2020

P&C Market Outlook

Provided by TIG Advisors.

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Uncertain Times Ahead

For 2020, the insurance market has reached a crossroads. After approximately 20 years of a soft, buyer-friendly insurance market, we are moving toward a firming or hardening market—one that is less friendly to insurance buyers.

While the effects of this hardening insurance market on your business will depend on a variety of factors, many businesses will see premium increases for their insurance coverage overall. In fact, for some types of coverage, businesses may see double-digit rate increases at their new renewal.

Beyond that, managing a business today is more challenging than ever. Organizations must account for dynamic, short- and long-term trends in their industry, while also addressing trends that affect the economy as a whole. Compounding the issue, all of this is unfolding at a time when the coronavirus (COVID-19) pandemic has upended life and business as we know it.

While the full human and economic cost of the COVID-19 pandemic has yet to be seen, it's clear that it has had a profound influence on businesses across the country. In many cases, businesses are facing challenges related to operational changes, the health and safety of their workforce, new compliance requirements and revenue forecasts. The COVID-19 pandemic is sure to influence the P&C insurance industry, likely from both an operating model and pricing perspective.

While this is unwelcome news for many businesses, they are not powerless. Now more than ever, it's essential for businesses to take a proactive approach when it comes to their risk management efforts and their insurance policies. Put another way—in an insurance and risk environment with many unknowns—businesses should focus on addressing the factors they can influence.

It's important to remember that you are not in this alone. To help you navigate the hardening market, you need a broker who understands your business and its unique risks and will advocate on your behalf. Secondly, you need an insurance broker who can tell your risk story to insurance carriers in a way that will best position your business come renewal time. Finally, you need a broker who understands your industry inside and out, the dynamic insurance landscape and how to provide targeted loss control solutions.

Remember, in these uncertain times, TIG Advisors is here to provide the guidance and expertise your business needs.

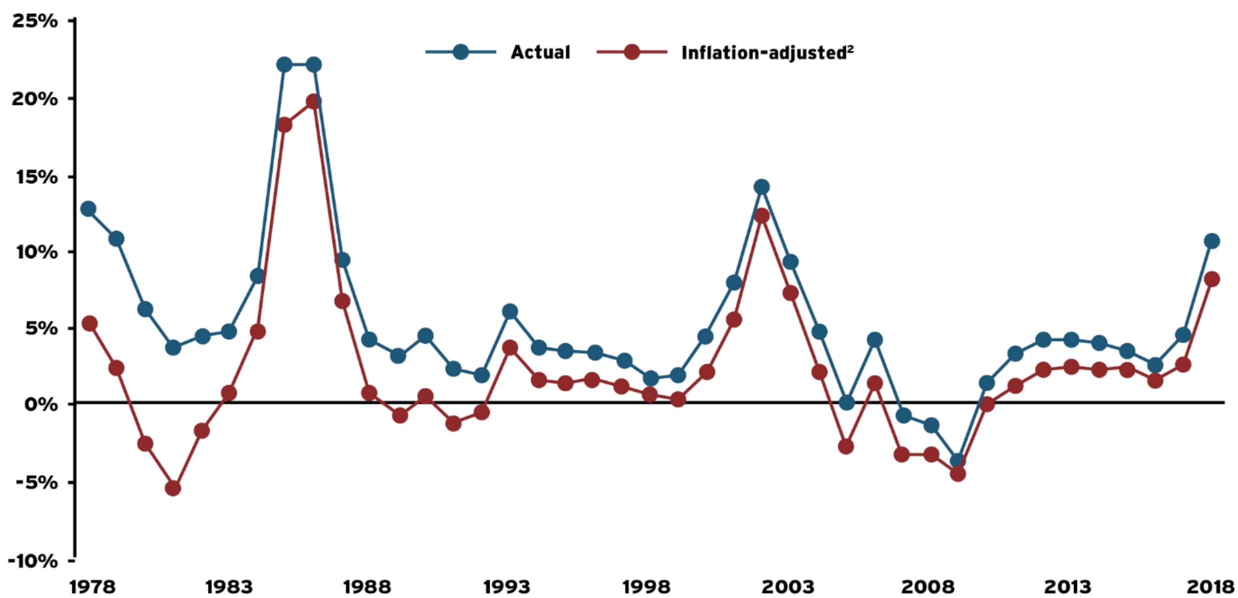
The Insurance Market Cycle: Hard vs. Soft Markets

The commercial insurance market is cyclical in nature, fluctuating between hard and soft markets. These fluctuations affect the availability, terms and price of commercial insurance, so it's helpful to know what to expect in both a hard and soft insurance market.

A **soft market**, which is sometimes called a buyer's market, is characterized by stable premiums, broader terms of coverage, increased capacity, higher available limits of liability and competition among insurance carriers for new business. A **hard market**, which is sometimes called a seller's market, is characterized by increased premium costs, stricter underwriting criteria, less capacity, restricted terms of coverage and less competition among insurance carriers for new business.

During a hard market, some businesses may receive conditional or nonrenewal notices from their insurance carrier. What's more, during hard market cycles, insurance carriers are more likely to exit certain unprofitable lines of insurance.

