SPECIALTY & EMERGING RISKS

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Specialty market thrives

Gavin Souter
EDITOR

Specialty risk insurance markets are coming into their own in the current environment.

Hardening insurance rates are driving more risks into the excess and surplus lines insurance market, where many specialty underwriters operate, and rapid changes in technology and heightened concerns over climate risks, among other things, are driving a need for more expertise to address emerging risks.

In this special issue of *Business Insurance*, we examine some of the key concerns of policyholders and insurance professionals in the field of specialty and emerging risks.

Technological innovation is a rapidly evolving concern for many risk managers as their organizations embrace new tools and processes to improve efficiency. As we note in our cover story on smart cities, public entities have particular issues to deal with as more communities connect to the "internet of things" in an effort to dramatically improve services, but at the same time ratchet up their cyber exposures.

Another cause of huge concern for policyholders and insurers is the effect of global warming. We examine two areas where climate change has had a direct effect on commercial risk profiles: the wildfire risks that wineries in California face and the combined effect of environmental activism and reduced demand on the coal sector.

Specialty liability risks in the fields of entertainment and recreation are developing, too, and we take a look at one longstanding attraction — zoos — and an increasingly popular pursuit — mud runs and obstacle courses.

We hope you enjoy the stories.

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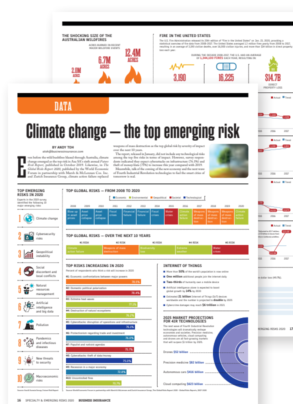

A recent report by Axa SA named climate change as the top risk. A separate report from the World Economic Forum said climate action failure is the top global risk in terms of severity of impact over the next 10 years. **PAGE 16**

VIEW FROM THE TOP

JOEL CAVANESS
President of Risk Placement Services Inc. since its founding, Joel Cavaness is also president of the Wholesale & Specialty Insurance Association. In this issue, he discusses the migration of individual risks into the excess and surplus sector and ways the market can become more efficient. **PAGE 15**

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Smart cities face web of cyber challenges

BY JUDY GREENWALD
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More cities are becoming "smart," adopting technology to improve their citizens' quality of life, but rapid advances come with some heightened risks that can stretch resources.

Cities and communities making expansive use of new technology face challenges addressing cyber risks because of their traditional budgetary constraints and problems competing with the better-paying private sector for top personnel, experts say.

Smart city initiatives can include utilities, energy and transportation, but also projects as small as monitoring available parking for electric vehicles. The projects usually rely heavily on "internet of things" technology, including sensors and other monitoring devices that collect large amounts of data. The data is then used to manage resources and services.

"At its core, the smart city's probably best described as an 'internet of things' exercise, because it's integrating information and communication technology with a lot of physical devices," said Robert Parisi, New York-based managing director and cyber product leader for Marsh LLC.

"The initiatives are being implemented at difference paces nationally," said Lisa Marsalis, San Antonio, Texas-based senior underwriting manager with OneBeacon Insurance Group's government risk group.

"Usually, it's a long process just to determine funding and the citizens' appetite, and they usually start off with one or two initiatives" and become smart cities over time, she said.

Whatever the degree to which public entities become involved, smart cities are becoming increasingly popular, experts say. "Virtually every city that is interested in some kind of quality-of-life improvement for residents is looking into smart cities," although "it doesn't mean that all their efforts are in the right direction or are scalable and sustainable," said Sokwoo Rhee, associate director for cyber physical system innovation at the Gaithersburg, Maryland-based National Institute of Standards and Technology.

"Virtually every city that is interested in some kind of quality-of-life improvement for residents is looking into smart cities."

Sokwoo Rhee, National Institute of Standards and Technology

One major factor facing smart cities is tight budgets, and the related challenge of attracting qualified personnel to aid them with their cyber security issues.

"It comes back to the fact that cities have budget constraints," said Ronni Rausch, senior vice president with Arthur J. Gallagher & Co. in Boston. "Municipalities struggle to attract top IT talent because they're competing with the private sector."

Raimundo Rodulfo, director of information technology/chief information officer for Coral Gables, Florida, which has introduced smart city technology, said the city has recruited specialists to aid the transition.

The city employs licensed engineers in multiple areas. "It wasn't like that from the beginning," he said. "We had to invest in our team."

"Capital planning for the IT structure is fairly new" among public entities, and, compared with other sectors such as financial institutions, has been a lower priority until recently, said Jeff Norton, Chicago-based senior vice president of technology and cyber for Brit Global Specialty USA, a unit of Brit Ltd.

Last year's ransomware-related breaches in Baltimore and other cities "are raising a lot of attention to these needs, but it doesn't just happen overnight. It takes time to plan for capital infrastructure and implement it," Mr. Norton said.

"Smart cities depend on the convergence of cyber and physical infrastructure," which involves joining new systems to old, said Thom Rickert, Dallas-based vice president and head of marketing at Trident Public Risk Solutions, which is part of the Argo Group. "It naturally can create a gap in security and operational ability."

"Unless security is built into what they're doing, this is going to be an issue with even bigger repercussions," said Anthony Dagostino, New York-based global cyber and technology practice leader for Lockton Cos. LLC.

"These systems are public facing," said Eric Friedberg, New York-based co-president of Aon PLC's Cyber Solutions Group. "There's tens of thousands, if not millions, of cyber front doors where attackers can sort of jiggle the knob and see if the door is open."

Attackers, for instance, could take over all of a city's parking meters, or manipulate smart meters to indicate there was no gas usage, Mr. Friedberg said.

Vendors are an issue as well. "Once you end up with hundreds, if not thousands, of different vendors who are producing multiple products, it creates an enormous challenge from a process and personnel point of view to keep pace to make sure everything is patched and tested so it's not vulnerable," he said.

Mr. Friedberg said mandatory low-bid procurements also pose an "enormous danger." "You risk that the vendor is going to cut corners on its own internal security testing and its own internal insurance procurement," he said.

EXPERTS RECOMMEND THAT CITIES THAT EMBARK ON 'SMART' TECHNOLOGY:

- First ask what could go wrong
- Identify and evaluate possible risks
- Address cyber security
- Periodically test, and receive security updates, on smart city technology
- Develop contingency plans
- Recruit qualified employees and train them on cyber security
- Work with private companies and academia
- Focus on vendor management
- Consider starting out with small pilot projects
- Keep communication lines with insurers open

Source: *Business Insurance* interviews

> "When they're thinking about adding new technology to their environment, they all need to be asking themselves, 'What could go wrong?'"
>
> Aaron Aaneson, S-RM Intelligence and Risk Consulting 2019

Smart cities face variations of what they have always faced, but it is "just a little bit different," Ms. Marsalis said. "They must continue to analyze exposures, and identify and implement risk management controls," she said.

Those who already have risk management practices in place are "not facing ground-shaking transformations," although they are required to adopt new technology, retrain staff and add positions, she said.

"When they're thinking about adding new technology to their environment, they all need to be asking themselves, 'What could go wrong?'" and have "the right people in the room to answer that question," said Aaron Aaneson, director, cyber security, with consulting firm S-RM Intelligence and Risk Consulting 2019 in New York.

"Don't implement these solutions faster than you can secure them," Mr. Friedberg said, adding smart cities must ensure the devices they are using are periodically tested and capable of receiving security updates.

Smart cities need to develop contingency plans, making sure there are appropriate policies and procedures in place in the event of a breach, said Diane Barr, St. Paul, Minnesota-based global practice leader for public sector services at Travelers Cos. Inc.

They should also make sure employees are trained to conduct a proper risk assessment and understand the risk so they can put an appropriate solution in place, she said.

Megan Zanesky, director of risk management for the Town of Greenwich, Connecticut, which has introduced several computerized systems, said employee error, including the risk of clicking on the wrong email, is a "major concern."

"The way we're addressing that is by increasing awareness," training workers on the importance of cyber security and how to use the systems properly, she said.

One approach is to have the public sector join with private companies and academia in working groups, Mr. Dagostino said. He added that he is optimistic about these initiatives' success because "the cities today are more willing to listen to outsider reviews" than they were 12 to 24 months ago.

Vendor management is critical as well. Cities must have fundamentally sound contracts with their vendors and conduct appropriate due diligence concerning their products and the protections they have against perils, said Damian Caracciolo, Columbia, Maryland-based vice president with CBIZ Insurance Services Inc.

They must also make sure their vendors "have adequate cyber policies with appropriate limits," Mr. Caracciolo said.

CYBER INSURANCE MARKET WELCOMES TECH ADVANCEMENTS

In a still-competitive cyber insurance market, insurers are willing to take on smart city risks, observers say.

"We are open to looking at any city or county customer," said Diane Barr, St. Paul, Minnesota-based global practice leader for public sector services at Travelers Cos. Inc. "Smart technology's not something we shy away from."

Many of the cyber exposures that smart cities are experiencing are already present in the private sector, so the technology has been proven, said Lisa Marsalis, San Antonio, Texas-based senior underwriting manager with OneBeacon Insurance Group's government risk group.

"Insurers are seeing it as an improved underwriting risk," she said.

