Pittsburgh RIMS Market Update

Management Liability Trends and Market Conditions

October 11, 2022

State of the Market: Directors & Officers Liability

Directors & Officers Liability Insurance

State of the Market: *Public Company*

Rate Predictions

Stable Risk Profiles		
Primary Layers	↔	-5% to +5%
Excess Layers	▼	-10% to Flat
Side A/DIC Layers	▼	-10% to Flat

Challenged Risk Profiles

- Non-U.S. parent, U.S. exposures
- IPOs and SPACs
- Challenged industries, e.g., oil and gas, health care, life sciences, higher education

Case-by-case basis; potential increases; may experience limited interest

Risk Profile Focus

- Financial strength (liquidity)
- ESG concerns
- Industry
- Territorial exposures
- Claims history
- COVID-19 adaptability
- Regulatory uncertainty
- Loss-cost escalation
- Cyber and privacy
- Systemic exposures

Key Takeaway

Rates and retentions have flattened and improved as capacity inflow continues to drive competitive market dynamics.

Underwriting

Influx of new capacity into the market since late 2020 created competition and yielded rate deceleration throughout 2021. Through Q2 2022, we have seen flattened-to-improved D&O premium outcomes.

Newer markets initially generated rate relief in the excess layers; however, as markets continue to seek growth, several carriers are providing alternative primary competition and leverage.

Other Market Influences

Securities Class Actions (SCAs): SCA filings in 2021 decreased YOY, just over half of annual filings in 2017-2019. Through Q2 2022, filings are on a similar trajectory, with 104 cases filed, annualized to 208 filings.

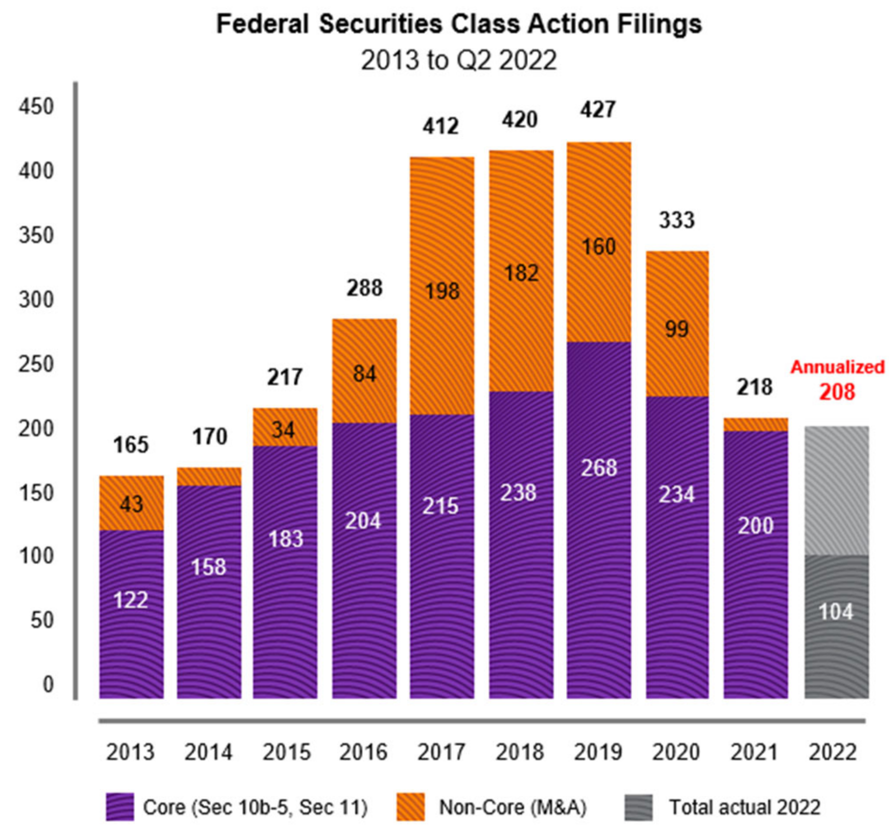
Broader Economy: Deteriorating economic conditions create a heightened need to address risk from an operational and disclosures perspective, also giving rise to solvency and restructuring concerns in some cases.