Percent Change From Prior Year, Not Premiums Written, P&C Insurance, 1978-2018



Source: ISO

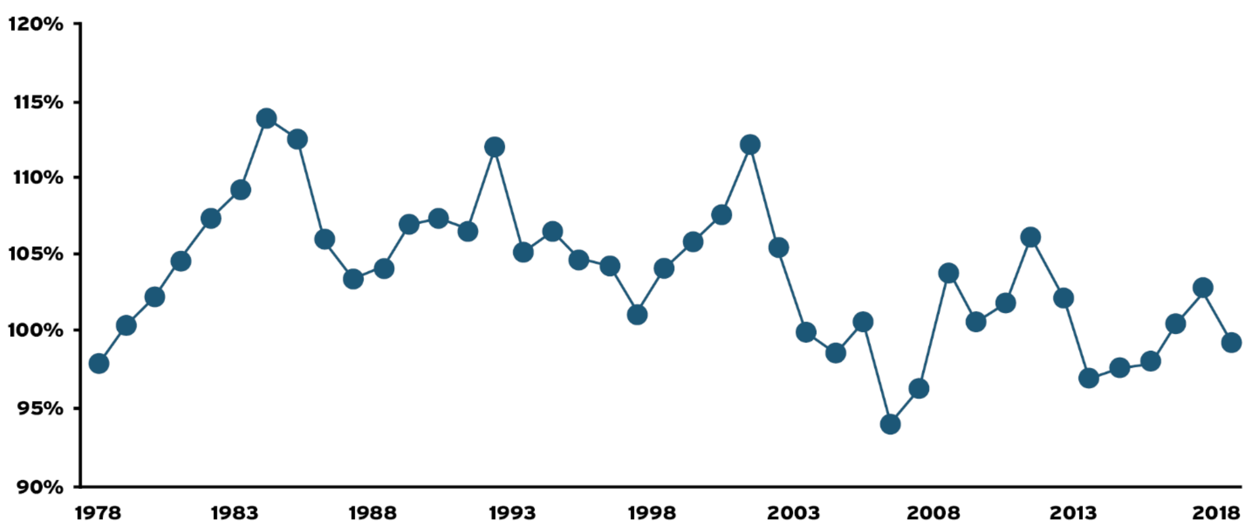
In what was one of the longest soft markets in recent years, businesses across most lines of insurance enjoyed stable premiums and expanded coverage for decades. While the commercial insurance market hardened for a short period of time after the terrorist attacks of Sept. 11, 2001, the last sustained hard market occurred in the 1980s. However, after years of gradual changes, the market is firming, leading to increased premiums and reduced capacity.

A number of different factors affect insurance pricing, but the following are common contributors to the hardening market:

The Insurance Market Cycle: Hard vs. Soft Markets

- **Catastrophic (CAT) losses**—Floods, hurricanes, wildfires and similar disasters are increasingly common and devastating. Years of costly disasters like these have compounded losses for insurers, driving up the cost of coverage overall, especially when it comes to commercial property policies.
- **Inconsistent underwriting profits**—Underwriting profits refer to the difference between the premiums an insurer collects and the money it pays out in claims and expenses. When an insurance company collects more in premiums than it pays out in claims and expenses, it will earn an underwriting profit. Conversely, an insurance company that pays more in claims and expenses than it collects in premiums will sustain an underwriting loss. An insurance company's combined ratio after dividends is a measure of underwriting profitability. This ratio reflects the percentage of each premium dollar an insurance company puts toward spending on claims and expenses. A combined ratio above 100 indicates an underwriting loss. Insurance companies generally do not generate profits from their underwriting operations. In the past 10 years, the commercial insurance industry has only had a combined ratio under 100 four times.

P&C Insurance Combined Ratio, 1978-2018

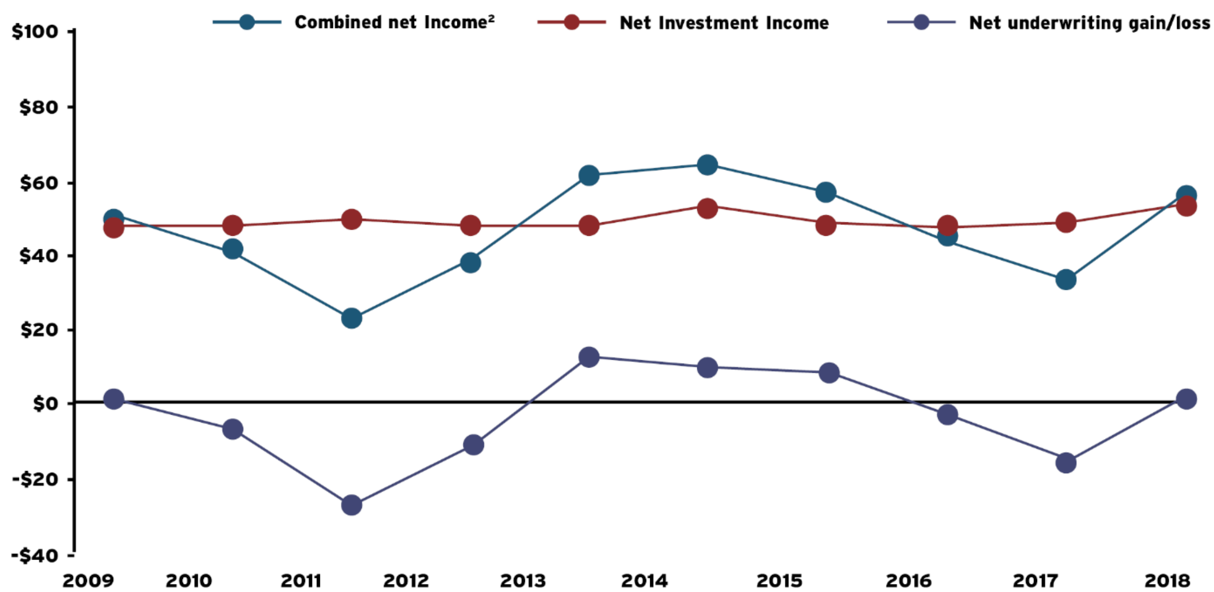


Source: ISO

- **Eroding investment returns**—Insurance companies also generate income through investments. Commercial insurance companies typically invest in a variety of stocks, bonds, mortgages and real estate investments. Due to regulations, insurance companies' largest asset group is typically bonds. These provide stability against underwriting results, which can vary from year to year. When interest rates are high and returns from other investments are solid, insurance companies can make up underwriting losses through their investment income. However, when interest rates are low—like they currently are—insurers must pay close attention to their underwriting standards.