"As long as the carriers and their insureds and the local governments and service providers work together," coverage is available, said Thom Rickert, Dallas-based vice president and head of marketing at Trident Public Risk Solutions, which is part of the Argo Group

Other industry sectors with infrastructure-related budgetary constraints, such as health care, have also faced this issue, said Jeff Norton, Chicago-based senior vice president of technology and cyber for Brit Global Specialty USA, a unit of Brit Ltd. Now, it's smart cities' "turn to go through the education, if you will," Mr. Norton said.

Damian Caraccioli, Columbia, Maryland-based vice president of CBIZ Insurance Services Inc., said he has "not seen any pushback in the market," in terms of pricing, "just by virtue of them becoming a smart city."

"There's still a tremendous amount of capacity in the cyber market and carriers, I think, are very much in front of these types of exposures, so I don't think we're going to see risk to capacity in the near or short term" unless there are catastrophic losses, he said.

Ronni Rausch, senior vice president with Arthur J. Gallagher & Co. in Boston, said smart cities "with severe risk concerns are going to have higher retentions and higher premiums, but the market has been pretty steady."

Judy Greenwald

SMART-TECH EXPERTS ADVISE STARTING WITH A PILOT PROJECT

Experts recommend that cities that introduce smart technology into their services plan carefully and consider starting small.

"We've definitely seen some cases where claims have arisen and the city is well protected," and others where it is not protected and they have suffered losses they did not plan for because of issues with vendors and cyber coverage, said Lisa Marsalis, San Antonio, Texas-based senior underwriting manager with OneBeacon Insurance Group's government risk group. "They just didn't anticipate something could happen to them," she said.

Public entities need to evaluate risks and determine how to mitigate or potentially eliminate them, said Jeff Norton, Chicago-based senior vice president of technology and cyber for Brit Global Specialty USA, a unit of Brit Ltd.

California's San Mateo County, which encompasses 20 cities and a large, unincorporated area, has approached the issue by setting up small pilot programs, said Ulysses Ron Vinson Jr., Redwood City, California-based director, SMC Labs, a unit of the county, which launched its smart city initiative in 2018.

One of the projects involves monitoring the impact of wildfires on air quality, he said. Another monitors electric car parking availability in (public) parking structures. "We want to start with the easy stuff," Mr. Vinson said.

Judy Greenwald

Wildfires put wineries in coverage bind

BY CLAIRE WILKINSON
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Shrinking capacity and rapidly increasing rates have left California wineries struggling to find affordable insurance coverage following the record catastrophe years of 2017 and 2018.

In the hardening market, some wineries are looking to self-insure or considering alternatives as they struggle to find coverage, brokers say.

"The biggest battle over here is the restrictions being put on insurance policies because of the wildfires. Prices are going up and coverage is being limited. The surplus lines market is trying to cover some of it, but even Lloyd's of London, a big surplus lines market, is very restrictive as well," said Kaj Ahlmann, former CEO of General Electric Co.'s Employers Reinsurance Corp. division and co-owner of the 4,300-acre Six Sigma Ranch and Vineyards in Lake County, California.

Wineries are stepping up fire prevention efforts, he said. "On our property, we fence around structures and vineyards and then we send a bunch of sheep in there to eat the dry grass before the fire season. That's a big movement," Mr. Ahlmann said.

"Good fire prevention" is "so important compared to everything else," he said.

For stock throughput insurance, which covers wine materials from grape harvest to delivery, there's very little capacity available through Lloyd's of London, where the marine cargo market had provided coverage for years, because many syndicates have pulled out of the market, leaving U.S. domestic insurers to step up, brokers say.

The few London market marine cargo insurers still writing stock throughput coverage are charging rate increases of 300% and up, they say.

REUTERS

Wineries that already had coverage in place in the property market are seeing "double-digit increases as well," said Stephanie Moriarty, San Francisco-based vice president, property/casualty, at USI Insurance Services LLC.

The price increases and shortage of capacity have left California wineries "looking to buy partial coverage," said Kevin O'Neil, executive vice president, AmWINS Insurance Brokerage of California in San Francisco.

"The capacity to write full limits for larger wineries is not there," he said, adding that smaller wineries can't afford coverage, so they are putting their wine stock back into the package property insurance market where coverage is not as broad.

Since wildfire risk outside of California is not as much of a concern to insurers, wineries in other locations are looked at in a more positive light, Mr. O'Neil said.

Insurers also don't have the aggregate accumulation outside of California for wineries, so there is more availability of coverage, though there are some Lloyd's syndicates that will not write wineries at all, he said.

Wineries are considering higher deductibles as one way to limit price increases, said John Ring, Sacramento, California-based senior vice president, property/casualty, at USI Insurance Services LLC.

A shared deductible is another option for a group of wineries that can purchase coverage together, he said.

However, because the wildfires and smoke damage affected a whole area, not just one or two wineries, the approach doesn't always work, Mr. Ring said. "A sharing deductible only works well if one person gets hit and other members don't," he said.

Wineries are becoming aware of parametric or index-based insurance to protect crops from climate-related risks such as frost and hail, said Stephane Godier, Chile-based chief distribution and parametric leader Latin America at Axa XL, a unit of Axa SA.

Axa XL has piloted parametric coverage for wineries in France and is starting to expand it to the U.S., he said.

Parametric coverage is triggered by the monitoring of a weather index, such as temperature, Mr. Godier said. If the temperature drops below a pre-defined threshold it would trigger the payment, he said.

"We're not looking directly at the materiality of the loss — we are looking for a correlation between the weather index and the loss for the client," he said.

Pricing of this tailored coverage depends on the client's risk appetite, budget and the nature of the risk, he said.

Beyond wildfire risk, wineries located across the U.S. face a range of exposures, from environmental liability and cyber risks to product recall, experts say.

"Wine is something we drink and ingest. It's not harmful, but it is when it spills into a river or in bulk," said Timothy Donnellon, Atlanta-based senior broker, environmental programs, at Burns & Wilcox Ltd.

Mr. Donnellon referenced the Jan. 22, 2020, spill of 97,000 gallons of cabernet sauvignon after a door malfunctioned on a blending tank at the Rodney Strong Vineyards in Healdsburg, California, some of which flowed into the Russian River.

Wineries need to be aware of their exposure, he said, adding, "You don't need to be in the environmental industry to get the coverage."

Wineries are not generally thought of as being on the front line of cyber or hacking, but this is a key exposure, said Frank Goudsmit, St. Louis-based senior vice president, life sciences practice and food industries practice leader at Chubb Ltd.

Many wineries have "Wine of the Month" clubs, so they may store consumer information or credit card information, which can "make them a target" for cyberattacks, he said.

TECHNOLOGY CAN AID WINEMAKERS, BUT MAY PROMPT COVERAGE RESTRICTIONS

Data analytics and technology are gaining traction in efforts to mitigate the risks facing wineries and to bring more precision to the underwriting and claims process, experts say.

But this can also present challenges for policyholders in a hardening insurance market, brokers say.

"Data has always been used in the production of wine," said Kaj Ahlmann, former CEO of General Electric Co.'s Employers Reinsurance Corp. division and co-owner of the Six Sigma Ranch and Vineyards in Lake County, California.

"I jokingly call my winery Six Sigma," he said. "It started maybe as a joke. We're pretty damn serious about everything. We have data all the way from when we do the first soil analysis, and we question our customers when they come into the tasting room about how they found us, and that goes straight into a database."

On the insurer side, technology is being used to better assist those policyholders located in fire zones during wildfire events, said Stephanie Moriarty, San Francisco-based vice president, property/casualty, at USI Insurance Services LLC.

"Insurers have a heat map of where their risks are placed and who is being affected, and they are able to reach out proactively to those clients and start preparing the claims process," she said.

"But then it also makes it easier for insurers to say, 'Hey, we're going to put a moratorium on binding coverage because you're in a fire zone right now,' so it makes it easier for them to restrict (coverage)," Ms. Moriarty added.

Risk modeling has become more sophisticated, which helps brokers better understand what the probability of loss is and communicate that to insurers, said John Ring, Sacramento, California-based senior vice president, property/casualty, at USI Insurance Services LLC.

"Insurers are understanding where their concentration of risk potentially is, so they know when they need to stop writing customers in a certain geographic area because they might be too exposed for certain risks," he said.

Chubb deploys infrared scanning capabilities and drones as part of its risk engineering services, said Frank Goudsmit, St. Louis-based senior vice president, life sciences practice and food industries practice leader at Chubb Ltd.

"You can use the infrared scans to look for hot spots in the production equipment. Then you can identify an emerging issue and resolve it prior to it resulting in loss," Mr. Goudsmit said.

Certified drone pilots fly drones over an insured location and assess vulnerabilities, "such as areas where the roof membrane needs some additional support to avoid a water intrusion event, for example," he said.

