

UNDERVALUED: Insurers eye low property estimates in hard market - PAGE 8

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puts focus on timeline expectations
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Rising numbers of assaults in the retail and restaurant industries are complicating comp claims. **PAGE 4**

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P/C premium growth has consistently exceeded India's nominal GDP growth in recent years. **PAGE 13**

VIEW FROM THE TOP

LAURA LANGONE

Head of insurance operations at Airbnb Inc. in San Francisco, Laura Langone assumed the presidency of the Risk & Insurance Management

Society Inc. at the start of the year. Her priorities for the organization include international development, and helping risk managers navigate a volatile insurance market and deal with the impact of technology. **PAGE 15**



OFF BEAT

Barroom brawler faces court fight after texting friend comp claim plan. **PAGE 30**



Assaults complicate comp claims

BY ANGELA CHILDERS

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As workplace violence rates in the retail and restaurant industries continue to rise, workers compensation experts say claims arising from such incidents as robberies and assaults are complex and expensive and often include a costly mental component.

From the well-publicized brawls at several Popeye's fast-food establishments nationwide over its popular chicken sandwich, to the annual Black Friday rush and tumbles for discounts, the trend toward employees getting injured in the mix has the comp industry taking note.

In November 2019, 17 fast-food workers filed a lawsuit against McDonald's Corp., alleging the company failed to address worker safety at more than a dozen Chicago-area restaurants and documenting a "daily risk of violence while at work" in restaurants "nationwide."

Overall, the numbers indicate a bleak trend: year-over-year figures from the National Safety Council show a steady uptick in workplace assaults for all industries, with the largest percentage of these occurring in the service industries.

"It does seem to be happening more often," said Donna Bradshaw, Wayne, Pennsylvania-based vice president of independent medical examiner services for the managed care provider Genex Services LLC, confirming that the company has seen the rise in such violence-related claim activity.

Workers comp claims data from multiple sources and Chubb Ltd.'s own claims data show an increase in the frequency of workplace violence incidents in retail between 2013 and 2017, said Stephen Craig, San Francisco-based managing director of Chubb Global Risk Advisors.

Over the same four-year period, comp claims due to workplace violence in retail industries ticked up about 5%, said Gary Anderberg, New Hope, Pennsylvania-based senior vice president of claims analytics at Gallagher Bassett Services Inc., said of the company's data.

"These claims involving workplace violence are costing more, and claims involving workplace violence, in retail specifically, have a significantly higher complexity," he said. "These



REUTERS

claims tend to have higher levels of severity, more medical issues, and often have a mental or emotional component that impact the claim. We see costs going up, both in terms of lost time and medical complexity."

Violence-related claims are "infinitely more complex" than a regular back strain, which is usually an open-and-shut case in which the worker is treated, receives modified duty for a bit and returns to full capacity, said Lev Pobirsky, Philadelphia-based senior director of safety and security for Pepsi-Cola and National Brand Beverages Ltd. and an independent safety consultant.

"With these types of events, once someone is back, if they claim that they are sort of mentally scarred from the event, is that workers compensation? Is it tied into (the Family and Medical Leave Act)? How do we work with human resources? It becomes this energy drain of resources," he said. "We want to do right by the person and get them back to 100%, but resources are finite."

While infrequent, these incidents are "terrible and costly, both for the employer and carrier and for the families affected," said Las Vegas-based Matt Zender, senior vice president of workers compensation strategy at AmTrust Financial Services Inc.

"It's not just the physical injury, but the psychological trauma that they realize can go on for years. It could get into the hundreds of

thousands of dollars. ... It can be very costly," he said.

It's easier to treat a physical ailment, which has an endpoint, Ms. Bradshaw said. A psychological component may include nightmares, flashbacks, and a fear of going back to the workplace, which are often subjective and more difficult to assess, she said.

"An emotional reaction to a workplace event that's violence can actually begin within the first few minutes of an event," Ms. Bradshaw said. "Handling the psych concerns specifically can be more costly just because of the testing and treatment that's associated with it." She noted that testing alone for psychological injuries and impairments can cost more than \$4,500, followed by treatment and return-to-work complications.

Mr. Zender said it's best to try to get in front of violence-related claims, such as by having case management responders trained in handling psychological injuries, who can provide an immediate response.

"Depending on the episode, it can be very important to spend a little bit of extra money and have trained individuals come out and sit down with these workers," he said. "I definitely advocate for trying to get in front" of those issues and potential claims.

Ms. Bradshaw also advocates for early intervention, noting that bringing in counselors and psychologists and providing the employees a way to discuss what happened can improve the rate of resolution and help employees get back to work.

"Although case managers and onsite counseling may seem expensive (after an incident), in the long run, those are not only some of the most potentially cost-effective things you can do from a mitigation perspective, but also the most humanistic and moral," said John Dony, Itasca, Illinois-based director of the National Safety Council's Campbell Institute. "It's going to have an impact for years."

COOL HEADS CAN REDUCE THREATS

De-escalation training and mental health awareness can help prevent violent incidents — and the associated workers compensation claims, experts say.

Such safety training is "an investment to prevent a low-probability but high-impact event," said Lev Pobirsky, Philadelphia-based senior director of safety and security for Pepsi-Cola and National Brand Beverages Ltd. and an independent safety consultant.

Preventing these incidents "starts way down the chain" with mental health first-aid training and understanding the signs of a situation that could escalate to violence," said John Dony, Itasca, Illinois-based director of the National Safety Council's Campbell Institute.

"With workers compensation, preventative solutions are far more cost effective in the long run," he said.

"Employers as a whole, regardless of sector, have to be more aggressive in providing training — anti-bullying and verbal de-escalation," said Donna Bradshaw, Wayne, Pennsylvania-based vice president of independent medical examination services for Genex Services LLC.

In addition, managers and key employees should be trained on how to spot "red flag" behavior, said Stephen Craig, San Francisco-based managing director of Chubb Global Risk Advisors.

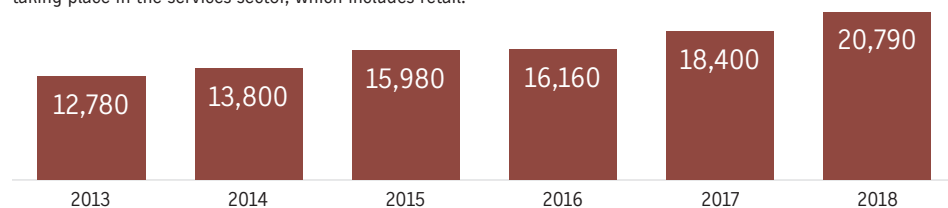
Making sure employees know to use verbal, not physical, de-escalation and when to call law enforcement when a situation arises is also key, Mr. Pobirsky said.

"I tell (my leaders), 'You don't get paid enough to intervene,'" he said. "You're going to get hurt in the process and we're going to have three workers comp claims instead of two."

Angela Childers

NONFATAL WORKPLACE ASSAULTS

Reported workplace assaults have been steadily rising, with the highest percentage taking place in the services sector, which includes retail.



Source: National Safety Council

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Comp sector conflicted over cannabis payouts

BY LOUISE ESOLA

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Are workers compensation payers skirting federal law — which they have claimed has kept them from covering medical cannabis for injured workers — and reimbursing for marijuana anyway? Maybe ... yes ... definitely no, experts say.

Welcome to the hazy world where federal marijuana law and state medical and recreational laws clash — a situation for employers and insurers that experts say will not go away in 2020.

There's little way to track whether comp payers are reimbursing, experts say, yet anecdotal evidence is growing, as are court rulings and at least one proposal to change state law.

Most recently, on Jan. 13 an appeals court in New Jersey ruled that a construction company's reimbursement for medical marijuana for one of its injured workers is not in violation of federal law that prohibits marijuana as a controlled substance; the same day, lawmakers in New Jersey introduced A.B. 1708, which would require that workers compensation insurers pay for medical marijuana.

In March 2019, the New Hampshire Supreme Court ruled that the state's medical marijuana law does not prohibit reimbursement under workers compensation but ruled that the insurer is not required to reimburse.

"I know several payers who are looking to reimburse without a court telling them they need to do it; they are finding it can be a replacement for prescription painkillers," said Mark Pew, Atlanta-based senior vice president of product development and marketing for pharmacy benefits manager Preferred Medical, who has been tracking marijuana's emergence in comp over the past several years.

"This is not going away," he said of payers grappling to deal with conflicting state laws and federal law on marijuana. "The only thing that will make this go away is if the feds reschedule it."

The federal government, under the Controlled Substances Act, still considers marijuana a Schedule I drug, on par with cocaine and heroin. Meanwhile, the health



subcommittee of the U.S. House of Representatives' Committee on Energy and Commerce held a legislative hearing on Jan. 15 to help develop a plan to make marijuana legal, and other reforms intended to allow better study of medical cannabis.

It didn't spur confidence among those keeping track.

"There's going to be a dissonance between state rights and the federal role for the foreseeable future," Mr. Pew said. "Because this year is an election year ... I don't see 2020 as a year where changes will be made at the federal level."

"The federal government has dragged their feet on this for years, and there is no indication that they won't continue to drag their feet," said Paul Armentano, Vallejo, California-based deputy director of the Washington, D.C.-based National Organization for the Reform of Marijuana Laws Foundation, which advocates for marijuana legislation in the states and at the federal level. "I would dare say that it is an untenable situation to have these inconsistencies at the state level and the federal level."

MARIJUANA CONCERNS AMONG EMPLOYERS UP SHARPLY

24.6% of 700 human resource professionals surveyed in early 2020 say they are "extremely challenged" by federal and state medical and recreational marijuana laws and managing employee drug use, compared with 5.7% in 2017.

Source: XpertHR, 2020

As of January, medical marijuana is legal in 33 states and Washington, D.C., and recreational marijuana is legal in 11 states and Washington, D.C., according to several databases tracking laws, including that of the NORML Foundation, which reported recently that the South Dakota Secretary of State's Office said a proposed constitutional amendment to legalize marijuana will appear on the November ballot there.

"The culture surrounding cannabis and the normalization of cannabis are advancing rapidly and we are seeing the courts and the laws at the state level beginning to reflect this change," Mr. Armentano said. "The states are just moving forward. ... They just aren't waiting anymore. They are seeing what works and what doesn't."

Meanwhile, this further expansion of marijuana (legality) also presents some stresses for the workers compensation industry, with employers unsure of how to handle a workers compensation claim for someone who tests positive for THC after legally using marijuana and comp insurers unclear on whether they must pay when

marijuana is prescribed — and how.

"It's creating a lot of gray area," said Brian Allen, Salt Lake City-based vice president of governmental affairs, pharmacy solutions for Mitchell International Inc. "Legislatures are ... trying to figure out what is the right balance, but the laws are often subjected to interpretation by the courts. ... There is a lot of challenge there, and it's a new body of law we haven't had to deal with before."

Mr. Allen said another issue is, if marijuana does become legal recreationally in more jurisdictions, what does that do to the medical model? And how does it change the dynamics, including workers compensation, if employees are self-medicating?

"I think the greatest opportunity and/or need is for payers and case management firms to have a clear plan for assessing (marijuana) coverage and reimbursement," said Kimberly George, Chicago-based senior vice president of corporate development, mergers and acquisitions, and health care for Sedgwick Claims Management Services Inc.

A clear treatment pathway is needed to assess benefits, compensability and other factors when a request for medical marijuana is made, she added.

The Cambridge, Massachusetts-based Workers' Compensation Research Institute, which tracks medical payment for workers compensation, said there's no easy way to track marijuana spending in comp.

"Yes, it is a fair assessment that we do not see payments for medical marijuana in the data," the institute's CEO John Ruser said.

One substantial challenge is the lack of data on medical marijuana's efficacy, usage or pricing, because when medical marijuana is prescribed as a part of a worker compensation treatment plan, it is coded as an expense and typically doesn't even go through to bill review, Ms. George said.

"We would love to do some research on marijuana (payments), but frankly it's not showing up on any of the claim files because it is passed through as an expense in most situations," she said. "I do think (research) will happen over the next 10 years ... and more claims shops, clinicians and case managers will need to be prepared."

Angela Childers contributed to this report.

SURGE IN MARIJUANA LEGISLATION EXPECTED TO KEEP ROLLING IN 2020

Workers compensation experts say the green wave in state legislation will continue throughout 2020.

In addition to New Jersey legislation intent on forcing workers compensation payers and employers to cover medical marijuana, on Jan. 13 lawmakers in

Colorado introduced H.B. 1089, which would clarify that an employer cannot fire a person who uses marijuana while not at work, aiming to treat off-duty marijuana use the same as alcohol use.

Later that week, on Jan. 15, lawmakers in West Virginia filed H.B. 4186, which would

amend state law to remove marijuana as a tested substance from the screening requirements of the West Virginia Alcohol and Drug-Free Workplace Act.

On Jan. 20, lawmakers in Washington filed H.B. 2740, which would make it unlawful for an employer to refuse to

hire prospective employees who legally use marijuana and test positive in a drug screen. The bill does carve out exceptions for workers in safety sensitive positions or workplaces that receive federal funding or fall under federal jurisdiction.

Louise Esola

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Insurers push back on bad property estimates

BY CLAIRE WILKINSON

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Commercial property valuations in insurance contracts are garnering heightened scrutiny in a hardening market as insurers burned by unexpectedly large claims in recent catastrophes seek to tighten underwriting standards, according to industry experts.

As part of their increased diligence around valuations, property insurers are sometimes applying “onerous” terms and conditions to policies when they feel a policyholder’s valuations are too low, brokers and risk managers say.

“We see common examples where the values reported at a location were perhaps different to how the claim actually begins getting adjusted,” said Jeffrey J. Beauman, vice president, chief underwriter for Johnston, Rhode Island-based FM Global. “We know this valuation challenge is a fairly common issue across a broad swath of industries and clients,” Mr. Beauman said.

The focus on values results from a combination of factors, according to experts.

One of the challenges for insurers at Jan. 1 renewals was obtaining correctly scheduled values, according to Michele Sansone, president of the North America property insurance business for Axa XL, a unit of Axa SA, in New York.

“Say the loss is \$10 million at a particular building and it’s a total loss. The insurance company has to write a \$10 million check and the value that has been reported is \$5 million.”

Gary Marchitello,
Willis Towers Watson

“We’ve seen numerous instances where we’ve gotten claims and the values are a lot higher than what was submitted as part of the schedule,” she said.

“That’s really disturbing because we set lines on those, we base our engineering surveys on those and we’re obviously charging based on those, Ms. Sansone said. “It’s very concerning, and nobody seems to know why ... We are really going to be paying close attention to that in 2020,” she said.

Gary Marchitello, chairperson of Willis Towers Watson PLC’s North Amer-



ican property team in New York, said in underinsuring actual values hits underwriters hard when a loss occurs.

“Let’s just say the loss is \$10 million at a particular building and ... it’s a total loss,” he said. “The insurance company has to write a \$10 million check and the value that has been reported is \$5 million so that’s the rate base at which the premium was derived.”

“That is a circumstance where senior executives at insurers pull their hair out and the ultimate consequence could be as extreme as firing the underwriter that didn’t spot that that particular building was undervalued,” he added.

Hardening market

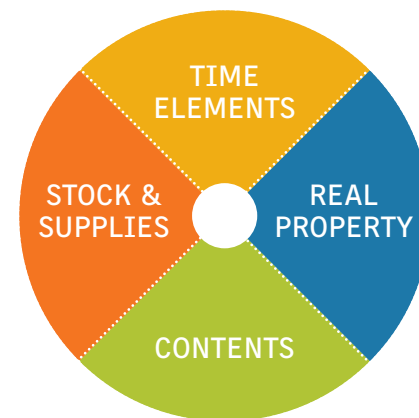
Recent catastrophic events may have prompted insurers to revisit valuations, though no single catastrophe is responsible for the heightened scrutiny, brokers say.