The Insurance Market Cycle: Hard vs. Soft Markets

Operating Results, P&C Insurance, 2009-2018 ($ bllions)



Source: NAIC and Insurance Information Institute

- **The economy**—The economy as a whole also affects an insurance company's ability to write new policies. During periods of economic downturn and uncertainty, some businesses may purchase less coverage or forgo insurance altogether. A business's revenue and payroll, which factor into how premiums set, may decline. This creates an environment where there is less premium income for insurers.
- **The cost of reinsurance**—Simply put, reinsurance is coverage for insurance companies. Carriers often buy reinsurance for risks they can't or don't wish to retain fully, including those for severe weather events like hurricanes and wildfires. It's a way for primary insurers to protect against unforeseen or extraordinary losses. As a result, reinsurance helps to stabilize premiums for regular businesses by making it less of a risk for insurance carriers to write a policy. However, reinsurers have exposures to many of the same events and trends that are affecting insurance companies. For 2020, reinsurance is becoming more expensive to obtain, which is reflected in the overall cost of insurance for businesses.

Additional Factors That Influence Your Insurance Rates

In addition to the above, the following are additional factors that may influence your insurance rates:

The coverage you're seeking—The forms of insurance you're are seeking, as well as the details of the coverage (e.g., limits of liability and value of insured property), will affect your insurance pricing.

The size of your business—As a general rule, the more employees your business has and the larger your revenue is, the higher you will pay for your insurance.

The Insurance Market Cycle: Hard vs. Soft Markets

The industry in which you operate—There are certain industries that carry more risk than others. In general, businesses in these sectors are more likely to file an insurance claim. As a result, businesses involved in risky industries tend to, on average, pay more in insurance premiums.

The location of your business—The location of your business will also influence your commercial insurance rates. If your business is located in an area prone to certain natural disasters, insurers may determine that your facility is more at risk for property damage. This increased risk will translate to higher insurance premiums.

Your claims history—Your business's claims history, often referred to as your loss history, will also have an impact on insurance rates. If your business has an extensive claims history, then insurance carriers will tend to consider your company more likely to file future claims. This, in turn, means that your business will be viewed as risky to insure, subjecting you to higher commercial insurance premiums.

Put simply, during a hard market, insurance buyers may face complex considerations regarding their insurance coverage. Thankfully, businesses are not without recourse in the face of a hard market. Business owners who proactively address risk losses and manage exposures will be better prepared for a hardening market than those who do not. Furthermore, those who educate themselves on the trends that influence their insurance will have a greater understanding of what can be done to influence their insurance rates.

Emerging Risks and Trends to Watch in 2020

Insurance experts often examine how outside influences and trends affect the insurance marketplace, and businesses should follow suit to determine what factors impact their insurance coverage. For 2020, there are a number of sweeping market developments to consider.

Spotlight on Social Inflation

As an insurance buyer, you may have heard the term "social inflation" used to explain one of the factors driving up the cost of insurance in today's market. In general, this term refers to societal trends that influence the ever-rising costs of insurance claims and lawsuits. As the insurance market changes, it's important for businesses to understand what's currently driving social inflation.

Litigation Funding

One of the factors driving social inflation has to do with increased litigation or, more specifically, litigation funding. Litigation funding is when 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 scare plaintiffs away from taking a lawsuit to trial. But, through litigation funding, 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 litigation funding becoming more common, but it also increases the cost of litigation, sometimes to seven figures. This is because plaintiffs are able to take cases further and seek larger settlements.

Tort Reform

Tort reform refers to laws that are designed to reduce litigation. Specifically, tort reforms are used to prevent frivolous lawsuits and preserve laws that prevent abusive practices against businesses.

Many states have enacted tort reforms over the last several decades, leading to fewer claims and caps on punitive damages. However, in recent years, a number of states have modified tort reforms or challenged them as unconstitutional. Opponents believe tort reforms lower settlements to the point where attorneys are less likely to take on new cases and help victims get justice for their injuries or other damages.

Further complicating matters, tort reform is subject to uncertainty, as it's largely tied to political leanings and the interests of individual states. Should tort reform continue to erode, there could be fewer restrictions on punitive and noneconomic damages, statutes of limitations and contingency fees—all of which can drive up the cost of claims and exacerbate social inflation.

Plaintiff-friendly Legal Decisions and Large Jury Rewards

The overall public sentiment toward large businesses and corporations is deteriorating, and anti-corporate culture is more prevalent than ever. A number of factors are contributing to this increasing distrust, including highly publicized issues related to the mishandling of personal data and social campaigns.

This has had a considerable impact on how businesses are perceived by a jury in court, and organizations are held to a high standard for issues related to the way they conduct their business. In fact, juries are increasingly likely to sympathize with plaintiffs, especially if a business's reputation has

Emerging Risks and Trends to Watch in 2020

been tarnished in some way in the past. As a result, plaintiff attorneys are likely to play to a jury's emotions rather than the facts of the case.

Compounding this issue, there's an increasing public perception that businesses—particularly large ones—can afford the cost of any damages. This means juries are likely to have less reservations when it comes to awarding damages. In the current environment, nuclear verdicts (awards of $10 million or more) have become more common.

Extreme Weather Events Examined

Extreme weather events—like hurricanes, tornadoes, hailstorms and wildfires—continue to make headlines as they become increasingly devastating and costly. Making matters worse, these events aren't limited to one geographic area or weather event, impacting businesses and residents across the United States.

In 2019, wildfires plagued the West Coast, and California alone recorded more than 47,000 wildfires. In the Midwest, flooding along the Mississippi River and its tributaries caused an estimated $6.2 billion in damage across 13 states. On the East Coast, the 2019 hurricane season caused billions of dollars in damage and affected multiple states along the Atlantic Ocean.

Many experts believe severe storms, extreme temperatures, wildfires and flooding are the new norm. As these catastrophes become more frequent, the insurance industry and the economy will likely struggle to keep up with the losses. This is even more apparent when you consider that insured losses (excluding damage caused by floods) reached $106 billion in 2017 and $50 billion in 2018.

Moving forward, expect to see more emphasis around weather readiness, especially from an insurer's perspective. Policyholders that take steps to fortify their property (e.g., using fire-resistive materials and reinforcing roofs) could enjoy premium discounts.