Claire Wilkinson

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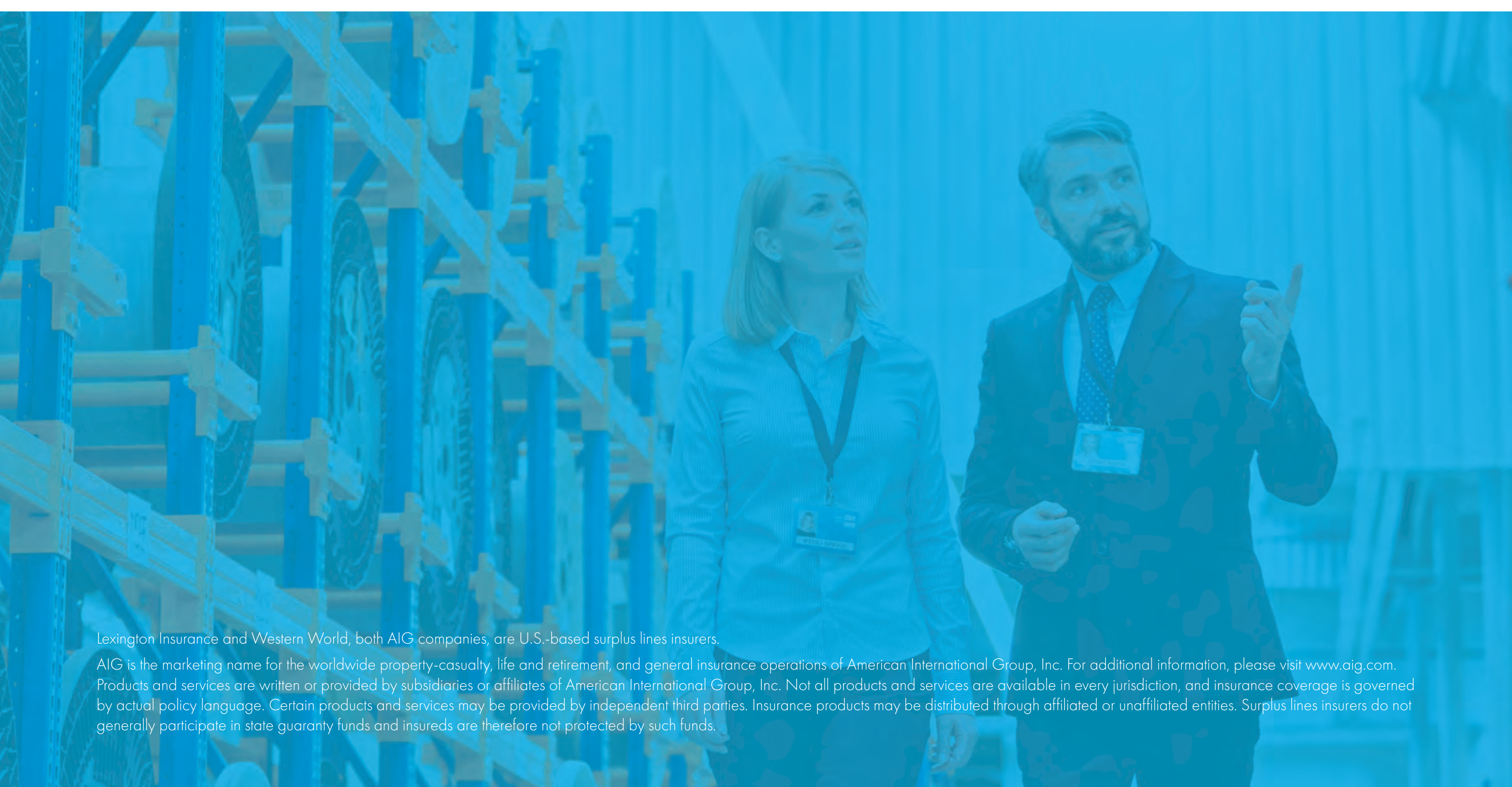

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ENERGY

Insurers no longer dig coal

BY MATTHEW LERNER
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Insurance coverage for the coal sector is harder to place and prices are higher than in the recent past as insurers leave the sector, announcing plans to reduce both underwriting of and investment in the industry.

The retreat is due to pressure over environmental, social and governance issues and the decline of the U.S. coal industry, sources said.

The U.S. produces 63% of the coal it did 10 years ago, and employment has also fallen off in the sector, according to data from the U.S. Energy Information Administration (see related story).

"What you've seen is a reduction in the marketplace," said Charleston, West Virginia-based James P. Crouse, property/casualty practice leader for USI Insurance Services LLC. "There are essentially four U.S. markets that will entertain coal at this point. Five years ago, that would have been 15."

There are still some London market insurers willing to underwrite coal risks, "usually with large deductibles," he said.

In the U.S., American International Group Inc., Houston International Group and Chubb Ltd. will consider coal risks but "appetites are not as broad as they once were," he said.

AIG and Chubb declined to comment beyond previous statements they have issued on the coal sector. Houston Internataional did not return a call seeking comment.

Last year, Chubb said it would reduce its investments in coal producers, stop underwriting construction coverage for new coal-fired plants and phase out coverage for companies where coal operations represented more than 30% of the risk.

> "It is getting harder to do business in this space."
>
> Ryan Brown, Lockton Cos. LLC

The number of insurers willing to take on coal business has dwindled and varies by line, said Ryan Brown, St. Louis-based senior vice president and lead of the mining practice of Lockton Cos. LLC.

"It really depends on line of coverage," Mr. Brown said. "Some won't write property, general liability or pollution, but will write workers compensation or surety," he said, with some eight to 10 commercial surety companies willing to write surety bonds for the coal industry.

The withdrawal is making it harder for coal companies to secure coverage, sources said.

"It is definitely harder for (coal companies) to get it," Mr. Crouse said, referring to insurance coverage. "It is getting harder to do business in this space."

Source: U.S. Energy Information Administration (EIA)

"The demand profile for coal mining insurance versus five to 10 years ago is much less, but the available supply is even worse," Mr. Brown said. "So it's driving rates and terms. You're seeing the effects of the demand imbalance with supply."

Coverage has become more restrictive, according to Mr. Crouse.

"Carriers want to have higher attachment points" and lower limits, he said. Policy forms "have become much more restrictive, doing away with some coverages that would have been available as recently as 12 to 24 months ago." For instance, "Some carriers have gotten away from insuring steam coal," he said. Also known as thermal coal, steam coal is frequently used by power plants.

Insurers still writing coverage are seeing rate increases as choices for policyholders dwindle.

"When capacity is reduced, the players still offering this coverage are able perhaps to get more favorable terms," said Jessica Botelho-Young, a senior financial analyst in London for ratings agency A.M. Best & Co.

"In line with our and other insurers' strategic directional change, and the subsequent removal of capacity from the segment, we are indeed seeing a larger than average increase in pricing and changes in terms and conditions for coal-related assets," said Chris van Gend, global head of engineering and energy, for Allianz Global Corporate & Specialty SE in Grünwald, Germany.

"While the commercial insurance market in general is seeing a hardening of rates and terms and conditions in many markets and segments, coal assets are seeing an even sharper hardening," he said.

Insurers are responding to calls from environmental advocacy groups, sources said.

"There is increasing pressure on these companies to step away from this industry," said Ms. Botelho-Young. "In Europe we've seen that a lot, but the U.S. is not immune," she said, pointing to the 2019 withdrawals from coal by Chubb and Liberty Mutual Insurance Co. as examples.

Liberty Mutual in December 2019 announced it would limit its investments in the coal sector and reduce its underwriting of thermal coal risks. A Liberty Mutual spokeswoman declined to comment further.

Other North America-based insurers that have announced plans to reduce coal investments and underwriting include Axis Capital Holdings Ltd. and Hartford Financial Services Inc.

Allianz SE says it will phase out underwriting coal mines and coal-fired power plants by 2040, said Mr. van Gend. As of July 2019, which excludes the announcements by Axis, Hartford and Liberty Mutual, 17 insurers had adopted a policy restricting coverage of the coal sector, and at least 25 insurers had divested from coal, according to Unfriend Coal, a coalition of environmental advocacy groups.

The coal industry's financial decline has also played a role in insurers' pullback, Mr. Crouse said. "It's a combination of social pressures along with the ability of the carriers to write the business profitably," he said. "Over the past 12 to 18 months, it has become more difficult for the carriers to get paid due to (coal industry) bankruptcies and business conditions."

Coal insurance markets are losing experience as well as capacity, Mr. Crouse said.

"Carrier knowledge is shrinking. When you only have so many underwriters out there and somebody with expertise in coal retires or goes to a different department," they are not replaced with similar or equivalent coal expertise.

The reduction in insurers underwriting coal could lead to operational difficulties as mines can't operate without certain coverages, such as surety, said Mr. Brown of Lockton. "If you got rid of two or three more insurance markets, a lot of U.S. coal capacity could not operate," he said, noting that coal still provides an estimated 28% to 30% of U.S. electricity.

MINES FACE LOW-CARBON FUTURE

The U.S. coal industry has been shrinking, with production declining and notable bankruptcies, leaving fewer mining operations and insurers withdrawing from insuring the business.

"The reality is, the world is transitioning to a low carbon economy," said Jessica Botelho-Young, a senior financial analyst in London for A.M. Best & Co. "Coal is not going to be a viable option in the future."

German insurer Allianz SE is reducing its exposure to underwriting and investing in coal and is increasing its underwriting of renewable energy, said Chris van Gend, global head of engineering and energy, Allianz Global Corporate & Specialty SE in Grünwald, Germany.

