COURT FIGHT: Early rulings over lost income claims start to diverge - PAGE 4

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COVER STORY

The devastating impact of the COVID-19 pandemic on nursing homes has demonstrated the urgent need for extensive testing for the virus, more staff and adequate personal protective equipment. Meanwhile, nursing facilities are facing a growing number of lawsuits alleging negligence in their response to outbreaks of the disease. **PAGE 17**

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VIEW FROM THE TOP

JAMES SHEA

The Zurich Insurance Group Ltd. executive joined the insurer as CEO Commercial Insurance in 2016 after spending more than 20 years at American International Group Inc. Mr. Shea, who has held a variety of roles in North America, Europe and Asia and is now based in Switzerland, discusses the effects of COVID-19 and the hardening market on policyholders globally, and Zurich's commercial insurance strategy. **PAGE 16**

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COVID-19 cover pendulum to swing

BY JUDY GREENWALD
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The lopsided victories to date by insurers in litigation over whether policyholders' business interruption policy provisions cover losses due to government-mandated closures during the COVID-19 pandemic likely won't continue, experts say.

Eventually, more courts will rule in favor of policyholders, say both insurer and policyholder attorneys, although many are reluctant to hazard estimates as to which side will win the most cases.

A major factor in future rulings will likely be state law precedents, which vary significantly, observers say, while noting court proceedings are generally still in their very early stages. A ruling in the United Kingdom largely in favor of policyholders may also be influential in the United States.

As of late last month, there were a handful of pro-policyholder rulings in COVID-19 business interruption cases, including two by a federal district court in Missouri issued by the same judge and one by a federal district court in Florida, with about a dozen other courts ruling in insurers' favor (see related story). More than 1,200 business interruption lawsuits have been filed to date in the U.S.

Insurers have largely successfully argued that coverage for lost income is excluded because the COVID-19 virus did not cause physical damage or loss under terms of policyholders' property coverage when they were forced to close by government orders, or because of a virus exclusion.

In *Mudpie Inc. v. Travelers Casualty Insurance Co. of America*, for instance, the U.S. District Court in San Francisco held in its Sept. 14 ruling that a Travelers Cos. Inc. unit was not obligated to pay a lost income claim submitted by Mudpie Inc., a San Francisco children's clothing and toy store that was forced to close earlier this year to help limit COVID-19's spread, because the store did not sustain a physical loss under the terms of the policy.

Experts say many of the initial decisions have been procedural in ruling whether the cases can move forward, and eventually there will be appellate court rulings that will more directly address the cases' substantive issues.

Ty Childress, insurance recovery practice leader at Jones Day in Los Angeles, said that in the procedural-based cases, it is "hard to know what the courts would do if the pleadings were different."

"As more is learned from court decisions, pleadings will become more precise," said David E. Weiss, a partner with Reed Smith LLP's litigation insurance recovery group in San Francisco.

Policyholder attorney Micah E. Skidmore, a partner with Haynes & Boone LLP in Dallas, said, "If you look at the decisions coming down, and adjust your pleadings accordingly, you would expect the policyholder-to-carrier ratios of cases that are going to get decided will even out, and perhaps even eclipse the carriers."

For policies with broad language and no virus exclusion "there's a lot of wiggle room" for potential coverage, "based on what your facts are," policyholder attorney Stephen V. Masterson, with Andrade Gonzalez LLP in Los Angeles, said.

However, insurer attorney Jennifer L. Mesko, counsel with Tucker Ellis LLP in Cleveland, said, "Most policies are written in a way that is not covered," and typically require a direct physical loss.

David Simonton, counsel with Dentons US LLP in San Francisco, who represents insurers, believes insurers will continue to prevail. The case law "has really grown into a robust body and consistent line of cases," he said.

Some experts say a major factor in the insurer victories to date is that many of these cases have been handled by plaintiff attorneys who do not specialize in insurance law.

Most of the plaintiff attorneys specialize in class actions, personal injury and other regular business issues, said policyholder attorney Michael S. Levine, a partner with Hunton Andrews Kurth LLP in Washington. "They're not pleading the cases properly," he said.

Over the long term, the bigger claims will be handled by sophisticated firms, he said.

There will ultimately be a "mixed bag of outcomes," said K. James Sullivan, a policyholder attorney with Calfee, Halter & Griswold LLP in Cleveland.

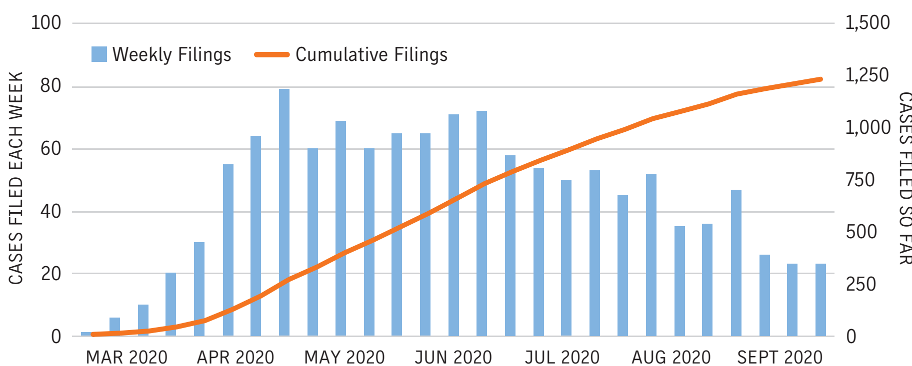
"Because each state has its own insurance laws, and each judge may be asked to look at the issues through different lenses, you're going to see at least a handful of cases that are going to cut for policyholders," he said.

Experts cite states including Florida, Illinois, New Jersey and Pennsylvania as among those whose laws are considered to be more policyholder friendly, while Michigan and New York are considered more pro-insurer.

Brenton W. Vincent, a partner with Bryan Cave Leighton Paisner LLP in Chicago, said despite having no precedential value, the English High Court's business interruption ruling in September in favor of policyholders, in a case filed by insurance regulator the Financial Conduct Authority, may be influential.

However, Keith Moskowitz, a partner with Dentons in Chicago, said he does not believe that litigation will influence U.S. cases because the policies at issue "do not have that physical damage requirement" that are in the U.S. policies. "We're talking about some very unique policy language," he said.

COVID-19 COVERAGE LITIGATION TRACKER



Source: University of Pennsylvania Carey Law School

POLICYHOLDERS SCORE SOME COURT WINS

Policyholders so far have prevailed in a few cases in the U.S. in litigation seeking coverage for COVID-19-related business interruption coverage.

The wins include:

- A federal case filed by a group of hair salons and restaurants, *Studio 417 Inc. v. The Cincinnati Insurance Co.*, in which Judge Stephen R. Bough of the U.S. District Court in Kansas City, Missouri, held in his Sept. 8 ruling that the plaintiffs had "adequately stated a claim of direct physical loss," based on the alleged causal relationship between the virus and their alleged losses. The ruling also says plaintiffs have plausibly stated a claim for civil authority coverage, among other findings.

  The court has appointed a mediator in the case.
- Judge Bough ruled similarly in a Sept. 21 decision in *Blue Springs Dental Care LLC et al. v. Owners Insurance Co.*, in which he denied Lansing, Michigan-based Owners' motion to dismiss a suit brought by a Kansas City, Missouri-area dental practice.
- The U.S. District Court in Orlando held in its Sept. 24 ruling against dismissing a business interruption case filed by a medical practice against a Hartford Insurance group unit in *Urogynecology Specialist of Florida LLC v. Sentinel Insurance Co. Ltd.* that the coverage's virus exclusion was ambiguous.
- In a New Jersey case, *Optical Services USA/JC1 v. Franklin Mutual Insurance Co.*, Judge Michael N. Beukas, of New Jersey Superior Court in Hackensack, issued a one-sentence order in the policyholder's favor that refers to the case's hearing transcript.

  The transcript reports Judge Beukas as stating the insurer "has not provided this court with any controlling legal authority to support their version of the defined terms in the policy." The ruling quotes as precedent the holding in an earlier New Jersey case.

  The policyholder attorney in the case, Christian Jensen, of Olender Feldman LLP in Summit, New Jersey, said, "These situations should be looked at on an individualized basis, and not prejudged to go in favor of the insurer, because each policy requires an analysis as to whether the policy language is ambiguous or not."

Judy Greenwald

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NEWS ANALYSIS

Rise in mega claims causes concern

BY ANGELA CHILDERS
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The most expensive workers compensation claims continue to increase in price year over year, with medical treatments and technical advances leading to more "mega claims" of at least $3 million each year, experts say.

While the big claims comprise a statistically small percentage of all workers compensation claims, some experts fear that claims made by workers who become seriously ill from COVID-19 could reach the mega threshold due to lingering health effects from the virus.

"It's possible there could be some mega claims related to COVID," said Mark Walls, Chicago-based vice president of communications and strategic analysis for Safety National Casualty Corp. "To get to that point (the worker) would have had to have very high levels of medical treatment — usually a significant amount of attendant care."

