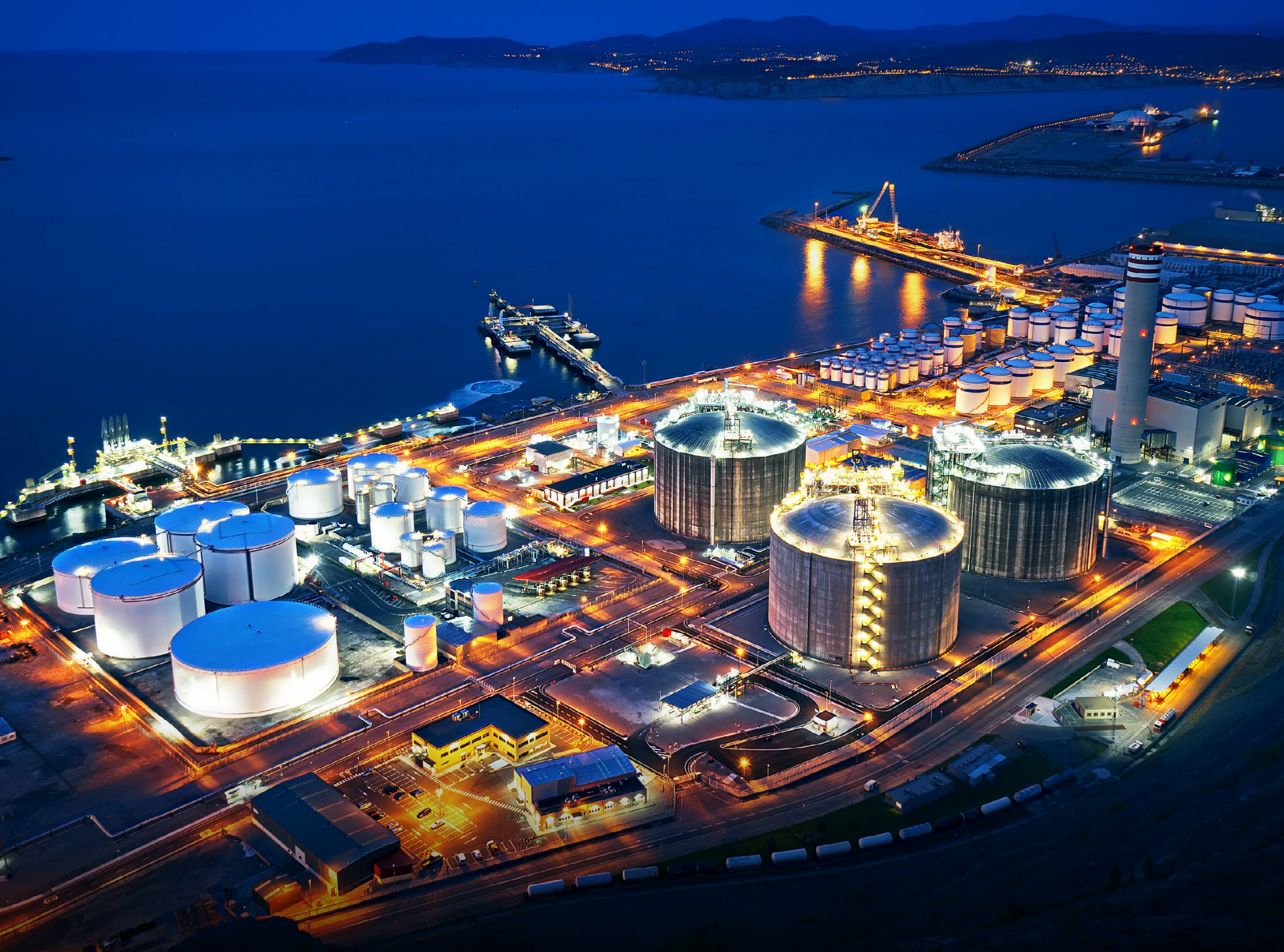
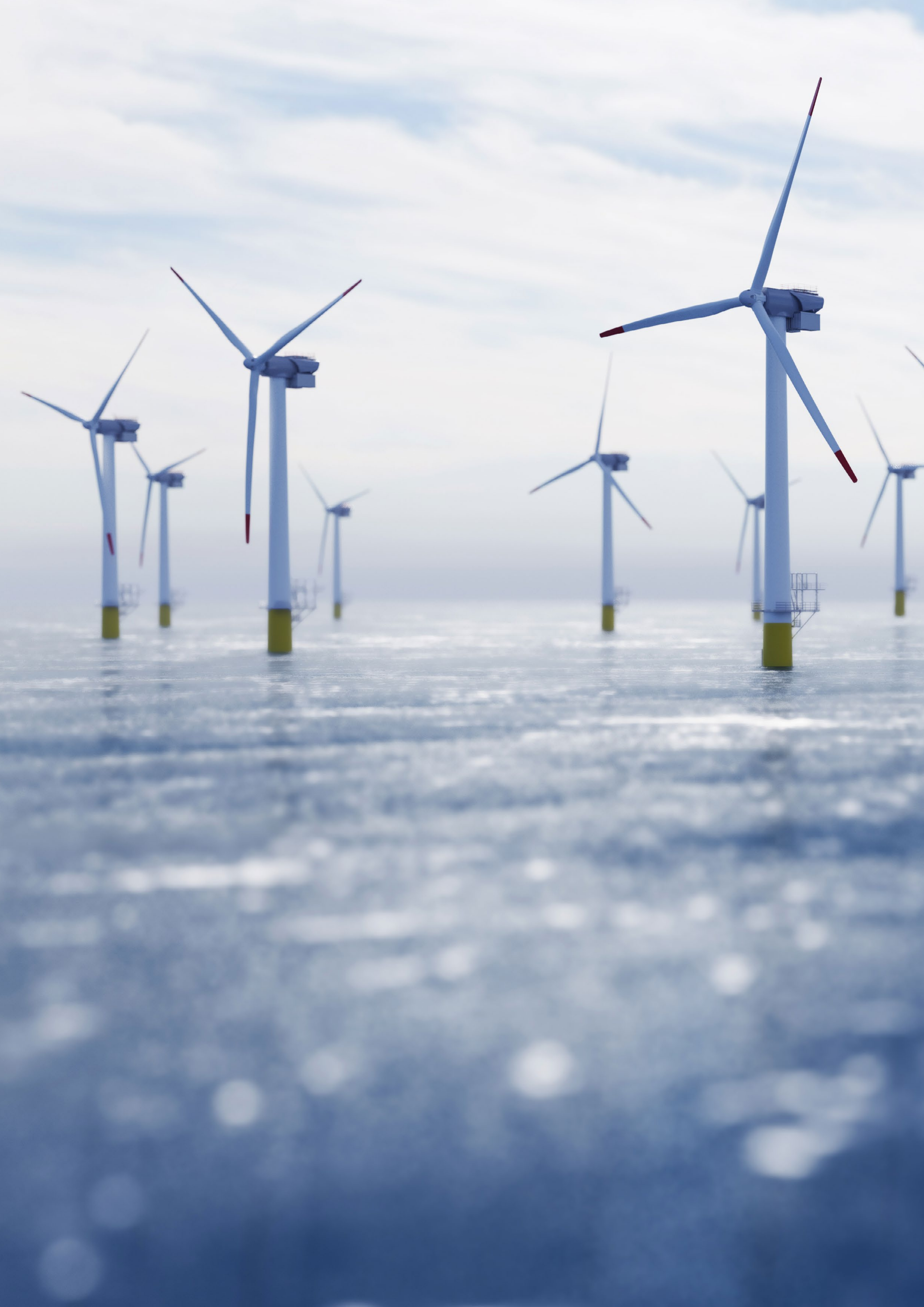
Marsh

Marsh Specialty

Energy & Power Quarterly Newsletter

April 2021





We are pleased to issue the April 2021 edition of the Energy & Power Quarterly Newsletter.

The energy and power insurance market provides solutions for companies operating within upstream, downstream, casualty, traditional power, and renewable energy. In this publication, we talk about the nuances and trends being experienced across the various sectors.

We hope you find this newsletter interesting and informative, and we welcome your feedback about insights you would like to see in future editions.

Contents

State of the market update

Insurance markets, like most commodity markets, are cyclical. The commodity in the insurance market is an insurer's capacity to underwrite risk, and the limits they place on those risks.

Like all cyclical markets, pricing is driven by supply and demand - supply being insurers' capacity, and demand being the limits of insurance companies want. Limited capacity leads to higher pricing, and additional capacity forces competition leading to lower pricing. At a certain point in a downward rating environment, insurers cut-back capacity or withdraw, enabling remaining participants to increase prices, which over time attracts new capacity. And the cycle repeats.

Clearly, this is an overly simplistic description of the insurance market cycle which is actually influenced by various complex, external factors, that impact available capacity and drive demand. Capital flowed to insurance markets following the financial crisis of 2007-08, because of record low interest rates and poor investment returns from financial markets. This increase in supply led to a softening of insurance markets across the board. For nearly a decade premium levels (rates) reduced year-on-year, and terms and conditions improved in buyers' favour.

While capacity in the insurance markets has remained relatively steady over the last few years, overall loss levels in many sectors have gradually led to capacity withdrawals and the onset of a hardening market. This is characterised by premium increases year-on-year, tightening of terms and conditions, and in some cases, increases in deductibles, in insurers' favour.

