



# What PI's can expect from the hard insurance market and how to combat the effects

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In 2020, a New York private investigation (PI) firm was sued for \$50 million by a client for aiding one of their investigators in inappropriate contact with a female subject. In April of this year, the investigator was found guilty of criminal and civil contempt, leaving the firm open to extensive financial and reputational damage. Claims such as these are why the PI industry is currently experiencing a hard market.

In a hard market, insurance premiums rise and coverage becomes costly and difficult to find. While cyclical in nature, many factors can contribute to a hardening insurance market. In the current market, two years of pandemic-related shutdowns, economic upheaval and costly claims for PI's, similar to the one noted above, have contributed to rising premiums. For PI's planning for the future, understanding the impact and knowing the risks insurers look for can help lessen the effect and provide better coverage options in an unstable environment.

## WHAT TO EXPECT

The lawsuit mentioned above is not the only instance of clients or subjects going after private investigators in recent years. In 2021, a private intelligence agency was brought into the London Commercial Court by their former client on claims against their conduct and investigative techniques. While no stranger to controversy and attention, having worked

with high-profile clients in the past, this claim showcased a shift in the way PI's are perceived and the risks they face.

The increased use of, and access to, technology, as well as the sensitivity around privacy laws in recent years has put PI's under more scrutiny for how they conduct themselves. It directly impacts how PI's collect information and the clients they take on. Such scrutiny puts PI firms at risk in the courtroom, with the court of public opinion and with insurers — all of which contributes to a hardening of the market.

With large settlements come rising insurance premiums, although the impact to PI's is not limited to premiums alone. In a hard market, insurers become more risk averse. As a result, they will enforce strict underwriting limits or leave certain markets completely. Carriers will also limit or raise the price of excess coverage in the face of costly claims.

PI's who take on high profile or high-risk work, or those who exhibit a pattern of loss experience, will also have a difficult time finding coverage in a hard market. Firms that do find coverage will pay a higher premium or find the coverage written on non-admitted paper. Fortunately, there are ways PI's can improve their risk profile and help control the impact of a hard market.

## BALANCING THE EFFECTS OF THE MARKET

There is little PI's can do to control economic, inflationary or public health issues as we've seen over the past two years; however, they can choose their clients carefully and limit their risk exposure to prevent denial of coverage and minimize rate increases.

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Here are some steps PIs can take to limit their liability and exposure to risk:

- **Avoid taking on high risk or high-profile accounts:** When evaluating a company, underwriters look carefully at the types of clients PIs handle, and the work involved. If a PI does work that is hard to prove, puts them at risk for violence or has a great deal of public exposure, they will have a harder time getting coverage. Examples of such clients and work includes skip tracing recovery, domestic work and process serving.
- **Stick with low profile work and that keeps rates down:** Alternatively, underwriters are more willing to cover PIs who work with low-profile, and therefore, low risk clients. Investigative work that keeps PIs out of the public eye, such as research or background work, is considered low risk. Examples of such work include workers' compensation fraud investigations, background checks, fire arson investigations, civil investigations and computer crime investigations. Computer crime and background checks have become more prevalent in recent years due to an increase in cyber-attacks and a rising trend among employers to complete background checks on all employees.
- **Make hiring and training a priority:** Like many of their clients, PI firms should conduct full screenings on all employees to ensure they have proper background for their roles. For instance, a PI who has a history of conducting background checks should not be asked to handle process serving. Insurers also like to see situational training, such as de-escalation or surveillance training as it further shows PIs are experienced in and prepared for their field of work and are therefore at less risk.
- **Be prepared:** While screening and training can help minimize risk, no role is entirely risk free. Clients can come back and implicate PIs for any number of reasons. One way to limit such liability is with carefully worded contracts. When negotiating contracts with new or potential clients, look for language that will limit liability to a PI's own negligence and not take on a client's error. PIs should also look for clearly worded goals or outcomes. If there is confusion around what the PI is expected to do, a client can hold the firm liable for not fulfilling their contract. Taking small steps such as these helps limit liability and show a pattern of responsibility that underwriters like to see.

In a hard market it may be tempting to shop around for lower premiums. While this may save money in the short term, it can potentially lead to more risks and expensive claims in the

long run. When looking at different carriers, not every policy is built the same. One insurer may have lower premiums, but their policy may not provide as much coverage as a carrier with higher premiums. The best way to navigate this is by asking your insurance partner exactly what their policy covers and what it doesn't.

While shopping for lower premiums may not help your business in the long run, understanding your coverage, avoiding risks and minimizing liability can help you navigate the hard market and set you up for success in the future. **PI**



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