Environmental, Social, Governance (ESG): Organizations face pressures to address ESG from operational and investment perspectives. Litigation and regulatory exposures have resulted in increased underwriter scrutiny into practices more broadly.

IPOs/SPACs: IPO filings, including SPAC IPOs, are down significantly YOY. Despite the decrease, litigation persists. Heightened underwriter uncertainty and hard market terms and conditions persist for challenged classes. More preferred IPO and SPAC risks may be starting to experience some relief.

Directors & Officers Liability Insurance

State of the Market: Public Company Claim Trends



Frequency (Filings)

1	2022 (Actual/ Annualized)[1]	2021[2]	2020[2]	2012-2021 Average[2]
SCA filings (all)	110/220	218	333	280
Non-Core (M&A)	5/10	18	99	84
IPO (Sec 11 Fed/State/Parallel)	22/44	34	35	15
SPAC SCAs (Sec 10b-5 and Sec 11)	18/36	32	5	N/A

Severity (Settlements)[3]

	2021	2020	2019
Average SCA settlement	$20.5	$57.1	$29.7
Median SCA settlement	$8.3	$10.6	$11.7
Settlements 2012-2021	No.	Median	Med. as % of damages[4]
Rule 10b-5 only	543	$7.9	4.8%
Rule 10b-5, §11 and/or §12	116	$16.0	6.1%
§11 and/or §12 only	77	$8.9	7.6%

Sources:

1. Stanford University, Cornerstone Research, *securities.stanford.edu*, accessed July 15, 2022
2. Cornerstone Research, *Securities Class Action Filings: 2021 Year in Review*
3. Cornerstone Research, *Securities Class Action Settlements, 2021 Review and Analysis*
4. *Id.* Cornerstone refers to these figures as "Median Settlement as a Percentage of 'Simplified Tiered Damages'", as described more fully in its report, *Securities Class Action Settlements, 2021 Review and Analysis*, p. 7.

Directors & Officers Liability

State of the Market—New / Refreshed Capacity

US & BERMUDA

Carrier	Distribution	Appetite	Entrance Year
Ascot	US (Wholesale), Bermuda (Retail)	Public XS D&O; FI & Private Primary/XS D&O	2020
Applied Underwriters	US	Primary and Excess D&O	2021
Arcadian (MGA)	Bermuda	Excess Commercial & FI D&O, Lawyers' E&O, EPL	2020
Aspen US	US	Re-entered public company D&O space in the US	2021
Awbury*	US / Bermuda	Distressed risks; towers with gaps to fill	2020
Balance Partners (MGU) – Fair Co.	US (Wholesale and Retail)	Excess D&O	2020
Banyan Risk Ltd. (MGA)	Bermuda	Excess D&O	2021
Bowhead Specialty	US	Excess D&O/E&O for Commercial and FI	2020
Canopius	Bermuda	Excess D&O	2022
Coalition (MGA)	US	Small business D&O, EPL and Cyber	2021
Dual North America	US	Excess D&O	2021
Hamilton Re	Bermuda	Financial Lines	2022
Falcon Risk Holdings (MGA)	US	Financial and Cyber lines	2021
Intact	US (Wholesale and Retail)	Excess Public Company D&O	2021
Munich Re	US	Excess Commercial Public Company D&O	2021
Orion	US (Wholesale)	Public and Private Excess D&O	2020
ProSight Specialty	US	Public and Private Excess D&O	2021
QBE	US	Revitalized appetite for Public D&O	2021
Relm	Bermuda	D&O for Digital Asset Market (Public and Private)	2020
Skyward Specialty	US (Wholesale and Retail)	Public Excess D&O; Private D&O	2020
Scor Specialty	US / London	Excess D&O and Side A	2021
Vantage	US / Bermuda	Excess D&O – Cyber entrant in H2 2022	2021
Westfield Ins. Co.	US	Excess D&O	2021