"Allianz not only wants to help reduce greenhouse gas emissions but is also actively supporting the expansion of renewable energies as both an investor and insurer," he said.

Coal mining employment has declined in the past decade as coal demand has decreased, according to the U.S. Energy Information Administration.

According to figures looking at the 2002-2018 period, U.S. coal mining employment fell from a 92,000 high in 2011 to 54,000 in 2018.

Annual U.S. coal production peaked over the period at 1.2 billion tons from 1,458 mines in 2008 compared with 756 million tons from 679 mines in 2018.

On Oct. 29, 2019, Murray Energy Holdings Co. sought Chapter 11 bankruptcy protection.

Murray was listed as the fourth largest U.S. coal producer in 2018 by the Energy Information Administration, accounting for 6.1% of total production.

Cloud Peak Energy, the third largest listed producer with 6.6% of production, filed for Chapter 11 in May 2019 and is now trying to exit after being sold.

Matthew Lerner

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Zoos present unique range of exposures

BY ANGELA CHILDERS
achilders@businessinsurance.com

A Sunday stroll through a local zoo or aquarium may bring joy for most, but for an underwriter, it's a scene rife with potential risks.

While incidents are rare, careful evaluation is required to protect against the myriad threats that the close proximity of humans and wild animals poses, from employee and visitor injuries to animal escapes and disease outbreaks, experts say.

For example, in 2019, a toddler fell into a rhino enclosure at the Brevard Zoo in Melbourne, Florida, suffering injuries, and a woman taking a selfie had her arm sliced open by an unhappy jaguar at the Wildlife World Zoo, Aquarium & Safari Park in Litchfield Park, Arizona.

More deadly incidents have taken place in recent years, such as the 2018 fatal mauling of an intern by a lion at the Animal Park at the Conservators Center in Burlington, North Carolina, when the animal escaped a locked area during a cleaning of its enclosure.

> With business interruption claims rising, zoos and aquariums pose a concern because they tend "to fall outside the scope of most underwriters' technical expertise and carrier appetite."
>
> Dennis DeLuca, AmWINS Group Inc.

The estimated $3 billion worldwide zoo and aquarium industry has continuously grown over the past five years, according to research firm IBISWorld, and the trend is expected to continue with the industry's revenue increasing at an annualized rate of 1.8%.

In the U.S. alone, 216 zoos and aquariums are accredited through the Association of Zoos and Aquariums based in Silver Spring, Maryland, and the number of incidents at these facilities tend to be "few and far between" because of the strict standards they must adhere to in order to maintain accreditation, said John Scott, former safety manager of the Denver Zoo.

Underwriting the risk of entire zoo or aquarium properties is not overly complicated, said Dennis DeLuca, executive vice president of AmWINS Group Inc.'s brokerage in Edison, New Jersey, which has brokered coverage for large aquariums. However, with business interruption claims rising over the past few years, the exposure risks of zoos and aquariums represent an area of concern because such properties — which include the animals — tend "to fall outside the scope of most underwriters' technical expertise and carrier appetite," he said.

"When you have a property loss, the biggest concern is the amount of (business interruption) exposure that carriers are going to take on because, god forbid you lose your key attraction animal — what exposure is associated with that?" he said. "If (that animal) isn't there anymore, how much does that impact gate sales ... and where does that exposure go?"

PRIVATELY OWNED EXOTIC ANIMALS UNCAGE EXTRAORDINARY RISKS

Whether lions, tigers or bears, if exotic animals are in your house, they ought to be insured, experts say.

In the past few years, Eric Conklin, Lexington, Kentucky-based director of equine and livestock Americas for Axa XL, a unit of Axa SA, said he has seen an uptick in insurance requests made by private individuals who purchase zoo-type animals. The most significant jump has been requests for insuring giraffes, which carry a price tag of about $125,000, and he's had a few claims in recent years for giraffes with broken necks from collisions with low bridges while being transported.

Axa's giraffe policies include detailed requirements for insuring transportation for the animals, said Robert Heinzl, London-based senior equine and livestock underwriter at Axa XL.

"(People) tend to do stupid things," he said. "That's why we write into policies, if you're moving these things, we want to know where you're going, and if you have planned a route."

The Humane Society of the U.S. estimates the exotic animal trade to be a $10 billion business. It says up to 7,000 tigers live in U.S., with only about 400 residing in accredited zoos. Between 1990 and 2012, more than 300 injurious incidents involving exotic cats occurred in 44 states, according to the organization.

Rick Lindsey, Salt Lake City-based president of Prime Insurance Co., writes liability coverage for all types of exotic animals, including lions, tigers, leopards, foxes, alligators and even problematic pit bulls that are excluded from traditional homeowner policies.

While he said 90% of people who own an exotic animal won't purchase insurance, he's provided many quotes — and policies — to athletes, musicians and others who have acquired exotic animals or need an umbrella policy for a dog that has been deemed vicious because of a biting incident or because of a policy breed exclusion, such as pit bulls or rottweilers.

And pet insurance providers are also expanding to include exotic animals. Nationwide Mutual Insurance Co. announced in late January that it plans to expand its veterinary insurance protections to certain exotic animals, such as parrots, water dragons, hedgehogs and pot-bellied pigs.

Angela Childers

Many zoos in the U.S. are owned by municipalities and are self-insured either under the city umbrella or a zoological foundation. For example, the Denver Zoo is insured through the Denver Zoological Foundation. Other zoos and aquariums purchase liability policies that include animals, but coverage is often limited to named perils, such as if an animal dies because of a fire, Mr. DeLuca said.

Many zoos and aquariums also carry policies to protect their feature animals, said Robert Heinzl, London-based senior equine and livestock underwriter at Axa XL, a unit of Axa SA.

"The average zoo will only insure big-ticket (animals), anything that's going to bring in the money," he said. But because many of the star attraction animals are traded or loaned through agreements — without an exchange of money — determining value for underwriting purposes can be a challenge, he said.

Mr. Heinzl noted that China often rents giant pandas to zoos in other parts of the world for $1 million a year. "They're unique in that you know where you stand. For others, valuations aren't the main concern for writing, it's the other risks, such as the husbandry and veterinary care, sourcing of the food and water, power sources and more," he said.

"We can write up to $2 million on any one animal, but it's not often that we have to do that," said Mr. Heinzl. "Generally (these animals) are so well looked after … it's a pretty decent risk."

"Imagine having five doctors following you around and slapping cheeseburgers out of your hand and making sure you're getting the right amount of vitamin A and mentally stimulated," Mr. Scott said.

General liability policies also will consider the impact of the loss of the star attraction, and having a redundancy in place to replace that key animal or exhibit is also considered in a valuation assessment, Mr. DeLuca said.

Disease prevention is also a big concern. The Denver Zoo has a detailed disease prevention program that includes annual tuberculosis tests for all employees — including administrative personnel — to prevent the highly contagious virus from possibly being passed from humans to animals such as primates, Mr. Scott said.

Such disease prevention methods are a priority for Axa XL's policyholders, Mr. Heinzl said. Zoos and aquariums are worried about the loss of income in the event of a disease outbreak, but it's also a top concern for livestock and equine clients, he said.

"Just somebody who comes in with a bit of disease on their boots transfers it and wipes out the stock," Mr. Heinzl said. "We look at standard operating procedures, feed, water, security, management — biosecurity is just one part of it."

Protecting zookeepers and others with access to the animals and their medicines is also an issue, Mr. Scott said, noting that he often had to remind zookeepers that they were ultimately more important than the animals they cared for, and to try to mitigate the risk of injuries they faced from heavy lifting, materials handlings, needlestick injuries, high-potency veterinary medicines and the animals themselves.

> "It's you and thousands of your closest friends. … The wildest animals we ever had were the guests. From a risk management perspective, the guests … are definitely a challenge."
>
> John Scott,
> Former safety manager, Denver Zoo

Then there are the properties themselves, which require a thorough inspection of enclosures and beyond, said Mitchel Kalmanson, owner of Maitland, Florida-based Lester Kalmanson Agency Inc., who has been underwriting polices for zoos, aquariums, wildlife refuges and private exotic animal owners for years. (Mr. Kalmanson owns quite a few exotic animals himself, including lions, tigers and leopards.)

Inspections should assess whether animals can escape, but also whether people can get in or get too close to the animals, which could lead to injuries and lawsuits, Mr. Kalmanson said.

"Kids like to find little holes to play in," he said. "That's where we may put the shrubbery in, but you still have to have a physical barrier to keep (guests) from getting in."

When a child is injured or killed, it often leads to litigation. Such was the case when a 2-year-old boy was fatally mauled by wild African dogs after he fell into their exhibit at the Pittsburgh Zoo & PPG Aquarium in 2012, and his parents filed a complaint against the zoo. The parties settled the lawsuit for an undisclosed amount in 2014. The majority of such suits are settled out of court for anywhere from $20,000 to $2 million, Mr. Kalmanson said.

With the nearly 2 million visitors the Denver Zoo receives each year, it's "inevitable" that things will happen, Mr. Scott said. That's especially the case on a free admission day when "it's you and thousands of your closest friends," and visitors are asking for help for such things heat stroke, cold stress, altitude sickness and bee stings.

It's also important to remind the public that animals in zoos are wild.