Sectors where overall premium values are not sufficient to cover the actual or prevailing losses, have seen year-on-year double-digit increases to "correct" the insurers' book. However, despite this hardening market, rate increases in certain sectors, such as downstream property insurance, are decelerating as capacity levels stabilize. New entrants are returning to other sectors where demand is increasing however, at the same time some insureds are exploring alternative risk strategies such as self-insurance or the use of captives and mutuals. Typical of a hardening market, there are more restrictive terms and conditions for certain perils, such as lower sub-limits or absolute exclusions. Cyber exclusions in particular have gained traction with insurers, and unsurprisingly, the pandemic has led to the introduction of communicable disease exclusions on virtually all policies.

UPSTREAM ENERGY

Confidence is returning to the oil and gas industry as the oil price improves significantly from its 2020 lows. The January 2021 edition of this newsletter discussed the concept of a capacity pyramid for upstream sectors. There are now clear signs that insurers are competing for a bigger share of insureds with premiums of around US$10 million at the top of the pyramid. Here, increased capacity, increased competition, and the absence of significant losses in the first quarter, mean price increases by insurers are more difficult to achieve.

Discrepancy between insurers has stabilized and average increases of around 5% were seen over the quarter. However, conditions continue to tighten for smaller business at the bottom of the pyramid. This is due to historical inflation of premiums, poor claims records, and some insurers exiting the market when they are unable to secure minimum premiums in-line with their underwriting requirements.

There is increased interest in offshore construction from following markets, enabling easier completion of programs.

Overall, insurers have absorbed the minimum 10% treaty reinsurance cost increases that they have experienced previously. The insurance procurement outlook for upstream clients definitely looks brighter.

However, it is a different story for United States Gulf of Mexico insureds who buy named windstorm coverage. The market remains tight to hard, with no serious new entrants to challenge the major insurers. Treaty reinsurers have not responded to the excellent results that this class has generated over the years, allowing underwriters to continue to impose extremely high retentions.

The most positive outlook for deepwater assets is likely to be 'as before' premium pricing. For fixed shelf platforms, the reasonably priced capacity offered by cargo style underwriters is likely to contract following losses from Hurricane Laura in 2020.

DOWNSTREAM ENERGY

Customers experienced improved offerings from the markets during the first quarter. Better loss experience through 2020, coupled with many years of continuous rate increases, and lower than expected reinsurance treaty costs, have seen insurer profit margins significantly improve. Rating levels are close to those of 2012, which some insurers consider a benchmark for sustainable underwriting. However, despite limited new capacity entering the sector, insurers generally, are targeting double digit premium growth in 2021.

The downstream markets have absorbed the impact of COVID-19 with some interesting results. The pandemic has substantially curtailed site surveys, but reaffirmed insurers' drive to keep rate increases moving. While the feared material losses in the sector have not eventuated, there is continuing focus on the potential effects of pandemics on policy coverages.

Capacity from leading global insurers for downstream property is in the region of US$4.4 billion but with only 50% of that applying to 'working' capacity for business interruption and natural catastrophe (NatCat) risks. Business interruption volatility clauses are well established and will be more poignant as customer earnings begin to ramp back up. The rollout of COVID-19 vaccine programs is beginning to accelerate project work, which will increase opportunity for construction and operational insurers. A move back to physical risk engineering surveys (and away from virtual surveys) may be further away as travel is likely to remain restricted throughout the year.

There remains a meaningful difference on expectations between geographical markets but this will likely narrow as the year progresses. The principles of pandemic and cyber resultant damage clauses continue to be hotly discussed. And, we expect to see further scrutiny and evaluation of environmental, social and governance (ESG) issues within the sector.

As we move into the busiest transactional quarter of the year, the markets remain sensitive to both rate movement and loss impact. Substantive or higher frequency of large losses will provide the momentum for upward rate movement, whereas a continuing absence of 2021 loss activity, and increased capacity, will provide a tipping point in the current market cycle.

At the end of the first quarter, rate rises are expected to continue but on a quickly flattening curve.

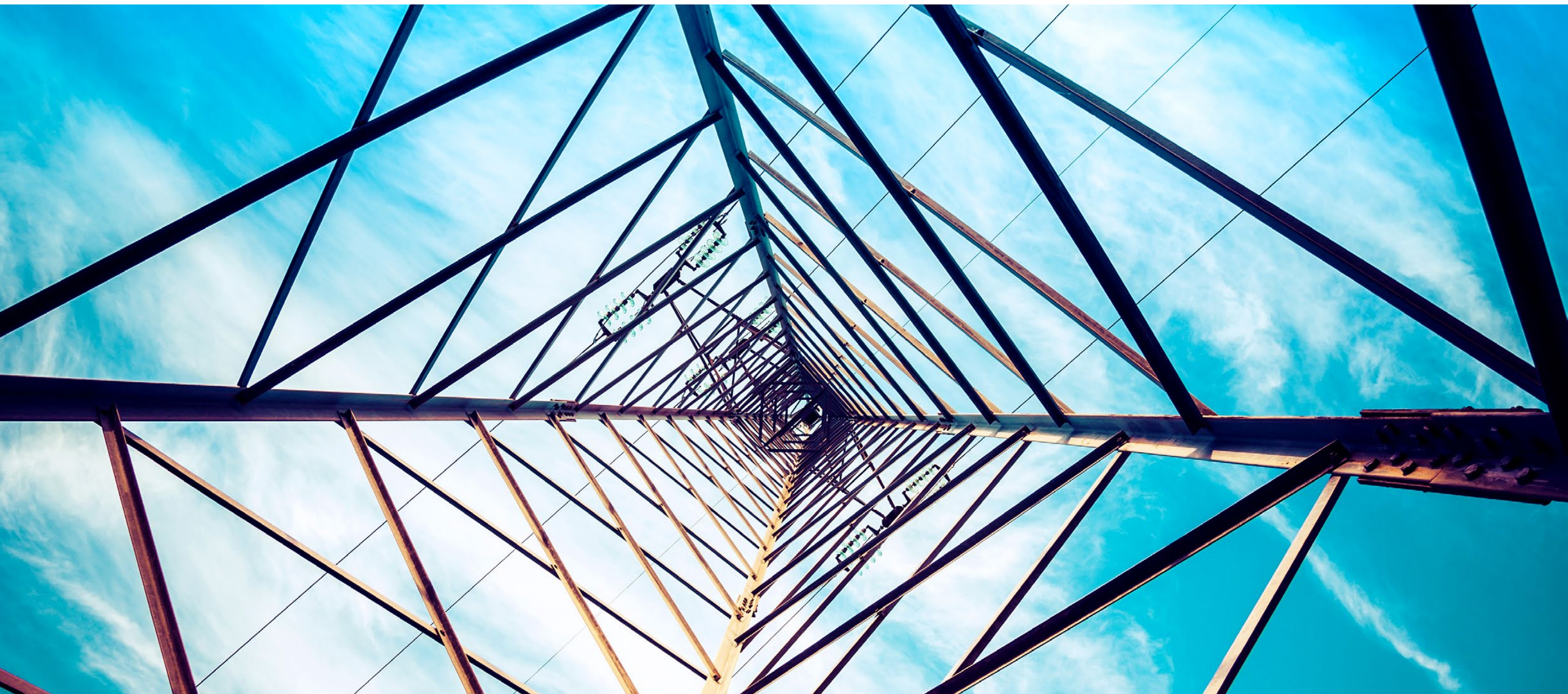
> Virtual risk engineering surveys continue to play a vital role in keeping markets up to date.

TRADITIONAL POWER

Insureds with a clean loss record and no NatCat exposure, continue to experience straight-forward renewals with premium increases around 15-20%. Outside of the US, new insurers are entering the market, which will slow premium increases but may cause over placement and signing down issues on sought after accounts. This is perhaps aided by operators willing to accept higher retention levels, as insurers shift their focus from pricing, towards scrutinizing sub-limits, and tightening terms and conditions.

Accounts or programs that include coal are still likely to see price increases as the trend for insurers to exit the class is likely to continue. The remaining shallow pool of insurers may use this as an opportunity to increase renewal rates. Therefore, the restructuring of programs and utilization of international markets is likely to become prominent.

The placement process is taking longer due to insurers reducing their capacity, and lead markets delaying the quoting stage to influence price. Road shows, recent engineering reports and a demonstrable commitment to continual risk management, are crucial to prevent tougher market conditions. Virtual risk engineering surveys have been well received by insurers, and in the current circumstances, will continue to play a vital role in keeping markets up to date.



RENEWABLE ENERGY

During the last quarter, London markets saw an influx of new business, and new capacity, with three new specialist renewable energy insurers starting operations. This is in-line with general industry trends, as energy transition gathers momentum and insurers adapt to the evolving needs of clients.

Existing renewable energy insurers continue to push for rate increases, to correct poor performance over a number of years. This varies significantly on a project-by-project basis, but even accounts with no losses, and no significant NatCat exposures, are seeing average increases of around 20%.

More positively, it seems that deductibles on renewal accounts have stabilized following corrections by underwriters during renewals in 2020. However, there are exceptions for asset portfolios that have reached the end of their warranty or long-term service agreement period. In these cases, there have been significant uplifts in retention levels as insurers look to limit their exposure.