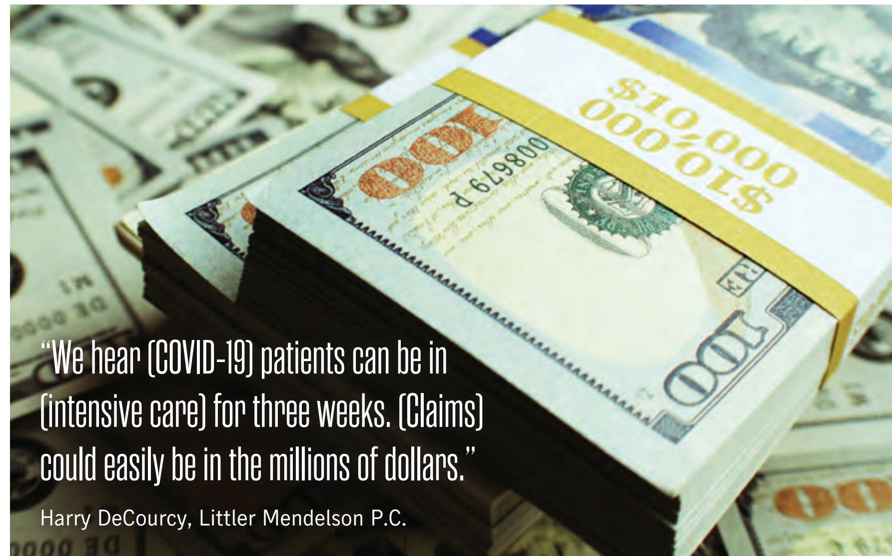
"These could be some costly claims," said Harry DeCourcy, Walnut Creek, California-based shareholder with Littler Mendelson P.C., days after California Gov. Gavin Newsom signed a new COVID-19 presumption law last month clearing some red tape for workers comp claims.

"We hear patients can be in (intensive care) for three weeks," Mr. DeCourcy said, adding that claims "could easily be in the millions of dollars."

Most mega claims result from accidents, not occupational diseases, and "because of innovations in technology and medical advancement, people are able to survive injuries" that they didn't in the past, said Dr. Michael Choo, Walnut Creek, California-based chief medical officer and senior vice president at Paradigm Management Services LLC. "I do believe that medical costs associated with injury care will continue to climb."

Overall, mega claims account for upwards of $2 billion in workers comp costs each year, according to research compiled by the National Council on Compensation Insurance, the California's Workers Compensation Insurance Ratings Bureau and other states that pooled their data to report on mega claims trends across the country.

In August, the ratings agencies released a study that included data from 43 states and the District of Columbia. The study revealed that more than 4,500 claims from these states and the district incurred losses in excess of $3 million (at 2018 cost levels) from 2001 through 2017. Of those claims, 57% cost between $3 million and $5 million, 33% between $5 million and $10 million, and 10% in excess of $10 million, with mega claim counts for 2017 at a 12-year high, according to the report released on Aug. 25.



"We hear (COVID-19) patients can be in (intensive care) for three weeks. (Claims) could easily be in the millions of dollars."

Harry DeCourcy, Littler Mendelson P.C.

MEGA CLAIMS RISING AT FASTER PACE

The number of claims reaching $3 million at first claim count 18 months after policy inception continues to rise.

Source: National Council on Compensation Insurance

While fewer than 50% of mega claims reach the $3 million threshold by 18 months from policy inception, the claims are reaching that number more quickly than in the past, the study found.

"This is likely driven by a combination of several items, including a general increase in the number of mega claims arising from the construction sector — potentially due to the higher relative hazardousness of the construction industry compared with other industry sectors," Ryan Voll, an associate actuary with NCCI and one of the report's authors, said in an email.

"We're noticing a higher frequency of claims hitting those thresholds," Dr. Choo said. "Especially after 2013-2014, we're definitely seeing more cases with high price tags related to medical costs."

With COVID-19, the unknown has created a fear in the industry that some of the claims could develop into mega claims due to the "small subset" of individuals who suffer serious damage from the virus, said Gary Anderberg, New Hope, Pennsylvania-based senior vice president of claims analytics at Gallagher Bassett Services Inc.

Another driver of concern is the rebuttable presumption laws in an expanding number of states that put the onus on employers to prove that workers with COVID-19 contracted the virus elsewhere.

Particularly in the self-insured sector, presumption laws covering a range of cancers for firefighters or heart conditions for law enforcement officers have led to claims cresting the mega threshold.

"We've seen cancer claims turn into mega claims," Mr. Walls said.

While Safety National has seen COVID-19 claims over $1 million, Mr. Walls said the insurer has not seen any pass the $3 million mark.

Fortunately for the workers comp industry, Mr. Anderberg said, COVID-19 claims are "pretty much behaving like other claims" in that risk factors such as age and comorbidities are a complicating factor and that most cases do not involve hospitalization.

That does not mean, however, that insurers and employers may not see frontline workers who filed a comp claim for COVID-19 later claiming that other ailments, such as chronic obstructive pulmonary disease, were caused by the coronavirus, he said.

"There are possible applicable precedents with other industrial diseases, but we're just going to have to wait and see what happens," Mr. Anderberg said. "A lot of this is going to have to be refined by the courts."

Louise Esola contributed to this report.

EMPLOYERS MAY OPT FOR SAFETY

Self-insured employers facing the threat of COVID-19-related workplace safety litigation have a safety net: accept a workers compensation claim for an employee who tests positive and suffers a minor illness as a result, according to legal experts.

"Liability is scary because there are no caps," said Mike Fish, Birmingham, Alabama-based founding member of the workers compensation defense law firm Fish Nelson & Holden LLC and past president of the National Workers Compensation Defense Network, an alliance of comp defense attorneys that monitor legislation.

"Employers weighing the risk may choose to have the exclusivity doctrine," he said. "Liability lawsuits are getting filed everywhere."

Accepting claims at the onset may be "possible" for self-insured employers that don't have to get clearance from insurers, said Adam Brackemyre, Alexandria, Virginia-based vice president of state government relations for the Self-Insurance Institute of America Inc., an association that promotes self-insurance and the captive insurance industry.

Employers "are not seeing as many COVID claims as they might have expected," he said. "All of these people are testing positive, but there wasn't much in terms of disability. It's a severe flu at worst" for some employees.

"Some (employers) are definitely crunching the numbers, and some may choose to process claims as workers comp because it may be cheaper to pay the benefit than to contest it," Mr. Brackemyre said.

Under a comp scheme, an employer would pay wages — typically about two-thirds of salary — and medical costs.

Trent Oubre, Baton Rouge-based legislative committee chair for the Louisiana Association of Self Insured Employers and partner at the firm Breazeale, Sachse & Wilson LLP, agrees that workers comp could be the way to go for some employers facing smaller, less complicated COVID-19-related claims.

"If they do, they need to proceed with caution," he said. However, the alternative — litigation — could be more risky.

"It behooves (employers) to evaluate their position now on how they are going to respond to these claims," Mr. Oubre said. "The safest route may be to keep them in the comp arena."

Louise Esola

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Minimum premiums, higher rates for airlines as COVID-19 creates insurance market turmoil

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

Commercial airlines can expect minimum premiums and accelerating rate increases at upcoming insurance renewals during what are expected to be difficult end-of-year negotiations.

The prolonged downturn in air travel brought on by COVID-19 has led to widespread layups of aircraft resulting in dramatically reduced exposures for insurers making it more urgent for them to protect their premium base.

Aviation market premium is estimated to be down by close to 40% due to the COVID-19-related travel slump, market sources say.

However, while exposures are down, insurers are still paying significant claims with reduced funding, said Jeff Bruno, Parsippany, New Jersey-based president and chief underwriting officer at Global Aerospace Inc.

Delta Air Lines passenger planes parked in Birmingham, Alabama, in March. Airlines saw a sharp reduction in flights after the pandemic hit, which put pressure on aviation insurers.

Reuters

> "The issue is underwriters need an aggregate revenue amount that covers rising claims and reinsurance costs, so rates are rising, and minimum premiums are being applied."
>
> Jeff Bruno, Global Aerospace Inc.

Significant claims in 2020 include the shooting down of a Ukrainian International Airlines 737-800 in January, the crash of a Pakistani International Airlines Airbus A320 on approach to Karachi airport in February, a fire on board an Ethiopian Airlines Boeing 777 on the ground in Shanghai in July, and the crash of an Air India Express plane after it skidded off the runway in Kerala state in August.

Several other hull claims have also occurred that have not been as widely publicized, in addition to attritional losses, such as claims from grounded aircraft, experts say.

"The issue is underwriters need an aggregate revenue amount that covers rising claims and reinsurance costs, so rates are rising, and minimum premiums are being applied," Mr. Bruno said.

Estimated worldwide airline premium on a net basis was around $1.9 billion in the fourth quarter of 2019, according to Brad Meinhardt, Las Vegas-based managing director of Arthur J. Gallagher Inc.'s aerospace practice. "Unfortunately, with the impact of COVID you're going to see a lot of that money coming back."

In this environment, there is no such thing as no rate increase, Mr. Meinhardt said. It is a "super hard market," but minimum premiums are the most significant

INCREASE IN IDLE AIRCRAFT HEIGHTENS CONCERNS ABOUT NEED FOR MORE COVER

The prolonged downturn in air travel brought on by COVID-19 has left many aircraft idle in the United States, prompting concerns about aggregation risk, especially in areas exposed to natural catastrophes.

While larger commercial airlines generally have the resources to mitigate the risks in normal conditions, the number of aircraft grounded during the pandemic has prompted some to purchase additional insurance coverage.

Parking more aircraft during the pandemic led Alaska Airlines to revisit its aviation hull/war coverage.