"The wildest animals we ever had were the guests," Mr. Scott said. "From a risk management perspective, the guests … are definitely a challenge."

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Extreme sports test liability protections

BY LOUISE ESOLA
lesola@businessinsurance.com

"Drowning," "near-drowning," "animal bites," "permanent paralysis" and "death" are among the words of a risk manager's nightmare, yet all are mentioned in the liability agreement for the popular Spartan Race obstacle course event, just one brand among a series of contests becoming a must-do for extreme sports enthusiasts.

In parallel with the rising popularity of the events — race groups say participation increased five-fold between 2010 and 2017 — are a growing number of lawsuits alleging organizers are liable for injuries incurred on crowded, muddy courses that often involve open flames, ropes to climb, walls to scale, and pits to leap over.

Signage posted by the organizers of race Tough Mudder — another major name in the sport — famously tells participants sweating through the obstacles to "remember, you signed a death waiver." Youmaydie.com was once the website address for Spartan's spinoff "Death Race."

Lawsuits filed against race organizers over the past decade include suits filed by paralyzed participants, families claiming wrongful death, and participants complaining of numerous other injuries. For example, a collapsed wooden climbing structure at a Warrior Dash event in St. Francisville, Louisiana, in 2017 spurred lawsuits that are still pending.

Several companies in the industry are suffering financial problems, although it is unclear whether liability issues are contributing to their troubles.

In July 2019 Chicago-based Red Frog Events LLC, organizer of the Warrior Dash run, announced it was going out of business, and in December 2019 New York-based Tough Mudder Inc. suspended registrations for more than two dozen races it had planned for 2020 throughout the United States. Three of its creditors have filed an involuntary petition to place the company in Chapter 11 bankruptcy over $855,000 in debts.

Despite the problems of some companies, there are numerous similar events scheduled for 2020, including Muddy Dash, Rugged Maniac, Muddy Princess for women and a Rad Dogs Mud Run, for people who want to run with their pets. Spartan Race, still in business and facing litigation, did not return requests for comment.

Being savvy with waivers

For the organizers still in the game, liability waivers are becoming increasingly sophisticated and long, according to legal experts.

"These event organizations have become very savvy in making their waivers of liability very clear in highlighting the risks," said Carla Varriale, New York-based partner with Havkins Rosenfeld Ritzert & Varriale LLP. "Just by definition these events are extreme, and they take a certain fitness level."

"It's essentially making people aware of what can happen," said Cameron Annas, Granite Falls, North Carolina-based national practice leader for the adventure and entertainment division of Granite Insurance Agency, which places coverage for the adventure sport industry.

"One of the legal arguments that we have to take care of is the assumption of risk argument," he said. "They have to be aware of the actual risks and what they are and what can happen. It has to be specific: injury or death. Contracting a disease in the mud is possible."

Despite the waivers, some lawsuits allege gross negligence — for example, that the race organizers provided shoddy obstacles or the event was poorly executed — or they dispute whether the waivers are enforceable.

"It varies state by state, the enforceability of the waiver," said Timothy Liam Epstein, Chicago-based chair of litigation with Duggan Bertsch LLC, which practices sports litigation for defendants, and an adjunct professor at Loyola University Chicago School of Law. States with a reputation for not enforcing waivers include Colorado, Utah and Minnesota, he said.

In March 2019, a New York state trial court in *Scotti v. Tough Mudder Inc.* ruled an arbitration clause in the race company's waiver was not enforceable. The court wrote that the arbitration requirement was "not the main objective of the agreement."

"People aren't paying attention to what they are signing," Mr. Annas said, adding that several factors can come into play if a waiver becomes part of litigation: "What languages are you offering it in? What's the font size? Those are the legal arguments that are going to come up. They will say, 'Hey, I couldn't read the waiver.'"

One strategy that's gaining traction in waivers is requiring participants to initial several parts of the document to ensure they read it, Mr. Annas said. "Having that is working a lot in defense."

Ms. Varriale said most suits claim negligence, which is hard to prove "unless there is a hidden or concealed issue on the course. Let's say there is a maintenance issue or some sort of malfeasance by a staff person involved in the race."

In such cases, organizers may be on the hook, she said. "Gross negligence crosses the line of an ordinary mistake into something that is extreme and outrageous," she said.

Mr. Epstein said waivers that aim to avoid responsibility for such issues as course maintenance and general safety can cause problems. Even a distracting flashing sign before a tough obstacle could fall under negligence, he said.

"There should be less attempts in a waiver to try to get out of your own negligence or gross negligence," he said. "Trying to excuse yourself from problems with the obstacle course is not going to be looked at favorably in court."

508

Number of U.S. obstacle course and mud runs scheduled for 2020

Source: Mud Run Guide

FINDING COVERAGE NO OBSTACLE WITH PROPER WAIVERS

Insurers covering mud runs haven't been deterred by the dangers of the sport, experts say.

That's because the number of participants in mud races far outpace the incidents that create legal problems, said David Hemme, an executive broker with Murrieta, California-based K2 Insurance Brokers and Risk Management, which works with dozens of events in 40 states. Mr. Hemme said he has seen just five claims from the events.

Races cost between $100 and $150 to enter, according to several registrations. Mr. Hemme estimates that insurance costs about $4 per runner. K2 offers an insurance program targeted at obstacle courses and mud runs.

"We have been writing mud runs for some time, and it will continue," Mr. Hemme said, adding that some smaller races have been consolidating into larger events to be more profitable — and better at risk management.

"We are extremely selective in how we work with these accounts," he said. "We want to make sure they are established in what they are doing."

Carla Varriale, New York-based partner with Havkins Rosenfeld Ritzert & Varriale LLP, a defense lawyer specializing in sports litigation, said she's optimistic about race organizers' ability to defend against liability when they provide well-worded waivers.

"When adventure races are popular because people say, 'Oh this is different and risky' ... I think it cuts in the favor of the organizers to tell people, 'You are aware of the dangers when you are doing a mud course.'"

Louise Esola

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Joel Cavaness

RISK PLACEMENT SERVICES

Joel Cavaness has been president of Risk Placement Services Inc. since its founding in 1997. Prior to joining RPS, which is the largest managing general agent in the United States and a wholesaler, he worked for 10 years in various roles at parent company Arthur J. Gallagher & Co. In addition to his role at RPS, he is president of the Wholesale & Specialty Insurance Association, the Kansas City, Missouri-based excess and surplus lines trade group. Mr. Cavaness spoke recently with *Business Insurance* Editor Gavin Souter about the hardening property/casualty market and trends in excess and surplus lines. Edited excerpts follow.

Q How are current market conditions affecting excess and surplus lines?

A As you would expect, there are a lot of individual risks that are migrating from a standard market play into more of a specialty or E&S play. That could be for an awful lot of reasons — individual risk characteristics, the need for additional capacity that might not be available in the standard market, specialized coverages, and, of course, there's a standard market change in appetite. There's been a very large flow into the E&S space and that's across lots of lines of insurance.

Q What are some of the tougher risks that the E&S market is dealing with?

A There are numerous classes that are much more difficult to get placed. California homeowners is extraordinarily difficult. The ability for standard markets to levy rate increases in California is limited so one solution for certain carriers is to just get out. Once you get out, there has to be somebody to fill that void and typically that's where the E&S market steps in because we have more freedom of rate and form to move in and out of markets.

Certainly, for large excess accounts insurance companies have shortened limits over the course of the past 18 months. They are much less willing to put out large chunks of capacity on accounts because of what's been going on with social inflation, jury verdicts, and costs to defend have risen enormously. Where carriers were very willing to put out $25 million in excess casualty limits, most of those carriers have restricted their capacity to much smaller bites on accounts — from $25 million to, say, $5 million.

Excess trucking business is difficult to place. Catastrophic exposed property continues to be a challenge. It takes a lot more carriers when you are putting together large schedules in cat-prone areas. Maybe where it took four or five carriers previously, now it's taking upward of 15 carriers to put together the kind of limits that we were able to put together just two years ago.

While prices are increasing due to underwriting performance, the biggest headline is just the restriction of capacity compared with what it was three or four years ago.

Q But capital isn't changing, so is it purely appetite?

A Insurers don't want to expose their capital to large limits on individual accounts. People don't want to expose their balance sheets to those losses because you can go through limits quickly. Defense costs are much more than they used to be.

Q Do you see areas where the market could become more efficient, both in the U.S. and in Lloyd's of London?

A All of us are working on our efficiencies, in particular not doing things twice, in whatever function that might be. Let's not audit the same account two or three times — Lloyd's audits it, the broker audits it, the syndicate audits it, we audited it — why are we doing certain functions three or four times?

The money that we save generally goes back to the ultimate client in some way and, of course, it goes back to the syndicates taking the risk and all across Lloyd's. Anything that we can do to make the process as efficient as possible helps everyone in the chain.

Q Is there anything on the technology front that can make a transformational change in the E&S market?

A We all seem to want to type and I can't quite understand it. Any kind of application process should be done one time. Today, through the involvement of (artificial intelligence) we should be able to put in a limited amount of information and then the rest of the application and the process should be prefilled through the technology. Once that's done, you should be able to transact with your carrier, no one should type it in again, and then issue the binder and the policy.