“Throughout 2017 and 2018 where we had back-to-back years of significant catastrophe losses whether it was hurricanes Harvey, Irma, Maria, or hurricanes Florence and Michael in 2018, there were a couple of very notable claims that were out there where the marketplace ended up paying hundreds of millions of dollars in claims on accounts where values were half of that amount,” said Ryan Barber, New York-based U.S. property practice real estate leader at Marsh LLC.

This led to some litigation and questions about misrepresentation and as a result, insurers are being “increasingly diligent about values and more are applying underwriting guidelines,” Mr. Barber said.

For example, an insurance coverage

TYPES OF INSURED PROPERTY VALUE



Source: FM Global

dispute related to property damage and business income loss arose between CBI Acquisitions LLC, the owner of U.S. Virgin Islands resort Caneel Bay and its insurers in the wake of hurricanes Irma and Maria in 2017.

The hardening market is another contributing factor, said Lori Seidenberg, New York-based global director of real assets insurance for BlackRock Inc.

“There shouldn’t be a correlation but now that the market is hardening the carriers are making sure they are collecting every little bit of premium they can to offset their losses in the future,” she said.

Insurers want to narrow the gap between what they may lose on an account and what they are collecting in premium, Ms. Seidenberg said.

“Property premium is derived by rate times value. If the values are understated, even if the rates go up it’s going to

produce an inadequate premium. So, every time there’s a hard market there’s a renewed scrutiny of the accuracy of the values reported,” Mr. Marchitello said.

Cutting costs

A market where rates and premiums are increasing has led some policyholders to understate values to cut insurance costs, some risk managers and brokers say, though there is no consensus on this issue.

“I would like to believe insureds are not intentionally underreporting for purposes of manipulating premium, but I can’t tell you it’s not being done out there,” said Mr. Barber, adding: “We remind insureds of their obligations under a policy and the need to represent what you believe to be 100% of value. If you knowingly underreport, an insurer can cite misrepresentation as grounds to deny a claim.”

While lenders require property owners to insure to 100% of the value, “if you own the building outright there’s no incentive to insure to value except in recovery,” said Ms. Seidenberg.

“I know some people in order to cut costs still underreport and hope that they never have a total loss. At BlackRock we make sure we insure at 100% because we’re an investment manager,” she said.

But Mr. Beauman said: “I don’t think clients, and certainly not brokers, are motivated to underreport their values. Ultimately, they are representing the risk through their value reports and that’s incumbent on them as they purchase the coverage to be as accurate as possible.”

During the prolonged soft market and prior to the heavy catastrophe years of

VALUE REPORTING BASICS

CATEGORIES	TYPES	BASIS OF REPORTING	CONSIDERATIONS	VALIDATION SOURCES
Real Property	• Buildings, tenant improvement & betterments	• Replacement cost new • Actual cash value	• Age of appraisal indexing	• Marshall & Swift • 3rd party appraisal
Contents	• Production equipment, office furniture	• Replacement cost new • Actual cash value	• Idle production lines	• Equipment vendors • 3rd party appraisal
Stock & Supplies	• Raw materials, work in process, finished goods	• Replacement cost new • Selling price	• Peak and average values • Sales trends over insurable period	• Insured production reports
Time Element	• Business income — profit + expenses that continue in event of loss	• Completed business income worksheet for current 12 month period ended and projection for upcoming 12 month period	• Ordinary payroll coverage • Corporate worksheet that requires allocation to the location level	• Profit & loss statement • Public financials

Source: FM Global

2017 and 2018, insurance to value was less of a concern, brokers say.

“I don’t think anybody intentionally did it. I just don’t think the carriers were minding the store that well,” said Brian Dove, USI Insurance Services LLC’s national real estate practice leader, based in Dallas.

Policyholders often don’t know the full value of a building until a loss occurs and they rebuild, he said.

“If they don’t have losses, they’re going to keep reporting the same values every year because nobody’s telling them anything different,” Mr. Dove said.

Subsidizing the market

When insurance buyers underreport their property values, policyholders that do report to value effectively subsidize the market, some risk managers say.

“This is the crux of the relationship between the insured and insurer. If you start a relationship with someone saying it costs \$100 a foot to rebuild something and I’m insuring it to \$50, that would be unethical,” said Stephan Upshaw, Chicago-based vice president of risk management at apartment complex owner Equity Residential.

Policyholders have an ethical responsibility to report their values as accurately as

possible, he said.

“Because I report to value, I am subsidizing those that do not,” Mr. Upshaw added.

By being honest you can be “subsidizing dishonest people or people who are not reporting correctly” but then it happens that “they have the losses and I end up paying the price because my premiums go up because other people are not profitable,” said Ms. Seidenberg.

Terms and conditions

Concerns about valuations have prompted insurers to change terms and conditions on some property policies, sources say.

Many insurers will put “onerous restrictions” on a policy if they feel a policyholder’s values are too low, said Mr. Barber. Changes include, per occurrence limit of liability endorsements in contrast to blanket limits, margin clauses and co-insurance clauses, he said. Margin clauses limit the amount an insurer will pay in the event of loss to a specified percentage of the values reported by the policyholder.

In the middle market, it’s more likely that a co-insurance or a margin clause might be applied to a policy, according to Mr. Marchitello.

For larger risks, penalties are less likely to be imposed, but underwriters will question values and ask for proof that they

are accurate, Mr. Marchitello said.

Anecdotally, real estate as a risk class generally has been perceived as “the most undervalued,” he said.

Kenneth Tolson, U.S. president of claims solutions at Atlanta-based Crawford & Co. said: “From a coinsurance standpoint the penalties can be quite severe for inadequate insurance. But I’d also argue that in the case of most commercial (risks) very seldom do they deal with total catastrophic loss.”

“If they don’t have losses, they’re going to keep reporting the same values every year because nobody’s telling them anything different.”

Brian Dove,
USI Insurance Services LLC

“Because it’s incumbent on both underwriters and clients to agree on values from a pure contract certainty point of view, our general mode of operation if we were to have dialogue if we believe the value is off, is to make sure there’s an agreement about that,” said Mr. Beauman.

“Then usually we can resolve that by agreeing to conduct an appraisal or figure out if it’s about how business values were interpreted,” he said.

Challenges to insuring to value

While there are multiple sources used to verify and validate values (see chart), any changes in construction, equipment or labor costs can affect replacement cost values and establishing accurate values can be challenging, according to some industry experts.

For example, in mergers and acquisitions where businesses are buying and selling locations, the risk management department is dealing with information using accounting systems and sets of rules based on a different business model, said Mr. Beauman. Interpreting that information can be a challenge.

When purchasing a building, a company can either have an appraisal done to calculate values and insurable costs or use software tools that enable you to input various data points, said Ms. Seidenberg.

“There’s no standard. If everyone, if all the carriers had a standard or had the same system it would be a lot easier but it’s all self-reporting and based on your data inputs,” she said.

Hard market prompts fresh look at building values

Risk managers need to provide detailed information on their valuation methodologies for property risks to differentiate themselves in the hardening market, experts say.

“We’re telling our clients you need to take a close look at how you are valuing your properties and you need to be able to explain to underwriters what your methodology is to arrive at value on a schedule of properties,” said Gary Marchitello, chairperson of Willis Towers Watson PLC’s North American property team in New York.

“The very first thing a client can do is give underwriters confidence and assurance that the client understands

how important values are to the underwriting process and is doing their best to make that information available as robustly as possible,” said Jeffrey J. Beauman, vice president, chief underwriter for Johnston, Rhode Island-based FM Global.

In addition to property values, policyholders need to explain to insurers how they develop business income numbers, what fiscal year they represent and how they project their business changing going forward, he said.

While there is more of a focus on building values, due to higher than expected property damage losses, business income is another area of

concern, sources say.

This is helpful when an insurer is trying to underwrite a policy that covers a loss 12 months into the future and in a major disaster a loss that is going to be settled over two to three years, Mr. Beauman said.

Even with long-term insurer relationships, in the hardening market, it’s like starting over, said Lori Seidenberg, New York-based global director of real assets insurance for BlackRock Inc.

“Insurers are looking at everything with a fresh pair of eyes. They are looking at your data points, your statement of values, they’re looking at

your secondary characteristics, your documentations. I could have an insurer who’s been on my account for 10 years but starting last year it seemed like they wanted to look at it from soup to nuts again, so it’s almost like being a brand new account or submission,” she said.

Policyholders should expect insurers to question them about valuations and need to have an answer, said Ryan Barber, New York-based U.S. property practice real estate leader at Marsh LLC.

“Preferably outline to them your specific methodology if referencing industry recognized tools and appraisers,” he said.

Claire Wilkinson

Risks rise as machines learn business

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

Businesses are increasingly using artificial intelligence, or machine learning, which can increase their operations' efficiency but may also pose significant cyber and other liability risks.

Artificial intelligence generally refers to a computer's ability to mirror human intelligence and make its own decisions. A global survey by New York-based McKinsey & Co. issued in November showed a nearly 25% year-over-year increase in the use of AI in standard business practices, with 58% of companies reporting their organizations had embedded at least one AI capability into a process or product in at least one function or business unit, up from 47% in 2018.

It is a rapidly changing environment, observers say. "The state of AI now is not the state of AI next year or the year after," said Eric Boyum, Denver-based national technology industry practice leader for Aon PLC. "The whole idea of AI is going to be much more integrated into human intelligence."

Its use can pose risks, though. "The largest risk about it is, we don't understand all the risks," said Marek Stanislawski, Stockholm-based deputy global head of cyber and tech professional indemnity for Allianz Global Corporate & Specialty, a unit of Allianz SE.

With the data it collects, AI "creates a new avenue for invasion of privacy," he said. The data may also reflect hidden biases. "It may end up discriminating against people" because of the failures people introduce into the algorithm, he said.

In addition, the European Union-mandated right to be forgotten "has to be very consciously designed" into the AI, he said.

"It changes the way in which liability is realized," Mr. Boyum said.

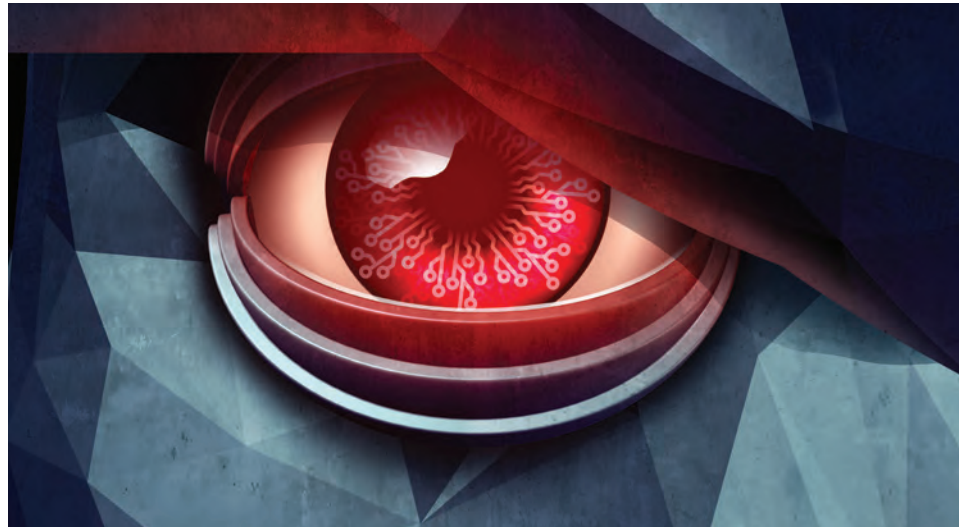
AI is "only as good as the data it's getting," said Robert Parisi, New York-based managing director and cyber product leader for Marsh LLC. "It's an added complication, and any time you add another complexity to a process or system, it adds risk," he said.

"AI hasn't really reached the level of independent thinking to the same level of complexity as humans do," said Steve Robinson, Cambridge, Maryland-based area president and national cyber practice leader for Risk Placement Services Inc., Arthur J. Gallagher & Co.'s wholesale unit.

"We're still relying ultimately on the programmer or the human side of it, and we have common sense," he said.

"There could be a disconnect" between what humans know and what is programmed into the AI, which "could lead to anything from negative PR" to a business violating peoples' right to privacy, or massive damage, he said.

Paul King, Dallas-based senior vice president



and national technical director of executive and professional solutions for USI Insurance Services LLC, said there is also the danger it may take people "a long time to recognize" the tactics of AI malware.

Experts say there have not been a significant number of cyber claims related to AI so far, but there may be more in the future.

"Certainly, AI expands the attacks surface," which "increases the probability of hackers finding a place to successfully attack," said John Farley, New York-based managing director of cyber for Gallagher.

POTENTIAL LIABILITY RISKS POSED BY AI'S USE:

- Creates new avenues for invasion of privacy
- May reflect hidden biases
- Is only as good as the data it receives
- Requires explicit "right to be forgotten"
- May take firms considerable time to recognize AI malware tactics
- Expands hackers' probability of successful attacks

Source: Business Insurance interviews

Cyber insurance may respond, experts say. "Cyber insurance is sufficiently broad enough to cover a failure of security," said Dan Burke, San Francisco-based national cyber practice leader for Woodruff Sawyer & Co. "It's the backstop for when security fails."

Mr. Parisi said, "There's nothing in current cyber policies that would exclude AI-based risks. That being said, if we suddenly see a lot of AI claims, the carriers may start focusing more closely on it and come up with more current wording, but the current definitions of computer systems and software and such easily encompass AI."

Mr. Farley said to underwrite the coverage, underwriters are "going to ask a lot of the same questions" they do for other cyber risks, including about the technology firms are using, how well protected they are, if they are using vendors to facilitate services that use AI, and if they have

vendor management programs.

Firms should also be sure there is coverage for the alleged wrongful collection of data, which is prohibited under laws including the European Union's General Data Protection Regulation and the California Consumer Privacy Act, said Anthony Rapa, Dallas-based western region leader, claims & legal group, for Willis Towers Watson PLC's FINEX North America practice.

With AI, "you're probably collecting a lot more data than you're used to, and new regulatory schemes mean you've really got to be careful how you collect that data and how you protect" yourself from liability, Mr. Rapa said. A typical cyber policy may not cover that, he said.

AI also has implications across the broader property/casualty market, said Stephanie Snyder, Chicago-based senior vice president and national sales leader for cyber insurance with Aon PLC. With auto policies, for instance, in the case of semi-autonomous cars, the question is whether the liability is the driver's or the AI device, she said.

Furthermore, Ms. Snyder said, silent cyber, where the risk is not precisely addressed in policies, "continues to be a big challenge facing the P/C industry and, frankly, the industry is not moving fast enough to address it."

Once insurers start seeing these types of AI-driven claims, they will swiftly respond that there is no cyber coverage within traditional property/casualty policies, she said.

Mr. Robinson said if a claim involves bodily injury or property damage, there is likely to be crossover between cyber and errors and omissions, crime and perhaps even workers comp.

Mr. Rapa said that when buying various policies, "You've really got to test them together, making sure the wording matches up," so if a claim hits multiple policies there is not a coverage gap.

Ryan Gibney, Lockton Cos.' Washington-based cyber technology practice leader for the Northeast said he does not anticipate AI-related exclusions. "But you never know," he added, pointing to the hardening market.

AI RISK CALLS FOR TEAM EFFORT

All facets of an organization must work together to address the risks that using artificial intelligence creates, experts say.

Steve Robinson, Cambridge, Maryland-based area president and national practice leader for Risk Placement Services, Arthur J. Gallagher & Co.'s wholesale division, said, "When programming machines to perform business procedures, or when a business is thinking about integrating AI into what they do, the entire management team has to be a part of the decision-making process."