The concern was not that the locations had high potential for terrorism, because "they are all very secure," but that the airline didn't pierce the limit on its primary aggregate hull/war coverage, said David Beyer, director of risk management at Alaska Air Group Inc. companies, based in Seattle.

Such policies typically have an annual aggregate limit based on the value of the maximum number of aircraft at any one location.

To meet the terms of financing and leasing requirements aircraft need to be fully insured, so Alaska worked with its broker to purchase excess aviation hull/war coverage through the Lloyd's of London market.

The additional coverage was "very reasonably priced," Mr. Beyer said.

Swiss Re Ltd. has introduced a new coverage for insurers known as "Sleeping Beauties."

"We realized early on when planes were being grounded there was an accumulation of assets for airlines. A lot of their fleets were being stored in the same location, and this created concentration risks for our clients, the insurance entities," said Greg Schiffer, Armonk, New York-based head of special lines reinsurance at Swiss Re.

The coverage uses data from Swiss Re's aviation tool 'Goldeneye' to quantify the exposure per airline and location and then overlays the reinsurance protection insurers have to see where they may have gaps, he said.

U.S. airlines parked 65% or more of their fleets in the second quarter, as passenger demand declined more than 90%, Moody's Investors Service Inc. said in a July report.

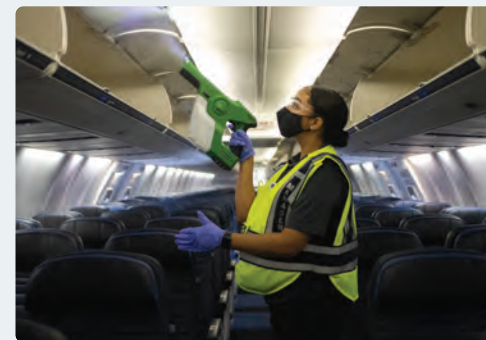
Concentrations of risk were already a heightened concern in the aviation sector before COVID-19, for both U.S. and international airlines, said Brad Meinhardt, Las Vegas-based managing director of Arthur J. Gallagher Inc.'s aerospace practice.

The grounding of Boeing 737 MAX aircraft in March 2019 due to safety concerns meant that many airlines were looking for storage holds, he said.

During COVID-19, the problem has expanded to include other aircraft. "We've moved beyond the MAX to the regular fleet of aircraft that aren't flying and need a place to go, and those exposures are significant," Mr. Meinhardt said.

Claire Wilkinson

CORONAVIRUS-RELATED LIABILITY TOUGH TO PROVE AS AIRLINES ACT TO LIMIT TRANSMISSION IN FLIGHT



Potential COVID-19-related liability claims against airlines face an uphill battle because proving causation will be challenging for plaintiffs, legal experts say.

As major U.S. airlines take steps to protect passengers and crews such as requiring masks to be worn on board and blocking off middle seats, COVID-19 lawsuits against airlines so far appear to mainly involve issues related to refunds.

Christopher B. Kende, a New York-based defense attorney at Cozen O'Connor, said he has not seen any case in which the claim is for having contracted the virus while on board an aircraft, though there are many against the cruise industry involving passenger vessels.

"My sense is that, given the incubation period and causation issues, any such claim would be challenging," Mr. Kende said.

The Centers for Disease Control and Prevention has indicated that symptoms may appear as late as 14 days after exposure to the virus. This would make it difficult for passengers to prove they caught the virus while on the aircraft, he said.

Airlines must take precautionary steps to understand their potential liability and be prepared to defend their response to protect passenger health and safety, said Elaine Solomon, Philadelphia-based partner at Blank Rome LLP, in written comments.

Airline liability would depend on an analysis of whether the airline knew or should have known that a passenger or crew member posed a health risk and took reasonable steps to protect passenger health and safety, and/or whether the airline's response was reasonable once on notice of the risk, she wrote in a recent brief.

A public health investigation into a March 2 flight from the United Kingdom to Vietnam suggests transmission by one passenger to up to 14 other passengers and one crew member.

That is the only event known to the International Air Transport Association of likely onboard transmission to a number of people, the Montreal-based airline trade association said in an Aug. 6 report.

On Sept. 22, IATA called for COVID-19 testing for all passengers before departure.

Multiple airlines have started offering complimentary COVID-19 insurance for certain passengers booking flights in a bid to restore customer confidence. The insurance typically covers medical and quarantine costs incurred by passengers who contract COVID-19 while traveling.

Claire Wilkinson

issue coming up for airlines in the fourth quarter, he said.

Minimum premiums are already being applied in the market, according to Mr. Meinhardt.

"Irrespective of what happens in the world and irrespective of return provisions like layup credits," insurers want a minimum premium, such as 80% of the premium that they quote, he said.

Minimum premiums are one way for underwriters to ensure they get appropriate premium coverage for the risk, regardless of how much exposures drop, said Jason Saunders, Atlanta-based president of Willis Towers Watson Aerospace, a unit of Willis Towers Watson PLC.

Many renewal discussions are beginning earlier than in the past, and the idea of minimum premiums is being discussed, Mr. Saunders said. "We really don't know what the end game is for COVID and what its impact will be on the airline industry," he said.

David Beyer, director of risk management at Alaska Air Group Inc. companies, based in Seattle, said minimum premiums are not something that has been experienced in the past on aviation renewals.

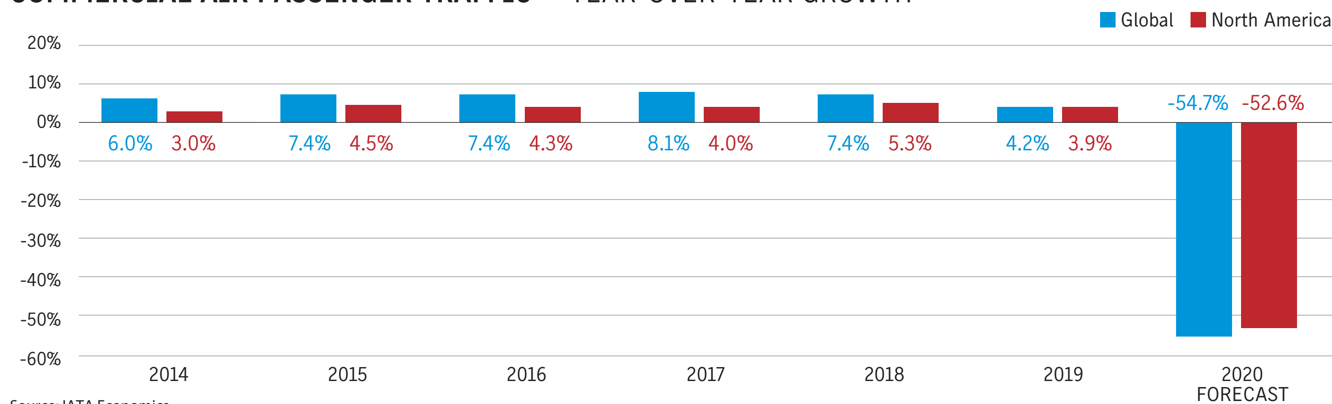
"I expect it will be a negotiating point for a renewed policy," Mr. Beyer said. "I do understand where the insurers are coming from and wanting a guarantee and we'll just have to see how that plays out in the negotiating process."

Mr. Beyer expects capacity changes in the aviation insurance marketplace come December or during the fourth-quarter renewal.

As passenger numbers have declined, so the amount of insurable risk going into the aviation market is much lower, he said.

"I would assume that insurers are going to want to increase rates to try and make up some of the revenue that they would be losing insuring on a renewal rate basis, but we're not there yet. Those conversations don't occur until November in a typical market," Mr. Beyer said.

COMMERCIAL AIR PASSENGER TRAFFIC — YEAR-OVER-YEAR GROWTH



Unlike some other airlines in the worldwide marketplace, Alaska Airlines hasn't been a "loss-intensive carrier," so it has been somewhat insulated from the rate pressure other airlines may have seen, he said.

"There have been some increases, and some decreases, the last few years. It's a typical market of ups and downs," he said.

The challenge is that while the aviation insurance industry is trying to make a profit after eight consecutive years of losses, the airline industry is "literally fighting for its survival," Mr. Saunders said.

"Trying to get one to understand the needs of the other is going to be difficult if both sides don't listen. … The aviation insurance community has been quite flexible in its approach — some more than others — to assist airline clients during this unprecedented time," he said.

Insurers have been professional in explaining why they need rate increases and the pressures that they are under, said Brian Glod, New York-based U.S. aviation practice leader at Marsh LLC.

The airline market is seeing a wide range of rate increases, with insurers, and even single insurers, treating different segments of the market differently, he said.

In general, rate increases are more than double-digit or at least double-digit, Mr. Glod said. "We have a situation where it could become emotional, and if it becomes emotional by buyer or insurer it's a powder keg," he said.

It's unfortunate that rates have to rise when customers are facing challenges, but airline underwriters have been through a sustained period of unprofitability, Mr. Bruno said.

> "Insurers are going to want to increase rates to try to make up some of the revenue that they would be losing insuring on a renewal rate basis, but we're not there yet."
>
> David Beyer, Alaska Air Group Inc.

"The upward movement in rating is part of the market turn that started before the COVID crisis," he said.

Airline rates have been rising about 30% on average and that trend line continues anywhere in the range of 20% to 35%, with minimum premiums applied, Mr. Bruno said.