Obviously, all the tech doesn't displace any technical experience or the broker or underwriter, but it does displace somebody sitting somewhere retyping, for the third time, the identical information.

For a lot of the smaller products that don't need particular individual handling or underwriting, we have ecommerce platforms where we ask a fairly small subset of questions to be able to provide an indication or quotation. With just a few more pieces of information we can bind the account and issue a policy, no touch. Small transactions, call it under $1,000, should generally via technology be transacted in a very efficient way.

Q Is the coverage offered changing?

A During the soft market, everybody tends to expand the extra things they throw in for free and people are pulling back. For example, on a property schedule people are looking closer at the values submitted. I believe that the next wave that's coming in the property area is checking total insured values on locations because there have been fairly significant increases in cost in replacing properties due to building costs and materials or staying up with what a jurisdiction in a city or state might require of you now to replace that same piece of property.

Q What can the E&S industry do to attract more people to the industry?

A Twenty years ago, very few colleges and universities had risk management programs, but there are many more now and the WSIA educational foundation is working on putting together a surplus lines module for risk management schools to use as part of the curriculum.

We here at RPS will have over 80 young interns this summer spread across the country, Gallagher will have excess of 400, and we are not the only ones doing it, a lot of other firms have very successful programs to encourage young people to enter the industry.

Excess trucking business is difficult to place. Catastrophic exposed property continues to be a challenge. It takes a lot more carriers when you are putting together large schedules in cat-prone areas.

DATA

Climate change — the top emerging risk

BY ANDY TOH
atoh@businessinsurance.com

Even before the wild bushfires blazed through Australia, climate change emerged as the top risk in Axa SA's sixth annual *Future Risk Report*, published in October 2019. Likewise, in *The Global Risks Report 2020*, published by the World Economic Forum in partnership with Marsh & McLennan Cos. Inc. and Zurich Insurance Group, climate action failure replaced weapons of mass destruction as the top global risk by severity of impact over the next 10 years.

The report, released in January, did not include any technological risks among the top five risks in terms of impact. However, survey respondents indicated they expect cyberattacks on infrastructure (76.1%) and theft of money/data (75%) to increase this year compared with 2019.

Meanwhile, talk of the coming of the new economy and the next wave of Fourth Industrial Revolution technologies to fuel the smart cities of tomorrow is real.

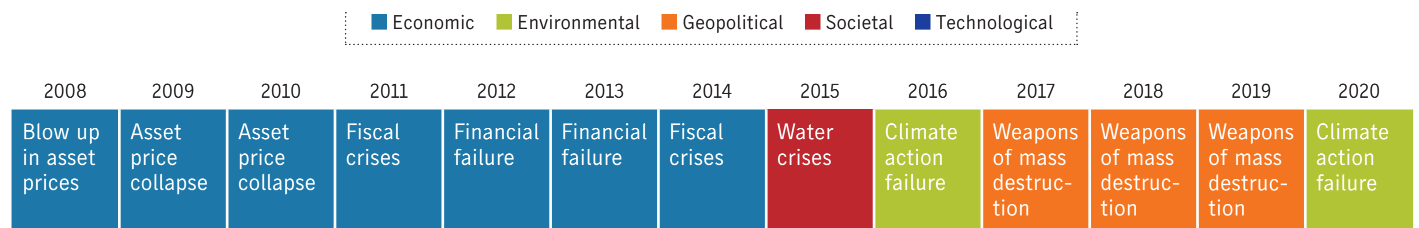
TOP EMERGING RISKS IN 2020

Experts in the 2019 survey identified the following 10 major emerging risks:

1. Climate change
2. Cybersecurity risks
3. Geopolitical instability
4. Social discontent and local conflicts
5. Natural resources management
6. Artificial intelligence and big data
7. Pollution
8. Pandemics and infectious diseases
9. New threats to security
10. Macroeconomic risks

Source: Axa & Eurasia Group, Future Risk Report

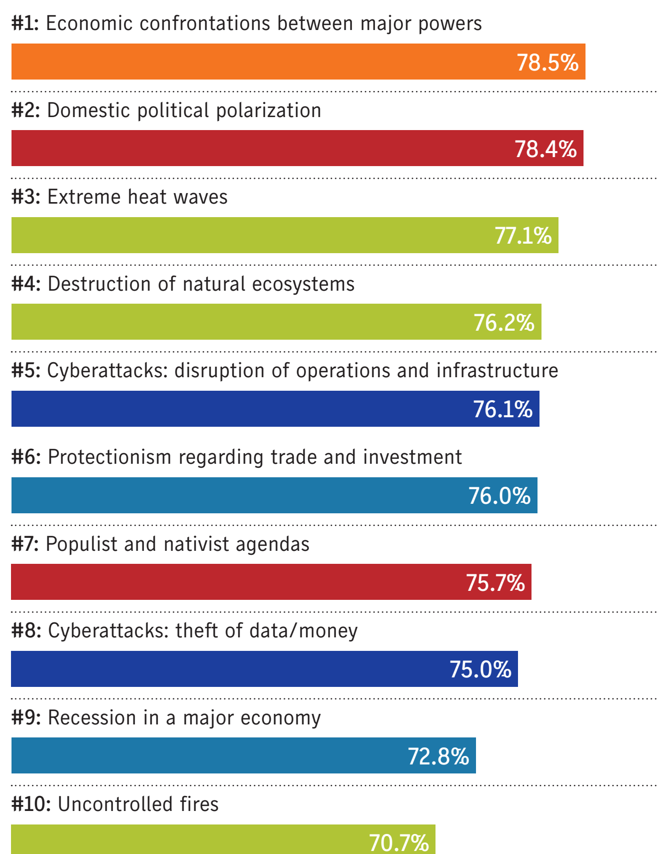
TOP GLOBAL RISKS — FROM 2008 TO 2020



TOP GLOBAL RISKS — OVER THE NEXT 10 YEARS

TOP RISKS INCREASING IN 2020

Percent of respondents who think a risk will increase in 2020

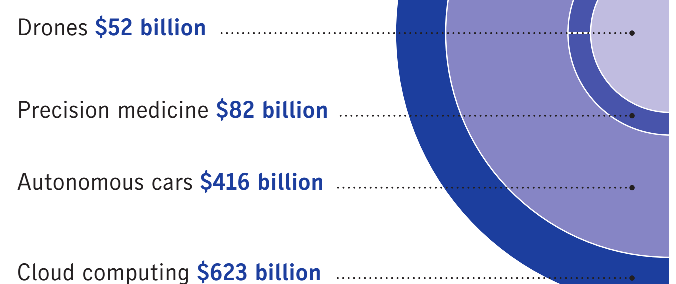


INTERNET OF THINGS

- More than **50%** of the world's population is now online
- **One million** additional people join the internet daily
- **Two-thirds** of humanity own a mobile device
- Artificial intelligence alone is expected to boost global growth by **14%** by 2030
- Estimated **21 billion** Internet of Things (IoT) devices worldwide and the number is projected to **double** by 2025
- Cybercrime damages may reach **$6 trillion** in 2021

2025 MARKET PROJECTIONS FOR 4IR TECHNOLOGIES

The next wave of Fourth Industrial Revolution technologies will dramatically reshape economies and societies. Precision medicine, autonomous vehicles, cloud computing and drones are all fast-growing markets that will surpass $1 trillion by 2025.



Source: World Economic Forum in partnership with Marsh & McLennan and Zurich Insurance Group, The Global Risks Report 2020 - Global Risks Reports, 2007-2020

THE SHOCKING SIZE OF THE AUSTRALIAN WILDFIRES

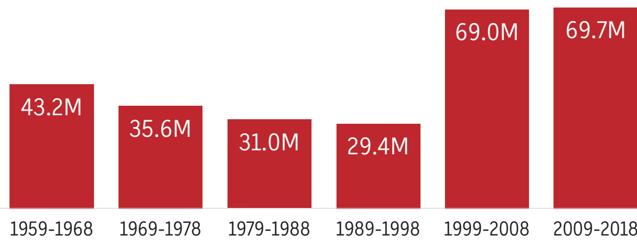
ACRES BURNED IN RECENT MAJOR WILDFIRE EVENTS

2.0M ACRES	6.7M ACRES	12.4M ACRES
2018 CALIFORNIA FIRES	2019 SIBERIAN FIRES	2019/20 AUSTRALIAN FIRES

Source: Statista from CalFire/Russian Federal Forestry Agency

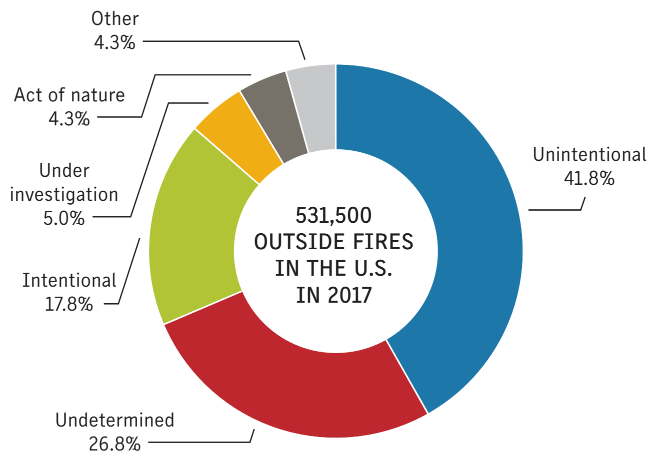
WILDFIRES BURNED NEARLY 70 MILLION ACRES IN A DECADE IN THE U.S.