There needs to be a more "holistic discussion," with the regulatory and legal environment considered, he said.

"There certainly needs to be an evaluation of who's doing what, when and where, to figure out where are the contractual relationships, who's taking on what piece of liability" and how "organizations are shifting that liability off their balance sheet using insurance," said Stephanie Snyder, Chicago-based senior vice president and national sales leader for cyber insurance with Aon PLC.

Stakeholders managing evolving technology in an organization need to communicate with those managing insurance and risk transfer and contractors, Ms. Snyder said.

"Oftentimes, we see two stakeholders sitting firmly at different ends of the organization," when there should be a dialogue, she said.

Judy Greenwald

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Broker mergers reach new high in 2019

BY TIMOTHY CUNNINGHAM,
DANIEL MENZER AND
STEVE GERMUNDSON

Broker merger and acquisition activity in 2019 edged past the 2018 count by six deals to set another record.

In spite of “only” 149 transactions tracked during the fourth quarter, 2019 still ended with 649 transactions recorded, compared with 643 transactions in 2018. This total includes U.S. and Canadian property/casualty and employee benefits brokerages, third-party administrators and related managing general agent operations, but it does not include agencies solely focused on life insurance, investment or financial management. We collect the information from public announcements, buyer websites and other sources in a consistent manner from year to year, but it does not include all transactions, as many are never released publicly.

The 149 reported fourth-quarter transactions, the lowest quarterly total since the fourth quarter of 2017, was still the second highest number for any fourth quarter. During the second half of 2018, there were 343 transactions reported, compared with 320 in 2019. Although the numbers for the last half of the year were down from 2018 and from the first half of 2019, we have not seen any letup in buyer or seller activity, and we expect 2020 to continue to be another very active year for agency acquisitions.

Buyers are broken down into the following categories:

1. PE/Hybrid — Private equity backed and private firms with significant outside acquisition financial support
2. Publicly traded
3. Privately owned
4. Bank-owned
5. Insurance companies
6. Others

Once again, Caledonia, Michigan-based Acrisure LLC reported the most activity, with 98 closed transactions, a slight decrease from the 101 transactions completed in 2018. That’s a completed deal every day and a half for two years running. Chicago-based Hub International Ltd. was second, completing 51 transactions, down from 59 in 2018 (see chart).

The PE/Hybrid group remains the most active group of buyers, occupying eight of the top 10 spots in the table and 448 of 649 transactions for the year, more than two-thirds of all agency acquisition transactions. The concentration of acquisitions by the top 10 buyers — as measured in each year independently — declined to 58% in 2019 from 61% in 2018 as five of the top 10 in the list showed year-over-year declines. At the same time, several firms

TOP BUYERS

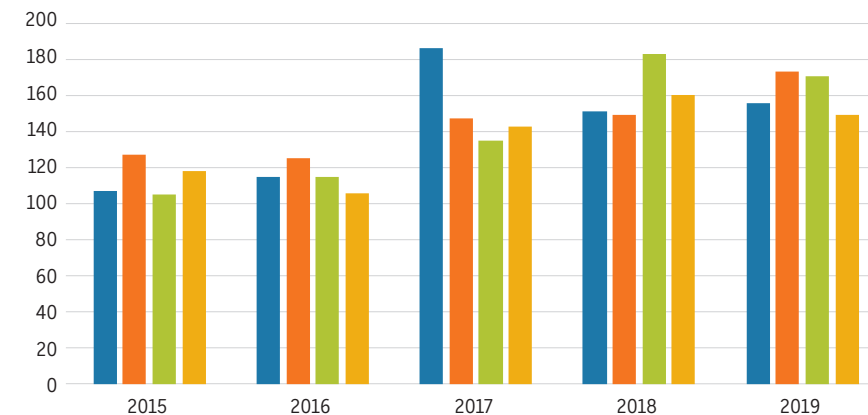
The 10 most acquisitive buyers of insurance agencies and brokerages in the U.S. and Canada in 2019, with comparable totals for 2018, are shown in the table below:

Buyer	Company type	2018	2019
Acrisure LLC	Private equity/hybrid	101	98
Hub International Ltd.	Private equity/hybrid	59	51
AssuredPartners Inc.	Private equity/hybrid	38	44
BroadStreet Partners Inc.	Private equity/hybrid	34	34
Arthur J. Gallagher & Co.	Publicly held	36	33
The Hilb Group LLC	Private equity/hybrid	12	25
Patriot Growth Insurance Services LLC	Private equity/hybrid	0	25
Alera Group	Private equity/hybrid	28	24
Risk Strategies Co. Inc.	Private equity/hybrid	10	22
Brown & Brown Inc.	Publicly held	23	20
TOP 10 TOTALS		341	376
ALL OTHER		302	273

Source: Optis Partners LLC

HISTORY OF DEALS TOTALS — 2015-2019

Insurance agency and brokerage acquisitions by quarter:



Source: Optis Partners LLC

outside the top 10 saw large increases, including Tinton Falls, New Jersey-based World Insurance Associates LLC going from nine transactions in 2018 to 19 in 2019, Bangor, Maine-based Cross Financial Corp. from five to 12, and Valhalla, New York-based USI Insurance Services LLC from four to nine, to name a few.

Some other statistics from the 2019 activity:

- 35 different PE/Hybrid buyers acquired 448 agencies in 2019, an average of nearly 13 transactions each.
- 45 privately owned firms acquired 118 agencies, an average of just over 2.5 each.
- 86 firms acquired only one agency in 2019, while 26 acquired five or more.
- There were 66 first-time buyers in 2019, including Patriot Growth Insurance Services LLC, which finished the year with a total of 25 acquisitions.

Property/casualty brokers continued to dominate the sell-side M&A landscape, with 329 of the 649 transactions, or just over 50% of the total. Employee benefits brokers were the second most acquired firms in 2019, with 162 transactions representing 25% of the total.

There were several significant transactions and private equity Recap’s during 2019:

- Bouchard Insurance Inc. sold to Marsh & McLennan Agency LLC in January.
- Lovitt & Touché Inc. sold to Marsh McLennan Agency in April.
- U.S. Risk Insurance Group LLC was acquired by USI Insurance Services LLC during the second quarter.
- EPIC Insurance Brokers & Consultants acquired Prime Risk Partners Inc. in November.

- Baldwin Risk Partners LLC went public in October via an initial public offering.
- Alliant Insurance Services Inc. received a minority investment from the Public Sector Pension Investment Board in January.
- Assured Partners Inc. was acquired from Apax Partners LLP by GTCR LLC in May.
- Aquiline Capital Partners LLC acquired Relation Insurance Inc. from their long-standing private equity backers Parthenon Capital Partners and Century Equity Partners LLC in March.
- Lee Equity Partners LLC acquired a majority ownership position in K2 Insurance Services from Endeavour Capital in April.
- Lovell Minnick Partners sold their interest in Worldwide Facilities LLC to Genstar Capital LLC in September.
- ABRY Partners sold their interest in The Hilb Group LLC to The Carlyle Group in October.

Insurance agency M&A activity, at the individual agency level, as well as from capital and equity partners, remains extremely active. Agency valuations and multiples continue to reach new upper limits every year as the demand for new acquisition opportunities continues unabated from a rapidly expanding base of buyers. With private equity firms, lenders and individual investors all supporting the large number of enthusiastic buyers, we see no reason for the general acquisitive atmosphere in the business to decline for the foreseeable future, barring some external economic or geopolitical event, in which case all bets are off. With a strong and stable economy, favorable interest rates and insurance rates on a modest increase, the tailwinds are strong.



Timothy Cunningham, Dan Menzer and Steve Germundson are principals at OPTIS Partners LLC, a Chicago-based investment banking and financial consulting firm that serves the insurance distribution sector. Mr. Cunningham can be reached at 312-235-0081 or cunningham@optisins.com; Mr. Menzer can be reached at 630-520-0490 or menzer@optisins.com and Mr. Germundson can be reached at germundson@optisins.com or 612-718-0598.

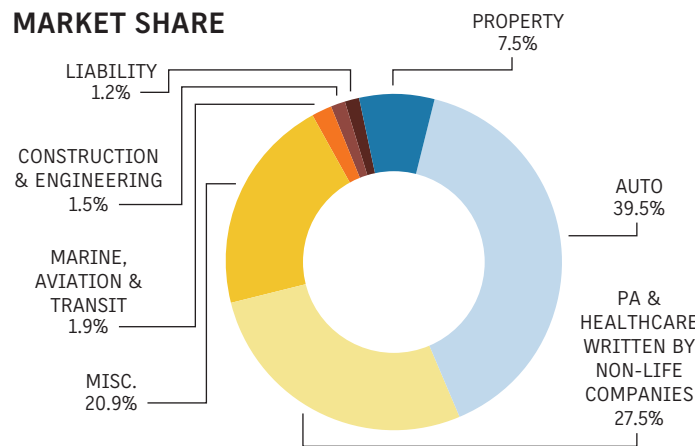
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13

GLOBAL
P/C MARKET
RANKING

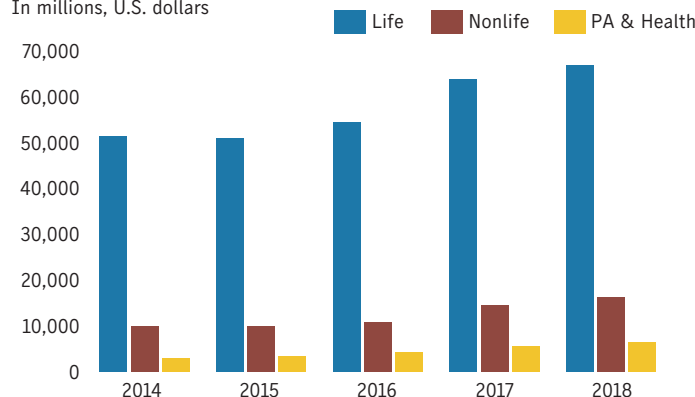
There are 34 insurers writing property/casualty business in India. In addition, there is one domestic reinsurer, GIC Re, nine branches of foreign reinsurers and Lloyd's India. New India is the market leader by a significant margin. There are no tendencies in the state sector toward absorption of property/casualty insurers into larger financial groups. Private joint-venture insurers usually involve a prominent foreign insurer or group, together with a local bank or major local industrial, financial or commercial conglomerates. Although insurance penetration in India remains low, property/casualty premium growth has consistently exceeded nominal GDP growth and the inflation rate in recent years. The very high growth rate in 2017 was principally attributable to the launch of the state-subsidized crop insurance scheme known as Pradhan Mantri Fasal Bima Yojana in 2016.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Third-party liability for manufacturers of hazardous materials
- Professional liability of direct insurance brokers, reinsurance brokers, insurance marketing firms, stockbrokers and mutual fund managers
- Aviation carriers' liability
- Shipowners' liability for marine oil pollution

NONADMITTED

Unauthorized insurers cannot carry on "insurance activity" in India. In *Radiant Overseas v. IRDA*, the High Court in Delhi overturned its previous decision, deciding that the business of foreign insurers covering risks incurred for Indian interests outside India does not fall within the definition of insurance activity in India and is, therefore, permitted. That case concerned medical and accident insurance for Indians traveling abroad, which was arranged by an Indian intermediary with a Ukrainian insurer.

INTERMEDIARIES

Intermediaries must be authorized to transact insurance business. Intermediaries are not permitted to place business on a nonadmitted basis, with the exceptions outlined in the *Radiant* case.

MARKET PRACTICE

Some local subsidiaries of multinational companies are believed to not always purchase local insurances when they know they can rely on global programs arranged by their head offices, even though this does not comply with the regulations. A nonadmitted insurer that tried to pay claims in India would be breaking the rules if the payment refers to the settlement of an insurance loss related to a local risk within the country.



AREA

1,269,219

square miles

POPULATION

1.38

billion

MARKET CONCENTRATION

54%

market share of top five insurers

2019 GDP CHANGE (PROJECTED)

6.4%

MARKET DEVELOPMENTS

Updated November 2019

- In August 2018, the government announced it would postpone plans to merge three wholly state-owned insurers — United India, National Insurance and Oriental Insurance — until late 2019. It was reported in July 2019 that the Insurance Regulatory and Development Authority had written to the government, expressing its concerns about the financial condition of National Insurance, the third largest property/casualty insurer in 2017-18, as its solvency ratio had dipped below 100%.
- In September 2018, the IRDAI announced plans to move toward a risk-based capital regime by March 2021. Based on recommendations by the International Monetary Fund and the World Bank, it will also adopt a risk-based supervisory approach, starting with insurers and then intermediaries.
- Following an order issued by India's Supreme Court, the IRDAI made it mandatory from Sept. 1, 2018, for property/casualty insurers to issue three-year motor third party liability policies for new cars and five-year MTPL policies for new two-wheelers. The regulator subsequently announced that, from Jan. 1, 2019, car and two-wheeler owners can opt to replace their bundled compulsory personal accident coverage with stand-alone coverage.
- Regulations took effect on Jan. 1, 2019, repealing various regulations, including those affecting foreign reinsurers. While the precedence system of offering reinsurance initially to an Indian reinsurer is maintained, greater scope is provided to cede to foreign reinsurance branches. The regulations also set out new procedures for reinsurance placements and new eligibility criteria for cross-border reinsurers.

Information provided by Axco Insurance Information Services.
www.axcoinfo.com



Court rules against worker who lost arms

■ A worker who lost both arms in a workplace accident failed to show that her employer intended to injure her.

In *Henry v. CMBB LLC*, the 6th U.S. Circuit Court of Appeals held in a 2-1 decision that the employee's intentional tort lawsuit was barred by the exclusive remedy provision of the Tennessee Workers Compensation Act, holding that she failed to prove a reasonable inference of an actual intent to injure.

Heather Henry had been assigned by temp agency Personnel Placement Inc. to work at a manufacturing facility in Humboldt, Tennessee, owned by CMBB LLC.

At the facility, Ms. Henry operated a 200-ton metal press. The press contains a light curtain, which prevents it from cycling if operators are detected within an unsafe area of the press. In early November 2017, an operator reported that the light curtain was not functioning properly. The company ordered a new light curtain but did not take the press out of operation.

On Nov. 15, 2017, Ms. Henry was operating the press when the machine cycled, crushing her arms, both of which were amputated below the elbow.

She and her husband filed a lawsuit against CMBB for her injuries and his loss of consortium. A district court held that her claims were barred by the act. The couple appealed.

The appellate court affirmed the decision. Although Tennessee courts allow employees to bring intentional tort claims if the employee can provide a reasonable inference that the employer "actually intended to injure" the worker, the Tennessee Supreme Court has held that even egregious safety violations fail to show actual intent to injure to rise above the exclusive remedy provision.

Suit over ship's fire keeps sailing ahead

■ A Florida federal district court refused to dismiss litigation filed by a Chubb Ltd. unit against a ship part manufacturer in connection with a vessel's destruction.

In 2014, a fire severely damaged the "E-Mc2," which was owned by Eric Slif-

ka and insured by Chubb Ltd. unit Ace American Insurance Co., according to court papers in *Ace American Insurance Co. v. Florida Bow Thrusters Inc.*

The vessel included a bow thruster, an auxiliary propulsion device in the ship's bow that aids in maneuvering, that had been installed by Merritt Island, Florida-based Florida Bow Thrusters, according to the ruling by the U.S. District Court in Orlando. An Ace expert determined the bow thruster was likely the source of the fire.

After related litigation in the matter that was filed in Massachusetts was settled, Ace, which had paid Mr. Slifka for the property damage, filed suit in Florida against Florida Bow Thrusters on negligence, indemnification and contribution claims.

Florida Bow Thrusters filed a motion seeking the case's dismissal, which the court denied.