COVID-19

The COVID-19 outbreak continues to be a top-of-mind concern for organizations and individuals across the globe, and almost every country has reported cases of the virus. As the COVID-19 pandemic becomes increasingly widespread, it's not only raising fears about the well-being of the general public, but it's also disrupting life as we know it.

In response to the pandemic, millions of individuals across the United States were subject to stay-at-home orders. While many essential businesses (e.g., hospitals, pharmacies, grocery stores and gas stations) remained open during the COVID-19 pandemic, other operations deemed nonessential shut down temporarily or changed the nature of their operations.

While the full cost of COVID-19, has yet to be determined, one thing is certain: The COVID-19 outbreak has significantly tested the preparedness of businesses everywhere. Moving forward, it's critical to take a hard look at your continuity and disaster response plans. You should also partner with experts who not only understand the risks your business faces on a daily basis, but can also help you prepare for the unexpected. This is particularly important during times of hardship and uncertainty.

2020 Market Outlook Forecast Trends

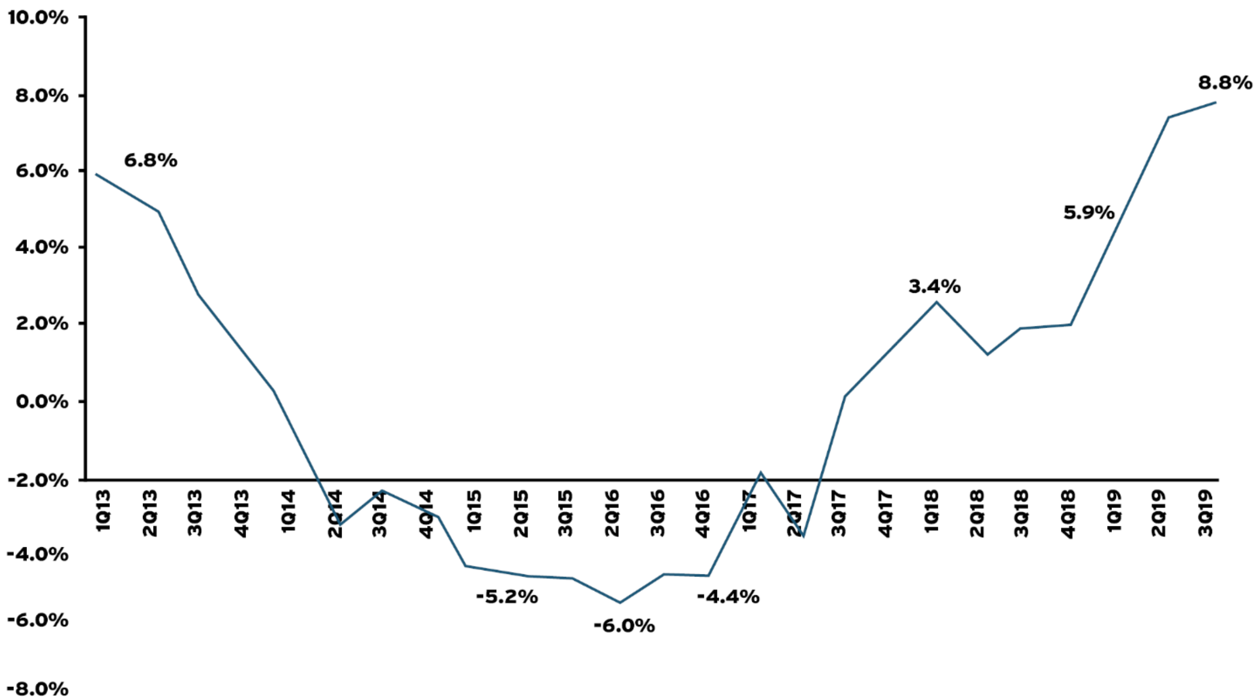
Price forecasts are based on industry reports for individual lines of insurance. Forecasts are subject to change and are not a guarantee of premium rates. Insurance premiums are determined by a multitude of factors and differ per organization. These forecasts should be viewed as general information and not insurance or legal advice.

LINE OF COVERAGE	PRICE FORECAST
Commercial property	• **Non-CAT exposed:** +10% to +20% • **CAT exposed:** +10% to +30% • **CAT exposed with poor loss history:** +25% to 50%
General liability	• **Overall:** +2.5% to +10%
Excess and umbrella liability	• **High risk**: +25% or more • **Low to moderate risk:** +15% or more
Commercial auto	• **Overall:** +6% to +12% or more
Workers' compensation	• **Overall:** -2% to +2%
Cyber liability	• **Overall:** Flat to +10%
Directors and officers liability	• **Public companies:** +17% to +50% or more • **Private/nonprofit companies:** +5% to +35%
Employment practices liability	• **Certain states and industries:** +5% to +25% • **Overall:** +5% to +15%

Commercial Property

The commercial property market continues to harden, and price increases are expected to accelerate throughout 2020. This has been a trend in the market for the past few years. In fact, commercial property rates have increased every quarter since Q3 2017.

Premium Change for Commercial Property, Q1 2013 - Q3 2019



Source: The Council of Insurance Agents & Brokers

An increasing number of weather-related catastrophes and natural disasters (e.g. wildfires, hurricanes, windstorms, hail and floods) have put stress on insurance companies to cover their losses, driving up premiums. While losses from natural disasters were down in 2019 compared to 2017 and 2018, insurance carriers are still monitoring their exposure to these events closely. Additionally, attritional property losses—losses other than those related to major catastrophes or exposures—are on the rise and are a cause for concern for many insurance carriers.

In response to these trends, insurance carriers are reducing their capacity and refining their appetite for certain risks. In some cases, insurers are exiting markets for certain industries. This is especially true for particularly high-risk operations with poor loss control practices or those located in natural disaster-prone areas.