ACRES BURNED BY WILDFIRES IN THE U.S. (1959-2018)



Source: Statista from National Interagency Fire Center

CAUSES OF OUTSIDE FIRES

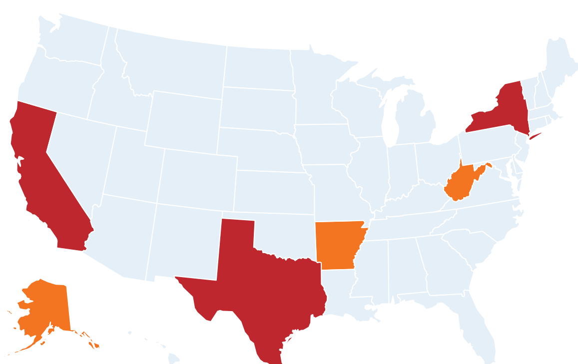


Source: U.S. Fire Administration

STATES WITH THE MOST FIRE DEATHS

California, Texas and New York led the nation in number of fire deaths in 2017. West Virginia, Alaska and Arkansas had the most deaths per million population in the U.S.

Most total deaths | Most deaths per million



Source: U.S. Fire Administration

FIRE IN THE UNITED STATES

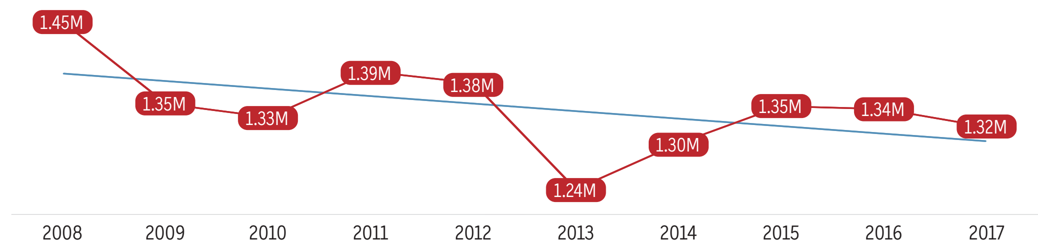
The U.S. Fire Administration released its 20th edition of "Fire in the United States" on Jan. 23, 2020, providing a statistical overview of fire data from 2008-2017. The United States averaged 1.3 million fires yearly from 2008 to 2017, resulting in an average of 3,190 civilian deaths, over 16,000 civilian injuries, and more than $14 billion in direct property loss each year.

DURING THE DECADE 2008-2017, THE U.S. HAD AN AVERAGE OF **1,344,100 FIRES** EACH YEAR, RESULTING IN:

3,190	16,225	$14.7B
CIVILIAN DEATHS	CIVILIAN INJURIES	DIRECT PROPERTY LOSS

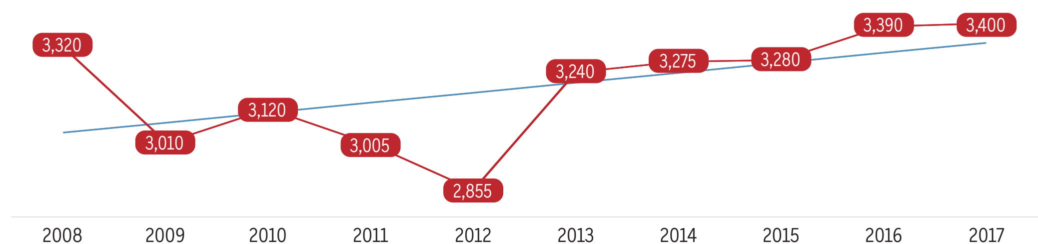
FIRES

Actual | Trend



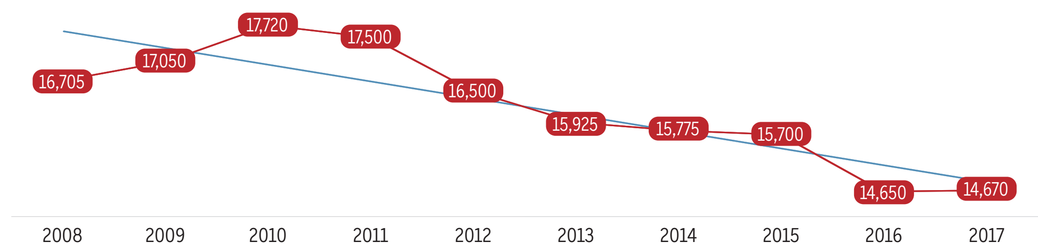
FIRE DEATHS

Actual | Trend



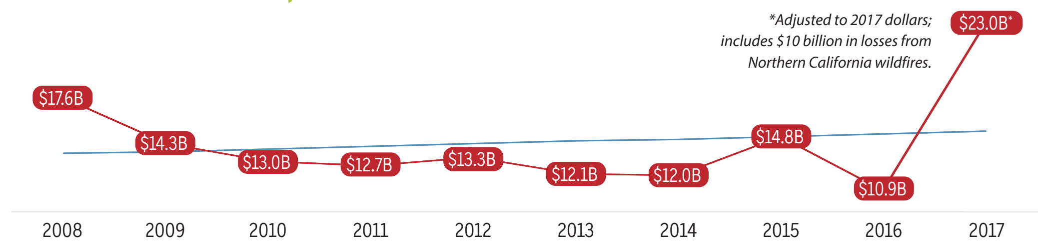
FIRE INJURIES

Actual | Trend



FIRE DOLLAR LOSS $

Actual | Trend

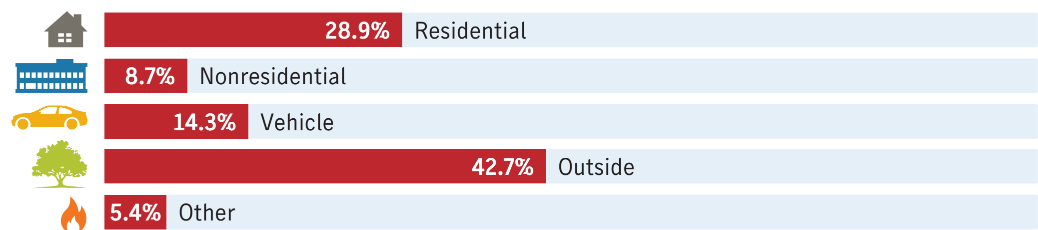


Sources: U.S. Fire Administration from National Fire Protection Association and consumer price index

PROPERTY TYPES AFFECTED BY FIRE

Residential is the leading property type for fire deaths (77.6%), fire injuries (76.1%) and fire dollar loss (49.7%).

FIRES BY GENERAL PROPERTY TYPE — 2017



Source: U.S. Fire Administration

Concerned about climate change?

6 ways for insurers to future-proof their portfolios

Anne B. Walsh is the chief investment officer for fixed income at Guggenheim Investments, which is headquartered in New York and Santa Monica, California. She can be reached via marketcommentary@guggenheimpartners.com.

In California, PG&E Corp. is being called the first climate-change bankruptcy and is likely a harbinger of more to come. In Australia, a 24-year-old is suing his pension fund for not adequately assessing the impact of climate change on its investments. And in Alaska, 31 towns face imminent destruction from rising water levels and some, such as the village of Newtok, are being relocated inland.

For insurers, climate change is a major risk because of their exposure to insurance claims and long investment horizons. Globally, the cost of catastrophic events to insurance companies is up 20-fold since the 1970s to an average annual rate of $65 billion in the past decade and $85 billion last year.

Some insurers are beginning to future-proof — or risk manage — their exposure to climate change risk. Most recently, Hartford Financial Services Group Inc. announced it would phase out policies and investments related to coal and oil from tar sands.

While some firms are taking action, adapting to climate change can be overwhelming given its magnitude and complexity. But the consequences are becoming too urgent to ignore.

Whether you have put off future-proofing altogether or have already begun, here's a blueprint for becoming a more adaptive organization and making preparations to protect your portfolios.

1. Understand the impact

To assess the magnitude of climate change, insurers need to follow the data to track its growing severity. Because it isn't a finite problem, insurers must keep up with its evolving impact and keep adapting.

Globally, the warmest years on record were in the past five years, the highest global average sea temperatures occurred in the past four years, and ocean levels are steadily rising. Together, these factors are causing extreme weather events to occur more frequently and with greater intensity.

Meanwhile, the policy response is ramping up as well, which stands to affect insurers just as dramatically as climate change itself. To keep global temperatures to below 2 degrees Celsius above preindustrial temperatures, 187 countries have signed the Paris Agreement, pledging to reduce carbon dioxide emissions and increase renewable energy market share. Cities and states are also beginning to limit investments in fossil fuels.

2. Frame the types of risk

By understanding the four types of climate-related risks, portfolio managers can prioritize and build the right teams to respond to:

- **Physical risk** — damage to physical assets from storms, hurricanes and floods, including the effect on productivity and economic growth.
- **Liability risk** — lawsuits about losses to physical assets, including recent lawsuits targeted at oil and gas companies for their alleged complicity in climate change.
- **Transition risk** — industries and commodities negatively affected by the transition to a low-carbon economy.
- **Market risk** — declining prices of assets, securities, commodities and services due to climate change or its remedies.