Florida Bow Thrusters maintains that the counts in the litigation are "replete with legal conclusions" and "devoid of the requisite factual allegations," but "does not provide any examples of these legal conclusions or of areas where the required factual allegations are lacking" said the ruling, in analyzing the firm's arguments in favor of dismissal.



Court rules against obese bus driver in work injury case

■ A bus driver who was injured in an assault by a passenger failed to show that his psychological injuries rendered him completely unable to work or that his morbid obesity was causally related to his work injury.

In the *Matter of the Claim of Robert Rapaglia v. New York City Transit Authority*, the Supreme Court of New York, Appellate Division, Third Department in Albany unanimously affirmed a New York City Workers Compensation Board decision that the man had a 60% loss of earning capacity but was not fully disabled.

Robert Rapaglia worked as a bus driver for the New York City Transit Authority when he sustained injuries from an assault by a passenger in 2015, which included injuries to his face and neck, post-traumatic stress disorder and major depression.

He received ongoing treatment and did not return to work. In August 2016 his employment was terminated.

In 2017, a workers compensation law judge determined that Mr. Rapaglia had a permanent partial disability and calculated a 60% loss of wage-earning capacity. The New York City Workers Compensation Board agreed, and Mr. Rapaglia appealed, arguing that the board failed to consider his obesity and limited education and work experience in calculating his percentage of lost wage-earning capacity.

In affirming the board's decision, the appellate court noted that in rating the severity of a medical impairment due to PTSD or other causally related psychiatric conditions, "the evaluation should include the impact of the psychiatric impairment on functional ability, including activities of daily living."

The court held that while Mr. Rapaglia could not return to bus driving, it could not conclude that the board erred in finding that he was not incapable of other work, nor could it conclude that his obesity was causally related to the workplace injury.

QBE scores win in fight over cover for arson loss

■ A federal appeals court ruled against a QBE Insurance Group Ltd. unit in a coverage dispute over arson at a hotel construction project, reversing a lower court ruling in the insurer's favor.

The construction project's general contractor was Fargo, North Dakota-based Axia Contracting LLC and its owner was Fargo-based 255 Blackhawk Hospitality LLP, according to the ruling by the 10th U.S. Circuit Court of Appeals in Denver in *Praetorian Insurance Co. v. Axia Contracting LLC; 255 Blackhawk Hospitality LLP*.

At the time of the June 2017 fire, a builder's risk policy issued by Sun Prairie, Wisconsin-based Praetorian, a QBE unit, was in effect, according to the ruling. A policy provision required that the job site be protected with chain-link fencing and all entrance and access gates remain securely locked during nonworking hours, according to the ruling.

Praetorian denied coverage because the job site was not enclosed by chain-link fencing, nor were the gates securely locked. The insurer filed suit in U.S. District Court in Denver seeking a declaration it was not obligated to provide coverage, and Axia counterclaimed for breach of contract and bad faith.

The District Court granted Praetorian summary judgment on the basis that the defendants' failure to maintain fencing was a material policy breach. But the ruling was unanimously overturned by a three-judge appeals court panel, which remanded the case for further proceedings.

DOCKET



CALIFORNIA VINTNER SUES OVER SMOKINESS

A California wine company is seeking \$12 million in damages from various Lloyd's of London insurers including units of Liberty Mutual Insurance Group, the Hartford Financial Services Group Inc. and Travelers Cos. Inc. in a coverage dispute over wine left with a "smoke taint" by 2017 wildfires. Vintage Wine Estates Inc. filed a federal lawsuit in the Northern District of California alleging breach of contract against London-based RSA Insurance Group PLC, and Lloyd's syndicates of Liberty Specialty Markets Insurance Group, Navigators Underwriting Agency Ltd., Brit Global Specialty and Travelers Marine Cargo.

CHUBB UNIT PREVAILS IN CAVE COLLAPSE

The collapse of layers of rock into a former limestone mine serving as an underground storage facility cannot be considered insured building decay, a federal appeals court said in affirming a lower court ruling in favor of a Chubb Ltd. unit. In 2014, Kansas City, Missouri-based Interstate Underground Warehouse & Storage Inc. experienced "dome-outs," in which layers of rock collapsed from above into the cavernous space, according to the ruling by the 8th U.S. Circuit Court of Appeals in St. Louis in *Westchester Surplus Lines Insurance Co. et al. v. Interstate Underground Warehouse & Storage Inc.*

GOOGLE TO PAY \$7.5M TO SETTLE CLASS SUIT

Google LLC has agreed to pay \$7.5 million to settle putative class action litigation filed in connection with its discontinued Google+ media platform, although class members may receive only \$5 each and no more than \$12. Google, a unit of Alphabet Inc., acknowledged that software bugs in its Google+ social media platform potentially exposed users profile information to unauthorized third parties, according to the plaintiffs' motion in support of the settlement.



Laura Langone, head of insurance operations at Airbnb Inc. in San Francisco, assumed the presidency of the Risk & Insurance Management Society Inc. effective Jan 1. Ms. Langone, who has been a member of RIMS for 22 years and joined its board of directors in 2016, discussed her priorities for the organization, including international development, helping risk managers navigate a volatile insurance market and the impact of technology, with *Business Insurance* Deputy Editor Claire Wilkinson. Edited excerpts follow.

Laura Langone

RIMS

Q What led you to the presidency of RIMS?

AI've been on the board now for four years. I've been an active member at RIMS, I've been a chapter president, I've helped with the subcommittees for enterprise risk and international. I love risk. Most of my opportunities have been driven from things I've seen at RIMS and opportunities on our job posting (site), and so for me this organization is home. It is one of the leading, and the only risk management, professional organizations that is truly global. If I want to shape my career and my profession, what better way to do it than to be an active member, and for me that's meant leadership and board leadership. It's an honor to serve RIMS, and it's one of the things I've really committed to over the last 10 years.

Q What are your goals for RIMS in the year ahead?

AI think our board has done a great job with staff and really setting the direction for RIMS. We're going to keep moving our global development in some of those focus regions, like India, China and other Asian countries and Latin America. We're developing our forums, and we have our annual conference, which are fantastic opportunities to get to know RIMS, get to meet risk managers and professionals in the risk management area and in a key area of a region. Areas I really want to continue to improve are around how do we look at our data, how do we get better access to information, how do we communicate that information more efficiently so that our members can make better decisions? And I want to make sure that younger professionals really see that there's an opportunity to join this profession.

Q What are the biggest challenges facing RIMS membership in 2020?

AWe are seeing a hard market in some insurance sectors. Many

professionals have not witnessed a market like this. So how do we help our risk management professionals, our CFOs, or treasurers navigate that volatility in the market? How do we help our professional members really be able to differentiate themselves in the marketplace on decision-making around insurance procurements? I think those are some of the challenges that our members are facing, and we need to be nimble to be able to help them navigate that.

want to price by a mile or price for their stay, like at an Airbnb. These are the types of things we need as risk management professionals to explain to our service providers.

Q You've said that risk managers today need to "dare to be different." In what way?

AIf we want to elevate ourselves in our profession, we have to be able to take risk, right? It's not always let's just focus on insurance. It's really about are you able to sit at the table and talk to the general counsel or talk to the head of strategy or even one of your board members on what are some of the risks across the board, whether it be cyber risk or volatility in the market right now. I think we have to be true consultants internally and that might mean you're uncomfortable in certain areas. You have to be able to put yourself out there and find a mentor if you feel like there's an area that you don't understand. And you can find it at RIMS or by increased education with certification, etc., that can help you really get more of an enterprise view on that conversation. For me I've stepped out of the box multiple times and it's not always easy. I stepped out of those boundaries and I learned so much along the way.

Q How is evolving technology shaping the role of risk manager?

APeople are collaborative, people are using different tools and technology to communicate, and I would argue that many in our risk management profession may not have access to those tools. As you start to think about how communities grow, they grow through technology and that's the new way of communicating. And you find different communities of thought. One of the biggest issues for RIMS is we want a diversity of people in race and sex, and we also want inclusion of thought, and those technologies help us have different perspectives.



Q Expanding on that topic, how should risk managers be approaching insurance markets today?

AYou need to understand your business, you need to understand what differentiates you in the marketplace compared to other similar companies. I grew up in this industry where when we first got started it was very siloed based on coverage. Now, we're seeing industries, so a tech group, a financial services group, a real estate group. Companies are going across the industries, and the brokerage and insurance marketplaces are not really equipped right now. They're trying to navigate that world of a shared economy space where people are looking for different ways of underwriting, different solutions for their risk as well as different pricing models. Think about companies that

If we want to elevate ourselves in our profession, we have to be able to take risk, right? It's not always let's just focus on insurance. It's really about are you able to sit at the table and talk to the general counsel or talk to the head of strategy or even one of your board members on what are some of the risks across the board, whether it be cyber risk or volatility in the market right now.

THERE ARE NO WINNERS IN RACE TO BEAT THE CLOCK

Unrealistic expectations and failure to factor in possible delays can prove deadly in the construction business

BY LOUISE ESOLA

lesola@businessinsurance.com

Oftentimes the causes of construction collapses, mishaps, tragedies, and losses in the millions can be found in a project's figurative foundations.

Somewhere in a long list of factors that include workforce culture, experience, safety training and engineering, weak links can be found that make injuries and losses more likely. One element, however, is increasingly cited as a major risk factor for the construction industry: unrealistic timelines.

Planning technology can aid scheduling, cut risk

Deploying technology at the planning stage of a complex construction project has quickly emerged as a strategy among best in class developers to better estimate timelines and keep work on track, according to experts.

One technology making a difference at the onset in eliminating construction issues, from scheduling different trades at correct times to ensuring concrete is given time to cure, is building information modeling. BIM, which also carries weight in calculating insurance premiums, allows contractors to pre-build in three dimensions via a computer program. This gives architects, engineers and construction professionals better insight into a project and the ability to manage design and construction before the first brick is laid.

"We are seeing technology play a role in these complex construction projects," said Rob McDonough, New York-based U.S. Construction practice leader for Marsh LLC. "You can build the building schematically before you actually do it. That is something that is very helpful."

"BIM is one attribute ... of an overall well-managed project," said Ben Beauvais, Boston-based senior vice president of global risk solutions-construction at Liberty Mutual Group. The use of BIM is one of the factors used in determining insurance premiums in a construction project, he added.

"The best in class have that holistic view and we would consider BIM what we would put in the best in class category," he said.

"The importance of preconstruction planning cannot be overstated," wrote



Tom Boudreau, Hartford, Connecticut-based head of construction and inland marine for the Hartford Financial Services Group, in an email. "Attention to every detail of the design and project is essential to a successful project. Discovering design flaws or concerns and addressing them before the work begins should be the norm, not the exception."

BIM, if all parties are granted access and collaboration, allows for better communication between teams and allows architects, engineers and contractors to better identify potential problems with such issues as "clashing," or when multiple elements of a building's construction run against each other, experts say.

"All general contractors are utilizing technology to better manage the construction project to better assist with scheduling," said Kevin King, vice president and general manager of risk management at New York-based Turner

Construction Co. "BIM drives efficiency in the construction project better, and the trades can mitigate the overlaps" among subcontractors in work schedules.

"It solves problems in the virtual world before they arise in the physical world," said Michael Hastings, an Atlanta-based president of MD Hastings Risk Consulting LLC, adding that BIM removes waste and early on solves issues among the trades involved in construction, cautioning, "the owner has to be willing to fund it."

Cost is a factor, according to experts, who say most general contractors include such technology in cost estimates. There is no set figure to how much BIM costs, as much depends on the size and scope of the project.

"BIM is not something everybody is doing," said Jeff Slivka, Hamilton, New Jersey-based president of the environmental and construction professional liability practice with

RT Specialty LLC, a unit of Ryan Specialty Group LLC. "What we hear from our insurers and contractors is that (BIM) is not being used as much as possible because of the costs. But I think that is gaining momentum."

Another technology that is growing in use is communication portals to better inform workers of schedules and, in some cases, job hazards. This technology often comes in the form of smartphone applications that can be accessed by all workers on the team.

"If you have a compressed timeline and you are putting a lot of trades and contractors and a big workforce on site ... in order to make that all work there needs to be communication in place, around quality and safety and here are the hazards of the day," said Stokes McIntyre, Columbus, Ohio-based president of MindForge LLC, which markets a communications app for construction projects and workers.

Several similar training and information modules have been launched in recent years, offering workers easier access to training programs, which Mr. McIntyre said must evolve "beyond safety huddles" at a job site to communicate to all the trades on site.

"We need a way, with these compressed schedules with projects, to be able to train all these workers to mitigate hazards. ... I have safety people calling me telling me they wake up worried every day. They know they are walking a fine line (on safety): Is there going to be a major fatality on that site or incident?"

Louise Esola

"Compressed schedules aren't going away," said Jeff Slivka, Hamilton, New Jersey-based president of the environmental and construction professional liability practice with wholesaler RT Specialty LLC, a unit of Ryan Specialty Group LLC. "There's a fine line between owner expectations and the risks associated with a compressed schedule," he said. "From a professional liability standpoint, your lawsuits are increasing."

Rob McDonough, New York-based U.S. construction practice leader for Marsh LLC, estimates that 60% of construction projects face "schedule slippage," or missed timelines, which can lead to accelerating work later, a situation he called "a race to the bottom" when it comes to managing safety, quality and other factors that can lead to the best outcome.

Derek Graham, a Cold Spring, New York-based senior scheduler with construction management firm Pavarini McGovern LLC, who has served as an expert witness in construction litigation,

puts that figure higher: he estimates 75% to 90% of building projects fail to meet contract deadlines.

"There's a fine line between owner expectations and the risks associated with a compressed schedule. From a professional liability standpoint, your lawsuits are increasing."

Jeff Slivka,
RT Specialty LLC

The causes of delay run the gamut: weather, engineering concerns, permitting issues, inspections gone awry, staffing issues, problems with materials and subcontractors, among other things, experts say.

"We have been seeing with more fre-

quency, schedules that even under the best of conditions are at a minimum very tight and, in some cases, nearly impossible or impossible to achieve," said Tom Boudreau, Hartford, Connecticut-based head of construction and inland marine for the Hartford Financial Services Group, in an email. "The shorter or more condensed the schedule, the more likely something will be missed, which could lead to injuries or defect issues."

"The most glaring risks associated with setting timelines on major projects align equally around build quality and sacrificing prudent safety measures to meet what in many cases can be unreasonable timelines," Mr. McDonough said.

Yet "there is a limit to how much you can reasonably accelerate a project," he said, "especially one with multiple subcontractors performing sequential work, without compromising work quality and workplace safety."

See **TIMELINES** next page

CONSTRUCTION DEATHS

- Out of **4,779 worker fatalities** in private industry in 2018, **1,008 or 21.1%** were in construction
- 338 out of 1,008, or **33.5%**, of total deaths in construction in 2018 were attributed to falls
- Lack of **fall protection** was the number one citation for OSHA in 2018

Source: U.S. Bureau of Labor Statistics and the Occupational Safety and Health Administration

TIMELINES

Continued from previous page

“We are trying to do more in a compressed period,” he said. “You can get sloppy and cut corners, and there is a sacrifice there.”

Increasingly, construction firms are using technology to help manage the problem (see related story).

A deadly scenario

There is no shortage of examples of how tight timelines may have heightened construction risks, according to experts, with some construction incidents mentioned in interviews among the deadliest.

The Oct. 12, 2019, partial collapse of what would have been the Hard Rock Hotel, in the tourist-heavy French Quarter of New Orleans, is under intense public scrutiny (photo page 16).

The Saturday morning tragedy caught passersby and workers by surprise when several floors of the building — which was originally slated to open in early 2019 and faced numerous delays since renderings for the hotel were released in 2018 — collapsed pancake-style over a busy city street.

