the insurance placement assessment process for retailers – and the decision-making process for buyers – is that standard lines property carriers continue to move into the cyber space. Those carriers are both seeking premium growth opportunities and seeing a natural tie-in with business interruption (BI) and contingent BI coverage. If General Liability insurers also move in to add cyber as a covered cause of loss for Bodily Injury and Property Damage, it will further muddy the waters for buyers.

"The caution I would issue to retailers is that standard-line package products that offer cyber sub limits may not provide the protection businesses need and that they can get from the E&S marketplace," Weller says. "That's where retailers can differentiate themselves in the advice they provide clients."

"I believe we will see a market shift toward differentiating among various grades of coverage," Weller says. "We will see clear delineation between throw-in coverage in the P&C market and the products offered by E&S markets that provide features such as no aggregate limit, excess D&O, zero retention on breaches, claims discovery, and other features that truly make their forms the gold standard."

In the coming months, all signs indicate a continuation of soft professional liability market conditions. In this widely varied market, it is essential to partner with a wholesaler that devotes the time and resources to understanding the spectrum of the professional lines and cyber marketplace.

"This is a market in which a wholesaler can add value to a retailer through specialization that the retailer can then bring to the client. We can answer questions for retailers on how to cover a particular risk, especially because there are many different forms, terms, and conditions," Weller says.

SUMMARY

- Miscellaneous lines continue to be extremely soft.
- Banking and insurance, lawyers' professional, and public D&O remain very challenging.
- Retail agents benefit clients by placing cyber on a stand-alone form.

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LONDON UPDATE

The effort to reduce capacity in certain areas of professional liability is originating in London, with some syndicates completely withdrawing from specific sectors as losses are catching up.

“It’s not enough activity to turn the market, but things are happening that might suggest certain mature markets taking the lead with increased discipline and careful class selection. There is still ample capacity, with everybody being very aggressive, but we may be beginning to see a change,” says Graham.

Additionally, some of the largest professional lines accounts are seeing occasional underwriting reticence.

“We have seen some syndicates losing money on the large account business,” Graham says.

Brokers are concerned about the potential impact if Lloyd’s tries to move into markets where it does not normally play in an attempt to retain or regain premium.

“If Lloyd’s gets out of other lines to try to make money in miscellaneous professional, it will make our market even softer – more and more competitive,” says Lewison.