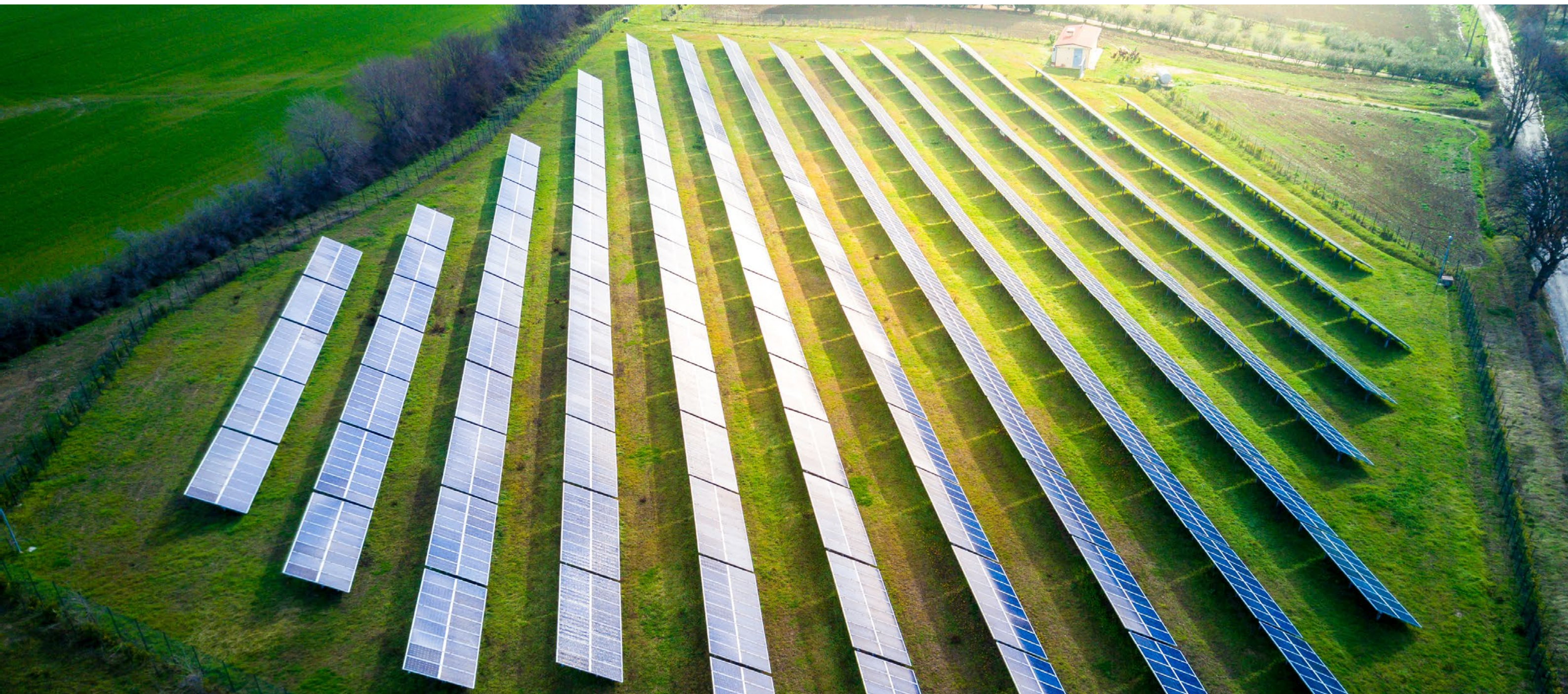
Early engagement with markets via virtual roadshows and surveys is critical in preparing for renewals or expiry of construction insurances. There has been a significant shift in underwriters' philosophy and requirements during the construction phase of projects.

Markets continue to tread carefully with respect to unproven or proto technologies and only limited coverage is available until components are tested to prescribed minimum requirements.

As wind turbine sizes increase in both onshore and offshore sectors, deductibles are also increasing to levels similar to the traditional power market. Insurers are taking an increasingly conservative approach towards wind projects following a spate of losses from repeated lightning events, or perceived contractor errors during the construction phase.

Competition in the offshore wind market is improving with the injection of new capacity by traditional oil and gas insurers looking to diversify into this sector. This shift is being driven by the decline in oil and gas production, coupled with increasing focus on ESG requirements.

Overall, the markets continued to focus almost exclusively on wind and solar, and the majority of renewable energy carriers in the London market have discontinued writing hydro, biomass or biofuels, and geothermal assets. Coverage for these asset classes remains available from the power and property markets, but the withdrawal of capacity has led to pricing challenges. Conversely, there is increasing interest in battery energy storage as insurers look to expand their portfolios into new growth industries. As investors and renewable energy developers diversity into the energy storage sector, so too will insurers looking for new revenue streams.



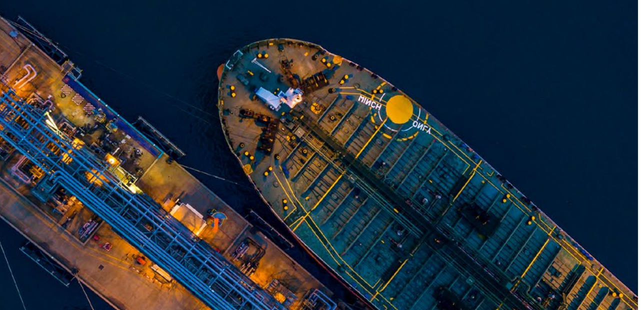
MARINE EXPOSURES

The rapidly escalating pricing of the last few years has now settled into a more consistent and predictable pattern as capacity withdrawals, and syndicate closures, diminish. Despite this, most insureds are looking at low, double digit increases in the near-term.

Underwriters are disengaging with accounts that have a poor loss record, limited spread of risk, low premium level or deductibles that are perceived to be inadequate. On larger or better performing accounts, leading underwriters are balancing the interests of the following market, with the risk of losing a favored client. Often, following markets are only prepared to support a competitive lead-line with higher alternative pricing, and there can be high uncertainty about the final price until the end of the placement process. In this situation, accounts that have regularly changed insurers are unlikely to receive any preferential treatment.

Overall, focus continues on deductibles, with terms and conditions continuing to tighten, and the inclusion of increasingly standard clauses such as:

- Automatic identification system (AIS) operation clause which aims to detect whether a vessel enters the waters of sanctioned countries (a policy exclusion), or enters a high-risk area (a war breach exclusion requiring additional premium to reinstate coverage).
- Revised cyber clauses to clarify the issue of silent cyber coverage.
- Communicable disease exclusions to address pandemic type events.



TERRORISM

New capacity in the political violence and terrorism market has helped to keep rates stable. The riskier end of the spectrum, which includes pipeline exposure, assets damaged by recent riots and looting, and assets that require the full political violence perils in high aggregate areas, will see higher rate rises. The drone attacks in 2019 on energy and non-energy related assets in Saudi Arabia, are still influencing underwriters in that part of the world.

ENERGY CASUALTY

For now, rates in this class seem to have stabilized, following the significant price corrections that occurred during 2020. However, insurers have indicated that rates may continue to rise, and the absence of any meaningful market alternatives may enable this to happen.

The reinsurance renewals during the first quarter were manageable, increasing about 5-10%. However, there is frustration from clients about coverage changes to certain components. For example, wildfire coverage is being targeted in territories where the loss experience does not warrant it. There are similar, continuing restrictions for some midstream businesses.

There have been encouraging signs of investment for the energy liability sector, but no confirmed mainstream entrants yet. It is clear that, for buyers and brokers, the near future looks challenging, and the remedies of 2020 will need to be applied for some time.

Bermuda Casualty

As we head into the second quarter, there is cautious optimism that capacity has stabilized in some sectors but that won't be known for certain until portfolios are reviewed after the heavy renewal periods. There have been two new market entrants and more are expected during the year. Pressure continues on rate correction, and the tightening of some terms and conditions. For example, communicable disease and cyber wordings are being adapted, there is a growing interest in climate change and ESG programs, and wildfire exposures continue to be monitored.

> **As wind turbine sizes increase in both onshore and offshore sectors, deductibles are also increasing.**