Three workers were killed and dozens of workers and passersby were injured. As of late January, close to two dozen lawsuits have been filed by dozens of workers, passersby injured by falling debris, and shuttered businesses in the vicinity that lost revenue as streets were closed.

A common component of the suits is the allegation, in part, of “negligence” and that dangerous short-cuts were taken to try to meet an expedited schedule for completion.

“Several days prior to the collapse of the building, workers noticed support beams (concrete) bowing and failing, however construction proceeded apace with no immediate stop in work or change in plans,” claims one lawsuit, filed in Louisiana state court in New Orleans in October against 19 businesses affiliated with the project, including the developers, architects, investors, and the general contractor, on behalf of 42 workers alleging the project was rushed.

“Maintaining the balance between schedule, budget, safety and quality is an ongoing challenge. It has always been present in construction.”

Michael Hastings,
MD Hastings Risk Consulting LLC

New Orleans, whose mayor said the collapse has cost the city “millions” a day, continues to grapple with an ever-changing demolition schedule. Citadel Builders LLC, the project’s developer — which has been named among the defendants in every suit — announced in January that the demolition plan has been delayed by investigations surrounding the lawsuits themselves, without clarity as to how

the suits are affecting demolition. The city’s latest timeline as of late January is that the collapsed building will be razed starting in March — a timeline that has changed several times since the October incident.

Meanwhile, two construction cranes, partially imploded, dangle over closed city thoroughfares. The Occupational Safety and Health Administration is still investigating the incident and two bodies remain inside the partially collapsed structure. Law firms, meanwhile, are advertising that they are still seeking plaintiffs.

Elsewhere, earlier in 2019, it was widely reported in Florida that most plaintiffs have agreed to undisclosed settlements in lawsuits involving alleged negligence related to the 2018 collapse of a 174-foot span of pedestrian bridge under construction in Miami. The bridge collapsed on top of cars waiting at a red light, killing six and injuring eight.

An investigation by OSHA found that cracks in the concrete had been ignored by developers and inspectors, among a host of design flaws, and that engineers hired to inspect the construction process reported that “time to conduct the peer review were rather constrained, and had an impact on the peer review,” according to OSHA documents.

“You could relate all of these errors to people moving too fast and not giving the time that they need to give, not communicating properly,” said Mr. Slivka, who added to the list of well-publicized construction losses that were not so deadly but noteworthy nonetheless: from the 58-story Millennium Tower in San Fran-

cisco, found to be sinking in the soil in 2016, whose developers are now saddled with numerous lawsuits from both the city and tower residents, to the so-called “Leaning Tower of South Padre Island,” a 31-story tower in south Texas that was never finished in 2008 and was imploded in 2009 after it was found to be sinking.

“All of this could be related to, one, not knowing what you are doing and, two, a compressed schedule,” he said.

‘Time is money’

“Maintaining the balance between schedule, budget, safety and quality is an ongoing challenge,” said Michael Hastings, an Atlanta-based risk consultant who’s worked for several insurers in the construction sector over his 30-year career and now serves as president of MD Hastings Risk Consulting LLC, which he founded.

“It has always been present in construction,” he said.

Much of the problem is attributed to finances surrounding a project, according to experts.

“Time is money,” said Mr. Graham of Pavarini McGovern.

The schedule for completion, he said, can be a sticking point in the project bidding and negotiation stage, involving developers and real estate investors, who want tenants or buyers for the development in anticipation of a finished product. This contracting phase can lead to the “unrealistic timelines” for contractors, Mr. Graham said.

“The owners want their asset or project to be completed as soon as possible

UNCERTAINTY SURROUNDS ARCHITECTS’ LIABILITY IN BUILDING MISHAPS

A project architect who drafts plans and hands them over to a contractor to build can be held liable if something goes wrong during construction, according to attorneys chiming in on a recent case in Florida that’s falling in line with legal trends.

In August, the District Court of Appeal of the State of Florida, 4th District overturned an earlier trial court ruling in *Grace and Naeem Uddin Inc. v. Singer Architects Inc., et al.* that granted a summary judgment to an architectural firm that claimed “it did not owe the contractor a duty of care” over alleged design errors on a project at the Ft. Lauderdale Airport that eventually prompted Broward County to fire the contractor, who later sought damages from the architect over its design and contended that it lost business.

“The courts over the years have fluctuated in what is required to hold (project designers) liable,” said Charles

Fombrun, a Miami-based associate at Pecker & Abramson P.C. “Federal courts have been saying that even though there wasn’t direct control (of a project) that the design professional should know that the contractor is relying on their design to build their work. That in and of itself

should establish professional liability.”

In New Orleans, the architectural firm in charge of the Hard Rock Hotel project, which partially collapsed in October, has been named in most of the 22 lawsuits filed by workers, passersby, and businesses that lost

revenue. Harry Baker Smith Architects II PLLC began filing its responses to the suits in the fall, claiming it had a contract with the contractor that included an indemnification provision that it would hold harmless “against claims, damages, losses and expenses ... arising out of or resulting from performance of work.” The architectural firm, as of late January, had not been dropped from the suits.

Meanwhile, a contract between the designer and the contractor, in some cases, might not even need to exist, according to Freddy Munoz, a Miami-based senior associate at Pecker & Abramson.

“Right now, it’s everybody in the design process,” he said. “That lack of privity is prevalent,” he added, meaning that even the absence of a contract between the designer and the builder doesn’t bar lawsuits and damages.

Louise Esola



to bring in revenue,” said Mr. Slivka of R-T Specialty.

“The planners set that in preconference and then the contractors are given a take it or leave it,” Mr. Graham said. Contractors and developers risk losing income in the event of a delay, and if the delay is prolonged, investors might “bail out,” he said.

It’s not always financiers pushing unrealistic schedules, according to experts. Contractors can also play a role in project timelines for the sake of finances. In some cases, contractors are on the hook for insuring the project during the build and any delay can call for an extension of insurance policies. In other cases, contracts provide extra compensation for meeting deadlines, according to experts.

Construction legal expert Sarah Biser, New York-based partner and co-chair of the construction practice group at Fox Rothschild LLP, which represents owners on projects, said timelines are written into contracts. “Cutting corners is not something we want,” she said. “When projects are accelerated, as a general matter the parties agreed to it and (builders) usually get paid extra for it.”

Yet “there is a tendency with contractors to propose overzealous timelines to get the business,” said Reubin Iqbal, London-based head of construction in the United Kingdom and Ireland for Crawford & Co.

“Cutting corners is not something we want. When projects are accelerated, as a general matter the parties agreed to it and (builders) usually get paid extra for it.”

Sarah Biser,
Fox Rothschild LLP

Mr. Iqbal said all involved parties can avoid major problems by asking at the outset, “Is it realistic?,” and leaving space in a schedule for “float,” an industry term for unexpected construction schedule delays and mishaps involving such issues as “sourcing materials, weather, unexpect-

ed ground investigations and problems with subcontractors.”

Failing to maintain an adequate timeline, leaving space for problems or delays, or even providing the necessary time to cure concrete, which must harden completely before supports are removed, are the “kinds of decisions that turn up being fatal,” said Mr. Graham, who noted some curing can take up to a month.

Concrete curing and inadequate support systems were mentioned in several lawsuits pertaining to the New Orleans collapse and that of the federal investigation into the Miami pedestrian bridge collapse. Concrete curing is also a concern in the collapse of a structure under construction in Cincinnati, Ohio, on Nov. 25, in which one worker — a concrete inspector — was killed. OSHA was still investigating that incident as of late January.

“We tend to hear, ‘I have to wait a month for this?’ You can’t do anything else on the project and so you remove the shoring (supports) early,” Mr. Graham said, adding that such cautionary tales run the gamut in construction. “That’s how you rush concrete.”

CONSTRUCTION DISPUTES

According to Arcadis NV’s construction disputes report:

- Projects fail because they are unable to adequately manage uncertainty and expectations. The plans are either **too optimistic** (i.e., the budget and schedule are based on wrong assumptions), or **external events and risks** affect the plan’s objectives, often giving rise to construction claims and disputes.
- More project participants are actively using digital tools such as **building information modeling**, or **BIM**, to aid in the prevention and resolution of disputes.
- With contractual obligations, the number one issue in litigation, average construction disputes in the U.S. cost a contractor **\$16.3 million** and took an average of **15.2 months** to resolve.

Source: Arcadis NV management consulting company

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MANAGEMENT LIABILITY

Climate change risks looming for D&O market

BY JUDY GREENWALD

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INSIDE

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Cannabis producers increasingly can find D&O coverage, but often at a steep price. **PAGE 22**

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Like other publicly traded companies, cannabis firms face the risk of shareholder litigation. **PAGE 23**

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Commercial policyholders will face more directors and officers liability insurance-related environmental and climate change disclosure litigation despite a high-profile victory for an energy giant in a climate case, experts warn.

With climate change issues at the center of public debate, shareholders, regulators and others will likely pursue corporations that fail to disclose climate change-related issues, they say.

Exxon Mobil Corp.'s victory in a recent climate change disclosure case brought by the New York attorney general is not an indication of other firms' likely success in comparable D&O litigation, in part because the ruling was based on a New York law that will not be applica-

ble to litigation filed in other states (see related story).

Furthermore, litigation may extend beyond just energy companies to a wide range of other firms, experts say, and the issue could affect their D&O coverage (see related story).

As a result, companies in all sectors should review their record-keeping procedures, public disclosures and insurance coverage, they say.

"It already is a huge D&O issue," said

Peter M. Gillon, a partner with Pillsbury Winthrop Shaw Pittman LLP in Washington, who represents policyholders in D&O litigation.

“Plaintiffs are gaining traction in securities suits based on environmental compliance disclosures,” said Ralph Banbury, London-based management liability underwriter at CFC Underwriting Ltd., in an email.

“Given the pressure weighing down on companies to adopt measures which will lessen their contribution to global warming, and on the back of the high-profile Exxon case, disclosures around this topic made in quarterly and annual reports will be scrutinized more than ever and boilerplate disclosures will not be deemed acceptable.”

In a letter addressed to CEOs in January, Larry Fink, CEO of New York-based BlackRock Inc., the world’s largest asset manager, said, “Climate change has become a defining factor in companies’ long-term prospects,” and the issue will become central to companies’ investment strategy.

“We could see any number of lawsuits” being filed by investors who were “allegedly not fully informed about vulnerabilities to those kinds of conditions.”

Kevin LaCroix,
RT ProExec

Additional litigation is unavoidable, given society’s concern with sustainability and the environment, said Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC’s FINEX North America practice.

Whatever the situation today, “it’s probably going to be worse tomorrow, and it’s going to continue to evolve,” Mr. Yellen said. “We may be just on the ground floor” of seeing all the interested parties take different actions, he said. “This is an evolving risk.”

With concerns over climate change growing, shareholders and regulators will file suit to test legal theories about how directors and officers can be held liable for better managing climate change issues, said Dan A. Bailey, a member of law firm Bailey Cavalieri LLC in Columbus, Ohio, who represents directors and officers and insurers.

“I think there’s the potential for some pretty significant exposures there, although admittedly we haven’t seen it yet in the climate change context,” Mr. Bailey said.

D&O climate change exposures could come from various sources, said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty LLC, in Beachwood, Ohio.

There could be disclosure cases such as

Exxon Mobil court win may not set trend

Policyholders should not necessarily be encouraged by Exxon Mobil Corp.’s recent victory in a climate change disclosure case filed by the New York attorney general, experts say.

Basing his ruling in part on a 1921 New York law, New York state trial court judge Justice Barry R. Ostrager on Dec. 10 held in *People of the State of New York et al v. Exxon Mobil Corp.* that the New York attorney general had failed to prove the energy giant had misrepresented its climate change disclosures.

Experts say that although it was not technically a directors and officers liability case, a different outcome could have encouraged more D&O litigation. But at the same time the company’s victory does not necessarily hold implications for other cases, they say.

“The Exxon decision was very factually based, based on the evidence presented, and didn’t support what the (attorney general) was saying in that particular complaint,” said Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC’s FINEX North America practice, adding, “That doesn’t say anything about what the next one’s going to be like.”

Noting that regulations vary by state and differ outside the U.S., as well, Mr. Yellen said, “That means heightened exposure.”

The ruling is “excruciatingly fact specific,” said Donna Ferrara, Chicago-based senior vice president and managing director at Arthur J. Gallagher & Co. Judge Ostrager “came out with about as narrow a ruling” as he could, she said, adding that related cases against Exxon remain ongoing in Texas and Massachusetts.

Ms. Ferrara noted also that the

Exxon’s, he said. “We could see any number of lawsuits” being filed by investors who were “allegedly not fully informed about vulnerabilities to those kinds of conditions,” Mr. LaCroix said.

Litigation could also be related to climate conditions, which was the case with PG&E Corp., Mr. LaCroix said, referring to litigation filed against the utility alleging it was responsible for California wildfires due to failure to maintain its equipment.

Another area of concern, he said, is the possibility of litigation filed by nongovernmental organizations in pursuit of their agendas. “It’s not necessarily your classic business case about money but could nevertheless translate into D&O claims and losses and exposure,” Mr. LaCroix said.

The litigation may extend beyond energy companies, experts say. Oil and gas and chemical companies “are very much on the leading edge. They’re very close to whatever it is that causes the climate change



REUTERS

Theodore Wells, lawyer for Exxon Mobil, exits a New York court, where the energy giant scored a legal victory related to climate change disclosures.

ruling states, “Nothing in this opinion is intended to absolve Exxon Mobil for responsibility for contributing to climate change through the emission of greenhouse gases in the production of its fossil fuel products.”

Dan A. Bailey, a member of law firm Bailey Cavalieri LLC in Columbus, Ohio, who represents directors and officers and insurers, said, “If we start seeing several decisions or results in the courts in one direction or another, then you might start seeing more of a trend that people may pay attention to, but as a one-off kind of case, (Exxon’s) interesting. It’s worth noting, it’s worth paying attention to, but I don’t think it’s going to have too much impact standing alone until we see how other cases turn out.”

“Most companies don’t have Exxon’s balance sheet and would tend to avoid

the risk of going to trial,” said Mike Gaudet, Philadelphia-based managing director and FINRO energy power and utility industry leader for Marsh LLC.

William Passannante, a shareholder with Anderson Kill P.C. in New York, who represents policyholders, said if Exxon had not prevailed, “you might see copycat suits alleging similar types of environmental-related injury pertaining to climate change, but since a big case like that went the opposite way with plaintiffs, you’d think plaintiffs would be less likely to invest in those cases, all things being equal.”

Andrew Doherty, Valhalla, New York-based national D&O practice leader at USI Insurance Services LLC, said he could see Exxon’s success “emboldening” defense counsel.

Judy Greenwald

“We may be just on the ground floor” of seeing all the interested parties take different actions.

Rob Yellen,
Willis Towers Watson

to happen,” said Donna Ferrara, Chicago-based senior vice president and managing director at Arthur J. Gallagher & Co. In other cases, it will depend on the company and how close it is to the subject of the complaint, she said.

A company in the sandwich food business probably doesn’t have a serious environmental risk, but others, such as dry cleaners, transportation companies and

See CLIMATE page 23

LAWSUIT DETERRENTS

To reduce the chances of being sued in connection with climate change disclosure or environmental liability, risk managers should:



- ✓ Establish rigorous environmental compliance practices
- ✓ Keep meticulous records
- ✓ Identify and manage risks
- ✓ Issue public disclosures
- ✓ Annually review their D&O insurance programs’ terms and conditions, limits adequacy and structure, keeping an eye on exclusions
- ✓ Readily communicate potential claims to insurers
- ✓ Discuss defense strategies with insurers, especially in multi-district litigation

Source: Business Insurance interviews

D&O exposures grow for cannabis firms

BY MATTHEW LERNER

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Cannabis companies and the firms that serve them can more readily find directors and liability insurers willing to take on the risks than a few years ago, but only at a steep price, sources say.

