

SPECIALTY LINES MARKETS



A DIFFERENT SORT OF SOFT MARKET

Professional liability market segments have unique reactions to market conditions

By Phil Zinkewicz

Anyone who has been in or around the property and casualty insurance industry long enough to have experienced at least one soft market knows that we're in one now. The signs are all there. There is competition for business that was all but shunned in the last hard market, so availability is not now a problem. New players with a good deal of capital are coming into the business creating additional competition. And, of course, premium rates are dropping.

But there's something different about this soft market. Compare it to the early 1980s when the soft market then brought with it chaotic behavior and less-than-wise underwriting judgment. Interest rates were soaring and insurers were willing to write the most volatile business at bargain prices in order to accumulate premium dollars for investment purposes. The phrase used to describe this phenomenon was "cash flow underwriting," and insurers paid the price for this foolhardy approach to doing business. By the mid-1980s, the industry was in the middle of the most severe hard market it had ever known.

By the early 1990s, however, insurers demonstrated clearly that they had not learned anything from the 1980s debacle. The stock market was booming and it was clear that

there was gold in "them thar' hills." The cash flow underwriting concept resurfaced and the insurance industry market remained soft until the end of the 1990s. The hard market began to surface in early 2000, became even harder after 9/11, and was further exacerbated by Hurricane Katrina and her sinister siblings in 2004.

But in today's soft market, interest rates are not soaring and the stock market is not booming. Quite the contrary. Interest rates are low, the stock market is down drastically and the overall economy is in the doldrums. So, what sort of soft market does that give us?

Rough Notes magazine checked in with some experts in professional liability exposures, which can be a volatile line of business, to find out what kind of soft market they're experiencing.

Stephen Freedman, senior vice president for the California-based Professional Underwriters Liability Insurance Co., which specializes in physicians liability, describes the standard professional liability market overall as "not soft, but softening." He continues: "The high-risk market, on the other hand, is very soft, with prices dropping and terms and conditions broadening. This is because there is a good deal of capacity available. New players are coming into the arena, such as new carriers who have never written the line before and risk retention groups. There has been a decline in the

frequency of claims in the area of physicians liability and that makes this particular line more attractive to the new capacity."

Garrett Koehan, executive vice president for Crump Insurance Services, a multi-line wholesale insurance brokerage group and a writer of medical liability, says that one should look at different segments of the professional liability market when trying to determine market conditions. "I would say that the miscellaneous professional liability market is soft, but stabilizing. The real estate market is difficult, understandably so given all the negative publicity involving mortgages. The same is true of hedge funds. On the technical side, I would say the market is slightly soft."

Michelle Duffett is executive vice president and co-founder of Insight Insurance Services, Inc., an insurance program administrator specializing in professional liability insurance for accounting professionals, architects, engineers and insurance agents. Duffett says that, overall, the professional liability market is soft. "There is no question that there is pricing competition. However, we're not seeing a lot of variation in policy terms, which usually happens in soft markets."

Nevertheless, Duffett says there are signs of softness in the market. "I've been solicited in the last few months by carriers to bring them more agents errors and omissions business," she says. "Companies want to write more

program business when the market is soft to bring in new premium dollars. And there is new capacity coming into the market. Let's face it. When the stock market is not performing well and interest rates are low, insurance looks pretty good as an investment."

John Whall, vice president of Euclid Managers, a program manager based in Kansas City, notes that "the marketplace for Internet, tech, miscellaneous professional liability and to a certain extent, media, was already robust but the number of new entrants over the past 12 months have further crowded the marketplace, which only heightens the impact of the soft market pricing trends. In fact, trends that created problems for carriers less than five years ago may be resurfacing. For example, limit management is deteriorating as carriers are putting up higher primary limits. Also, excess layers are selling for as little as 35% of underlying and the rate per million is starting to look more like an umbrella rate. Finally, carriers that previously steered clear of covering intellectual property, personal injury and security are now building coverage for these exposures into their forms without necessarily charging additional premium.

"Unfortunately, some carriers regard E&O lines like a commodity," Whall continues. "This is a mistake as all risks within the same class of business do not present the same levels of exposure. With the rate deterioration over the past 12 to 18 months, this approach could be problematic for those underwriters that do treat all accounts as the same."

Homer Sandridge, vice president and manager of the professional liability business unit for Travelers' bond and financial products, and Tim Francis, vice president and miscellaneous professional liability product manager for Travelers, agree that the professional liability market is soft in spots and not so soft in others. "Travelers offers a wide range of non-medical professional coverages including design professionals, accountants, tax professionals, lawyers, real estate professionals, and more," says Francis. "In addition, our miscellaneous professional liability department provides coverages for other professionals in the marketing and public relations areas, among others," adds Sandridge.

"You have to examine these segments separately," they say. "Look at architects and engineers, for example. Terms and conditions became extremely broad in the last soft market and stayed that way

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during the hard market. They're not going to get any broader now. And you have to look at accountants liability carefully. The roles are expanding for small and mid-sized accounting firms. These firms are no longer giving only tax advice but investment advice as well. Our policies are meeting those changes."

For design professionals, again the role of the architect is changing dramatically, according to Sandridge and Francis. "In the past, architects usually worked with the end user of designed products," they say. "Today, architects are very often working for a contractor or a subcontractor and so become the servant of multiple masters. The point is we are seeing coverages responding to the needs of the customers and not necessarily to market conditions. We are looking at our customers to determine what it is they do and how that determines new exposures. In other words, we're trying to fill the gaps that may exist because certain new exposures do not fall under a standard policy."

Sandridge and Francis emphasize the importance of working with the customer in developing sound risk management programs. "We spend a good deal of time," they say, "and a great deal of energy translating claims coming from our customers into risk management tools. New players coming into the market cannot do that. We encourage our brokers and agents to work with customers in discussing risk management disciplines, not just with the principals of the company but with staff and employees. Risk management is essential for professional liability lines."

Finally, *Rough Notes* spoke with executives of The Marquis Agency, a Woodbridge, New Jersey-based firm that provides specialized insurance products and

risk management services to companies throughout the United States, focusing exclusively on professional liability service firms. The three interviewed were Ami Jastrzemski, Keith Fitschen and Debra Pellet, all account executives with Marquis.

"We build customized solutions for the design, real estate, legal, technology, financial and consulting industries," says Ami. "We have 1,300 clients that are in the architects and engineers arena, so that makes us pretty much a leader in this area."

"We offer our solutions to brokers around the country who want to get into any of those areas," adds Debra. "We primarily operate as a retail agent," she says.

"There's no question that the professional liability market is soft," says Keith. "Terms and conditions are broad, as broad as they can get," he says. All agreed, however, that underwriting caution has not been tossed into the winds as it had in previous soft markets. "All candidates for professional liability coverage are being scrutinized carefully. This is especially true in the A&E area," says Ami, "where it has become difficult getting increased limits on some firms."

Ami, Keith and Debra agree that carriers are looking at the financial strength of firms to be insured and how they are developing. "With the downturn in the economy, a faltering stock market and low interest rates, there is no cash flow underwriting in this soft market," they say.

"The same is true on our side of the business," they add quickly. "We don't just jump into bed with new carriers. We investigate them carefully as well. And, we want carriers that have strong risk management programs in place for our brokers to draw upon," they say. ■