2020 Price Prediction

Non-CAT exposed: +10% to +20%
CAT exposed: +10% to +30%
CAT exposed with poor lost history: +25% to 50%

Commercial Property

Trends to Watch

- **Unfavorable renewals**—In many cases, premium increases will be unavoidable. However, these increases will vary based on a number of factors, including, but not limited to, a business's location, industry, loss history, CAT exposures and loss control measures.
- **Carrier selectivity and stricter underwriting**—Carriers are focusing on their underwriting profitability more so than in years past and are facing less pressure to bring in new business. This allows carriers to be more selective about the risks they are willing to write. Underwriting criteria are expected to tighten, and loss control techniques will be scrutinized more than ever before.
- **Increased submission volume**—For 2020, we anticipate that insurers will see an increase in commercial property applications. This increase in submission volume will likely allow carriers to apply greater scrutiny to new applicants and be more selective when renewing risks.

Tips for Insurance Buyers

- Work with your insurance broker to begin the renewal process early in order to put your best foot forward.
- Examine the design of your property insurance with your insurance broker.
- Gather as much data as possible regarding your exposures and existing risk management techniques. Be sure to work with your insurance broker to highlight any business continuity plans and loss control measures you have in place.
- Address any open insurance carrier recommendations prior to renewals. Insurers will be looking at your loss control initiatives closely. Taking the appropriate steps to reduce your risks whenever possible can make you more attractive to underwriters.

General Liability

Overall, liability lines have seen significant rate increases annually, as worsening loss trends make underwriting profitability more difficult. Unlike in previous years, rate predictions for various liability lines are no longer mixed, and single-digit increases are expected for virtually all buyers.

While there are several contributing factors to the hardening liability market, much of it has to do with insurers being more selective. In fact, insurers are leaning into conservative underwriting approaches and refraining from using surplus capital to write new business.

Some carriers are exiting the market altogether due to claims severity, and many are unwilling to write primary liability lines on a standalone basis. Compounding the issue, it's unlikely that competition for premium dollars will slow rate hikes in any meaningful way. These reduced capacity and rate fluctuation trends will no doubt affect a variety of industries.

2020 Price Prediction

Overall: +2.5% to +10%

Trends to Watch

- **Increased medical costs**—Advances in health care have made treatment more effective, and people are living longer, fuller lives after a serious accident. While this is a positive trend, it has had an impact on compensatory damages and benefits, particularly when they are paid out over a lifetime. Additionally, annual medical cost inflation is averaging between 3% to 6%, which has also increased claims costs.
- **Social inflation**—Social inflation generally refers to the rising costs of litigation and insurance claims. These rising costs are the result of societal trends and views toward increased litigation, broader contract interpretations, plaintiff-friendly legal decisions and large jury awards. Together, these factors can raise the cost of insurance.

Tips for Insurance Buyers

- Work with your insurance broker to educate yourself on key market changes affecting your rates and how to respond using loss control measures.
- Examine your general liability coverage with your insurance broker to ensure limits match up with your insurance needs.

Excess and Umbrella Liability

The excess and umbrella liability market is experiencing significant disruption and is proving to be more challenging than the markets for primary coverage. In the excess and umbrella market, insurance carriers are adjusting their underwriting appetites, reducing capacity and increasing attachment points. In most cases, rates on excess layers are exceeding those of primary ones. What's more, insureds have seen an uptick in nonrenewal notices on various layers throughout their liability towers.

Market conditions are not only being dictated by claims experienced by insurance carriers, but also by fears over trends pushing claims costs even higher. These trends include, but are not limited to, litigation funding, nuclear verdicts and medical care cost inflation. For 2020, we anticipate a challenging excess and umbrella market for many insureds. Underwriters are likely to apply caution when examining risks, and most insurance carriers are unlikely to increase capacity or expand the writing of new business.

2020 Price Prediction

High risk: +25% or more

Low to moderate risk: +15% or more

Trends to Watch

- **Litigation funding**—Litigation funding refers to the practice of having a third party finance a lawsuit in exchange for a portion of the settlement. This practice is becoming increasingly common and is driving up the cost of litigation and settlements.
- **Nuclear verdicts**—Verdicts that surpass $10 million are becoming more and more common risks for businesses. The uptick in nuclear verdicts, especially in the commercial auto space, has put pressure on the excess and umbrella market.
- **Changes at the insurance carrier level**—In light of market turbulence for excess/umbrella coverage, many insurance carriers are reducing their lead umbrella capacity from $25 million to less than $15 million.