With just a half dozen insurers providing coverage, choices are limited for a sector that is growing rapidly in the U.S., where many states have legalized medical and recreational marijuana, and Canada where recreational marijuana was legalized in 2018.

Still, companies operating in the sector have more options than just a few years ago, when those few policies available were so restrictive that in practice they provided little if any D&O coverage, said Tim Conder, chief operating officer of Phoenix-based Tilt Holdings Inc., which has operations in the U.S. and Canada and is listed on the Canadian Securities Exchange.

"Today, Tilt has a great directors and officers policy, but it is expensive," he said, adding "the insurance industry has quickly adapted to the needs for directors and officers coverage in the cannabis industry," such as offering coverage with fewer exclusions.

Adequate D&O coverage costs about \$200,000 per \$1 million of coverage, said Mr. Conder, who is based in Reno, Nevada.

Some cannabis companies don't consider their potential exposures, sources say.

"D&O insurance is something that start-up cannabis companies often overlook, either because they think it is unavailable or are inexperienced in sophisticated business ventures," said Rod Kight, principal of Asheville, North Carolina-based Kight Law Office P.C.

"Given the recent filing of several class action lawsuits against CBD companies, and the gray regulatory area with respect to



REUTERS

A worker collects cuttings from a marijuana plant at the Canopy Growth Corp. facility in Smiths Falls, Ontario. The company faces a shareholder lawsuit.

state and federal laws for consumable cannabis products, it is apparent that having access to meaningful D&O policies is vital for cannabis companies," he said.

Several cannabis companies have been sued by shareholders alleging various breaches of securities laws (see related story).

Potential exposures for cannabis companies could include shareholder lawsuits alleging inadequate disclosure or mismanagement, said Ian A. Stewart, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles.

Demand for D&O coverage in the cannabis sector comes from producers and from ancillary businesses that service or supply cannabis operators, according to Brian Savitch, senior vice president of financial services with Worldwide Facilities LLC in San Francisco.

"It's also the consultants, testing facilities, vendors of point-of-sale systems and track-and-trace systems," Mr. Savitch said.

Public company D&O coverage for

cross-listed companies — those listed in Canada with U.S. and Canadian operations — costs between 17.5% and 22.5% per \$1 million in coverage, said Patrick Ryder, senior vice president for management liability in Denver for Hub International Ltd., who is also the brokerage's U.S. practice leader for cannabis management liability.

"D&O insurance is something that start-up cannabis companies often overlook, either because they think it is unavailable or are inexperienced."

Rod Kight, Kight Law Office

The levels of insider ownership and market capitalization determine whether a company falls at the top or bottom of that range, he said.

Renewal rates being presented recently to clients are said to be "exorbitant," Mr. Stewart said, with rates climbing year over year.

While the cost of coverage may seem high, it's similar to some other industries, experts say.

"At the top end, what the largest (cannabis) companies are facing, isn't dissimilar from what we're seeing in U.S. biotech and IPO-type pricing, so there is precedent," Mr. Ryder said. "What I tell my clients is that they are not being treated differently because (they're) a cannabis company."

One of the difficulties insurers face is the lack of loss history for cannabis-related D&O, Mr. Ryder said.

"The cannabis industry does not lend itself to the law of large numbers," Mr. Ryder said, estimating there are about 150 publicly traded cannabis companies. "There is not a large enough data set to give actuaries comfort in loss projections. The fear of the unknown is driving a little bit of the rate."

Insurers "don't know what the legal landscape is," Mr. Stewart said.

But market forces play a role, too, Mr. Ryder said.

"It's not a hyper-competitive environment," he said. With only a handful of insurers offering coverage, "they can set the market and hold it because they are legitimately taking on all of the risk."

Specifically, he said there are five insurers offering public company coverage and seven in total on the private side.

"It's not a large group," Mr. Conder said. There is only "a small group of companies underwriting in that space, and they're pretty particular about who they take on."

"Each carrier has a different small box of what fits and what doesn't fit," Mr. Savitch said.

None of the sources contacted by *Business Insurance* disclosed the insurers offering D&O coverage, saying it was proprietary "competitive" information.

Bermuda market clampdown cuts capacity for pot producers

A notice late last year from Bermuda regulators limiting insurers' business with companies in the cannabis industry is limiting the availability of directors and officers liability insurance.

On Nov. 12, the Bermuda Monetary Authority published a notice saying it "will not object to BMA-supervised entities conducting business with a licensed cannabis cultivator, processor or seller," provided "the cannabis activity in the foreign country is legal at all levels

(including the federal)," which rules out "business activity originating from where cannabis may be legal at the state level, but is not legal at the federal level, i.e., the United States."

While the BMA made it clear that doing business with cannabis firms in Canada, where recreational cannabis is legal federally, cross-listed companies — those listed in Canada but with U.S. operations — were off-limits for Bermuda insurers, many of which offer D&O coverage,

sources say.

Deals involving both U.S. and Canadian assets are "now off-limits," said Brian Savitch, senior vice president of financial services with Worldwide Facilities LLC in San Francisco. He noted that together with a previously issued directive from Lloyd's of London also prohibiting cannabis activities, two of the world's markets for difficult to place risks would not accept a growing and difficult to place risk.

Prior to the BMA's prohibition, some public companies with market capitalizations below \$50 million, so-called "micro-caps," had been able to secure D&O coverage insurance for about 12.5% cost per \$1 million in coverage from Bermuda insurers, said Patrick Ryder, senior vice president for management liability in Denver for Hub International Ltd., who is also the U.S. practice leader for cannabis management liability.

Matthew Lerner

Shareholder lawsuits allege disclosure failures

Recent shareholder lawsuits show the types of directors and officer liability-related exposures faced by public companies in the cannabis sector.

In November 2019, a class action lawsuit filed against Canopy Growth Corp. alleged the Smiths Falls, Ontario-based cannabis producer and distributor failed to disclose it was experiencing weak demand for its Softgel and oil products and would be forced to take a \$32.7 million Canadian (\$22.6 million) restructuring charge due to poor sales, excessive returns and excess inventory.



REUTERS

Bruce Linton, founder and co-CEO of Canopy Growth. The company faces litigation after its stock price fell last year.

Filed in federal court in New Jersey, *Ortiz v. Canopy Growth Corp.* alleges that as a result of the withheld information, the New York Stock Exchange-listed firm's stock price was artificially inflated to more than \$40.

Also filed in New Jersey district court in November, *Wilson v. Aurora Cannabis Inc.* alleges the Edmonton, Alberta-based cannabis producer materially overstated the demand and potential market for its consumer cannabis products and that its ability to sell products had been materially impaired by extraordinary market oversupply, including oversupply that was the product of its increase in production capacity.

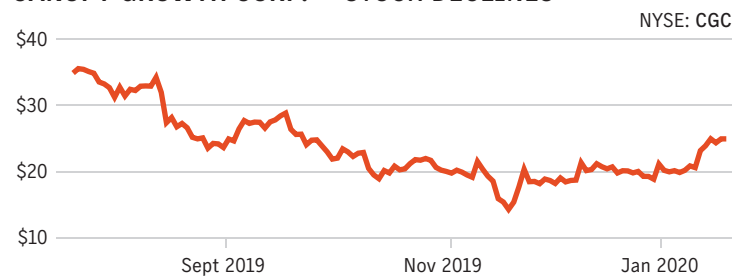
In addition, the suit charges that Aurora's spending growth and capital commitments were slated to exceed its revenue growth and that, as a result, it had to cease development of some of its facilities, and that it had violated German law related to distribution of medical products.

The suit also charges that the NYSE-listed company's stock price was artificially inflated by the lack of disclosure.

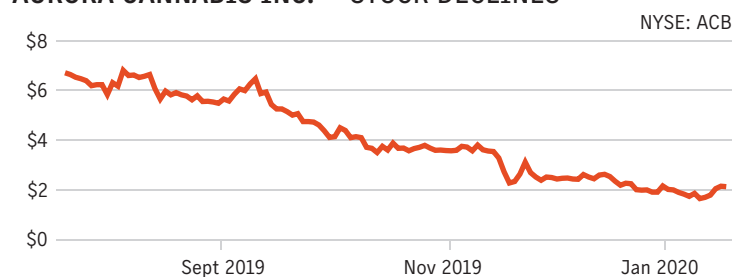
Canopy and Aurora did not respond to requests for comment.

Matthew Lerner

CANOPY GROWTH CORP. — STOCK DECLINES



AURORA CANNABIS INC. — STOCK DECLINES



Source: Google

CLIMATE

Continued from page 21

automakers may, Mr. LaCroix said.

John E. DeLascio, a partner with Hinshaw & Culbertson LLC in Chicago, said, "One of the problems with climate change claims is that it can impact all industries from insurance companies, to trucking, architects, engineers, accountants, lawyers, governmental bodies and certainly boards of directors and corporate officers."

"If you've got manufacturing facilities in an area that's susceptible to sea level rise, that's a big issue," Mr. Gillon said. "If you're susceptible to huge weather events, which are increasing due to climate change, if you're susceptible to drought, or if you're in the agriculture business or the wine business ... all of these are major impacts that companies need to consider in evaluating their own financial exposures," and could become a D&O issue, he said.

Investment funds could also be sued if they fail to disclose how much of their portfolio is held in companies that have questionable climate change practices, Ms. Ferrara said.

Directors and officers need to identify and manage such risks and issue public disclosures about what the company knows about them,

Mr. Bailey said.

Companies should establish rigorous environmental compliance practices, and annually review their D&O insurance programs' terms and conditions, limits adequacy and structure, said Mike Gaudet, Philadelphia-based managing director, FINPRO energy, power and utility industry leader for Marsh LLC.

Meanwhile, if there is anything to be learned from Exxon's successful litigation, "it's the value of having meticulous record keeping supporting your disclosures," said Priya Cherian Huskins, San Francisco-based senior vice president, D&O, for Woodruff Sawyer & Co. "You don't want to have well-meaning folks in marketing run away with statements on behalf of the company."

Companies should also keep an eye on their D&O policies, Ms. Huskins said. "While I don't expect the D&O insurance market to impose blanket exclusions, these are one-off, highly negotiated contracts, so it's also a good idea to keep a good eye on exclusions that make it into policies," she said.

"Communicate before it comes to a claim," said Andrew Doherty, Valhalla, New York-based national D&O practice leader at USI Insurance Services LLC. Discuss defense strategies with insurers, especially in multi-district litigation that may involve many attorneys, he said.

Climate change liabilities may lead to more hardening

Environmental and climate change disclosure issues may further harden the already hardening directors and officers liability insurance market.

Experts say that although there has been relatively little coverage litigation in this area, more is expected, which could lead to increased rates. Policyholders should also be on the alert for exclusions in their policies, they say.

"There's the potential of this to impact rates, certainly," said John E. DeLascio, a partner with Hinshaw & Culbertson LLC, who represents D&O insurers.

The issue should affect underwriters as they try to determine what is happening over the horizon, said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty LLC in Beachwood, Ohio. He added that underwriting and terms and conditions will not be affected "until claims start materializing in volume, and I don't know when that might happen."

The D&O market is "overwhelmed by litigation," said Priya Cherian Huskins, San Francisco-based senior vice president, D&O, for Woodruff Sawyer & Co. If a company has direct climate exposure issues, it's more likely to see some impact on its rates, but "it's going to be fairly limited, given everything else that's driving up the cost of litigation," she said.

"The good carriers will ask more questions," said Andrew Doherty, Valhalla, New York-based national D&O practice

leader at USI Insurance Services LLC. Some insurers may pull back from the sector in general, or perhaps in certain areas, such as coverage for companies involved in coal and other energy sources, he said.

"A big question from a D&O insurance standpoint is whether a company's D&O insurance policy has some type of pollution exclusion," said Dan A. Bailey, a member of law firm Bailey Cavalieri LLC in Columbus, Ohio, who represents directors and officers and insurers.

D&O policies traditionally had broad pollution exclusions. More recently, however, many policies have narrowed, and in some instances, eliminated, that exclusion. "So, today, you've got a variety of approaches in different policies issued to different companies," Mr. Bailey said.

"The lesson there for a director and officer is to pay attention to what, if any, coverage for litigation there is in the policy for pollution-related matters."

Mr. DeLascio said, "There's certainly going to be attempts by insurers to exclude these types of risks. I see that happening. I think as these claims continue to evolve, the insurance products will continue to evolve, to either provide coverage for these types of claims or to exclude them."

"I don't anticipate exclusions right now, but we have to see" how this situation plays out, said David Blades, associate director of the industry research team at Oldwick, New Jersey-based A.M. Best Co. Inc.

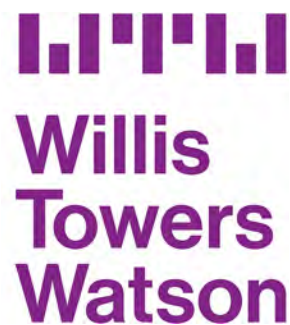
Judy Greenwald

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SPECIAL REPORT

LARGEST D&O INSURERS

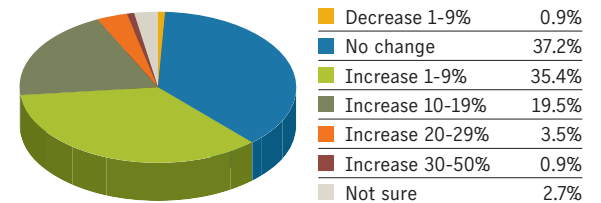
Ranked by direct premiums written through the third quarter of 2019, in millions of dollars

2019	2018	Insurer	Direct premiums written	Percent increase (decrease) vs. 3Q 2018	Direct incurred losses	Direct loss ratio	Market share
1	3	Axa SA	\$686.1	48.3%	\$368.8	62.3%	12.7%
2	1	American International Group Inc.	\$620.4	1.1%	\$478.1	71.9%	11.5%
3	2	Chubb Ltd.	\$592.3	9.3%	\$306.4	52.0%	11.0%
4	4	Tokio Marine Holdings Inc.	\$472.1	7.5%	\$247.5	53.8%	8.8%
5	6	Travelers Cos. Inc.	\$257.3	11.5%	\$84.5	34.4%	4.8%
6	5	CNA Financial Corp.	\$219.3	(30.4%)	\$96.8	51.4%	4.1%
7	12	Berkshire Hathaway Inc.	\$196.6	74.9%	\$147.5	81.8%	3.7%
8	11	Fairfax Financial Holdings Ltd.	\$174.6	52.8%	\$71.1	48.2%	3.2%
9	7	American Financial Group Inc.	\$168.3	(17.0%)	\$52.3	33.5%	3.1%
10	9	Sompo Holdings Inc.	\$159.0	26.3%	\$72.0	48.7%	3.0%
11	10	Alleghany Corp.	\$157.9	30.0%	\$28.2	21.6%	2.9%
12	8	Zurich Insurance Group Ltd.	\$155.0	7.8%	\$103.5	53.3%	2.9%
13	13	W. R. Berkley Corp.	\$129.2	16.8%	\$74.9	65.4%	2.4%
14	19	Hartford Financial Services Group Inc.	\$123.3	25.4%	\$58.7	53.2%	2.3%
15	14	Nationwide Mutual Group	\$120.0	31.8%	\$60.8	54.6%	2.2%
16	17	Old Republic International Corp.	\$114.1	57.9%	\$55.2	60.8%	2.1%
17	15	Arch Capital Group Ltd.	\$106.2	29.4%	\$24.3	25.7%	2.0%
18	16	Axis Capital Holdings Ltd.	\$99.0	25.6%	\$53.3	53.6%	1.8%
19	18	Allianz SE	\$94.7	40.0%	\$38.6	48.2%	1.8%
20	23	Markel Corp.	\$76.0	72.3%	\$32.7	53.3%	1.4%
Top 20 total			\$4,721.5	16.0%	\$2,455.3	55.1%	87.6%
Industry total			\$5,390.3	17.3%	\$3,079.8	60.7%	100.0%

Source: S&P Global Market Intelligence based on as-reported quarterly National Association of Insurance Commissioners statutory P/C statement filings. U.S. filers only, compiled Dec. 13, 2019

D&O PRICING

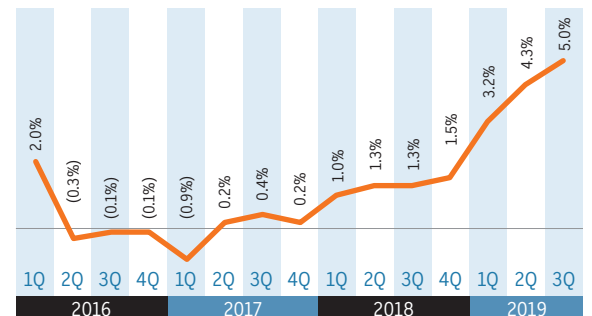
During the third quarter of 2019 (July 1 – Sept. 30), 59.3% of survey respondents saw increases in premium rates for directors and officers liability coverage



Source: Council of Insurance Agents & Brokers

RENEWAL PRICING

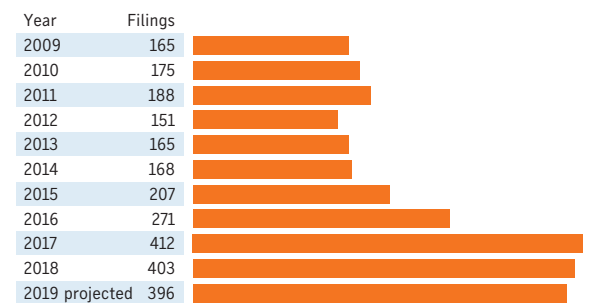
Average D&O renewal pricing changes by quarter since 2016



Source: Council of Insurance Agents & Brokers

CLASS ACTIONS

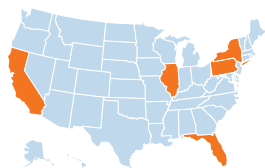
The number of 2018 federal class action filings decreased to 403 from a 10-year high of 412 in 2017.