LONDON

Carrier	Appetite	Entrance Year
Beazley	New D&O product for Crypto risks	2022
Convex	Public XS D&O; Private Primary/XS D&O, FIs Primary/XS	2020
CV Starr	New Cyber Market entrant in H2 2022	2022
Faraday Syndicate	Crime, FI PI, FI D&O and Commercial PI	2021
Hiscox Consortium	Offers additional capacity to Hiscox Syndicate and/or split lines between both	2020
Inigo	Primary and Excess D&O; FI Primary entrant in H2 2022	2021
IQUW (Lloyd's)	Commercial & FI D&O	2021
Ki Syndicate (Lloyd's)	Follow only (Brit) & selected nominated lead/syndicates) digital business	2021
Landmark (MGA)	PI and D&O	2021
Mosaic	Cyber , Professional Lines & FI D&O	2021
Rising Edge (MGA)	Primary and Excess D&O	2021
Syndicate 4321	Beazley ESG Syndicate – ability to offer additional capacity for clients with superior ESG metrics	2022
Tegron Specialty	Excess Public Company D&O	2021

(as of 7/15/2022)

Fidelity & Crime

State of the Market

Rate Predictions

Stable Risk Profiles		
Commercial	↔ ▲	Flat to +5%
Financial Institutions	↔ ▲	Flat to +5%
Not for Profit	↔ ▲	Flat to +5%

Challenged Risk Profiles

- Non-Governmental Organizations (NGOs)
- Gaming, casinos, etc.
- Crypto
- Cannabis
- Plastic card

Case-by-case basis; large potential increases; may not be enough willing capacity

Risk Profile Focus

- Industry
- Claims history
- International footprint
- Consistency of controls across all locations
- Wire transfer controls
- Verification procedures
- Anti-fraud training for employees
- Network access via VPN
- Multi-factor authentication

Key Takeaway

- In most cases, underwriters have returned to pricing renewals based on changes in exposure year over year. Some carriers are suggesting continued rate need on their social engineering book.

Competition

- Most insurers prefer to limit primary capacity to $10m.
- Social engineering coverage remains largely sub-limited.
- Excess crime remains highly attractive and competitive.
- Excess social engineering only product is available and being underwritten by Beazley.
- Start-up D&O insurers may also have excess crime capacity to deploy.

Underwriter focus

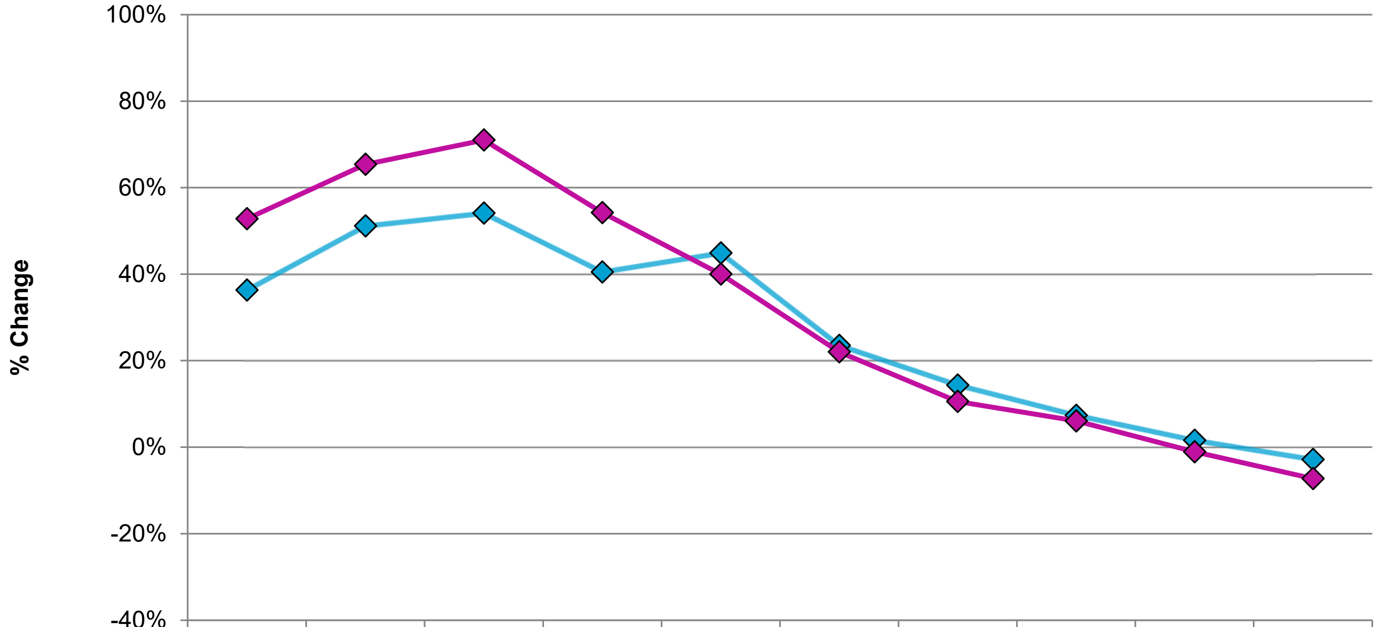
- **Social engineering controls**; specifically, call back requirements.
- **Identifying and eliminating** crime coverages that may be duplicative with cyber (i.e., destruction of data).
- **Clarifying** that crime will not respond to cyber related exposures.