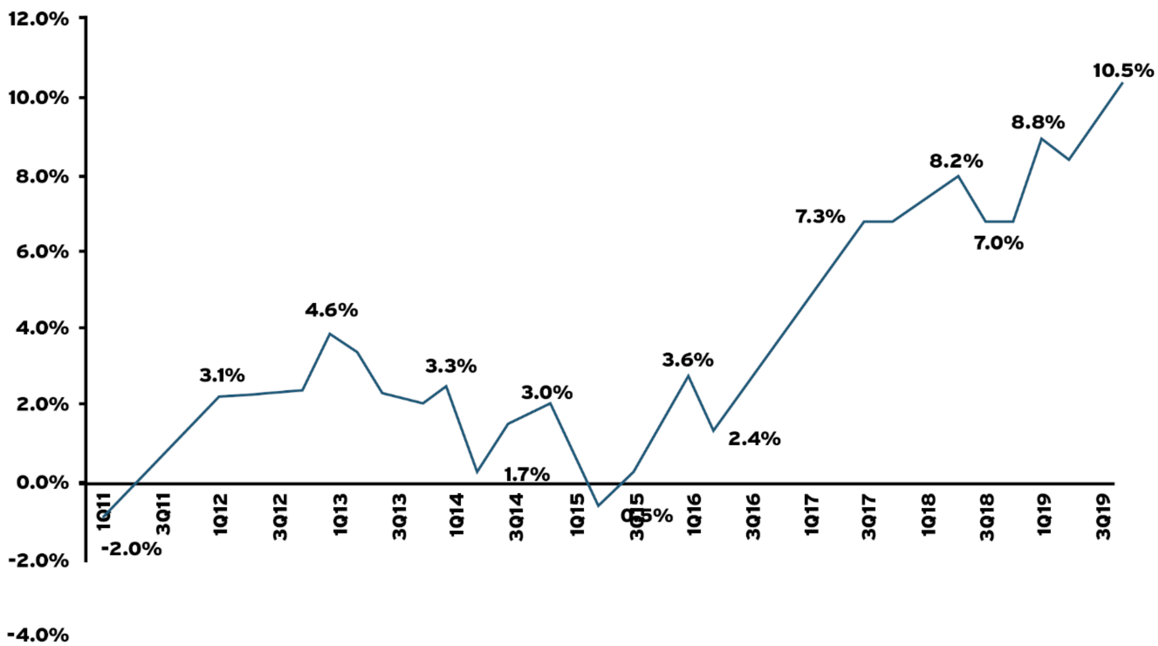
Tips for Insurance Buyers

- Plan for price increases and difficult renewals. In many cases, applications will have to be submitted earlier than normal.
- Work with your insurance broker to submit a quality application. Because of the firming market conditions for excess and umbrella layers, submission activity is up. Insurance companies are dealing with a lot of submissions for both renewals and new business. In this environment, poor applications are likely to be denied by underwriters.

Commercial Auto

Exposures related to commercial auto insurance are vast, and a number of industry changes, as well as the frequency and severity of claims, have had a significant impact on this insurance market. While commercial auto rates have been climbing for years, many carriers are still finding it difficult to maintain profitability for commercial auto insurance. In fact, 2019 was the ninth year in a row that insurance carriers had a combined ratio in excess of 100 for commercial auto lines.

Premium Change for Commercial Auto, 2011 - 2019



Source: The Council of Insurance Agents & Brokers

Rates for commercial auto insurance are likely to increase in 2020 and beyond. While some insureds will see more profound rate increases, we anticipate that the overwhelming majority of businesses with commercial automobile exposures will experience cost increases, regardless of their industry or vehicle class.

2020 Price Prediction

Overall: +6% to +12% or more

Trends to Watch

- **Distracted driving incidents**—While many factors can lead to a crash, distracted driving is one of the most common causes of accidents. As these incidents have become more frequent, insurance rates have climbed in tandem, creating a risk management challenge for insureds and a profitability challenge for insurance carriers that sell commercial auto insurance.

Commercial Auto

- **Driver shortages**—A shortage of experienced drivers is taxing many businesses when it comes to commercial auto exposures. While this driver shortage is most profound for over-the-road trucking companies, it's also affecting businesses in just about every other industry as well. Increasingly, businesses are struggling to recruit and retain experienced drivers. This has forced many employers to hire inexperienced drivers who are more likely to be involved in accidents.
- **Increasing medical costs**—In general, medical costs have been rising steadily over the past decade. In fact, losses for bodily injury liability insurance claims increased 10% over a five-year period alone. These increased costs have affected multiple lines of insurance, including commercial auto.
- **Increasing vehicle repair costs**—Technological advancements have made vehicles safer and more efficient. However, as commercial vehicles are outfitted with a variety of sophisticated components, they are becoming increasingly expensive to repair.

Tips for Insurance Buyers

- Examine your loss control practices relative to your fleet and drivers. Enhance your driver safety programs by implementing or modifying policies on safe driving, distracted driving and substance abuse.
- Design your driver training programs to fit your needs and the exposures facing your business. Regularly retrain drivers on safe driving techniques.
- Ensure you are hiring qualified drivers by using motor vehicle records (MVRs) to vet a driver's past experience and moving violations. Disqualify any drivers with an unacceptable driving record. Review MVRs on a regular basis to ensure that drivers maintain good driving records. Define the number and types of violations a driver can have before they lose their driving privileges.
- Consider technology solutions, such as telematics, where appropriate to strengthen and supplement other loss control measures.
- Implement a driver- or employee-retention program to maintain experienced drivers.
- Examine your Federal Motor Carrier Safety Administration (FMCSA) BASIC scores to identify gaps in your fleet management programs, if applicable.
- Determine whether you should make structural changes to your commercial auto policies by speaking with your insurance broker.

Workers' Compensation

In contrast to other casualty lines, the markets for workers' compensation insurance remain competitive in most states and industries. In fact, premiums for workers' compensation policies have steadily declined for nearly a decade. This is due in large part to favorable loss ratios for workers' compensation coverage in most states. What's more, combined ratios have improved to their lowest level in more than 50 years, and the National Council on Compensation Insurance (NCCI) estimates that private insurers had $5 billion loss reserve redundancy at the start of 2019.

For 2020, we anticipate that workers' compensation trends will be similar to what they've been in previous years. Again, workers' compensation is mostly a buyer's market, as the number of workplace injuries continues to decline at a steady pace and combined ratios stay below 100%. Overall, policies written on guaranteed cost (insured pays a fixed premium) will continue to see competitive pricing. Loss-sensitive plans (final premium is dependent on the actual losses) will also see favorable pricing, although perhaps not as favorable as guaranteed cost plans.

2020 Price Prediction

Overall: -2% to +2%

Trends to Watch

- **Large claims**—Workers' compensation lines have seen a decline in overall claim frequency over the last few decades. However, serious accidents still occur, with costs for medical treatment and lost-wage benefits sometimes reaching millions of dollars. In recent years, there has been an uptick in so-called "mega claims." Mega claims are essentially workers' compensation claims in excess of $10 million.

- **Expansion of telemedicine**—Telemedicine uses technology to facilitate communication between a doctor and patient who are not in the same physical location. It can be used to provide medical evaluations, diagnosis and treatments. Many praise telemedicine, as it can provide quick and efficient access to care and reduce overall medical costs. Moving forward, expect states to introduce legislation to speed up the adoption of telemedicine.

Tips for Insurance Buyers

- Implement safety and health programs to address common risks, especially when using a loss-sensitive workers' compensation program.