Source: Cornerstone Research Inc.

TOP STATES

States with the most direct premiums written for medical professional liability insurance in 2018

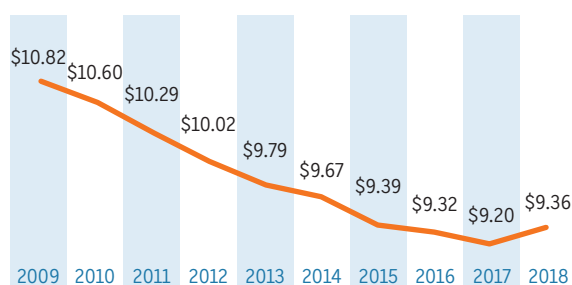


State	Direct premiums written	Number of insurers
New York	\$1,611,944,697	126
California	\$758,932,851	124
Pennsylvania	\$660,503,520	149
Florida	\$603,908,761	123
Illinois	\$457,413,998	126

Source: National Association of Insurance Commissioners

PROFESSIONAL LIABILITY COVER

Direct premiums written for U.S. medical professional liability insurance 2009-2018, in billions of dollars



Source: National Association of Insurance Commissioners

LARGEST MEDICAL PROFESSIONAL LIABILITY INSURERS

Ranked by direct premiums written through third quarter of 2019, in millions of dollars

2019	2018	Insurer	Direct premiums written	Percent increase (decrease) vs. 3Q 2018	Physicians	Hospitals	Other health care professionals	Other health care facilities
1	1	Berkshire Hathaway Inc.	\$1,316.2	1.8%	\$839.7	\$156.2	\$167.0	\$153.3
2	2	Doctors Co., an Interninsurance Exchange	\$757.6	1.0%	\$572.3	\$121.8	\$20.3	\$43.1
3	3	CNA Financial Corp.	\$430.8	5.6%	\$49.0	\$81.8	\$179.8	\$120.3
4	4	ProAssurance Corp.	\$390.7	4.8%	\$262.6	\$40.0	\$79.2	\$8.9
5	5	Coverys Insurance Group	\$366.3	6.4%	\$241.9	\$53.1	\$16.4	\$55.0
6	7	MCIC Vermont Inc.	\$364.6	32.7%	–	\$364.6	–	–
7	6	NORCAL Mutual Insurance Co.	\$296.5	7.5%	\$289.0	\$0.3	\$5.0	\$2.2
8	8	MAG Mutual Insurance Co.	\$218.7	1.1%	\$199.1	\$16.5	–	\$3.1
8	10	Controlled Risk Insurance Co. of Vermont Inc.	\$166.3	5.0%	–	\$166.3	–	–
10	14	Liberty Mutual Holding Co. Inc.	\$161.2	23.8%	\$4.4	\$9.8	\$62.3	\$84.7
Top 10			\$4,469.0	5.8%	\$2,457.9	\$1,010.5	\$529.9	\$470.7
Industry			\$7,933.4	3.6%	\$4,154.2	\$1,729.4	\$1,040.6	\$1,009.3

Source: S&P Global Market Intelligence based on as-reported quarterly National Association of Insurance Commissioners statutory P/C statement filings. U.S. filers only, compiled Dec. 3, 2019

Time to reconcile state, US pot laws

The question of how to manage the risk of cannabis keeps getting more complicated, with employers still faced with contradictory laws and court rulings and pot producers themselves struggling to find insurance coverage.

Already this year several pieces of legislation on marijuana use have been introduced in state legislatures, as we report on page 6. While there's no guarantee that any of the proposals will make it onto the books, an appeals court in New Jersey last month took more concrete action when it ruled that an employer could reimburse a worker's medical marijuana costs after he'd been injured on the job.

While the court apparently gave New Jersey's medical marijuana law precedence over the federal Controlled Substances Act, which still bans marijuana use, the court noted the lack of federal appetite to prosecute marijuana use in states where it's legal.

In addition, the decision noted medical testimony that effectively compared the lesser of two evils: medical marijuana or opioids. Pot can cause some memory loss, emotional highs and lows, and lung damage, if it's smoked, compared with flash pulmonary edema, fatal arrhythmia, higher risk of addiction, and a long list of other risks associated with long-term opioid use.

If both drugs relieve pain, people are probably more likely to opt for the one less likely to cause death.



Gavin Souter
EDITOR

Still, it's understandable that employers remain leery of breaching federal law, even if there's little evidence that it will be enforced.

A similar dilemma affects property/casualty insurers: tap a booming new sector but do so by covering companies operating outside of federal law or play by the rules and watch competitors willing to risk the reprisals rewarded with new income streams.

And the cannabis companies themselves are crimped by a lack of insurance. While an increasing number of insurers are entering the market, there's still a way to go before pot firms' insurance needs are met. As we report on page 22, for example, some publicly traded cannabis companies are already being subjected to shareholder lawsuits, but, unlike most other public companies, they face a tough time securing directors and officers liability insurance to protect them from the suits.

The problem isn't going away and the solution is not to start prosecuting federal law. Anyone seeing the 100-yard-long line outside the dispensary in my neighborhood on the day recreational pot became legal in Illinois would conclude that the legal/illegal pot debate is already over.

While it may be too much to hope for in an election year, lawmakers must make serious efforts to reconcile the differences in federal and state law. Only then can serious concerns, such as testing the efficacy of medical pot or ensuring that companies operating in the field are able to meet their liabilities, be effectively addressed.

SCHEDULE I

Schedule I drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse.

Some examples of Schedule I drugs are:

heroin, lysergic acid diethylamide (LSD), **marijuana (cannabis)**, 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote.

Source: U.S. Drug Enforcement Administration

SCHEDULE II

Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous.

Some examples of Schedule II drugs are:

Combination products with less than 15 milligrams of hydrocodone per dosage unit, **(Vicodin)**, cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), **oxycodone (OxyContin)**, fentanyl, Dexedrine, Adderall, and Ritalin.

Climate risk fixes can't wait

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

At home in suburban New Jersey, my two sons are becoming keenly aware of steps they can take at an individual level to help save the planet. For starters, plastic straws are out, both at home and in restaurants. Just the other night my elder son was thrilled to find paper straws at Burger King. The lids on the drinks are another story. Perhaps more impactful, our town now bans single-use plastic bags in all stores and charges for paper bags. Other jurisdictions impose a tax on all non-reusable bags. California was at the forefront of this trend, enacting a statewide ban on single-use plastic bags in 2014.

While the recent wildfires in Australia and California have alarmed many, it's the younger generation who seem more acutely aware of environmental risks. The World Economic Forum Global Risks report, released in January, highlights that those born after 1980 rank environmental risks higher than other generations, in both the short and long term. Almost 90% of these millennials believe risks from "extreme heat waves," "destruction of ecosystems" and "health impacted by pollution" will increase in 2020, compared with 67% to 77% for older generations, according to the report. The younger generation also believes that the impact from environmental risks by 2040 will be more catastrophic and more likely, according to the WEF. Concerns about environmental risks and how companies respond to them rank high among Gen Z and millennials in other recent surveys as well.

With companies everywhere under increasing pressure not only to build "resilience" to climate

risk, but to reduce their environmental impact, it seems like this issue will be at the forefront for the foreseeable future. While cyber risks moved to the top risk concern in the recently released annual Allianz Risk Barometer 2020, climate change/increasing volatility of the weather also registered as a major concern for corporations. Many industries are facing major transformation risks — and expenses — in order to ensure their future business models are more climate-friendly Allianz Global Corporate & Specialty said in the report. Responding to the challenges posed by climate change could cost companies worldwide as much as \$2.5 trillion, the insurer estimates.

Both risk managers and insurers have a key role to play in reducing and absorbing climate exposures. The Allianz report outlines some of the most significant risk exposures that climate change represents for businesses, ranging from the physical loss impact of higher property damages due to increasingly volatile weather, to the operational impact such as the cost of cooling facilities, to the regulatory and legal impact of changing rules and policies on emissions, and the increased prospect of litigation. Businesses also have to think about the reputational impact when faced with public criticism of their activities.

Paper straws and reusable bags, while a start, aren't going to cut it. With millennials joining the workforce, and Gen Z not far behind, these younger generations are demanding real change. "Climate change is often presented as an issue for tomorrow with global warming paths calculated for the end of the century. But this perspective is swiftly changing," Amer Ahmed, CEO of Allianz SE Reinsurance, says in the report. Real solutions to climate risks are needed now. What are you going to do?

Risk mitigation for renewable energy



Tom Cain is head of U.S. renewable energy at Axis Capital Holdings Ltd. in New York. He can be reached at tom.cain@axiscapital.com

Many of the world's costliest storms on record have occurred in the past 10 years, and it is increasingly apparent that storm strength and risk exposures are rising overall. The business impact is clear — immediate losses and the subsequent clean-up and remediation expenditures have adversely affected insurers' balance sheets.

As has become evident in recent years, renewable energy projects are often impacted by severe weather. However, a number of measures can, through careful preparation, mitigate or alleviate storm risk. It will be important to establish a balance of responsibility between insurers, project developers, investors, site owners and contractors in a collaborative effort to improve market standards for the mutual benefits of all market participants.

The insurance industry must take proactive steps. We should dedicate some of our resources and significant pools of data to analyse exposures thoroughly, then manage risks to reduce losses. We should collaborate to develop common standards that facilitate informed risk consideration and mitigation, which enable the secure and cost-effective growth of the renewable energy sector.

As insurers, we have a unique understanding of the full scope of renewable energy projects. Therefore, our industry can, and should, share our knowledge and take a leading role in educational initiatives. For example, Axis recently has focused on the impact of changing weather on tropical storms and their impact on solar farms, wind farms and battery storage facilities. It's vital to discuss what project developers and managers must do to mitigate risk across project design, engineering, training, pre-storm preparation and post-storm assessment.

Assess risk at start of project

We see more and more renewable energy projects developed in locations where hurricanes pose major threats. Unfortunately, a surprisingly high number of these projects have not been engineered to cope with severe storm risks. Some solar projects cannot withstand winds greater than 100 mph, but storms today regularly exceed this, and often by a wide margin. Hurricane Michael generated sustained wind speeds of 150 mph, which caused catastrophic damage to buildings and several solar energy projects in Florida. In Puerto Rico in 2017, Hurricane Maria brought down the entire electrical grid. Months passed before power was restored to various communities.

Risk consideration during the project development phase is essential. A more fulsome knowledge of the site-specific risks, which can be gained through a combination of on-the-ground due dili-

gence and data analysis, should influence the selection of the appropriate technology, as well as whether additional structural engineering is required and, ultimately, which risks need to be mitigated. Strengthening solar energy systems to increase their wind resilience is another pragmatic measure to ensure their production rates and longevity. Floridian regulation now requires solar generation facilities to be engineered to survive 160 mph winds, although this is only part of the issue — flying debris during Hurricane Irma damaged some panels.

“Insurers have an important role to play in prompting a market-wide effort within the renewables sector to improve and adopt pre-and post-loss best practices across the board.”

Solar farms are at risk during any tropical storm due to external effects on the solar panels. The panel structure and layout are crucial for avoiding damage. Solar farms with PhotoVoltaic (PV) panels can have various layouts, array numbers and static or dynamic tracking systems. Large panels should be designed to accommodate high winds, incorporating flexible designs and aligning to the prevailing wind direction in storm events. The importance of site management and planning must not be overlooked, since risk strategies adopted early in the development stage deliver the most cost-effective protection.

Wind farms have several direct and indirect vulnerabilities to extreme wind events. These may be due to incorrect design assumptions, construction quality issues, unsatisfactory operational procedures or inherent technological vulnerabilities. They are primarily at risk through the Wind Turbine Generators (WTGs) themselves. There are multiple considerations to check at each stage of the construction of a wind farm, and for wind turbines it is particularly important to test bolts, fastenings and auxiliary systems for heightened resilience to a hurricane.

Consider tornado, flood threat

Hurricane-force winds are not the only threat to renewable energy projects. Severe flooding and tornadoes also pose a significant risk. After Hurricane Florence in 2018, many solar projects in North Carolina were effectively inaccessible due to flooded roads and fallen trees. Flood damage claims can be exceptionally expensive. The economic loss may be comparatively high, and insured flood losses often surpass insurers' expectations. Risk mitigation and improved procedures

for renewables sites can reduce the losses, whether insured or retained. Tornadoes are often spawned from hurricanes that make landfall, and can generate much faster, and consequently, more devastating winds. These in turn will require more significant measures to prevent property losses and it the development of tornado-resistant renewable energy facilities will be a priority in exposed geographies.

The challenge is not limited to North America. Towards the end of 2018, storms raged throughout Europe, causing severe flooding. With better preparation and proper design of renewable energy project sites, the severity of these losses could have been reduced. Personnel must be trained to execute detailed, event-dependent plans both before and after a storm, to minimise losses. This will not only benefit insurers, it will also take significant weight off site builders and designers as they avoid costly repairs or even more expensive replacements. Advanced risk management measures may involve adopting generic lock-down procedures at potentially affected sites, alongside technology-specific requirements dependent upon exposures and risks.

Threat monitoring is also key. High-speed computers and simulation software enable meteorologists to predict and monitor storm trajectories continuously. When the potential arises for a tropical cyclone to make landfall, a tropical storm/hurricane “watch” will be issued to the public by the relevant local weather advisory service. If the storm is almost certainly due to arrive, a “warning” is issued. It is critical, therefore, to monitor such warnings for the areas where renewables projects are located.