Directors & Officers Liability – Commercial Public Company

Quarterly

Average Rate Change:

Rate Change = Premium change on comparable limits with an adjustment for retention changes calculated via D&O Quantified



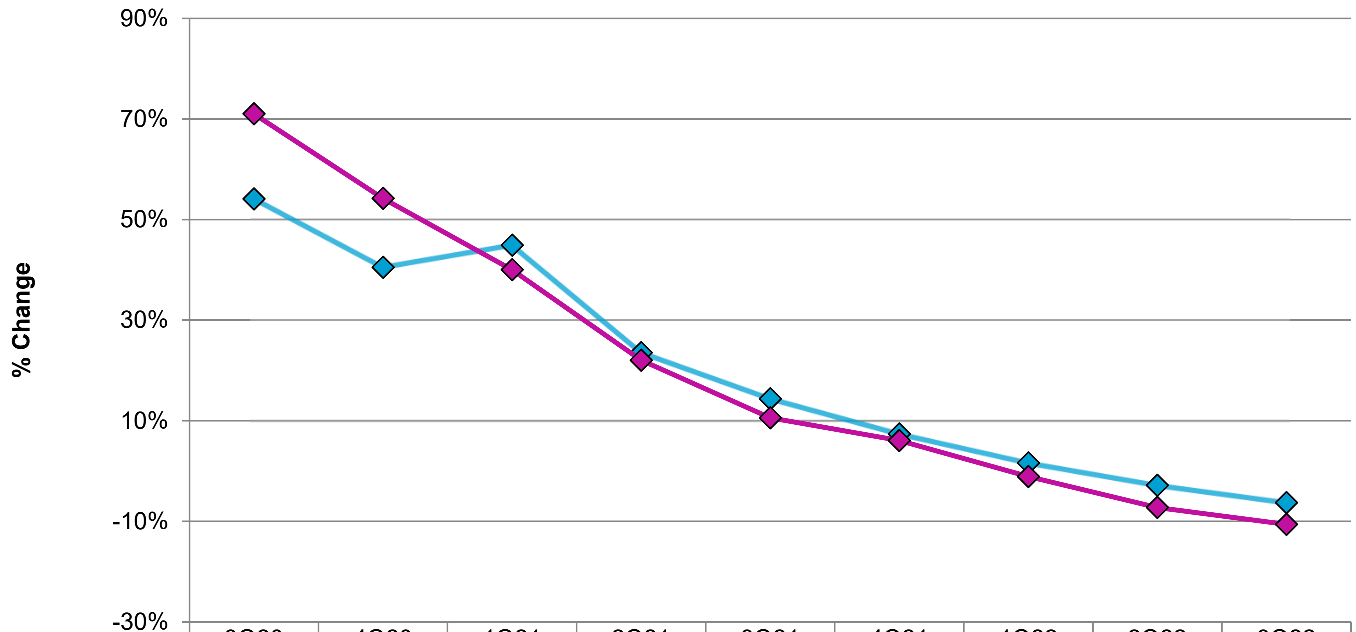
	1Q20	2Q20	3Q20	4Q20	1Q21	2Q21	3Q21	4Q21	1Q22	2Q22
Primary	36%	51%	54%	40.5%	45%	24%	14%	7%	2%	-3%
All ABC Layers	53%	65%	71%	54.2%	40%	22%	11%	6%	-1%	-7%