- Reevaluate the effectiveness of pre-loss safety initiatives and post-loss claims handling procedures.

Cyber Liability

Over the past few years, new insurance carriers have been entering the cyber insurance market. This has helped increase competition among insurance carriers for market share. During this period, capacity for cyber insurance has grown, while coverage terms have expanded. Competition and ample capacity have also allowed insurance carriers to absorb the impact of cyber claims, while keeping premiums in check. Overall, it has been a buyer's market for this line of coverage.

While we anticipate a relatively stable market for cyber insurance, there are growing headwinds in the industry. Insurance carriers are increasingly concerned with a growing volume of cyber attacks. Most notably, 2019 saw a dramatic increase in ransomware and social engineering attacks across the United States.

For 2020, premiums for cyber insurance are likely to remain flat or have modest increases for most businesses, particularly for smaller firms. However, insureds with higher levels of revenue or that operate in challenging sectors (e.g., retail, hospitality, health care and finance) could see more pronounced premium increases.

2020 Price Prediction

Overall: Flat to +10%

Trends to Watch

- **The rise of ransomware attacks**—Ransomware refers to a type of malware that can breach and encrypt a victim's files. The victim is then forced to make a ransom payment in order to regain access to their data. Ransomware attacks are among the most expensive for organizations to deal with. The frequency of ransomware has been difficult to determine, as many businesses pay off attackers without notifying the authorities. However, most indicators show that these attacks have exploded in frequency over the past two years. Making matters worse, the average loss from a ransomware attack now exceeds $1 million.
- **Human error**—Human error continues to rank as one of the leading causes of data breaches. In fact, according to research from the Ponemon Institute, nearly 25% of all data breaches are caused by human error.
- **Data protection laws**—Over the past few years, multiple international (e.g. the United Kingdom and Canada) as well as domestic jurisdictions have implemented new data protection laws. Laws like the California Consumer Privacy Act create new liabilities and compliance considerations for organizations that handle data. As the world becomes more interconnected, more states are likely to pass similar legislation.
- **Phishing**—Phishing emails continue to be one of the most common causes of data breaches. This threat refers to fraudulent emails that try to trick employees into revealing sensitive

Cyber Liability

information. More and more, cyber criminals are developing “phishing kits,” which are shared among criminals and can be used to deploy a large volume of phishing campaigns.

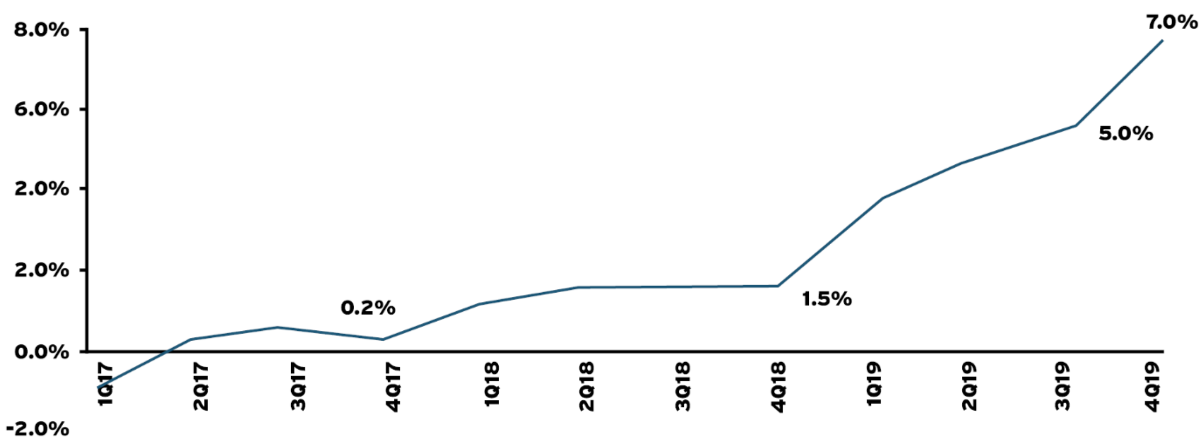
Tips for Insurance Buyers

- Work with your insurance broker to understand the different types of cyber coverage available and secure a policy that’s unique to your needs. Determine whether your organization should purchase standalone cyber liability coverage or make modifications to your current policy.
- Take advantage of loss control services offered by insurance carriers to help strengthen your cyber security.
- Focus on employee training to prevent cyber crime from affecting your operations. Employees should be aware of the latest cyber threats and ways to prevent them from occurring.
- Consider how a cyber incident could affect your operations and plan accordingly. Business continuity and emergency action plans should account for first-party as well as third-party cyber incidents.

Directors and Officers (D&O) Liability

The D&O market is in a period of transition. After a decade of favorable pricing for businesses, insurance carriers have tightened their underwriting criteria for D&O risks. In 2019, businesses purchasing D&O insurance started seeing not only higher premiums and retentions, but reduced capacity as well. We anticipate that the D&O insurance market will continue to firm over the next 12 to 18 months. Rate increases are the new norm, and, for certain segments and larger programs, finding willing capacity for new or replacement layers could prove difficult.

Premium Change for Directors and Officers Insurance, 2017 -2019



Source: The Council of Insurance Agents & Brokers

There are a number of factors forcing insurance companies to reexamine their approach to D&O insurance. In recent years, insurance companies have found themselves paying increasingly expensive claims at a more frequent rate. D&O claims are often eating through primary layers of coverage and impacting excess layers. Costly security class action lawsuits, mergers and acquisitions (M&A) class suits and derivative actions are more common than ever. Finally, there is a longer tail when it comes to D&O claims, and some insurance companies are still paying out losses from claims that occurred during the financial crisis.

For 2020, businesses with a poor claims history and organizations with significant exposures are seeing higher premiums and self-insured retentions (SIR). Additionally, businesses with layered D&O programs will notice that excess premiums are increasing faster than primary ones.