Meanwhile, insurers are scrutinizing airline accounts more closely, and aggregation risks due to idled aircraft have drawn more questions, brokers say.

Early in the pandemic almost every underwriter raised concerns about aggregation risks, Mr. Glod said.

In the U.S. the losses didn't mount as much as they potentially could have as airlines brought aircraft back into service, or perhaps retired aircraft altogether, he said.

The focus tended to be outside the U.S., where values, for example for blue-chip airlines in the Middle East, could be close to $20 billion versus a couple of billion dollars in aircraft in any one location in the U.S.

However, the issue remains a concern, and "we still get questions," Mr. Glod said.

As the pandemic intensified in the earlier part of the year, Alaska Airlines, like most others, parked some of its fleet, Mr. Beyer said.

"We took a scientific approach of choosing where we were going to park planes to make sense for us so that they would be spread throughout the U.S. in locations that we had established maintenance facilities," he said. "We divided them, so we didn't have too large numbers at any location."

NEWS ANALYSIS

Emerging liabilities fuel deep dig for coverage

BY MATTHEW LERNER
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Insurance archaeology, a specialty service born of long-tail environmental and asbestos litigation in the late 1970s, is seeing increased activity today in areas such as sexual misconduct and concussion claims, experts say.

Statutes in states including New York and California that allow victims of past misconduct to sue for damages despite legal time bars are fueling a need to reconstruct historical insurance coverages, along with long-time problem exposures such as product liability and asbestos.

"One aspect that is very current is all of the allegations of sexual abuse, and that can be for a whole variety of organizations," said Sheila Mulrennan, president of Insurance Archaeology Group in Rutherford, New Jersey. "Often the allegations cover a long time period, and many states have suspended the statute of limitations, so that's quite a problem now."

The number of childhood sexual abuse claims filed in the jurisdictions that have enacted so-called revivor statutes has increased. For example, 350 claims were filed by noon on the first day New York's Child Victims Act went into effect last year, according to Washington law firm Crowell & Moring LLP, which noted New Jersey and California may see increased activity as well.

> "The real value creation comes when you go back in time to find those companies with the most liberal policy wording. A disproportionate number of claims shift toward the earlier policy years."
>
> John Kelly,
> Hanover Stone Partners LLC

"Primarily now, most of the activity is in New York and New Jersey," Ms. Mulrennan said. "There has been significant legislation in New York and New Jersey that sent so many organizations scrambling to find out what their past insurance was so that they could respond to these claims."

"It can be in a number of different areas," said Donna Filippi, a senior vice president in the consulting solutions practice of Marsh Advisory, who oversees archaeology activities for Marsh LLC. "It can be revivor claims now that are going on in the abuse area. It can be for emerging torts like the concussion injuries over the last couple of years, or it can be for old standards like asbestos and environmental coverage. It crosses all lines."

"We assist clients by going back and reconstructing their insurance programs, to give them the ability to tender claims for long-tail legacy exposures that have just come to light," Ms. Filippi said. Generally, this involves a client's general liability or excess coverage, but can include other lines as well, she said.

The insurance archaeologist burrows through old files and records at brokers, insurers, in storage and elsewhere, and might also look for witnesses such as retired risk managers, brokers and others, sources say.

Insurance archaeology can also be brought to bear in product liability suits, said William Passannante, a shareholder in New York with policyholder law firm Anderson Kill P.C. The firm uses archaeology services "pretty often," he said. "At any given time, we'll have cases that are going through some type of archeology issue."

Insurance archaeology grew with the rise in long-tail injury litigation, much of which was associated with asbestos and environmental claims.

"This is an example of how an entire new industry can grow up as an offshoot of something else," said Carl Pernicone, an equity partner with law firm Wilson Elser LLP in Garden City, New York.

Long-tail injury litigation was much less frequent before the mid-1970s, Mr. Pernicone said.

A landmark 1971 asbestos liability case in a Texas federal court, *Borel v. Fibreboard Paper Products Corp.*, provided precedent for thousands of product liability, personal injury and property damage claims.

As later policies began excluding such exposures, especially during the 1980s liability crisis, policyholders looked to older policies for broader coverage.

"It's very important to identify those liability policies that were written before 1986, because they're broader and don't have the same exclusions as general liability policies have today," said John Kelly, founder and managing partner at risk consultants Hanover Stone Partners LLC in New York. "Many didn't have pollution exclusions."

The Insurance Services Office Inc. introduced stricter pollution exclusions in general liability policies in 1986.

"The real value creation comes when you go back in time to find those companies with the most liberal policy wording," Mr. Kelly said. "A disproportionate number of claims shift toward the earlier policy years."

"The reason why they want to go back in time is that the more recent policies are the ones more likely to have limitations in coverage," Mr. Pernicone said. "It becomes very attractive for policyholders in long-tail injury cases to reconstruct the older policies because of the likely absence of any exclusions."

Mr. Passannante encourages policyholders to keep their insurance policies "forever."

"An old insurance policy which covers a year in which there was an injury can be extremely valuable," he said.

PUTTING THE PIECES TOGETHER TO MAKE OR PROVE A CLAIM

Even if an old insurance policy cannot be located, it is possible to prove the existence of coverage using so-called secondary evidence.

"In most states, you are permitted to prove the existence of an old insurance policy through secondary evidence, such as a letter to the broker or a letter to or from a plaintiffs attorney discussing the insurance," said William Passannante, a shareholder in New York with Anderson Kill P.C.

Policyholders can also establish "bookends" to demonstrate coverage with a policy from, say, 1980 and 1983 together with evidence about consistency of coverage, to prove coverage for 1981 and 1982, Mr. Passannante said.

"Very good" secondary evidence of coverage in the absence of an actual policy form could be communication from an insurer or a certificate of insurance, said Donna Filippi, a senior vice president in the consulting solutions practice of Marsh Advisory, who oversees archeology activities for Marsh LLC.

Prior claims can also be secondary evidence of coverage, Ms. Filippi said. "If we can establish the insurer handled previous claims," this can help prove coverage during a period in question, she said.

While standards of evidence vary by state and negotiations can sometimes lead to litigation, "it is clear that you don't need to have an actual copy of an insurance policy — of an old occurrence-based general liability policy — to make or prove a claim," Mr. Passannante said.

Matthew Lerner

Employers face taxing time with remote work

BY ANGELA CHILDERS
achilders@businessinsurance.com

When the COVID-19 pandemic shut down businesses across the country, workers fled confined cities, decamping to the homes of friends and family, second homes and rentals. While many companies have found success operating with a newly remote workforce, some employers may be unaware of the insurance and tax implications of now having employees working across state lines, experts say.

"The workers compensation challenge is what's puzzling me," said Tracy Heay, Phoenix-based solution architect for Origami Risk LLC, noting that not only are workers no longer performing their jobs in their offices and may be scattered around the country, but those who are going into work may be in a state that has a COVID-19 rebuttable presumption law that puts the onus on the employer to prove that a worker did not contract coronavirus in the workplace.

Remote workers can pose a challenge if an employers' workers compensation policy does not protect employees in other states.

Employers need to contact their brokers to ensure their workers comp policies will cover those working temporarily in other locations, said Paul Fires, Philadelphia-based chair emeritus at Weber Gallagher Simpson Stapleton Fires & Newby LLP.

While typically an "other states endorsement will cover a business trip," if an employee is working in another state for a year, an employer may need to purchase a policy specific to the states where workers are residing, he said. "When someone has changed location for more or less permanent reasons, the other state's endorsement might be insufficient," he said.

The lack of appropriate workers comp coverage can create a dollar-for-dollar obligation on the part of the employer for medical costs and penalties if a worker is injured — and the loss of protection from the exclusivity provision, said Bob Robenalt, partner in the Columbus, Ohio, office of Fisher Phillips LLP.

Employers need to find out where their employees are physically to determine whether they are covered by the company's insurance, Ms. Heay said. Employers may also want to look at occupational accident insurance as an option if they now have a widely spread workforce, she said.

Not knowing where workers are can also cause tax implications for employers, experts say.

"The majority of employers are in a situation where they may not know where their employees actually are," said Eira Jones, San Francisco-based national U.S. employment tax leader at Deloitte Tax LLP. "Unless they've made some adjustments internally, a lot of employers are actually surveying employees to find out where they actually are and leveraging that data ... to establish their compliance requirements."

In these "unprecedented times," employers need to consider whether their newly remote workers may trigger payroll withholdings, corporate tax and/or sales tax in the states where they are performing their work, she said.

The payroll impact of having a remote workforce has "been such a hot topic for the past six months," said Eugene Ruvere, New York-based state and local tax partner at accountancy and advisory firm Citrin Cooperman & Co. LLP.

Payroll tax exposure is tied to salary, so employers need to weigh the risk vs. the time and effort of compliance, Mr. Ruvere said. A company with one employee working out of state at a salary of $100,000 a year, for instance, would have a minimal tax exposure of a few thousand dollars, he said.

While a handful of states have announced that they will not require employers to change their payroll to the state where employees are temporarily working during the pandemic, most have not offered guidance, leaving employers to speculate, Mr. Ruvere said.

Having a remote workforce creates a "multifaceted tax challenge," Ms. Jones said, including the question of when "nexus" is created — or when it is determined that the state in which the work is performed for an out-of-state company can collect tax on sales made in that state.