ONSHORE CONSTRUCTION

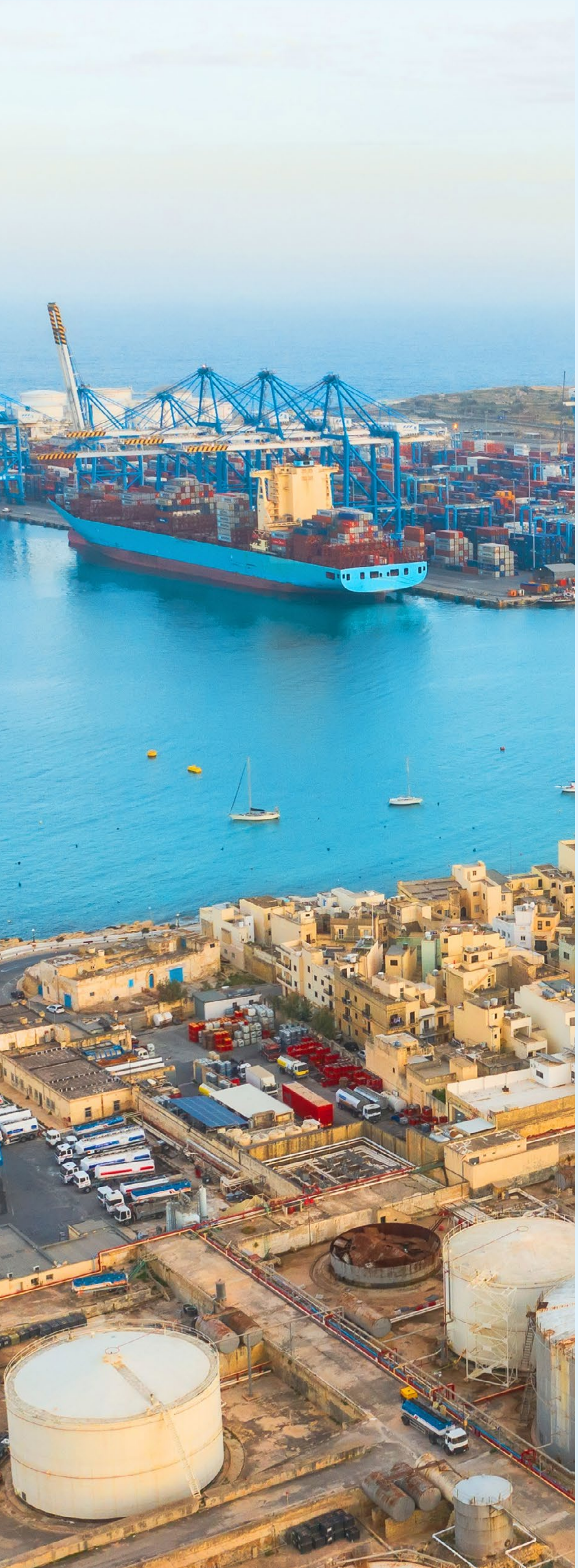
The market is at a steady rate of change edging rates up, and limits down. There has not been a step change, or overreaction to treaty renewals, indicating that both treaty reinsurers and insurers are comfortable with their forward view. In global markets, there are signs the gaps between policy terms, conditions and pricing offered in London compared to other regions are narrowing.

Obtaining timely responses to underwriting submissions continues to be a challenge with renewals taking longer than many clients had become accustomed to during the soft market.

In some areas, difficulty in securing a consensus on policy wordings is also taking time as there are marked variances in relation to cyber and communicable disease exclusions.

If there are no large losses, which have not been allowed for within insurers' models, the market conditions could be nearing a plateau.

Regional updates



MIDDLE EAST

The Middle East market continues to follow global market trends where we see clear signs of increased appetite, especially in the downstream and power sectors. This is reducing market volatility in some areas where the pace of market increases are slowing in modest increments. These changes are not happening organically, and renewal planning needs early engagement with a much more detailed requirement for premium and claims data.

The shifting strategies of global insurers, which has defined the recent period of change in the Middle East market, have had both expected and unexpected consequences. With fewer international markets in the region for upstream, downstream and power business, there is a greater need for regional clients to partner with London and European insurers – a trend we identified in the January 2021 edition. However, there has also been a growing appetite from a handful of leading insurers in Asia to secure a portfolio in the Middle East. This is positive for clients seeking to expand the global market participation for their programs.

An unexpected, but positive, outcome of some international carriers withdrawing from the region, is the availability of talent that domestic markets can use to strengthen their underwriting teams. The growing talent in many of the international arms of the local cedants, as well as the managing general agents (MGAs), has improved their capabilities across energy, power and construction.

ASIA

The first quarter of 2021 has seen a continuation of the market trends and conditions that existed in Asia towards the end of 2020.

In the upstream market, underwriters are maintaining their discipline and focus on portfolio profitability. However, they are also showing an increased willingness to retain existing accounts, which reflects the reduced activity across the industry. In an effort to reduce acquisition costs, renewal accounts are seeing rate increases alongside offers of prompt payment discounts and renewal incentive bonuses.

While offshore construction rates have increased significantly in recent years, appetite remains for new projects, especially where the estimated contract values (ECVs) are in excess of US$1 billion. However, there is a high level of scrutiny of the terms, and anything that veers away from the 'market standard' may require a global broking strategy to ensure that the required levels of capacity are available. Smaller projects, and those that are purely subsea focused, continue to incur higher rates and more restrictive conditions, reflecting the level of attritional losses seen in prior years.

The downstream market in Asia tends to react more slowly than the London market, and the hard market cycle regionally is continuing, influenced by the losses incurred during 2020. The market also remains slow, hampered by continuing work from home requirements. Allowing longer lead times to manage renewal negotiations remains important, in order to secure the most commercial terms available. On a positive note, the quantum of rate increases is starting to reduce, particularly for accounts with good loss and claims history. To date there have been no major regional losses in the downstream market in 2021, which would seem to favor a continuation of the downward rating trend.

In the power sector, insurers continue to seek rate increases for all renewals, with few exceptions. Insureds that have suffered losses, or who are exiting long term agreements, are often experiencing significant price rises. Coal-fired power risks, particularly those combined with NatCat exposures, are continuing to face significant capacity challenges. Some smaller, complex power risks, such as waste-to-energy plants or run-of-river hydro, are also challenged, with a general lack of market appetite resulting in limited capacity. Conversely, on programs where rates have moved to insurers' levels of price adequacy, there has been moderation in the level of increases, with no changes to other terms and conditions.

The claims trend from 2020 has continued into the first quarter with further losses in the power sector, involving several large machinery breakdown claims. While not yet fully materialized, these losses are sure to again focus insurers' attention on risk quality and risk management.

An interesting fact which is representative of market conditions in Asia, is that almost all power placements have remained with their current lead insurers. Rarely have new insurers assumed the lead role, and often this has been necessary as the previous lead insurer has withdrawn from the power sector or is unable to continue to offer capacity due to a change in underwriting guidelines. This illustrates the continued focus by most power insurers on bottom line profitability rather than revenue growth.

Domestic markets in Asia remain competitive compared to international reinsurance markets, particularly for power or renewable energy risks that can be written within their local treaties. In some domestic markets, like Vietnam, Taiwan, and Korea, local insurers are having to fully assume power risks, as international reinsurers are unable to meet the competitive terms available locally. It is uncertain if this situation is sustainable over the longer term, particularly when the low power sector premium pools locally are impacted by losses.

Focus on: business interruption insurance

ONE SIZE DOES NOT FIT ALL

Business interruption (BI) insurance is a complex topic and even the most experienced risk professionals can find it difficult to navigate both the intricacies of cover, and the often onerous claims process.

In most cases, BI insurance is designed to compensate a business for its net loss of income as well as for any unplanned increases in operating expenses, such as the cost of using temporary facilities. While this may sound simple, getting it right is not straightforward for large industrial organizations. There are many variables in financial forecasting, and predicting reductions or increases in operating expenses in the event of property damage, often requires making the intangible, tangible.

Most 'off-the-shelf' BI coverages fall short in meeting the specific circumstances of energy and power operations – for such a wide range of usage cases it's impossible to apply a 'one size fits all' approach. The rapid pace of growth in the renewable energy sector, the increasing interdependencies at multi-site facilities, and the sheer range of contractual arrangements across complicated energy value chains, have resulted in a mixture of approaches to BI coverage.

Aligning a BI policy mechanism with the actual commercial arrangements of a business is essential to ensuring adequate cover and a smooth claims process. Historical and forecast data – beyond standard accounting metrics – is critical, but so too is aligning calculations with the basis specified in the policy wording. Too often during a claims process, an organization is unaware that the value insured by the policy is different to the basis that has been used by accounting teams for budgeting and forecasting. The onus is on risk professionals to ensure that accounting standards, metrics, and calculations defined in the policy terms are aligned, and are appropriate for their organization's commercial and regulatory arrangements. More importantly, an organization needs to ensure it has the information, systems, and capability to prepare loss data on the basis defined in the policy. Or, to modify the policy definitions to align with the basis of the business forecasts.

The following are some examples that different segments of the energy and power industry should consider, and factor into BI policy mechanisms, to ensure that claims will reflect the actual loss suffered by the insured.

Traditional or renewable power facilities are subject to a wide variety of contractual arrangements. Operator obligations often reflect local regulatory requirements and variables such as the power mix, generation hierarchies (for example, baseload versus peak shaving), power purchase agreements, and use of grid infrastructure. Power risks can also feature financial exposures that lag property damage events by months or even years, and standard BI coverages rarely cater for these circumstances.

In the offshore segment, BI coverages typically assume a steady production rate over time, and apply daily limits based on this principle. Upstream operations that are in the process of bringing additional production on-stream from a new field, need to ensure full coverage for their changing production profile. Otherwise, higher production rates during the ramp-up may not be covered, and a BI loss could be capped at the average production value for the period.

Midstream operators of transmission or storage systems are often faced with unique commercial circumstances. Regulators may define the terms of agreements with shippers and off-takers, and the contractual obligations on the operator can be complex. Traditional BI coverages are rarely well-suited to the unique range of exposures or the contractual obligations of the systems at risk.

Many downstream BI policy mechanisms use reduction in revenue as a proxy to calculate the relative impact of a BI loss, and to scale BI claim payments. This isn't always the most appropriate measure for complex, margin-based businesses, which can suffer a substantial financial loss while maintaining a constant revenue. Oil refineries for example, do not typically use revenue to measure financial health therefore, reduction in revenue would be a poor indicator of the overall impact of a loss.

If you aren't confident in the specifics of how your BI policy mechanism works, it may be time to take another look.