2020 Price Prediction

Public companies: +17% to +50% or more

Private/nonprofit companies: +5% to +35%

Trends to Watch

- **Environmental, social and governance (ESG) issues**—ESG is generally defined as a broad set of environmental, social and corporate governance considerations that may impact an

Directors and Officers (D&O) Liability

organization's ability to execute its strategy and create value over the long term. Investors, regulators and the public increasingly expect organizations and their boards to address ESG issues.

- **Cyber liability in the boardroom**—Now more than ever, corporate boards are under the microscope when it comes to their role in overseeing cyber risks. Cyber claims often cross over into D&O claims when there are allegations that the directors and officers did not put the proper safeguards or insurance coverage into place before a cyber incident.
- **Claims driven by workplace mismanagement**—Following social initiatives like the #MeToo movement, there's intense pressure for corporations to hold leadership accountable for their actions when responding to allegations of workplace harassment. Over the past few years, there has been an increase in D&O claims alleging that corporate boards failed to control, prevent or stop workplace issues.

Tips for Insurance Buyers

- Examine your D&O program structure and limits alongside your insurance broker to ensure they are appropriate and take market conditions and trends into account.
- Work with insurance brokers, loss control experts and underwriters to gain a better understanding of your D&O exposures and cost drivers.
- Focus on addressing exposures related to cyber liability, M&A activity and workforce management.

Employment Practices Liability (EPL)

Like many other lines of insurance, the EPL insurance market is also firming. This is due in large part to a higher frequency and severity of claims in recent years as well as increased legislative activity at the state level. In the current market, there has been a lot of upward pressure on both premiums and SIR rates, especially in certain areas of the country.

Changes to state and local laws, more enforcement activity, social movements like #MeToo and #TimesUp, and an increased focus on the gender pay disparity are just a few notable shifts impacting EPL exposures for employers. Moreover, judges and juries seem increasingly sympathetic to plaintiffs in employment-related actions. Over the past few years, there has been an acceleration of large judgments (more than $5 million) issued against employers for EPL claims. All of these trends are impacting the market for EPL insurance. Many insurance carriers are decreasing their appetite to write new EPL business.

For 2020, we anticipate that most businesses will see rate increases between 5% and 15% on EPL policies. However, larger firms and those that operate in riskier states (e.g., California, Illinois, Florida, New York and Texas) may see larger percentage increases.

2020 Price Prediction

Certain states and industries: +5% to +25%

Overall: +5% to +15%

Trends to Watch

- **Increased litigation**—While litigation for workplace harassment fell slightly in 2019 as compared to 2018, overall levels of litigation for workplace claims are still at near-record highs. Additional trends, such as an aging workforce, could further the volume of legal actions filed against employers.
- **State-level activity**—In 2019, more than 20 states passed laws that expand employer liability related to workplace incidents. Among other requirements, these new laws expanded protections for victims of workplace harassment, created new training requirements for employers related to sexual harassment, extended statutes of limitation and limited the use of nondisclosure agreements. This trend is likely to continue for the foreseeable future as additional states consider similar measures.
- **Wage and hour enforcement**—In 2019, we saw record levels of Department of Labor enforcement for wage and hour violations. While EPL policies often exclude coverage for wage and hour violations, standalone policies are available and may be appropriate for some larger companies. Beyond insurance, employers should pay close attention to wage and hour rules on a state, federal and local level.
- **Gig workers**—In what's referred to as a gig economy, employers are relying on independent contractors and freelancers more than ever before. And while this reduces payroll costs and tax

Employment Practices Liability (EPL)

liabilities, it can also increase the risk of misclassification claims. Moving forward, it's likely many states will adjust their laws to discourage and prevent employee misclassification. What's more, additional states may consider laws like California's Assembly Bill 5, which makes it easier for independent contractors to claim employee status.

- **Possible COVID-19 fallout**—Covid-19 has introduced a host of workplace issues that employers must consider. It's yet to be seen if the fallout from the COVID-19 pandemic will lead to an uptick in lawsuits being filed against employers for issues related to wrongful termination or breaches of privacy.

Tips for Insurance Buyers

- Review your employee handbook and related policies. Ensure you have all appropriate policies in place, including language on discrimination, harassment and retaliation.
- Ensure you are compliant with any recent developments that affect how you manage your workforce or create additional employment practices liability.
- Investigate all claims of discrimination and harassment immediately, and administer discipline and training as necessary.
- Document all evaluations, employee complaints and situations that lead to employee termination.
- Pay particular attention to issues that could lead to wage and hour complaints.

Moving Forward

It can sometimes seem as if the forces determining your insurance rates are beyond your control. But, as an insurance buyer, it's important to know how your premiums are calculated, what trends influence the market and what you can do to get the best price.

Your claims history—which you can control—has an enormous impact on whether your rates go up or down. That's where implementing a solid risk management plan will help steer your pricing in a more favorable direction, both now and in future renewal periods.

The following are five key components of a successful risk management strategy:

1. **Pinpoint your exposure and cost drivers.**
2. **Identify the best loss control solutions to address your unique risks.**
3. **Create a solid business continuity plan to account for disasters and other unpredictable risks.**
4. **Build a company culture focused on safety.**
5. **Manage claims efficiently to keep costs down.**

In addition to implementing the above risk management strategies, working alongside an experienced insurance broker is equally crucial. Qualified brokers can help their clients analyze their business, understand their exposures and establish a suite of customized insurance policies that act as a last line of defense against claims. A broker will also thoroughly explain your policies, notifying you of any additional considerations to keep in mind.

Remember, the insurance landscape is complex, and while the predictions found in this outlook are based on expert research, they are subject to change. Fortunately, your partners at TIG Advisors are diligently monitoring the market throughout the year and will keep you informed of any changes that might affect your business.

For More Information

For more details regarding the information contained in this report, contact TIG Advisors today.

In addition to helping you navigate the insurance market, TIG Advisors has resources to assist in your risk management efforts. Business owners who proactively address risk, control losses and manage exposures will be adequately prepared for changes in the market and will get the most out of each insurance dollar spent.