Directors & Officers Liability – Commercial Public Company

Quarterly

Average Rate Change:

Rate Change = Premium change on comparable limits with an adjustment for retention changes calculated via D&O Quantified



	3Q20	4Q20	1Q21	2Q21	3Q21	4Q21	1Q22	2Q22	3Q22
Primary	54%	40.5%	45%	24%	14%	7%	2%	-3%	-6%
All ABC Layers	71%	54.2%	40%	22%	11%	6%	-1%	-7%	-11%

Directors & Officers Liability Insurance

State of the Market: *Private, Not for Profit*

Rate Predictions

Stable Risk Profiles		
Primary/Excess*	↔	-10% to +10%
Side A/DIC Layers	▼	-10% to Flat

* Low end of range predicted for more broadly marketed risks

Challenged Risk Profiles

- Non-U.S. parent, U.S. exposures
- Challenged Industries, e.g., oil and gas, health care, life sciences, higher education, retail, restaurants, sports/entertainment, newly created organizations
- Recent claims activity; opioids, cannabis and hemp; cryptocurrency, NFTs; M&A and other corporate transactions; solvency concerns, newly created organizations, especially those highly leveraged.
- Case-by-case basis; large potential increases; may experience limited interest

Risk Profile Focus

- Financial strength (liquidity)
- ESG concerns
- Industry
- Territorial exposures
- Claims history
- COVID-19 adaptability
- Regulatory uncertainty
- Loss-cost escalation
- Cyber and privacy
- Systemic exposures

Underwriting

Primary: Insureds with low and stable risk profiles are seeing enhanced competition, with a minimum of flat renewals and decreases when marketed. The market for high and/or distressed risk profiles remains challenging.

Excess: For larger risks, excess markets have recalibrated increased limits factors (ILFs).

Retentions: For challenged risks and those with large exposure increases, carriers continue to press for higher retentions. Even for smaller risks, minimum retentions are being scrutinized and regularly increased. Severity of increases most often depends on prior renewal increases and the need, if any, for continued correction.

Increased deployment: Carriers are willing to regularly deploy capacity for preferred risks. Additional capacity can be found for more risks than in recent quarters. This is having an impact on market conditions more broadly, especially for more desirable risks.

Market Influences

The Economy: Economic concerns around supply chain, staffing shortages and inflation continue to create uncertainty.

Bankruptcy/Restructuring: Heightened scrutiny over organizational liquidity continues in the face of persistent pandemic uncertainties.

ESG: Companies face pressures to address environmental, social, and governance concerns, including climate risk and diversity and inclusion, from operational and regulatory perspectives.

State of the Market: Employment Practices Liability

Employment Practices Liability Insurance

State of the Market

Rate Predictions

Stable Risk Profiles		
Primary Domestic Markets	▲	+5% to +15%
	↔	Flat to +10% (FI)
Bermuda Markets	▲	+5% to +15%

Risk Trends

- 61,331 EEOC charges in 2021 (decrease from 2020)
- Biden Administration providing broader employee protection
- Privacy protections – increased privacy protections lead to class actions

Global Trends

- COVID-19 (mandates and return to work)
- Equal Pay
- ESG / Diversity, Equity & Inclusion
- #MeToo

Key Takeaway

The EPL rate environment is slightly improving, however, changes in exposure will impact rate; retentions remain fairly stable, however, expect separate retentions for certain hotbed states.