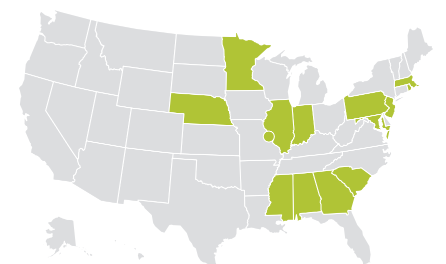
Another issue is when companies have negotiated a credit or incentive within a state based on employing a certain number of workers in that location, said Ed Kenawell, Pittsburgh-based national multistate tax services principal for Deloitte Tax LLP. Companies that now have employees working in different states or jurisdictions may lose those incentives, which can be multimillion-dollar deals, he said.

Sales tax is also a concern, particularly if employees are buying items — software for example — to perform their work in a different state, Mr. Kenawell said.

REMOTE WORKING TAXES BY STATE

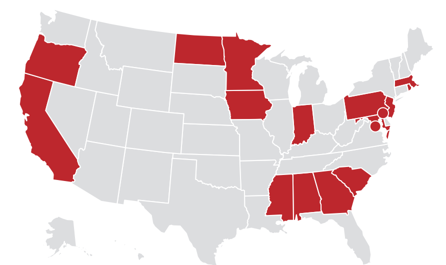
Thirteen states and one city have declared that newly remote workers can continue to have their business withholding tax based on the state where the employer is located, not where the employee is temporarily working. Those are:

Alabama, Georgia, Illinois, Indiana, Massachusetts, Maryland, Minnesota, Mississippi, Nebraska, New Jersey, Pennsylvania, Rhode Island, South Carolina and **St. Louis.**



Fifteen states and two cities permit businesses to adhere to work locations for state and local taxes purposes during the pandemic and allow companies the option to use their employees' work locations for payroll withholding and nexus during the pandemic. Those are:

Alabama, California, Georgia, Iowa, Indiana, Massachusetts, Maryland, Minnesota, Mississippi, North Dakota, New Jersey, Oregon, Pennsylvania, Rhode Island, South Carolina, Philadelphia and **Washington D.C.**



Source: American Institute of Certified Public Accountants

COMP COVERAGE QUESTIONS ARISE AS WORKFORCE SPREADS

With 2020 winding down, employers need to consider the insurance and tax implications if their workforce continues to be scattered around the country through 2021 and into the future, experts say.

"The pandemic is going to accelerate more of that workforce move to remote, and I think that is going to ... become a permanent solution for a lot of employers," said Bob Robenalt, partner in the Columbus, Ohio, office of Fisher Phillips LLP. While employers may save money on the costs of maintaining a building, they are "going to need to stay on top of" workers compensation, including ensuring that comp policies cross state lines to cover workers, he said.

Another issue is whether choosing not to bring workers back creates tax implications, said Ed Kenawell, Pittsburgh-based national multistate tax services principal for Deloitte Tax LLP.

In some states and jurisdictions, the "convenience of the employer rule" can also come into play. For instance, under New York's rule, an employer is required to withhold New York state income tax from all wages paid to the employee if the employee spent at least one day in the year in New York and the reason the employee is working from home outside of the state is for the employee's own convenience.

"But if the office in New York is closed, can the convenience of employer rule really apply?" Mr. Robenalt said. "The COVID crisis is sort of testing some of these lines on how all this gets paid. It's definitely something employers should look at and investigate to make sure they're taking steps to take payroll out of the appropriate state."

Angela Childers

PROFILE: KUWAIT

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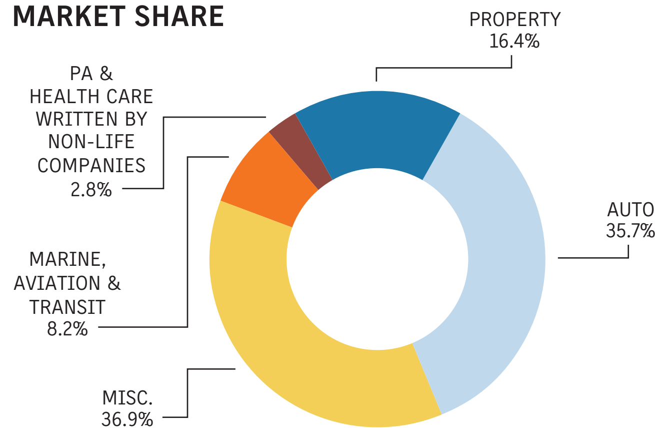
GLOBAL P/C MARKET RANKING

The Kuwaiti insurance market is one of the smallest in the Gulf Cooperation Council. It is heavily influenced by auto business, which in 2018 accounted for 40.5% of all nonlife premium income (conventional and takaful combined) and by energy and energy-related business.

Growth in the market has been slow in recent years. In 2018 the total gross written premium for all classes (conventional and takaful) was KWD 449.13 million ($1.48 billion), of which KWD 201.19 million was nonlife business. Of this amount, KWD 141.29 million was written by conventional insurance companies.

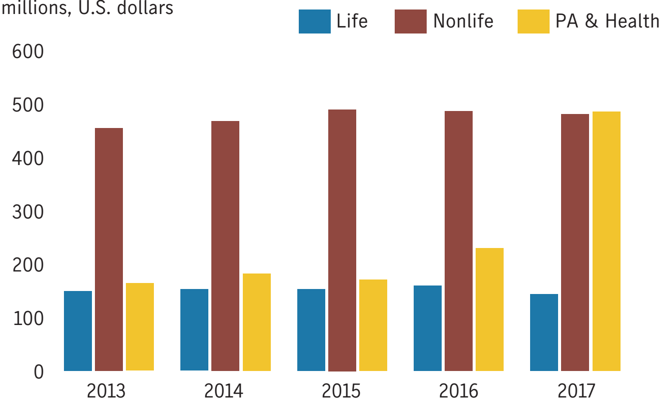
With the increase in the number of companies operating in the market in recent years — combined with the rapid emergence of a takaful sector — Kuwait remains one of the most competitive nonlife markets in the region.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA

6,880

square miles

POPULATION

2.99

million

MARKET CONCENTRATION

71.1%

market share of top five insurers

2020 GDP CHANGE (PROJECTED)

(1.1%)

MARKET DEVELOPMENTS

Updated September 2020

- The long-awaited new insurance law, Law No 125 of 2019, took effect on March 1, 2020. It regulates insurance companies and brokers and includes provisions for establishing a new insurance supervisory authority. The new regulator, the Insurance Regulatory Unit, has been formed within the Ministry of Commerce but has not yet commenced full operations.
- Several ministerial resolutions were promulgated in 2019. The most significant of these regulate actuarial services and require all insurance companies to appoint a Kuwaiti compliance supervisor and an actuary.
- The Kuwait National Development Plan, launched in 2015, has continued this year with 135 projects underway to improve infrastructure, provide better health care facilities and help the economy and the environment. Despite some postponed or delayed projects, this plan is responsible for much of the growth in market premium income in recent years. An economic recovery was anticipated in 2019, but this failed to happen.
- Nonlife gross premiums written by the national insurance companies decreased by 4.14% in 2018, whereas the total Kuwaiti premiums written by all insurance and takaful companies grew by 0.23%.
- Auto insurance business continues to dominate national takaful companies' nonlife accounts. Auto business in Kuwait is traditionally loss-making as auto third-party liability premiums have not increased since 1991.

COMPULSORY INSURANCE

- Auto third-party liability for death, bodily injury and property damage
- Workers compensation for workers in the private sector
- Professional indemnity for insurance consultants
- Shipowners' liability against marine oil pollution (financial guarantee or insurance)
- Liability insurance for air carriers for injury to passengers and damage to baggage or goods during international journeys

NONADMITTED

Nonadmitted insurance is not permitted for real estate or property situated in Kuwait because the law provides that this type of insurance must be purchased from locally licensed insurers. The insurance supervisor considers that auto insurance should be placed with a locally licensed insurer, although the law makes no specific mention of this. Professional indemnity for insurance consultants and workers compensation insurance may not be placed on a nonadmitted basis.

INTERMEDIARIES

Brokers and agents must be authorized by the insurance supervisor to carry out insurance business in Kuwait. Intermediaries are not allowed to place insurance with nonadmitted insurers for real estate and property situated in the country, or auto insurance, workers compensation or professional indemnity insurance for insurance consultants. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Most insurance policies are placed with locally licensed insurers, although there are some cases in which policies are placed directly into the international market. Government entities place all their insurance business with national conventional and takaful companies.

Information provided by Axco.
For free trial access to global insurance intelligence, visit axcoinfo.com.

LEGAL BRIEFS

Pro wrestlers´ injury lawsuits dismissed

■ A federal appeals court in New York dismissed several consolidated lawsuits filed by more than two dozen former professional wrestlers who claimed their work for World Wrestling Entertainment Inc. caused "significant" lifelong mental and physical ailments.

The wrestlers alleged that due to physical trauma they experienced while performing, they suffered neurological damage resulting in diseases such as the degenerative brain disease chronic traumatic encephalopathy, according to documents in *Haynes v. World Wrestling Entertainment Inc.* At least one of the wrestlers claimed that WWE withheld information on risks associated with wrestling, according to documents.

The lengthy list of plaintiffs includes Chris Pallies, who performed under the stage name "King Kong Bundy" and died last year, and the families of Jimmy "Superfly" Snuka, who died in 2017, and Harry Masayoshi Fujiwara, otherwise known as "Mr. Fuji," who died in 2016.