Contractual clarity is vital when making preparations for any storm risks, making sure the degree of mitigation spend versus risk is acceptable as well ensuring that any gaps are closed through further mitigation or insurance. Considering generic site issues alongside the technology-specific considerations is crucial, such as the drainage design and site security for post-event protection.

After an event, site access may be restricted until it is deemed safe by the relevant local authorities, and appropriate permissions have been obtained. Once access has been granted, initial post-storm checks will be made. The insurance industry has room to improve its loss adjustment practices, which would facilitate development.

Insurers have an important role to play in prompting a market-wide effort within the renewables sector to improve and adopt pre- and post-loss best practices across the board. With the rise in turbulent and severe weather events, a more thorough and consistent industry response will help to mitigate risks and will enable projects to remain profitable while providing clean energy long into the future.

Comp platform unveils multiple quote engine

Workers compensation technology platform Fastcomp.com LLC has added a component to enable agents to obtain multiple quotes for monoline workers compensation with one submission.

The Hudson, Ohio-based technology company's multiple quote automation engine provides up to eight quotes, and agents can also use the software for renewal quotes for comparison.

Multiple declinations for coverage for clients who may need to move to assigned risk can also be generated by the technology, the company said.

Professional liability platform for law firms launched

Embroker Inc. launched its lawyers' professional liability platform for large and small law practices, the San Francisco-based digital broker said.

The platform is designed to lower the cost and time requirements associated with obtaining the coverage, Embroker said.

While legal liability typically costs about \$3,000 per attorney per year, Embroker has seen savings of 5% to 40% in "comparables," a company spokeswoman said in an email. She said rates vary by state and are based on variables such as number of lawyers, areas of practice and risk management techniques.

The coverage is currently available in 31 states and is being rolled out nationwide, the statement said.

Embroker is targeting law firms with one to 10 attorneys — the size of the majority of firms in the U.S., the statement said.

Liberty Mutual adds bond for contractors

Liberty Mutual Insurance Group's Liberty Mutual Surety launched Liberty Mutual Surety Plus, a product to support small and mid-sized surety and contract transactional business.

Available through independent agents, Surety Plus allows contractors to secure standard bond programs up to \$25 million, transactional bonds up to \$3 million, subdivision bonds and bonds that need special risk underwriting such as collateral, funds administration or Small Business Administration support, the statement said.

Contract transactional refers to primarily small, credit-based contract bonds, a type of surety bond that can be underwritten quickly, sometimes with just a credit check, a Liberty Mutual spokesman said in an email.



MGU introduces cost cap cover

Managing general underwriter North Branch Global Risk LLC is offering environmental cost cap insurance, which provides protection against cleanup cost overruns for polluted property, in conjunction with a Munich Re unit.

The product will be insured by Great Lakes Insurance Co., an excess and surplus lines insurance unit of Munich Reinsurance Co.

Coverage capacity ranges from \$5 million to more than \$100 million per policy, according to a company statement.

Morristown, New Jersey-based North Branch said it partners with owners, strategic acquirers, private equity buyers and developers to insure fixed costs for approved cleanup plans, with the fixed costs insured by Munich Re.

In the event of cost overruns, the cost cap policy pays first-dollar charges exceeding the fixed cost amount up to the policy limit.

There are no retentions or deductibles that limit coverage, the statement said.

Cleanup work can be performed by engineers and contractors previously employed onsite or by qualified service providers, according to the statement.

North Branch is responsible for ensuring that all cleanup work is completed properly and within the insured fixed cost amount, the MGU said.

Beazley, RenRe unveil cyber cat coverage

Specialist insurer Beazley PLC and Bermuda-based reinsurer RenaissanceRe Holdings Ltd. launched a cyber catastro-

phe coverage backed by the capital markets.

The reinsurance coverage will give Beazley additional catastrophe coverage for cyber events, with most of the security behind the deal provided by capital sources structured by RenaissanceRe, the companies said in a joint statement.

The collateralized reinsurance arrangement covers the whole of Beazley's affirmative cyber book, a spokeswoman for Beazley said.

Ryan Specialty combines professional liability units

Ryan Specialty Group LLC's CorPro Underwriting Managers' management team has joined another Ryan unit, CorRisk Solutions.

CorPro, which provides market access to management liability products, now operates under the CorRisk brand, the statement said.

Maria V. Amelio, chief underwriting officer, specialty casualty, for Melville, New York-based CorRisk, said in the statement that CorRisk will now be able to provide management liability and professional liability products under one umbrella. In addition, CorRisk can offer products on both an admitted and non-admitted basis, she said.

The expanded CorRisk provides professional liability for architects and engineers, associations, contractors, corporate counsel, cyber, insurance agents and brokers, landscape architects, managed care organizations, miscellaneous, public officials, school leaders and technology. The management liability coverage is for private and nonprofit entities.

Coverys introduces MGA platform

Boston-based Coverys, a medical professional liability insurer, launched Coverys European Holdings Ltd., an agency platform and network that will invest in and collaborate with managing general agencies in Continental Europe and the United Kingdom that specialize in professional lines.

The insurer said Steven Spano, previously U.K. country manager at the Generali Group, will serve as the unit's CEO, and Doug Robare, previously global head of financial lines at the Generali Group, has been appointed chief underwriting officer.

Philippe Sloan, director of underwriting for the Coverys Managing Agency and a director of Coverys European Holdings, said in a statement the insurer will provide MGAs in Europe and the U.K. with pricing and infrastructure capabilities and support to grow as the market hardens.

DEALS & MOVES

Marsh & McLennan Agency buys Atlanta broker

Marsh & McLennan Agency LLC, Marsh LLC's middle market agency subsidiary, acquired Atlanta-based broker Ironwood Insurance Services LLC.

Terms of the transaction were not disclosed.

Ironwood provides property/casualty insurance, employee benefits and private client services to midsize businesses and individuals throughout the United States.

Ironwood's 85 employees will continue to operate out of the firm's Atlanta and Charlotte, North Carolina, offices.

NFP buys specialty broker in Arizona

NFP Corp. acquired Koty-Leavitt Insurance Agency Inc.

Terms of the transaction, which closed Nov. 1, 2019, were not disclosed.

Tucson, Arizona-based Koty-Leavitt, which has about 65 employees, specializes in offering insurance to medical device distributors.

Lloyd Koty, a former co-owner of the firm, will join NFP as senior vice president, reporting to Ed Kurowski, NFP West region managing director.

Hilb Group expands footprint in Maryland

The Hilb Group LLC acquired Rockville, Maryland-based Martens Johnson Insurance Agency Inc.

Terms of the transaction, which became effective Jan. 1, 2020, were not disclosed.

Martens Johnson focuses on the commercial transportation industry in the Maryland and Washington metro areas, the statement said. It also has offices in Knoxville, Tennessee, and Lawrenceville, Georgia, according to its website.

The broker's employees will continue to operate out of their current office under the management of agency leader, Bryan Johnson.

Sedgwick acquires software as a service firm

Sedgwick Claims Management Services Inc. acquired the software service company G&E Enterprises LLC.

Seven staff of Chattanooga, Tennessee-based G&E Enterprises will join the Sedgwick team in Memphis, Tennessee, Sedgwick said. Deal specifics were not disclosed.

G&E Enterprises offers data management for insurance restoration contracting.



UP CLOSE

Sharon Edwards

NEW JOB TITLE: Nashville, Tennessee-based chief operating officer, Risk Strategies Insurance Brokerage Service LLC

PREVIOUS POSITION: Nashville, Tennessee-based chief financial officer of corporate risk and broking, North America, Willis Towers Watson PLC

OUTLOOK FOR THE INDUSTRY: Low interest rates, political uncertainty, natural disasters, cyber and government sponsored enterprises' concerns will continue to be a challenge for the industry. These factors will continue to push rates upward, especially in the property, cyber and financial lines spaces. Newer risks due to the Internet of Things provide an environment ripe for innovation. New technologies, such as robotic process automation, artificial intelligence and blockchain, will begin to see wider adoption and bring new options to the industry.

GOALS FOR YOUR NEW POSITION: My goals are to lead improvements in client experience, with a focus on consistent associate experience, and optimize company operations to facilitate continued growth.

CHALLENGES FACING THE INDUSTRY: A few challenges include changes stemming from new laws and regulations, data protection and security, as well as challenges stemming from legacy technology.

FIRST EXPERIENCE: While in college, I had a summer job working for a local insurance agency, which gave me my first exposure to the industry. After spending time in public accounting with Arthur Andersen & Co., I returned to the industry by joining Willis Towers Watson.

ADVICE FOR A NEWCOMER: The insurance industry is a fabulous place to build a career and have a great quality of life. Take advantage of the expertise available to you and work to rapidly build your knowledge base and solve the next wave of problems by bringing new ideas and thoughts to the table.

DREAM JOB: If I cannot win the lottery, I would like to be the person who notifies others that they did win!

LOOKING FORWARD TO: I am looking forward to working with and supporting a group of incredibly talented colleagues in delivering exceptional service to our clients and helping them manage their risks.

COLLEGE MAJOR: Bachelor of business administration in accounting.

FAVORITE MEAL: I enjoy almost anything Italian and a good glass of wine.

FAVORITE BOOK: I enjoyed all of the Harry Potter books by J.K. Rowling, and I also liked "Start With Why," by Simon Sinek, which has a lot of great lessons on how to inspire, influence and lead people.

HOBBIES: Taking long walks, traveling to interesting places and attending a concert or sporting event, such as the Tennessee Volunteers, Nashville Predators or Tennessee Titans.

TV SHOW: "Shark Tank," "Succession" (HBO) and "The Crown" (Netflix)

ON A SATURDAY AFTERNOON: I enjoy spending time with family and our two labrador retrievers, Jammer and Willow. However, in the fall, you will typically find me tailgating and attending an SEC football game.

"Low interest rates, political uncertainty, natural disasters, cyber and GSE concerns will continue to be a challenge for the industry. These factors will continue to push rates upward, especially in the property, cyber and financial lines spaces."



Insurtech firm LineSlip Solutions Inc. named longtime Marsh & McLennan Cos. Inc. senior executive **Lee Stevenson** president. Mr. Stevenson spent about 25 years at

Marsh, most recently as chief operating officer and managing director, North America. He will be based in Chicago.



Sompo International Holdings Ltd. named **Ray Santiago** executive vice president and leader of its U.S. commercial management liability and financial

institutions teams. New York-based Mr. Santiago was most recently senior vice president of underwriting for XL Catlin's professional liability team.



Chubb Ltd. appointed New York-based **Suresh Krishnan** to the newly created role of chief operating officer for its accident and health business in the U.S. and Canada.

Previously, he was head of Chubb Europe's major accounts division.



Marsh LLC named **Jacqueline Quintal** managing director in its U.S. financial institutions practice. Previously, New York-based Ms. Quintal was Aon

PLC's financial institutions leader.



QBE North America appointed **Tom Fitzgerald** president of specialty and commercial, based in Chicago. Mr. Fitzgerald left Aon

PLC nearly a year ago amid the brokerage's restructuring program. At the time of his departure, he was chief executive of Aon Broking.



Brown & Brown Inc. named **P. Barrett Brown** executive vice president and president of the brokerage's retail segment. Mr. Brown, who joined

Brown & Brown in 2000 and is based in Atlanta, previously served as a senior vice president and a regional president in the retail segment.

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Visit www.businessinsurance.com/ComingsandGoings for a full list of this month's personnel moves and promotions. Check our website daily for additional postings and sign up for the weekly email. *Business Insurance* would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to editorial@businessinsurance.com.



Couple face reality of home makeover

Aso-called “Windy City Rehab” is one leaky house, according to a lawsuit filed by a Chicago couple against developers of the HGTV fixer-upper television show that claims the home renovation work was shoddy.

The couple who bought the \$1.36 million brick home featured on the reality show now want the show’s hosts to take back the 4,000-square-foot house, which they say is plagued with problems: a leaky roof, an upper-floor shower sending gallons of water into the kitchen ceiling below and poorly installed windows are just a few issues mentioned in the lawsuit, accessed by the Chicago Sun-Times.

Plaintiffs James and Anna Morrissey are citing defective and shoddy work, breach of contract, breach of warranty and consumer fraud, according to the article.

Defendants include TV hosts Alison Gramenos and Donovan Eckhardt.

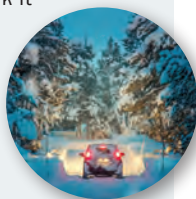
There’s snow way to miss work

Neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds” is supposed to be the mail carriers’ motto, but the people of the Pacific Northwest seem to think it applies to all jobs.

Or, they at least think that’s the view of their bosses.

According to a study from PEMCO Mutual Insurance, many residents of the region continue to drive to work through snow and ice despite the obvious perils because they feel pressure to go into their workplaces and in part because they feel confident in their driving skills.

Almost two-thirds, 62% of respondents, feel some pressure to go to work even when it snows, the survey found, a slight decrease from the 66% who answered the same way in a similar poll five years ago.



BARROOM BRAWLER FACES COURT FIGHT AFTER TEXTING PAL COMP CLAIM PLAN



The Washington State Department of Labor & Industries will cover workplace injuries, but not if a worker gets in a bar fight and then sends a text to a friend along with a photo of his bandaged hand: “Now L&I will cover it.”

A Yelm, Washington, man working for a bathroom products manufacturing company won’t be drinking to that anytime soon, according to the department, which announced that Chuck Wayne Riccio is now facing a felony theft charge after the department, investigating his claim that he hurt his hand working with shower parts, found that wasn’t the case.

Mr. Riccio claimed he injured his hand in mid-October 2018 at work, but a friend tipped off investigators of the August 2018 barroom brawl.

“The person provided text messages that Riccio sent from a clinic about the same time he filed the L&I claim,” according to a statement. “He texted that his hand still hurt from the fight, but that he told the clinic ‘I kinda said it happened at work.’”

Desk helps staff be more laid-back

You might want to lie down to read this.

That’s if you are working and want to minimize physical ailments and improve productivity and circulation.

Such are the claims of a San Francisco-based company trying to persuade office workers to start laying down on the job, with a reclining desk that appears to be half desk and half reclining dentist’s chair, the Daily Mail reported.

Altwork’s Signature Station desk, which was first released in 2016 for \$5,500, is now pushing an updated \$7,600 model that includes built-in plugs and an optional 40-pound spring housing to keep heavier computer displays in place, according to the article.



Pets take priority over income

British consumers are twice as likely to take out insurance for their pets than for personal income protection, a U.K.-based income protection provider revealed in the results of a recent survey.

Cirencester Friendly hired a research firm to gather responses from 2,000 workers in the United Kingdom between 18 and 54, finding that while 33% of respondents either have taken or would take out pet insurance, 17% either have taken or would take out income protection insurance.

“It is pleasing to see increasing numbers of people turning to insurance to provide peace of mind should the worst happen,” however, insuring your income, in case illness or injury prevents you from working, is still too low on the agenda, David Macgregor, Cirencester Friendly’s commercial director, said in a report.

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In just a few years, cannabis trading has moved from an underground market to a booming legal business. With the insurance industry and the cannabis sector grappling with complex coverage and liability issues in this rapidly expanding sector, *Business Insurance* is hosting their second Cannabis & Hemp Conference. Set in San Francisco, the agenda will be centered on cannabis insurance and risk management for anyone interested in the cannabis and cannabinoid market.

Day One will feature an **exclusive offsite tour** to cannabis operator facilities in the area and a networking reception. Day Two will feature a **full day of networking and meaningful, cutting edge content** presented by senior-level industry experts including carriers, cannabis distributors and producers, attorneys, risk managers, consultants, government officials, industry association professionals and more.

Register today to be part of the conversation.

2020 ADVISORY BOARD MEMBERS

Thank you to our advisory board for helping us put together a stellar agenda.

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STACEY JACKSON, General Counsel, Golden Bear Insurance Company

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