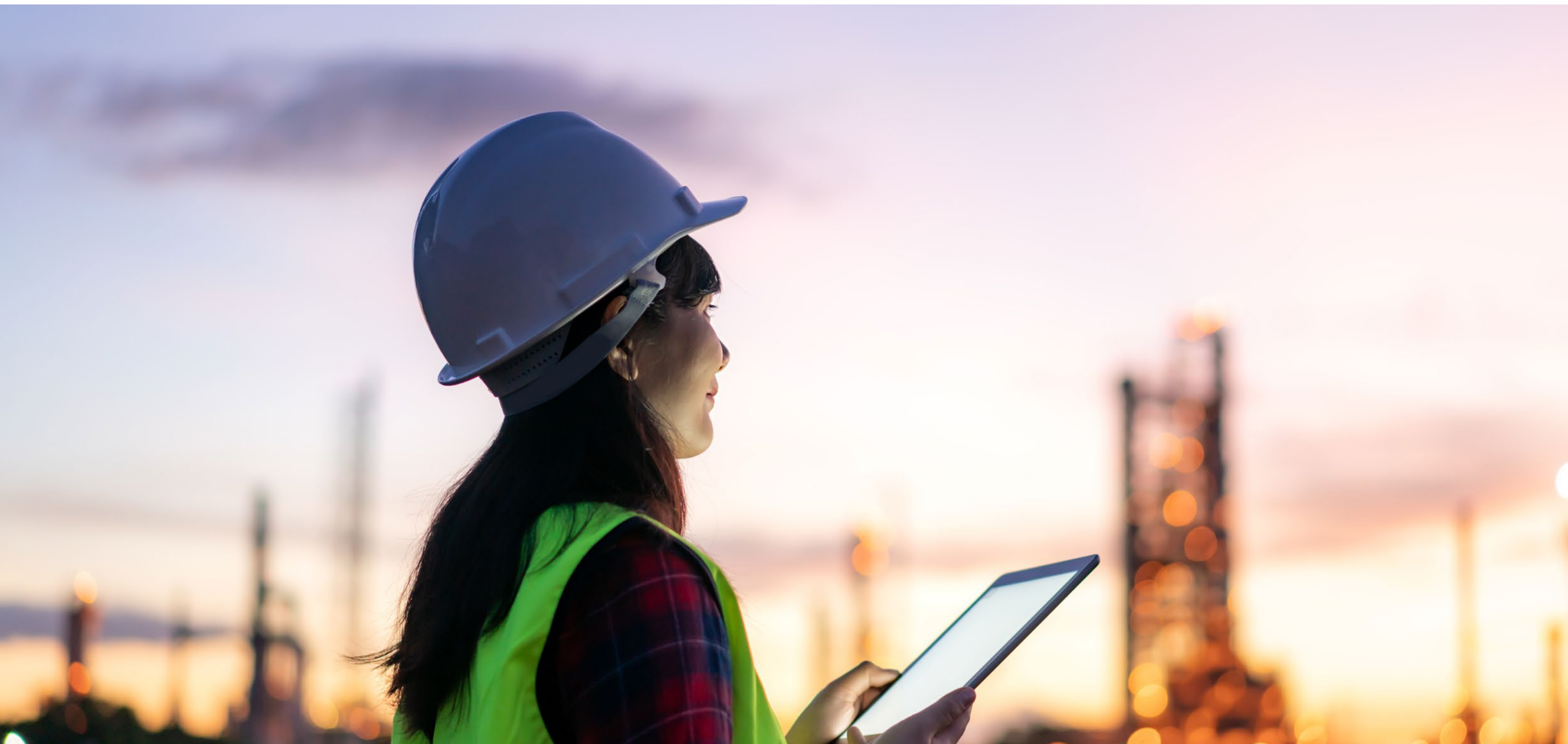
Our Energy & Power practice includes a dedicated BI engineering team and policy wording specialists, who regularly collaborate to develop best-in-class BI coverages for Marsh Specialty clients.

> **“If you aren't confident in the specifics of how your BI policy mechanism works, it may be time to take another look.**

News briefs

Lloyd's 2020 Annual Report
Lloyd's recorded a combined syndicate pre-tax loss of £887 million for 2020, a result driven by £3.4 billion in COVID-19 related claims, and representing a sharp decline from its £2.5 billion profit in 2019. However, the significant loss reported by the corporation masked a favorable result for Lloyd's energy insurers who made a total profit of £79 million, nearly three times the 2019 result. While gross written energy premiums fell by 16% compared to 2019, Lloyd's commented that pricing trends across all energy lines had been positive throughout 2020. Looking ahead, Lloyd's stated that in the downstream sector, underwriting discipline and price increases for property and liability, would likely continue the 2020 trend. Pricing, conditions and underwriting appetite in the upstream sector are likely to remain relatively stable due to the absence of large operational losses, and reduced storm activity. In the renewable energy sector, Lloyd's saw an increase in offshore wind submissions through 2020, a trend that is expected to continue in-line with the pace of the energy transition.
https://assets.lloyds.com/media/2b8020de-682d-48aa-b35c-f49d96814643/Lloyds_Preliminary_results.pdf

A Lloyd's, Guy Carpenter and CyberCube Analytics collaboration has produced a report, *Cyber risk: The emerging cyber threat to industrial control systems*, which analyses three scenarios for a cyber attack against industrial control systems (ICS) that could generate major insured losses. The scenarios, based on historical precedents, are discussed in relation to four key industries dependent on ICS (energy, manufacturing, shipping, and transportation). Advances in automation, coupled with the increasing sophistication of threat actors, make this an increasing concern for the insurance industry. For example, both energy property and liability lines could be "significantly impacted" by attacks on oil and gas systems that result in explosions at refineries or offshore drilling units. For manufacturing operations, the report found that large explosions or chemical spills could impact surrounding areas as well as cause supply chain disruptions. The report is available here:
https://www.lloyds.com/news-and-insights/risk-reports/library/icsreport



A report by AM Best, *London and Bermuda Attract Capital as Insurance Market Conditions Improve*, found that significant capital inflows to Bermuda and London in 2020 have not materially impacted capacity. Expectations of a hardening market stimulated significant capital raising activity in both Bermuda and London. Capital found its way to the insurance sector, as the low interest-rate environment forced investors – particularly institutional investors – to look further afield for yield opportunities. The report said that private equity funds have contributed to the inflows, alongside industry capital and public placements however, inflows have now slowed partly due to a period of high severity losses. While the bolstering of capacity at company level is not insignificant, it does not currently represent a material addition to industry capital, particularly when combined with existing third-party capital capacity. The report is available here: www.ambest.com

Allianz has released its tenth annual corporate risk survey, *Risk Barometer*, representing a record 2,769 respondents from 92 countries and territories. The survey includes responses from global organizations, brokers, industry trade organizations, risk consultants, underwriters, senior managers and claims experts.

The top five identified risks are:

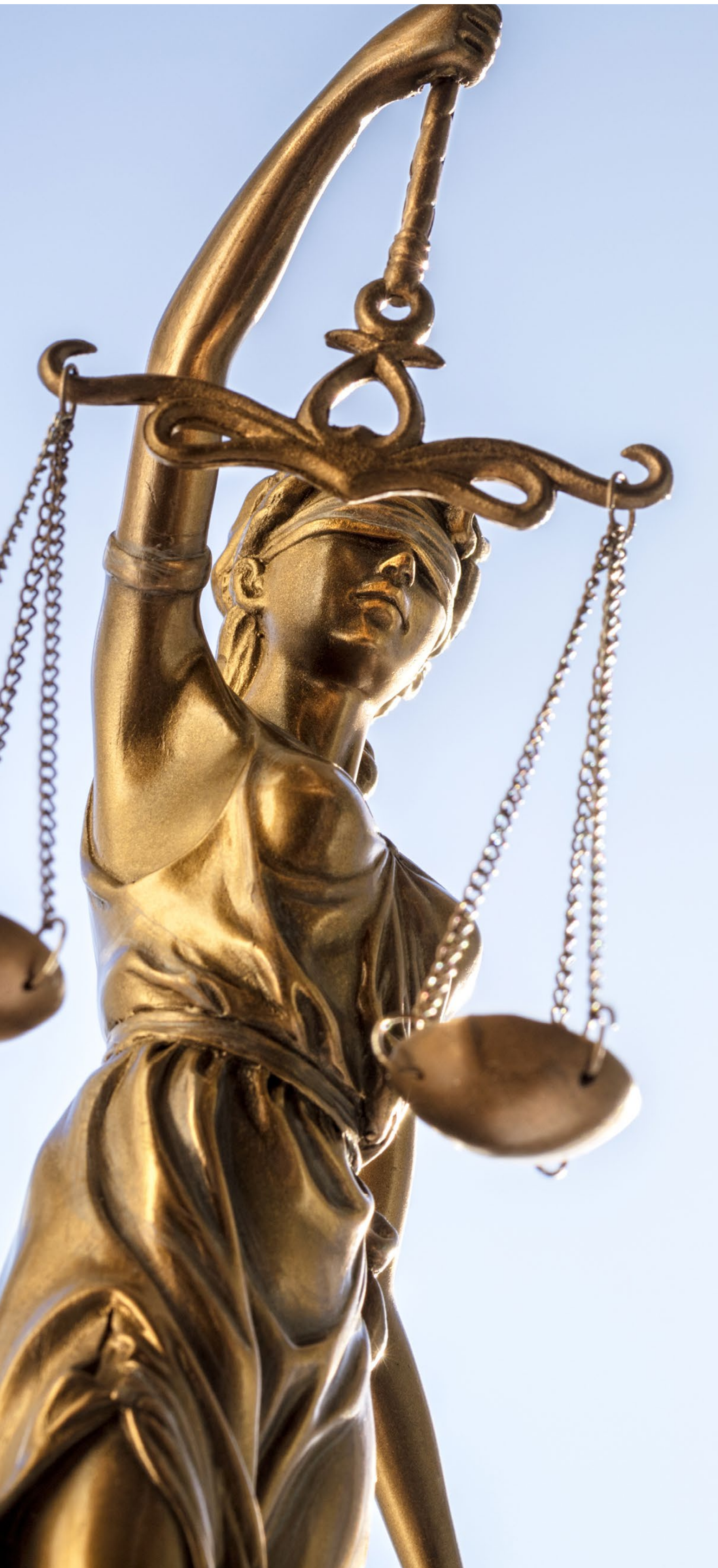
1. Business interruption (including supply chain disruption).
2. Pandemic outbreak (e.g. health and workforce issues, restrictions on movement).
3. Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties).
4. Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation).
5. Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration).

