Condo risks in focus as A&E market tightens

By Michael Bradford | November 1, 2021

Rising losses are causing underwriters to rethink the way they analyze architects and engineers professional liability risks, and the deadly collapse of a condominium building in south Florida earlier this year is raising further concerns.

Coverage prices have moved up gradually over the past three years as A&E professional liability losses have become more frequent and severe, sources say.

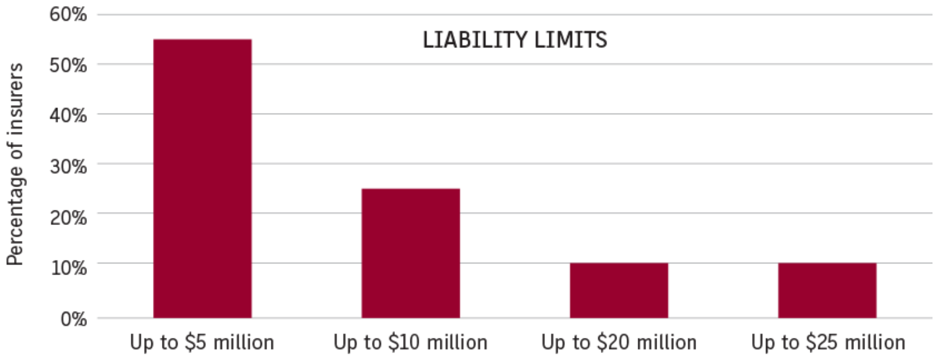
And while the collapse of the Champlain Towers South condo building in Surfside, Florida, is not expected to immediately have a widespread impact on rates, it is bringing closer scrutiny to condo risks and could eventually lead to coverage restrictions, they say.

“The Surfside condo collapse will heighten awareness around the risks associated with this project type and will likely cause a further tightening for condo projects,” Lawrence Moonan, executive vice president and chief operating officer at Monterey, Calif.-based Berkley Design Professional, a unit of W.R. Berkley Corp., said in an email.

The June 24 collapse of around 55 condo units in Surfside killed 98 and triggered lawsuits, including one filed by a victim’s family that names engineering firm Morabito Consultants Inc., charging it failed to provide warnings of the dangerous condition of the building.

Morabito has said that it provided the Champlain Towers South Condominium Association with an estimate of costs to make extensive repairs to, among other things, “significant cracks and breaks in the concrete” of the building.

MAXIMUM AVAILABLE PROFESSIONAL LIABILITY COVERAGE



Source: Ames & Gough, Architects & Engineers Professional Liability Insurance Market Survey

"In terms of underwriting, I think it's a real wakeup call for underwriters to the perils of large vertical condo complexes," said Michael Muglia, national underwriting director, professional liability, at Burns & Wilcox, a unit of H.W. Kaufman Financial Group Inc. in Farmington, Michigan. "In general, the industry has a conservative approach to those types of projects," he added, but in the wake of the Surfside collapse, they are going to be even more reluctant to consider a similar exposure.

Lisa Wheeler, Kansas City, Missouri-based senior vice president and team leader in the construction and design practice at Lockton Cos. Inc., said insurers and brokers accepted after the Surfside collapse that "these things are going to happen, let's revisit what the best practices are and what as design firms you should be aware of in your contracts, what you're agreeing to and where you are limiting your liability appropriately."

The collapse has not immediately affected the A&E professional liability market, Mr. Moonan said, but he expects rates could rise. Fewer insurers will likely be willing to offer coverage on condo projects, particularly in coastal areas, "and those that do will likely charge higher premiums for the exposure and will restrict policy limits as they are able," he said.

The collapse is "an unfortunate real-life example of what can happen," said Laura Malloy, Bala Cynwyd, Pennsylvania-based loss control director with RLI Professional Services Group, a unit of RLI Corp. And when policyholders request higher limits, "you need to really nail down the specifics of a project and get a feel for the construction values, contracts that are in place and what the insured is willing to provide service-wise for that project," she said.