The most recent appeal arose from seven cases consolidated in the U.S. District Court for the District of Connecticut, which dismissed all of the cases by 2018, concluding that the plaintiffs had "not produced evidence establishing that WWE knew of a risk of permanent degenerative neurological conditions prior to September 2007, when a widely publicized report … discussed those conditions."

The district court also concluded that "no reasonable jury could find that WWE concealed the dangers allegedly associated with wrestling."

The 2nd U.S. Circuit Court of Appeals affirmed the dismissals, citing no "plausible actions" and saying that some of the claims were time-barred or frivolous.

Arbitration clause foils captive class action

■ Microcaptive owners who alleged they were duped into breaching U.S. tax laws when they formed their captives can't bring a class action lawsuit against their captive manager but must instead arbitrate their disputes individually with the Arthur J. Gallagher & Co. unit, a federal appeals court ruled.

Affirming a lower court ruling in *Dimitri Shivkov v. Artex Risk Solutions Inc.*, the 9th U.S. Circuit Court of Appeals in Seattle held that the arbitration agreements in the contracts were enforceable despite the captive owners' allegation that the clauses in the "less than 10-page agreements" had not been fully explained to them.

In the original suit filed in December 2018, a group of Arizona-based individuals and their related businesses said they had to pay back taxes, penalties and interest to settle IRS investigations over their use of so-called 831(b) captives.

The plaintiffs alleged that Artex knew or should have known that the captive insurance strategies it promoted were abusive tax shelters.

In compelling arbitration, the appeals court ruling states that although the captive owners assert the captive manager "breached a fiduciary duty to point out and fully explain an arbitration clause, they identify no state law authority recognizing such a duty."

In addition, the arbitration agreement in the contracts is enforceable after the termination of the contracts, the court ruled.

Chubb in fight over Affleck movie delay

■ The producers of a planned thriller starring Ben Affleck, whose April production start date was postponed because of COVID-19, sued a Chubb Ltd. unit over its refusal to extend its insurance coverage to accommodate the delay.

Los Angeles-based Hoosegow (Hypnotic) Productions Inc. had a producers risk policy with Chubb Ltd. unit Chubb National to cover the production of the film "Hypnotic," according to the lawsuit *Hoosegow (Hypnotic) Productions Inc. vs. Chubb National Insurance Co.* filed in U.S. District Court in Los Angeles.

The policy, which expires in October, provides $58 million of production media coverage per occurrence, $58 million of media perils coverage per occurrence and $58 million of declared person coverage per occurrence, in addition to other coverages, according to the complaint.

After production was shut down because of the pandemic, Hoosegow sought to extend its coverage's expiration date, but Chubb "categorically refused" to do so, according to the complaint.

Instead, it said it would provide coverage "with a material reduction in scope of the insurance," including the addition of an exclusion applicable to COVID-19-related losses, "thereby depriving Hoosegow of coverage that it had purchased and that was promised under the existing policy."

The complaint charges Chubb with breach of contract, tortious breach of the implied covenant of good faith and fair dealing, fraud and negligent misrepresentation.

Hoosegow is one of hundreds of businesses across the United States that have filed COVID-19-related lawsuits against their insurers. (See story, page 4.)

Walmart to pay $20M to settle EEOC suit

■ Walmart Inc. will pay $20 million to settle a U.S. Equal Employment Opportunity Commission lawsuit and stop using a pre-employment test that allegedly disproportionately excluded female applicants, the agency said.

Walmart said in a statement that although it agreed to discontinue the test, it believes it was nondiscriminatory.

The EEOC said in its statement that Walmart conducted the physical ability test, known as the PAT, as a requirement for applicants to be hired as order fillers at Walmart's grocery distribution centers nationwide and that it disproportionately excluded female applicants.

It said this violated Title VII of the Civil Rights Act of 1964, which prohibits tests that are administered to all applicants and employees regardless of sex but have a discriminatory impact on a particular sex or any other demographic category.

The EEOC had filed suit against Walmart in U.S. District Court in London, Kentucky, in August.

EEOC Regional Attorney Kenneth L. Bird said in a statement, "The parties were able to reach an early resolution of this case due to Walmart's willingness to engage in settlement discussions. Distribution center jobs provide good career opportunities for women when sex-based barriers to hiring for those jobs are removed."

Walmart said in its statement that it introduced the test "based in part on the recommendation of the EEOC.

"The test was created and validated by third-party experts and designed to determine if applicants for the order filler position could perform the job requirements.

"We continue to believe that the test was non-discriminatory, however we have agreed to discontinue it, which is consistent with the company's efforts to accelerate and streamline the hiring process across the business."

DOCKET

FORD DOESN'T HAVE TO PAY FOR MASSAGES

Ford Motor Co. does not have to cover massage therapy for an injured worker in part because the treatment was not prescribed by a doctor, an appeals court in Michigan ruled. Russ M. Belcher was injured in 2006 while working for the automaker and required medical treatment for injuries to his back and right leg and for headaches. Although he was not referred to massage therapy by his doctor, he chose to begin receiving it in October 2014 after his physical therapy was terminated.

TRIP-AND-FALL SUIT VS. CARNIVAL REINSTATED

A federal appeals court has overturned a lower court ruling and reinstated a personal injury lawsuit filed by a Carnival Corp. passenger who hurt her leg and knee in a trip-and-fall, ruling there was evidence the company may have known about a dangerous condition on its ship. Paulette Bunch injured her right leg and knee as she was exiting the aerobics room and entering the gym on Carnival Corp.'s Glory cruise ship, according to the ruling by the 11th U.S. Circuit Court of Appeals in Atlanta in *Paulette Howard Bunch v. Carnival Corp., a.k.a. Carnival Cruise Line*.

INSURER NOT ON HOOK IN TRAMPOLINE CASE

A Tokio Marine Group unit insurer is not obligated to defend or indemnify a dance and performance company for an accident involving a trampoline under a policy exclusion, a federal district court ruled. Shana Guins was seriously injured in 2018 while participating in an acrobatics class at Streb Inc. in Brooklyn, according to the ruling by the U.S. District Court in New York in *Philadelphia Indemnity Insurance Co. v. Streb Inc.* She was attempting a "dive roll" or a "front roll" from a "mini-trampoline" when she tumbled forward and landed on her neck and back, causing severe injuries. She filed suit against Streb in state court, where litigation is ongoing, according to the opinion.

R!SK PERSPECTIVES

A formidable year for healthcare heroes

COVID-19 risks are challenging, but providers have allies

By Leo Carroll | Head of US Healthcare, Berkshire Hathaway Specialty Insurance

The ability to rise to the occasion is admired in most working environments. Nowhere has that been more evident — and worthy of praise and gratitude — than in the healthcare industry during the coronavirus pandemic. As the novel virus has spread around the world, healthcare providers continue to make heroic efforts to treat patients and combat the disease.

2020 will enter history as an exhausting, stressful year for most of us, and especially for physicians, nurses and caregivers. COVID-19 has taken a terrible toll on our healthcare professionals, turning a global crisis into a personal one. Not only are they at greater risk of infection, but they also are experiencing mental health burdens that, for some, lead to depression and burnout.

A study in The Lancet found that the rate of COVID-19 infections in front-line healthcare workers in the United States and United Kingdom in April 2020 was more than 10 times that of people in the general community. According to the study, the prevalence of COVID-19 infections was 2,747 per 100,000 front-line healthcare workers, vs. 242 per 100,000 people in the general community.

Burnout and stress have long been associated with healthcare careers, and COVID-19 has introduced additional stressors to the daily lives of clinicians and caregivers in hospitals and senior care facilities. From initial shortages of personal protective equipment and other supplies, to widespread restrictions and quarantine measures that have increased feelings of isolation, the pandemic has made the important work of delivering care far more challenging.

Recently published research by professionals at the Harvard Medical School found that physicians experiencing burnout have worse patient safety outcomes, lower patient satisfaction scores and are at greater risk of depleted energy. Unaddressed mental health conditions can lead to a cascade of concerns, to patients as well as physicians.

Compounding risks

Healthcare organizations and their staffs were under significant pressure before the pandemic emerged, with operational challenges and rising liability exposures. With COVID-19, those risks are

compounding. Even as some state and federal laws offer limited immunity to healthcare providers, organizations continue to operate in a litigious environment. The pandemic has temporarily slowed judicial processes, but eventually the pace of litigation and trials will resume. When that occurs, litigation against healthcare providers could be the next stressful wave that follows the pandemic.

Therefore, the need to support healthcare professionals and provide resources in managing their daily challenges is greater than ever. Among the many challenges in healthcare during the COVID-19 era that require priority attention and support are:

- **Burnout.** The pandemic has exposed shortages of key resources, and the most vital is healthcare professionals themselves. As the intensity of COVID-19 cases deepened around the world, hospitals' patient capacity reached its limit. At times, physicians moved from their specialty practice areas to support emergency medicine clinicians in treating coronavirus patients. Staff shortages have increased the risk of burnout, which can contribute to elevated risk of substance dependency and depression. Healthcare organizations are compassionate by their very nature and continue to recognize signs of stress and take active measures to address it before it evolves into burnout.
- **Turnover.** Facilities across the healthcare and aging services spectrum, from acute care hospitals to ambulatory clinics to long-term-care facilities, all struggle with adequate staffing. The pandemic has amplified that challenge, and unfortunately turnover remains a major hurdle. Research published in January 2020 by the National Center for Biotechnology Information indicates the turnover rate in nursing, for example, is between 8.8% and 37.0%, depending on geography and specialty. This high rate of turnover is leading to an estimated shortage of 1 million nurses.
- **Errors and inconsistencies.** High patient-to-provider ratios during a time of talent shortages are inevitable during public health emergencies. The obvious downside to such high ratios is an increase in the potential for errors and treatment inconsistencies, leading to patient safety incidents, readmissions and potential harm to an organization's reputation for patient satisfaction.