Underwriting

Continued pressure on primary retentions. Expect increase in retentions and separate retentions for CA, NY, NJ and IL claims and for “highly compensated” employees

COVID-19 related questionnaires during the underwriting renewal process regarding the company’s position on vaccine mandates and accommodations based on religion and/or disability exemptions.

Capacity stable but still limited for stressed industries due to COVID.

Continued pull back on coverage for biometrics and privacy claims (i.e., BIPA, CCPA)

Market Influences

COVID-19/economy uncertainty; financial uncertainty for industries emerging from COVID-19 (Healthcare, Retail, Hospitality and Leisure)

Increased employment claims

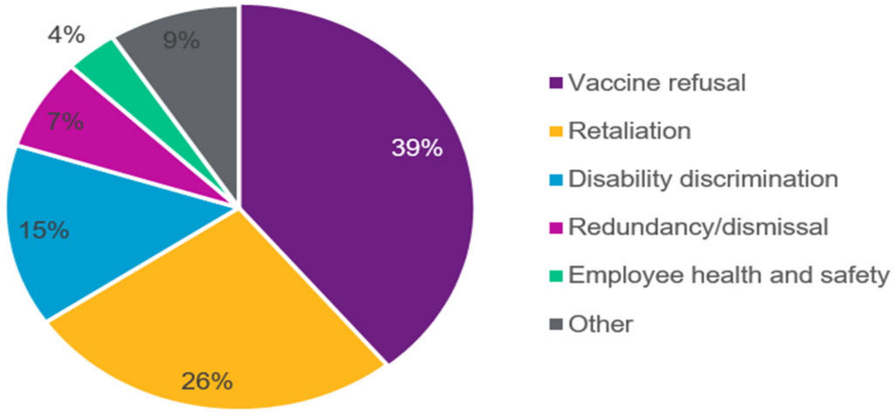
Social media movements that drive employee claims

Employment Practices Liability Claims

Claims and losses - WTW Proprietary Claims Data

COVID-19

The pandemic has led to employment practices claims which initially tended to center around the lack of protective equipment and the safety of working conditions. Many matters contained allegations of retaliatory actions against the employees. Claims alleging disability discrimination often alleged a lack of concern over employee's health in environments where infections were occurring. A recent increase has been noted in the number of EPL claims related to a failure or refusal to have a COVID vaccine.



Employment Practices Liability

Top issues to watch

Issue: COVID-19

More than 5,000 employment-related complaints have been filed thus far. While OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard was stayed, employers not covered by another federal, state, or local mandate may choose to implement whatever policies and practices best-suited to the unique needs of their workplace; employers who choose to maintain workplace vaccination policies must still follow other applicable laws, such as Title VII and the Americans with Disabilities Act.

Issue: Invasion of Employee Privacy / AI

New technologies in response to the pandemic, including to support remote working and protect health and safety may present new concerns. The EEOC is considering how artificial intelligence (AI) used in employment decisions (including hiring) may overlap with federal civil rights laws. In addition, as return-to-work and hybrid scheduling continues into 2022, considerations for how employers monitor productivity without breaching privacy and confidentiality issues will become a bigger issue

Issue: Diversity, Equity & Inclusion/ ESG

Diversity, equity and inclusion continues to be an area of focus in many organizations – continue to expect more questions from underwriters about your organization's inclusion, diversity and equity initiatives. Many states continue to pass state-specific legislation regarding pay equity, wage discrimination and sexual harassment.

Issue: Pay Equity

Based on the Equal Pay Act, but over the last few years many states have amended their equal pay laws to supplement the EPA, and in some cases provide broader protection. Many states have also passed pay transparency laws. Typically, these cases are hard to litigate so they tend to settle.