3. Establish a process

Future-proofing introduces change in an organization, and you need to mitigate the potential pain. A framework for assessing bottom-up credit risks and top-down economic impacts gives you a repeatable process, so you're prepared and less reactive. You don't have to create something new each time:

- Identify physical assets, businesses and supply chains in locations exposed to extreme weather events and long-term climate change.
- Reduce exposure to assets vulnerable to transition risk to a low-carbon economy by industry, such as oil, coal, high-energy users, carbon emitters, and by resource impacts, such as water usage, commodity consumption and toxic emissions.
- Evaluate second-order effects of transition risk, such as rising regulatory costs, taxes, surcharges, subsidies, and shifts in supply and demand.
- Seek out transition beneficiaries, such as clean/renewable energy technology, electric vehicles, battery technology, LED technology, green bonds and the carbon credit market.

4. Prioritize immediate risks

It's not enough to define the types of risk — you need to segment by the urgency they represent and prioritize accordingly. First-order effects of climate change include physical holdings in regions more exposed to extreme weather conditions, as well as sectors directly exposed to transition risk, such as oil and gas, coal, utilities and natural resources.

Forward-thinking insurers are already introducing policies that discourage investment in the thermal coal market. According to the California Department of Insurance, 53% of U.S. insurers excluded coal from their portfolios in 2018, up from 50% in 2016, and 10% of insurers were committed to divesting coal holdings going forward, up from 6% in 2016. In announcing its new policy to phase out thermal coal investments and underwriting, Liberty Mutual Insurance Co. acknowledged its responsibility to stakeholders.

5. Don't ignore longer-term risks

Some risks are easy to disregard because their impact isn't imminent. But the point of future-proofing is preparing for what's to come. For insurers, that means identifying the appropriate course of action needed to mitigate the risk of stranded assets — a resource that no longer has value. Developing policies to address second- and third-order effects of stranded assets is critical to prepare for the future.

Geographic regions that have significant economic exposure to these sectors will see an effect on real estate holdings, tourism and hospitality businesses, and regional municipal debt. While not yet reflected in pricing for municipal bonds, credit rating agencies are beginning to factor climate-change risks into their municipal ratings.

Another long-term consideration is how to anticipate demands from regulators, shareholders, pension recipients, policyholders, and activists for investments and business policies that do not contribute to climate change.

6. Establish dedicated resources

Think of climate change as a new and necessary priority that requires appropriate resources. Insurers should build out dedicated teams to analyze climate change and its effect on macroeconomic and investment risk.

To start, insurers should follow the critical data in the battle against climate change, including carbon emissions, global temperatures and rising sea levels. The progression of these data points will play a role in the timing and costs of protecting a portfolio from the future effects of climate change, and inform the critical risk analysis for industry, security and assets. Firms should also partner with subject matter experts to stay informed and develop expertise in green bonds and carbon pricing markets.

There is time to prepare for the longer-term consequences of climate change, but insurers should not be complacent now just because many of the worst outcomes might not be felt for decades. This "tragedy of the horizon" means that once climate change becomes a defining issue, it may be too late to take action.

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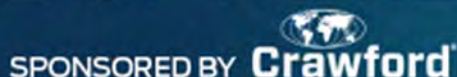

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EPL insurance for restaurants:
Make sure wage and hour protection is the main course

Crystal Jacobs is the Restaurant Guard vice president and program director, a division of specialty lines underwriter and wholesaler U.S. Risk Insurance Group in Dallas. She can be reached at Crystal.Jacobs@restaurantguardinsurance.com.

Employee lawsuits inevitably present a variety of financial obstacles for the employer.

Regardless of a claim's validity, the average cost for defending and settling employment law cases is $160,000, according to business insurance company Hiscox Ltd. The impact of such cases stretches far and wide, with household names such as AT&T Inc., Bank of America Corp., CVS Health, FedEx Corp. and The Home Depot Inc. among the most litigated American companies for employment practices liability cases, according to legal analytics firm Lex Machina Inc.

Specifically for the foodservice industry, wage and hour violations are near the top of many claims lists, with thousands filed each year. In 2017, the U.S. Department of Labor received over 7,000 hospitality wage and hour claims that resulted in the recovery of more than $483 million in back wages for employees. With restaurant and bar spending growing twice as fast as all other retail sectors in the past decade, according to U.S. Census Bureau Data restaurant owner/operators will need a reliable safeguard against this growing threat.

The list of potential violations for a restaurant is as broad as it is complex, because it truly doesn't take much for restaurants to be sued.

One 2019 case, *Montano v. Montrose Restaurant Associates Inc.*, involved two waiters at Montrose Restaurant in Houston. They took their supervisor to court, claiming that the restaurant wrongfully included a so-called "coffeeman" in the restaurant tip pool. The majority of the coffeeman's work was done behind the scenes where he, as you would expect, made coffee. However, he occasionally would bring bread and other food items to dining room patrons.

> The problem is, many standard EPLI policies leave out coverage for claims that violate federal labor standards and similar state statutes.

On the surface, this seems like an innocent, perhaps even generous practice. The coffeeman presumably worked hard, just as the wait staff did, and the owner/operator determined that he should get a share of the tips. The plaintiffs disagreed, arguing that they should not be forced to share with workers who do not customarily receive tips.

The case made it all the way to the 5th U.S. Circuit Court of Appeals in Houston with the main question being whether the customer who left a tip had intended for the coffeeman to receive a portion. In the end, the court ruled in favor of the plaintiffs, stating that the coffeeman failed to have more than "minimal interaction with the customers who leave the tips." The restaurant owner/operator, as a result, had to pay up.

Similarly, Long Island restaurateurs the Poll family surrendered $1.2 million after failing to comply with New York's "spread of hours" pay requirement, according to reports. Under New York law, restaurant workers have the right to an extra hour of pay when the workday spans more than 10 hours. Approximately 122 cooks, dishwashers and other kitchen workers who worked at Poll family restaurants are entitled to up to $7,000 each in settlement money as a result of these violations.

One of the top employment practices liability insurance defense firms in the U.S., Lewis Brisbois Bisgaard & Smith LLP offered its insight on such cases, having just recently seen three arbitration claims all involving the same violation — wait time and time manipulation. Specifically, the allegation was that the establishments set a schedule but did not allow servers to clock in until diners arrived. This typically resulted in an alleged time loss of 15 to 30 minutes per worker at the beginning of the shift.

The facts of each case were a bit complicated at times, with gray areas regarding the validity of each claim. According to the establishments, workers were offered other work opportunities until patrons arrived, but they "refused." Instead, employees opted to spend their extra time in the break room.

Valid or not, it was the restaurant owner/operators who ended up on the hook, most notably for the $3,000 fee to the arbitration agency. Plus, they shouldered near thousands of dollars in legal fees and payments to the employees.

EPLI exists to protect against claims like these, however proper wage and hour protection is often excluded from standard coverage packages. As with many legal areas, there are federal laws and state laws to comply with. The problem is, many standard EPLI policies leave out coverage for claims that violate federal labor standards and similar state statutes. These exclusions are broadly construed to include the relevant state wage and hour statute, even if the federal standards aren't very similar at all.

This represents a massive gap in coverage that restaurant owners often unknowingly suffer from, completely unaware that their standard insurance is not doing what they think it does. In order to properly serve the restaurant market, more EPLI providers should be guaranteeing wage and hour defense coverage, and better educating their customers on what their policy includes.

Aside from pay violations, wrongful termination or discipline, where employees allege that they were disciplined or fired for an infraction that did not occur — or that they received excessive discipline for an infraction they committed — is another important area of coverage that may be overlooked.

> These lawsuits are extremely complex and equally costly. ... With an industry turnover rate of over 74% as of 2018, every dismissal presents a potential risk.

One high-profile case involved Chipotle Mexican Grill, in 2018 — *Ortiz v. Chipotle Mexican Grill*. Jeanette Ortiz, who had worked at Chipotle for over 14 years, was accused of stealing $626 from a safe at the restaurant and subsequently dismissed from her position. Although Chipotle initially claimed the theft was documented by the store's security camera, the management later said the evidence had been destroyed.

After Ms. Ortiz took the Mexican food giant to court for wrongful termination, a California jury awarded her $7.97 million to compensate her for the loss of her job. Even for a chain as massive as Chipotle, that's a whole lot of money that they didn't want to pay.

Regardless of their size or makeup, these lawsuits are extremely complex and equally costly in a busy restaurant environment. With an industry turnover rate of over 74% as of 2018, every dismissal presents a potential risk. For this reason alone, wrongful termination or discipline protection can be as vital any other coverage for restaurant owner/operators.

Similar to wage and hour claims, anyone with a lawyer can file suit, even if the employer is objectively in the right. Without the proper proof to justify termination, a restaurant leaves itself wide open to potential litigation.

All of this adds up to just the tip of a very large EPLI iceberg; from breach of employment contract to negligent evaluation, the plethora of risks for restaurants will continue to grow. Owner/operators must make sure they are aware of their protections — and insurers must sufficiently protect them.

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