Pandemic was ranked 17 in the previous year's survey. Natural catastrophes has fallen from four to six. The full report is available here: https://www.agcs.allianz.com/content/dam/onemarketing/agcs/agcs/reports/Allianz-Risk-Barometer-2021.pdf

The UK-based pollution response organization, International Tanker Owners Pollution Federation Ltd (ITOPF), released statistics that in 2020 there were only three incidents where more than seven tonnes of oil was spilt. The total volume of oil lost in all three incidents was approximately 1,000 metric tonnes, making it one of the lowest on record, and termed by ITOPF as "a promising start to the decade". In the 50 years since ITOPF's records began, the frequency of large oil spills (more than 700 tonnes) has fallen dramatically. The average number of spills greater than seven tonnes per year in the 1970s was about 79, but this has fallen by more than 90%, to an average of six per year. The proportion of spills arising from allisions and collisions increased, to around 44% of all oil spills greater than seven tonnes from tankers. The annual statistics publication only reports incidents involving tankers, combined carriers and barges. ITOPF noted the grounding of bulk carrier Wakashio off the coast of Mauritius in July 2020 as an example of incidents not captured in the statistics. https://www.itopf.org/news-events/news/article/itopfs-annual-statistics-show-a-promising-start-to-the-new-decade/

According to a new report from GCube Insurance Services, *Hail or High Water - The Rising Scale of Extreme Weather and Natural Catastrophe Losses in Renewable Energy*, the risk profile of renewable energy assets continues to change. The average weather-related solar loss is almost 2400% higher than in 2019. While traditional NatCat such as windstorms, earthquakes and flooding continue to be of primary focus, unmodelled extreme weather threats have caused more significant NatCat losses since 2015. The report is available from GCube: http://www.gcube-insurance.com/reports/hail-or-high-water/

Legal round-up



The UK Supreme Court has found substantially in favor of the Financial Conduct Authority (FCA) in the appeal of the business interruption test case, and dismissed appeals made by insurers.

The judgement (January 2021) included the following key points:

- **Notifiable disease:** cover will be available under all of the notifiable disease extensions considered by the Supreme Court for losses caused by the wider COVID-19 pandemic. This outcome extends to the QBE wordings under consideration which had been given a narrower application by the High Court.
- **Non-damage denial of access:** these extensions were construed more widely than they had been by the High Court, in particular:
  - The public authority action necessary to trigger the cover need not necessarily have the force of law (such as government guidance or announcements); and
  - The prevention of access to or inability to use premises need not be absolute, meaning that closure of a discrete part of a business could be sufficient to trigger cover.
- **Causation and trends:** consistent with the outcome of the High Court judgment, the Supreme Court did not find favor with the narrow arguments around causation and trends clauses advanced by insurers. In practical terms, on the wordings in issue, the findings of the Supreme Court will make it difficult for insurers to limit recovery on the basis that losses would have been caused in any event by the wider COVID-19 pandemic.
- **Orient Express:** the Supreme Court determined that the case of Orient Express Hotels v Generali was wrongly decided and that it should be overruled.

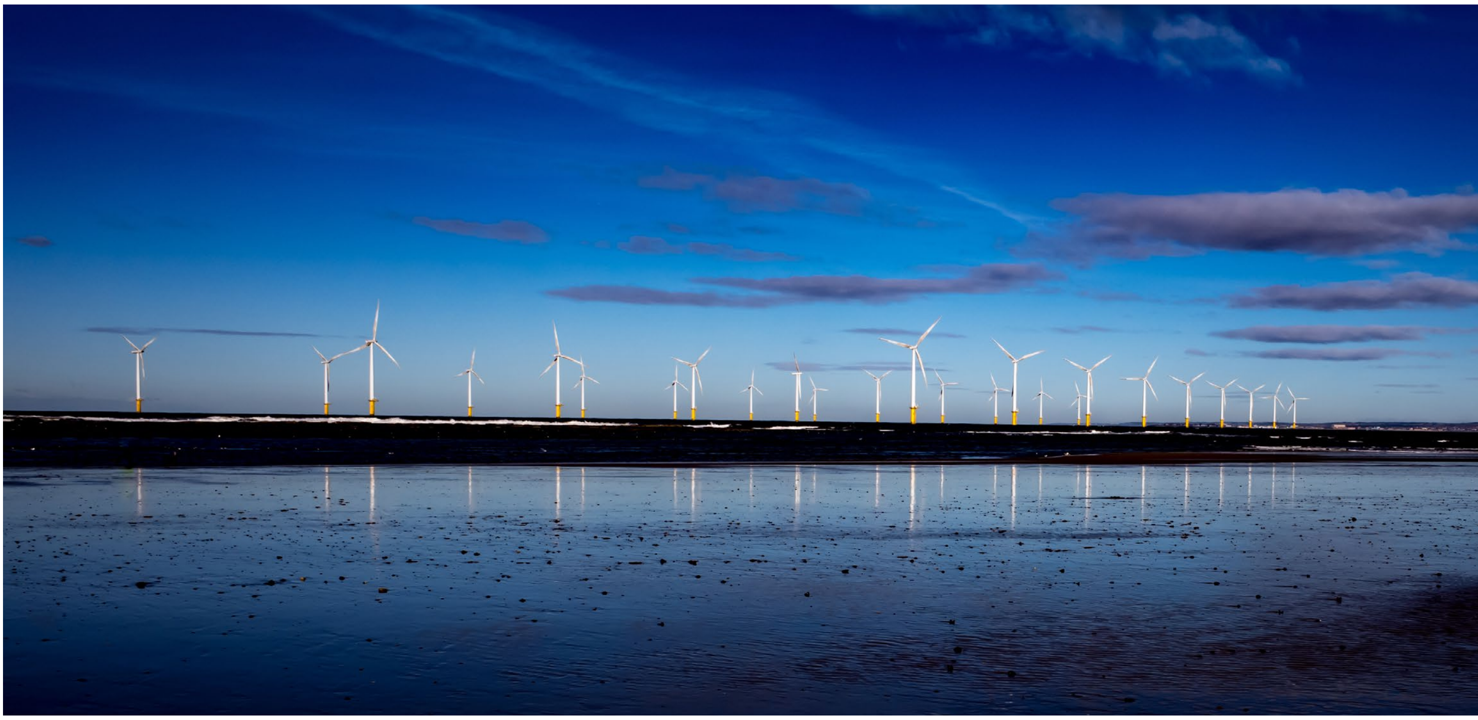
US Appeal Court concludes a seaman may be contributorily negligent when he is complying with an order from his superior.

The case involved a seaman who was injured while following an order to replace a chafed line during bad weather, and the court found equal fault to both the seaman and tugboat owner. The judge noted the tugboat owner was negligent because “there were safer times to issue the order to change the line”. The seaman was negligent because he failed to “watch his footing while replacing the chafed stern line” and did not “move the chafed stern line to a location on the boat where he would not have stepped on it”.

In appealing the decision, the seaman cited a similar case where the Appeal Court had found that “a seaman may not be contributorily negligent for carrying out orders that result in his own injury, even if he recognizes possible danger”. However, the Appeal Court found that the cited dictum (a remark, statement, or observation by a judge that is not a binding legal precedent) could not be applied in this case as the seaman was not following a ‘specific’ order. The court defined a ‘specific’ order as one that includes a manner and method, and does not make allowances for alternative action. The court upheld the finding of contributory or comparative fault by the seaman.

US Customs and Border Protection (CBP) ruling in relation to offshore wind energy projects on the Outer Continental Shelf.

In the US, the Jones Act is a section of the Merchant Marine Act (1920) which specifies that US flag ships must be used to transport cargo and passengers (coastwise trade) between US ports. For offshore wind energy projects, one of the first requirements is for scour protection material (typically rocks). In January, CBP ruled that the Jones Act applies to vessels discharging scour material to a ‘pristine seabed’ for projects on the Outer Continental Shelf.
The CBP cited 2021 amendments to federal law (Outer Continental Shelf Lands Act 1953) which now expressly includes reference to “installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources, including non-mineral energy resources”. Going forward, the CBP may have to consider how the Jones Act will apply to offshore wind projects compared to oil and gas projects.



New products and market developments

The **London Joint Rig Committee** has launched a proposed update to the currently widely used Operators Extra Expense form (EED issued in 1986). This will be the first major revision since the version which was launched in the 1990s but was not embraced by brokers given the perceived detrimental coverage impact for clients.