Risk management allies

Despite the constant presence of daily challenges, Healthcare's heroes are doing amazing work in difficult conditions. It's largely due to their efforts that so many lives have been saved as the pandemic persists. In addition to the national gratitude and respect during this crisis, healthcare providers deserve every reminder and act of kindness from their allies committed to supporting them.

Managing risk collaboratively in healthcare enables providers and organizations to fulfill their mission, make the best use of vital resources, and to improve patient outcomes. Working with experienced partners and allies committed to supporting front line healthcare heroes — before, during and after the pandemic — makes a difference. For more information about solutions and resources, please visit www.bhspecialty.com.

Leo Carroll is Head of US Healthcare at Berkshire Hathaway Specialty Insurance. He is responsible for the strategic growth and performance of the group's Healthcare Professional Liability products.

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For more information, contact info@bhspecialty.com

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James Shea

ZURICH INSURANCE

James Shea joined Zurich Insurance Group Ltd. as CEO Commercial Insurance in 2016 after spending more than 20 years at American International Group Inc., where he began as a financial institutions underwriter. His career has included a variety of roles across the globe, including stints in his native Canada, the United States, the United Kingdom, France, Japan, Singapore and now Switzerland. In his current role, he oversees Zurich's large commercial and middle-market property/casualty business globally. He recently spoke with *Business Insurance* Editor Gavin Souter about the effects of COVID-19 and the hardening market on policyholders worldwide, and Zurich's commercial insurance strategy. Edited excerpts follow.

Q How has COVID-19 and the economic fallout affected policyholders globally?

A It varies by different types of customers. When you look at a company such as Zurich, where we have large corporate, middle market, small business, individual consumers, life customers, travel business, all were impacted differently. The impact on the middle market and above has been more of an earnings event, though, of course, there are segments such as travel and airlines where it's been much more impactful. For small businesses, the impact has been much more substantial as it becomes a solvency event.

Generally speaking, in my area it's a challenging event but an earnings event for many of our customers.

Q What's the knock-on effect to the insurance market?

A We call it a hard market now, but the market has been changing since the second quarter of 2019. It started in the United States — less capacity, premiums increasing substantially — and then, as we went around the world, it started in the United Kingdom in the third quarter, and in continental Europe, because of the dominance of the Jan. 1 renewal period, the first go around was Jan. 1, 2020.

So, COVID-19 didn't create the hard market but it may be accelerating some of the changes. Some companies, probably due to the financial market impact in March and April, had to take another look at their capacity deployment in terms of capital available, and some raised capital.

As we went through renewals, the changes in the market that began last year continued in the first half of this year, and we certainly expect it to continue in the remainder of the year and the early part of next year.

Q Are you seeing pushback on increases due to financial difficulties?

A We are very sensitive to the situation. Customers are looking at their insurance spend and they are seeing internal pressures on costs. For many companies it is a significant annual spend. The main conversations we are having is on ways they can restructure programs. We are seeing a lot of customers retaining more risk through captives and other means and looking at whether they should buy the same limits they have purchased in the past number of years.

So you are seeing a lot of customers reevaluating the structure of the programs they have, and instead of saying, "This is what I need," they are saying, "This is what I want to spend and how can we structure it differently?" In most cases, the outcome is either less capacity or higher retention on the part of the customer.

Q Are insurers changing wordings in light of COVID-19 and the civil unrest that affected the U.S. and other countries earlier this year?

A For the vast majority of policies, we are very clear on our wordings and the coverage that's provided, so we haven't changed anything in terms of appetite for the coverage that we are offering.

Generally in the market, during the softening market you had a lot of manuscript wordings and broker wordings, but even before COVID-19 you saw a migration back to carrier wordings, which in general provided better clarity.

We are comfortable with the wordings we have, and if we do make a change it's more of a clarification.

Q How do you do site visits and other risk engineering tasks in this environment?

A We've been able to deploy remote risk assessments through videos and working with customers our risk engineers have continued to perform assessments of sites remotely. I would never say it's a substitute for an onsite visit, but we've been able to keep that momentum going.

Q Where do you see opportunities for growth?

A Zurich went through some challenges a few years ago in terms of re-underwriting and repositioning the portfolio and so we've entered this period probably less distracted than some of our peers, so I think we are in a good position as we enter this market.

We have a strategy in terms of what we want to see in terms of portfolio balance, business mix and how we like to select risks. As this market cycle evolves, it's important that we're continuing to invest and get the right portfolio and stick to the strategy that will see us through the cycle.

There are opportunistic times to grow, and we certainly see opportunities in the marketplace, but they have to be consistent with our strategy.

Q How would you summarize that strategy?

A Three or four years ago our exposure to long-tail liability business was probably too high, so we rebalanced it with investments and growth in some specialty, more niche lines, and property has certainly presented some opportunities, so we feel we've reached a better balance in portfolio mix from large customers to the middle market.

In terms of geographies, the U.S., Canada and Europe make up the majority of our commercial businesses, but we've made some investments in Latin America and we see opportunities in Asia to grow, so we are getting a real mix across the geographies and that will continue as our strategy.

Q What do you see as the biggest challenges that you face as a commercial insurer?

A I don't have a crystal ball, but we expect this market to continue through the end of this year and into 2021, but eventually it will flatten and move in a different direction. It's important not to get too enthused about things that might look like a great opportunity but are outside our risk appetite. The investments that we've made in people and technology will enable us to manage through the cycle.

"COVID-19 didn't create the hard market but it may be accelerating some of the changes."

NURSING HOMES FACE CONTINUED THREATS IN COVID-19 RESPONSE

High death toll highlights chronic need for better virus testing, more staff and adequate personal protective equipment

BY LOUISE ESOLA

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When frail, elderly residents at a Seattle-area nursing home developed coughs and fevers earlier this year, medical staff suspected they were dealing with an obvious case of influenza, but when tests came back negative it was clear that something else was happening.

Later, the operators of the facility, which was hit with the first known outbreak of COVID-19 in a nursing home in the United States, said in an online statement that "no medical professional or health care facility was prepared to fight" what became an unprecedented health care crisis.

By the time COVID-19 had swept through Life Care Center of Kirkland, Washington, a suburban 190-bed facility, throughout February and March, dozens of residents had succumbed and dozens of workers fell ill.

Life Care Center of Kirkland, which declined to comment, publicly put the death toll among residents at 39 — nearly one-fourth of its beds. The Centers for Medicare and Medicaid Services fined Life Care $611,000.

"When I heard about Kirkland … I knew what was coming," said Dr. Michael Wasserman, Thousand Oaks, California-based president of the California Association of Long Term Medicine, who has spent three decades in geriatric medicine.

Serving as the medical director of the Eisenberg Village nursing home in Reseda, California, he assessed the immediate future while processing the news. "This would be the worst thing that hit nursing homes in our lifetime," he said.

Elderly patients are often more at risk to disease due to weakened immune systems and comorbidities such as heart disease and diabetes, or the effects of old age such as organ failure, according to medical literature. When those vulnerabilities are coupled with the regular needs of nursing home residents, facilities trying to cope with an easily transmittable, highly infectious disease face the "worst of all worlds," said Dr. Terrence O'Malley, a Boston geriatrician at Massachusetts General Hospital and medical director of Marquis North End, a nursing facility.

"What happens in a nursing home is you have a group of individuals (there) because they need hands-on care," Dr. O'Malley said. "They have functional impairments. They need help bathing and dressing and eating. They literally need somebody to help them with everything, and that is up-close and personal. That makes it hard for these people to isolate because they can't; because they

COVID-19

Continued from previous page

need someone to help them."

By April nursing homes in most major cities in the United States and abroad would report deadly outbreaks. By late September, more than 55,000 nursing home residents in the United States had died, making up about one quarter of the nation's COVID-19 deaths, according to the Centers for Medicare and Medicaid Services.

The problems that arose with the novel coronavirus were "all things that nursing homes have struggled with prior to COVID" when dealing with infectious disease outbreaks, said Priya Chidambaram, a Washington-based policy analyst with Kaiser Family Foundation's Program on Medicaid and the Uninsured.

In her analysis, Ms. Chidambaram found that one in three nursing homes nationwide in recent years reported either a staffing shortage or a lack of enough personal protective equipment, which are all issues that were highlighted during the pandemic.

Money is a factor, said Dr. Wasserman, who once served as the CEO of Los Angeles-based Rockport Healthcare Services, one of California's largest nursing home conglomerates, and has long called for reforms to the industry, including more money for safety equipment and more staff, such as a designated disease management specialist.

COVID-19 "is a wake-up call for the industry" in terms of risk management, he said, noting, however, that narrow profit margins keep nursing homes unprepared.