Wage & Hour

State of the Market

Rate Predictions

Stable Risk Profiles		
Primary Markets	▲	+5% to +15%

Risk Trends

- 5,238 FLSA collective actions filed in federal court (decrease from 2020)
- State legislation providing broader protection for employees
- CA biggest area of concern for underwriters
- Minimum wage increases lead to higher value claims

What to Expect…

Underwriting

- Bermuda carriers
- Continued increases in rate and retentions being sought by carriers on the back of claims experience, legal environment and impact of COVID.
- Underwriters still asking additional questions related to COVID during the submission process, although now focused on return to work and vaccination protocols etc.
- California still remains the region of major concern irrespective of industry class
- Most challenged sectors: Retail, Healthcare, Hospitality and Leisure.

Market Influences

- COVID-19 uncertainty
- Financial uncertainty for industries emerging from COVID-19 (Healthcare, Retail, Hospitality and Leisure)
- Increased state legislation

State of the Market: Fiduciary Liability

Fiduciary Liability Insurance

State of the Market

Rate Predictions

	Trend	Range
Commercial/nonprofit (plan assets up to $50M)	▲	+5% to +15%
Commercial/nonprofit (plan assets $50M to $500M)	▲	+10% to +25%
Commercial/nonprofit (plan assets above $500M)	▲	+10% to +40%
Financial Institutions	▲	+5% to +25%

Key takeaways

- Increases in premiums have stabilized somewhat, although within substantial ranges.
- Carriers continue to focus primarily on class action retentions with upward pressure.
- Negative U.S. Supreme Court precedent and its short term effects on motions to dismiss, combined with a renewed volume may override lowered severity trends. Carriers prefer to see frequent RFPs/benchmarking, no revenue sharing, no retail share classes, few actively managed funds.
- Nonetheless, the market for primary fiduciary shows signs of expansion, with some established carriers which historically had small books expanding their appetite (especially if the primary D&O can also be available).
- Most carriers prefer to offer $5M limits rather than $10M – and may be willing to offer lower retentions for reducing primary limits to $5M.

Underwriters Continue to be Cautious

- **Underwriting Focus:** Excessive fee class action volume appears to have returned somewhat, with 42 cases being filed in the first half of 2022 (versus only 54 in 2021, but almost 100 in 2020). Although most recent settlements have been substantially below $5M million (previously most settlements exceeded $10M), carriers are still concerned about perceived unpredictability, high costs of defense and the substantial number of still pending cases. The U.S. Supreme Court’s pro-plaintiff ruling in the Northwestern University excessive fee case disappointed insureds who hoped that a victory for the defense could reverse the negative pricing trends in fiduciary liability; although the Court’s holding was very narrow, most carriers have seen it as a justification for continued tough terms and possible escalation. Particularly with commercial and large nonprofit (university and hospital) risks, underwriters are focused on defined contribution pension plans with assets greater than $250M, where previously the cut-off had been $1B (now some carriers are reluctant to quote plans with assets above $1B). Even smaller plans cause concern, now that a few smaller plaintiff firms have targeted them. Insurers now seek detailed information about fund fees, record keeping costs, share classes and more.

- **Retentions/Sublimit:** Insurers are even more focused on retentions than on premiums. First-dollar coverage is virtually impossible to obtain. Retentions of 7 figures have become commonplace for specific exposures, e.g., prohibited transactions/excessive fees and sometimes all mass/class actions, with some outliers seeking 8 figure retentions. Even the non-class action retentions are generally six figures now (previously five figures). Some insurers may only offer a sublimit of liability or exclude prohibited transactions/excessive fees coverage. Marketplace results vary with plan asset size, plan governance and claim history; recently brokers have had some success in getting credit for positive risk factors including level of delegation, quality of advisors and favorable circuit venue.

- **Rate Prediction Qualification:** Rate increases may be higher or lower depending on the insured’s existing pricing. Insureds who have already had at least one round of double-digit percentage premium increases may see increases as low as 5 to 15%. Price per million can vary substantially among risk classifications, particularly those involving plans with proprietary funds.

State of the Market:
Fidelity / Crime Coverage