Marsh Specialty has been invited to a consultation process, and will be looking to work with the Joint Rig Committee to ensure any changes further the interests of clients.

Lloyd's is aiming to re-open the underwriting room on 17 May, in-line with the UK government's lockdown easing phases. There will be a class of business rota in place to manage capacity and maintain social distancing measures.

Demystifying common clauses

In this regular feature, we take a look at common clauses found in energy insurance that are often not well understood, and try to look at what their intentions are, and what they cover or exclude.

In this article we examine expediting expenses.

Many property damage policies contain a sub-limit for expediting expenses but what does this cover?

Expediting expenses coverage is similar to extra expenses coverage and is usually an extension to a gross earnings business interruption policy. It provides indemnity for costs incurred to continue the operations of the business, to a level that is as near as possible, to the level prior to a loss (such as renting temporary properties).

Usually the coverage is limited to reasonable and necessary extra expenses incurred by the insured, subject to an agreed sub-limit of liability. However, some forms of cover may be limited to the amount of business interruption claim saved by the action. For example, cover is applied if US$90 is spent to save a loss in revenue of US$100, but if US$110 is spent to save USD$100 of revenue, the claim is limited to US$100.

It is sometimes possible to extend the business interruption section of a policy to include cover for 'additional extra expenses' (subject to an agreed sub-limit), if a business needs to spend more than it will save in order to continue normal business operations. For example, to avoid loss of market share.

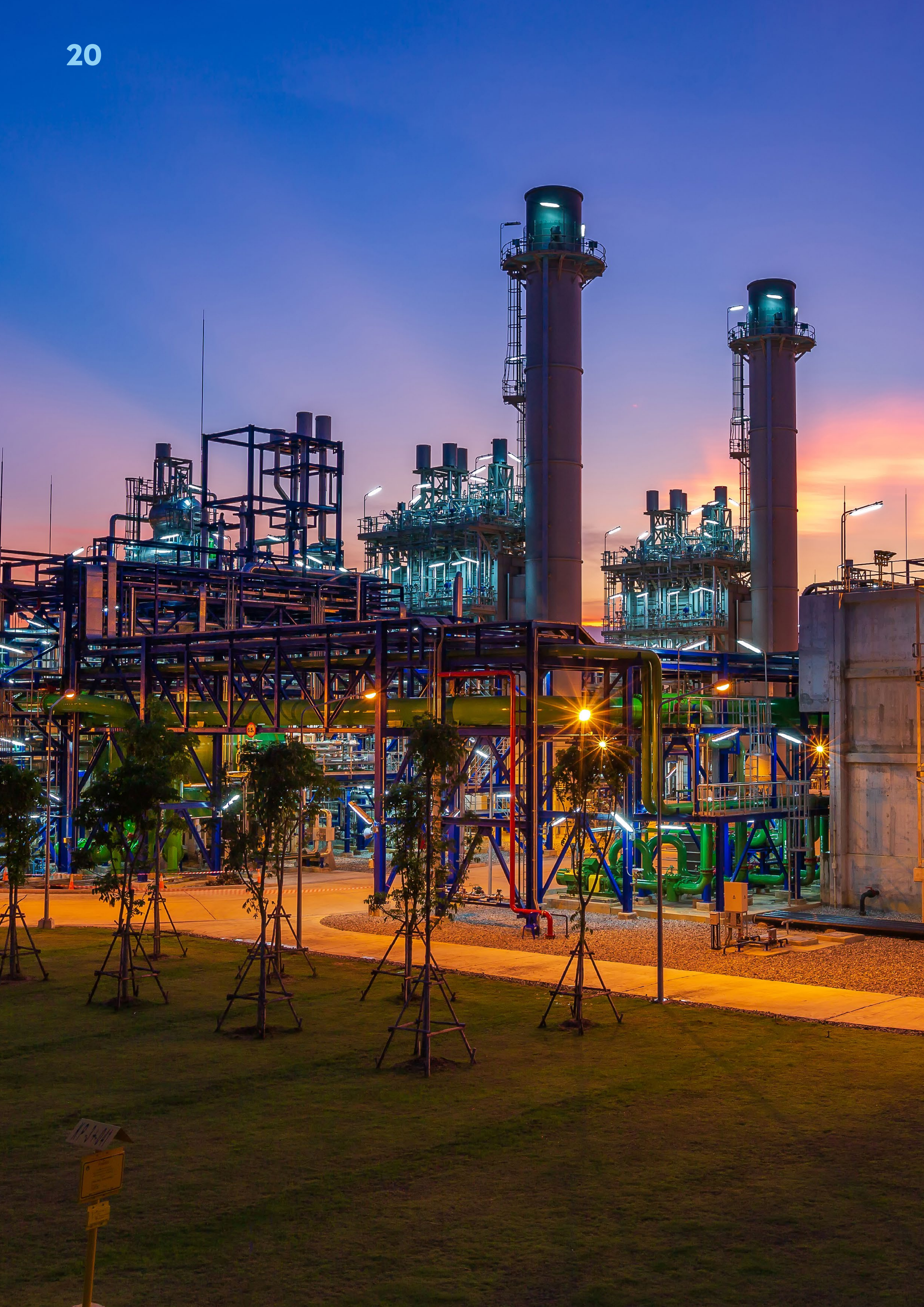
However, 'expediting expenses' differ from extra expenses as they are usually an extension to the property damage section of a policy.

Expediting expenses clauses usually cover the expenses of temporary repairs, and costs incurred to speed up the permanent repair or replacement of covered property or equipment. This could include measures such as overtime or additional costs incurred for express or rapid transportation.

Unlike extra expense clauses, expediting expenses are not restricted to having to reduce a business interruption loss. However, expediting expenses will typically be subject to a sub-limit of liability.

If readers have particular clauses they would like us to consider including in this feature, or have any comments on the above, please contact john.cooper@marsh.com.

The above is provided as a general overview of some of the coverage often provided by the aforementioned clauses. This is not intended to be an extensive and exhaustive analysis of the insurance coverage provided by such clauses. The comments above are the opinion of the Marsh Specialty only, and should not be relied on as a definitive or legal interpretation. We would encourage you to read the terms and conditions of your particular policy and seek professional advice if in any doubt.



Marsh McLennan publications

The following are recent or forthcoming Marsh McLennan publications that we think are of interest to Energy & Power clients.

Global Risks Report

The 16th edition of the Global Risks Report, published by the World Economic Forum with support from Marsh McLennan, highlights the disruptive implications of major risks, including the COVID-19 pandemic, that may reshape our world in 2021 and over the next decade. The report draws on the survey results from nearly 700 experts and decision-makers globally who were asked about their concerns for the next decade, how global risks interact, and where opportunities exist to collectively act to mitigate these threats. https://www.marsh.com/uk/insights/research/global-risks-report-2021.html

Running Hot: Accelerating Europe's Path to Paris

Oliver Wyman's latest research with CDP Europe analyses data from nearly 1,000 of the largest companies in Europe, worth around 80% of the region's market capitalization. The research looks at the progress made by companies in reducing emissions and their transition plans to net zero. It also explores the consequences of this for financial institutions, many of whom have now made pledges to reduce the emissions of the companies they finance, in-line with the Paris agreement. https://www.oliverwyman.com/our-expertise/insights/2021/mar/running-hot.html

Political Risk Map 2021: Pandemic Recovery Complicates Risks

Providing a deep dive on the global drivers of political risk, the latest Political Risk Map 2021 from Marsh Specialty, provides valuable insights for organizations doing business overseas or considering entering new markets. This report outlines the key drivers of political risk, and includes in-depth analysis of the key risk issues by region and nine country profiles. https://www.marsh.com/uk/insights/research/political-risk-map-2021.html

Marsh McLennan's 2020 ESG Report

2020 was a year like no other, one that tested the world in unforeseen ways. At Marsh McLennan, it also reaffirmed a sense of purpose that goes beyond commercial success. *We're changing what's possible*, and invite you to read our inaugural ESG report. https://www.mmc.com/about/esg.html

What insurers said

The following are ‘sound bites’ taken from speeches, statements or articles by prominent market figures about the insurance market. While we have tried not to take their words out of context, the excerpt may not be the entire speech or article.

Stephen Catlin Chairman and CEO of Convex

“It is estimated that total capital to have entered the market over the past year at somewhere around US$20 billion, around half of which is traditional capital inflow with roughly half of that deployed in new and recent ventures. That US$5 billion, as a proportion of the total industry market cap, which is in excess of US$900 billion, won’t actually move the dial, particularly when there are losses out there which are upwards of US$250 billion to US$500 billion. The concept that this US$5 billion of new capital in new ventures can have a pronounced effect on the market lacks rationale.

The magnitude and enormity of the economic loss [from COVID-19] that is going to be experienced by the industry is well understated at the moment, and as that changes, which it will have to over time, so [insurance] pricing will have to reflect that. There is a lot of exposure out there where there are losses which have not yet fully been recognised for both casualty classes as well as COVID-19, where some people have kicked the can down the road. One of my colleagues said to me, ‘well Stephen, when people start kicking the can down the road, there’s a tendency for them to carry on doing it for as long as they possibly can’. So I said ‘fine, but the trouble is every time you kick the can, it gets bigger and heavier’. For casualty classes, the pricing correction on some product lines still has a way to go on what potentially could be a one, two or three-year journey.”