Coverage costs for A&E professional liability risks were rising before the collapse in Florida.

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A gradual tightening in the market pushed up prices 5% to 10% at recent renewals, sources say. Plenty of capacity is available but insurers have grown more cautious about deploying it as losses have climbed, they say.

“We’ve seen the market harden a little bit,” said Jared Maxwell, Boston-based vice president and partner at specialty broker Ames & Gough Insurance Risk Management Inc. “That’s primarily due to the claims frequency and severity ticking up.”

“Over the last couple of years, we have seen some challenges from the buyers’ perspective,” said Brandon Perry, senior vice president and A&E large firm program manager at Victor Insurance Managers Inc. in Bethesda, Maryland. Moderate rate increases are being charged for most risks, he added, with larger hikes for “classes underwriters have traditionally seen as riskier business,” such as structural engineers, geotechnical engineers and residential real estate.

Some insurers are pushing hard for rate increases and stricter terms and conditions on renewal business, said Christine DeFelice, New York-based vice president and team lead for professional liability, architects and engineers, and contractors E&O, at managing general underwriter CorRisk Solutions, a unit of Ryan Specialty Group Holdings Inc.

Ms. DeFelice said, however, that the market is turbulent because some insurers that have raised renewal rates on accounts that have been loss-prone are “attacking new business aggressively,” which she says reflects a lack of underwriting discipline.

“You have to stay consistent,” she said. “At some point, it doesn’t make sense to try and compete with those carriers.”

Capacity issues tend to affect the largest and smallest buyers, according to Mr. Perry.

A&E firms that need $50 million or more in coverage “are seeing some churn in markets for excess placements” and have to replace some insurers in those layers, he said. Smaller firms that need limits of $5 million to $10 million are also seeing disruption as some insurers back away from those accounts.

“Across the market we’re seeing requests for higher limits” driven partly by rising construction values and social inflation — higher judgments and settlements, said Vince Costello, underwriting director with RLI. Whereas limits of $5 million were routinely requested a few years ago, “$10 million is the new $5 million,” he said.

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“Capacity is still available, insureds and brokers just need to find it,” Mr. Costello said. In some cases, that means building towers of coverage and involving multiple insurers, he added.

Adequate capacity is not a problem for most risks, said Ms. Wheeler. Professional liability for project-specific risks, however, can be somewhat difficult to arrange as “the number of markets has become more limited in that area.”

A lack of willing insurers is not a problem for most well-managed risks, Mr. Maxwell said. “There’s still significant capacity. If you’re a good risk you’re probably going to benefit from the competition that’s out there,” he said.

Climate change complicates underwriting decisions

A challenge for architectural and engineering firms — and their insurers — is determining whether changes in the climate should influence the design and evaluation of projects.

“There is a focus on whether climate change events are something that should be factored in,” said Brandon Perry, senior vice president at Victor Insurance Managers Inc. in Bethesda, Maryland “Consequently, as underwriters and the insurance marketplace, how do we account for that as well?”

The standard of care is a big focus for the industry, said Lisa Wheeler, Kansas City, Missouri-based senior vice president at Lockton Cos. Inc. And it is unclear how designers can anticipate the potential effects of a changing climate and adapt their projects in ways that haven’t been tested, she said.

“It is something we are evaluating right now,” said Vince Costello, Bala Cynwyd, Pa.-based underwriting director at RLI Professional Services Group. “A design professional has a certain standard of care; could environmental issues change that?”

Whether they are the result of climate change or cyclical weather patterns, more frequent storms like those along the Gulf Coast have already prompted changes in building codes in some areas, said Michael Muglia, national underwriting director, professional liability, with Burns & Wilcox, a unit of H.W. Kaufman Financial Group Inc. in Farmington, Michigan.

Design and engineering firms must adhere to those codes, he said, and when they change, it creates challenges for projects already underway.

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