Speaking during an interview with The Insurer, 25 January 2021

Mike Sapnar, TransRe CEO

“A systemic cyber event could bankrupt certain carriers as soon as it hits them, owing to loose terms and conditions and large risk limits. The COVID-19 pandemic is an example of how devastating a systemic cyber event could be. Every business is affected; you don’t have territorial limitations, this is a global issue, and you won’t be able to work from home. Business interruption and system failure coverage in many cyber policies have broader wordings and more expansive limits than property policies. The limits outstanding on these contingent business interruption and business interruption extensions are enormous. Reinsurers are in an easier position when writing cyber coverage because they can include mechanisms like loss ratio caps to reduce potential exposure. On the other hand, disputes around ceding pandemic losses could run for years. I’m not going to say it’s the next asbestos, but it’s going to be around for a long time.”

Speaking at Insurance Insider’s, Insider London conference, 26 January 2021

Rob Berkley, WR Berkley CEO & President

“Pricing in the insurance market is firming demonstrably, allowing us to achieve rate rises across every line of business except workers’ compensation during the fourth quarter. Similarly, to prior periods of market hardening there is a realization among carriers that capacity will be increasingly scarce. From my perspective, and I believe from our perspective, the market is clearly in the throes of firming. And quite frankly, that is appropriate and necessary.”

Speaking during WR Berkley’s quarterly earnings call, 26 January 2021

Andrew Brooks, Ascot CEO

“Lloyd’s and the wider insurance market are still underpricing business to an alarming extent, despite the acceleration of rates across the majority of lines. Analysis we have run underlines how far rate adequacy had fallen during the soft market, and how far it still has to go before the market achieves a technical level of rate. What really shocked us at back end of 2020, rolling through into 2021, was our rate index went up 12.9%. But when we stripped out renewal business, the new business rate rise was 55%. That’s actually quite alarming. When we look at technical price on our portfolio, there is no differential between new business and renewal business on the technical price. The underpricing of renewal business by weaker performers was one of the fundamental reasons there is such a disparity between the top, and bottom-performing quartiles in the Lloyd’s market. Looking at those numbers, you realise why the market got itself in the state it was in. Hopefully the Decile 10 work and the focus on remediation means we are in a far better place going forward.”

Interview with Insurance Insider, 1 February 2021

Richie Whitt, Markel CEO

“Rising rates across the insurance market are a result largely of factors including low interest rates, elevated cat activity and social inflation, and have nothing to do with a shortage of capital. Unlike in previous hard markets, capital remains plentiful.”

Speaking during Markel’s quarterly earnings call, 3 February 2020

Alex Maloney, Lancashire CEO

“It irritates me when people will come out with big statements about this being the best market they have ever seen. That is just factually incorrect. Elements of the portfolio are in hard market territory but others still needed attention. Across the industry, I don’t think new capital and market entrants will dent rate momentum, and there are enough hurdles in 2021 to keep the rate environment strong. There’s still a lot of attrition in most classes of business and some of it is an increase in loss costs because of COVID 19. Carriers have to be realistic as any claim could be impacted by COVID 19, and exposure could inflate claims.”

Interview with Insurance Insider, 11 February 2021

The quotes referenced above are included herein to provide readers with a broad overview and insight into what is currently being said in the marketplace however, the inclusion of such does not mean Marsh endorses or agrees with any of the foregoing.

Insurance industry people moves

Amy Barnes was appointed to the newly created role of head of sustainability and climate change strategy at Marsh, to be based in London. **Rupert Mackenzie** will replace Ms Barnes as Marsh Specialty, Energy & Power leader for the Americas, to be based in Houston.

Gordon Browne of AIG is to relocate to New York, as AIG's head of specialty for the US, and global head of energy and construction.

Allie Edge has resigned from Aegis to write the energy casualty book at start-up insurer Inigo.

ERS have hired **Phil Furlong** from Hiscox to write their casualty book, **Dave Message** (previously with Starstone) to write their upstream energy, and **Dan Callow** from Talbot as lead underwriter for political violence and war.

Andrew Horton is leaving Beazley where he is currently CEO, to take the role of CEO at QBE. Horton is replaced at Beazley with current chief underwriting officer, **Adrian Cox**.

Sophie Irvine is leaving Canopius to write a renewable energy book at Berkley Offshore.

Rob Johnston has resigned from Amlin (where he writes their energy & marine casualty book) to join Apollo.

Huw Jones (who left Axa XL last year) has joined Lancashire in a newly created role as head of specialty.

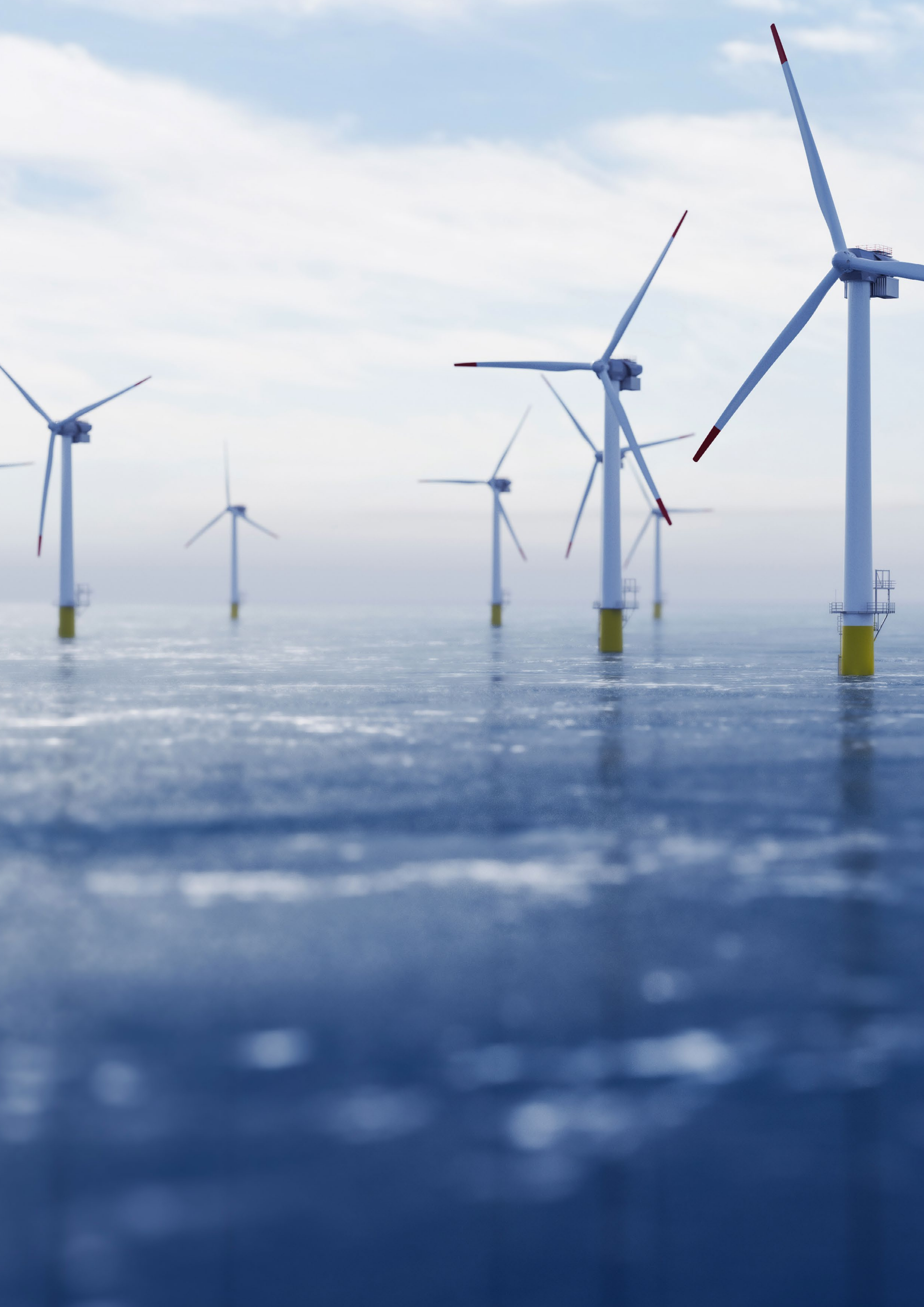
Mike MacColl has resigned as Axa XL's global head of hull to take up a position as head of Marine Hull and War at Atrium.

Quentin Prebble has come out of retirement to join start-up insurer Mosaic as chairman of its war, terrorism and political violence team.

Chris Walker of Berkley Offshore has stepped down as chairman of the Joint Rig Committee and is replaced as chair by Mel Raven of Ark.

Penny Wang is leaving CV Starr to join Berkshire Hathaway to write an energy liability book.

Tom Weeks, currently energy liability underwriter at QBE is taking on a new role heading up QBE's international markets property binder and political violence division.



About Marsh

Marsh is the world's leading insurance broker and risk adviser. With over 35,000 colleagues operating in more than 130 countries, Marsh serves commercial and individual clients with data driven risk solutions and advisory services. Marsh is a wholly owned subsidiary of Marsh & McLennan Companies (NYSE: MMC), the leading global professional services firm in the areas of risk, strategy and people. With annual revenue over US$15 billion and 75,000 colleagues worldwide, MMC helps clients navigate an increasingly dynamic and complex environment through four market-leading firms: Marsh, Guy Carpenter, Mercer, and Oliver Wyman. Follow Marsh on Twitter @MarshGlobal; LinkedIn; Facebook; and YouTube, or subscribe to BRINK.

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