"Prior to COVID we were looking at between 40% to 50% of facilities experiencing infection control-related deficiencies. … That can be anything from staff not washing their hands to cross-contamination of equipment to not using PPE," Ms. Chidambaram said. "Nursing homes hit early in the pandemic weren't ready for something that was quite this aggressive as coronavirus."

By late summer, the spread of infections in nursing homes slowed and experts say a quick deployment of materials, new rules that included quarantining the sick and isolating vulnerable patients, and expanded testing for the virus have helped.

But some are wary of the coming flu season, as those at risk for severe reactions to COVID-19 are also at highest risk for complications from the flu. According to the Centers for Disease Control and Prevention, 70% to 85% of seasonal flu-related deaths are among people 65 and older. Outbreaks of flu in nursing homes are common, according to Ms. Chidambaram.

Public health officials in several cities are warning of the possibility of a "twindemic," where the usual flu outbreaks will exacerbate the strain on resources as COVID-19 cases continue to climb in the fall.

"We're going into the winter months and what comes with winter is flu season, so our facilities are really focusing on the effectiveness of infection control," said Alex Burton, Birmingham, Alabama-based managing director of Arthur J. Gallagher & Co.'s senior living practice.

Best practices include requiring the flu vaccine for both workers and residents, adequate testing for both types of virus, the availability of sufficient staff in case workers get sick, designating areas for sick patients and providing adequate personal protective equipment, according to experts. Mr. Burton said hiring a full-time infectious disease "preventionalist" to oversee a facility's plan is an essential step.

COVID-19 DEATHS BY THE NUMBERS

114,920

By late September U.S. Centers for Disease Control and Prevention data showed that 114,920 people in the U.S. ages 65 and older had died from the virus — 45,980 of them older than 85.

231,957

In late September, the Centers for Medicare & Medicaid Services reported 231,957 confirmed cases had occurred in nursing homes, with 55,845 residents dying of the disease — more than a quarter of U.S. COVID-19 deaths.

Of all the measures, Dr. Wasserman and Dr. O'Malley said regular testing of staff and anyone who has access to a nursing facility, many of whom can carry the COVID-19 virus while being asymptomatic, will be a top strategy.

"What needs to happen is that facilities have to set up procedures whereby they can rapidly identify anyone who comes into their building who is COVID-19 positive," said Dr. O'Malley. Workers at the facility he works at in Boston are tested weekly, and visitors are treated cautiously, he said.

"You have to limit who can come into your facility, and that includes contractors, clinical staff, families and patients from other facilities," Dr. O'Malley said.

"Very limited visitation" has been among the most effective policies put in place at facilities nationwide, said Joanne Wankmiller, Philadelphia-based managing director and U.S. senior care practice leader for Marsh LLC. "By and large long-term care (facilities) are not open to visitors," she said.

Availability of personal protective equipment is also a top concern. Assessments of whether adequate protective gear is available are mixed: Some nursing care and risk management experts say it hasn't been an issue in the months since the outbreak and some — including a number of state and national nurses unions — say equipment shortages are a safety concern.

Nationwide, from April 20 to Sept. 22, the U.S. Occupational Safety and Health Administration tallied 377 workplace safety complaints from nursing home workers, although the federal data does not break down complaints by alleged violation. As of September, numerous health care organizations in several states were facing fines in the tens of thousands of dollars for not having enough respiratory protection for health care workers.

Liz Spink, St. Louis-based health care practice leader for Lockton Cos., said nursing home operators are diversifying their suppliers of personal protective equipment to ensure they don't face shortages. Having backup suppliers will be essential, she said.

Lainie Dorneker, Miami-based president of IronHealth, a subsidiary of Liberty Mutual Insurance Co., is confident that nursing homes are better prepared for flu season than in recent years because of the focus on COVID-19.

And lower numbers of nursing home COVID-19 patients in the summer and into September indicate that "the infection control measures are working," she said.

One hole in strategies to prevent COVID-19 outbreaks could be employee burnout, said Dr. Benjamin Miller, a Chattanooga, Tennessee-based psychologist and chief strategy officer for Well Being Trust, a national foundation that provides resources on workplace mental health.

"With health care workers, more than half of workers experience burnout," he said, citing recent medical literature. "COVID hits and it exacerbates the problem. It's hard to sustain that type of go-go-go."

"Health care workers have spent the last six to seven months in absolute crisis," said Jeff Duncan, Boston-based senior vice president and chief underwriting officer in the health care practice of Liberty Mutual. "Nursing home staff have seen themselves as the last lines of defense; this trench warfare can weigh on anybody's mind." The result is "alarm fatigue and procedure fatigue," he said.

The risks of fatigue include lax safety practices that sometimes are not intentional, Dr. Miller said. "You stop seeing to all the details that you saw to before because you are so overwhelmed yourself."

Dr. Miller's advice is for organizations to "own it," admit there could be a problem and then provide employees resources for mental health. "There's a lot of trauma that is coming from long-term care facilities especially," he said. "Sometimes the helpers in these situations need the most help themselves."

PANDEMIC HITS ALREADY HARDENING LIABILITY INSURANCE MARKETPLACE

The insurance market for general liability, workers compensation, professional liability and medical malpractice for nursing home facilities continues to harden, a trend that was in place prior to COVID-19, experts say.

"COVID coming on has only accentuated the hardening of the market," said Alex Burton, Birmingham, Alabama-based managing director of Arthur J. Gallagher & Co.'s senior living practice. He said the senior living market saw prices begin to rise in 2018.

"You have rates increasing 40% to 200% plus" in professional liability and medical malpractice, particularly because of the pandemic-related risks, said Joanne Wankmiller, Philadelphia-based managing director and U.S. senior care practice leader for Marsh LLC.

For all lines related to long-term care, deductibles are up and capacity has reduced across the board, she added.

"It's the anticipated, potential mass litigation that comes with all of this," said Liz Spink, St. Louis-based health care practice leader for Lockton Cos. "It's a pandemic and there is so much unknown of what's going to unravel."

Exclusions are also changing, experts say. "Communicable disease exclusions are nothing new, but specific COVID-19 exclusions are a new development," Mr. Burton said. Exclusions barring punitive damages coverage are also new in the senior living market, he said.

"The only way for carriers to manage their business is to say, we can't take that on," said Ms. Spink, who is expecting more changes in the next several months.

For now, "with COVID and pandemics there have definitely been wording changes," said Lainie Dorneker, Miami-based president of IronHealth, a subsidiary of Liberty Mutual Insurance Co. "Things are changing more rapidly for long-term facilities."

For workers compensation, the pre-COVID-19 market was "quite soft" compared with other lines, but the pandemic "led to an almost instant hardening for nursing homes," said Jeff Duncan, Boston-based senior vice president and chief underwriting officer in the health care practice of Liberty Mutual.

As of early fall, nine states had passed COVID-19 workers compensation presumption bills and more than a dozen were considering such measures that would make the virus a compensable occupational illness, which contributes to the changes in the comp marketplace, according to experts.

"The big change in workers comp are the endorsements; language is being restricted, reduced or eliminated" with regards to communicable diseases, Ms. Spink said.

Louise Esola

Nursing facilities hit by increasing number of virus-related lawsuits alleging negligence

As COVID-19 cases in nursing homes continue to mount, families of residents and workers are going to court alleging negligence by some facilities.

In addition, state and federal regulators have started investigations, and workplace safety citations over a lack of personal protective equipment for health care workers are also trending, which some legal experts say could trigger more lawsuits.

With regards to litigation alleging negligence in some nursing home facilities, "the stories you are hearing is what's going on," said Dr. Michael Wasserman, Thousand Oaks, California-based president of the California Association of Long Term Medicine.

"There is nothing they could have done to prevent Kirkland," he said of the first documented COVID-19 outbreak in a nursing home, adding that once other nursing homes nationwide caught on to the dangers of the virus, "why weren't they testing their staff and providing PPE for all of them?"

The examples of lawsuits and investigations are many.

In July the family of a housekeeper who worked at a nursing home in Beaver, Pennsylvania, and died of COVID-19 filed a lawsuit against The Brighton Rehabilitation and Wellness Center, which was linked to at least 80 COVID-19 deaths and has a "long history of infection control violations," according to a statement from Saltz Mongeluzzi & Bendesky P.C. in Philadelphia. The case was moved to federal court in September.

That suit, which alleged negligence and a "long pattern" of unsanitary conditions at Brighton, preceded the execution of search warrants by the FBI in September. According to media reports documenting the raids, the FBI is also investigating another western Pennsylvania facility, Mt. Lebanon Rehabilitation and Wellness Center in Allegheny County. Both nursing facilities were linked to dozens of COVID-19 deaths. Officials at the facilities, which share the same ownership, could not be reached for comment.

In another lawsuit filed in July, the family of an 87-year-old resident at Redwood Springs Healthcare Center in Visalia, California, who died of COVID-19 is suing the facility alleging elder abuse, willful misconduct and wrongful death.

As of the summer at least two lawsuits had been filed against the Life Care Center of Kirkland, Washington, epicenter of the first documented nursing home outbreak.

In September the California Division of Occupational Safety and Health fined the Gateway Care & Rehabilitation Center skilled nursing facility in Hayward, California, $23,430, claiming that it exposed nurses and housekeeping workers to COVID-19 when it failed to follow requirements for providing necessary personal protective equipment.

Meanwhile, the New York State Senate in late September called for investigations into nursing home deaths.

Legal experts say to expect more investigations and lawsuits — everywhere.

Paralleling the litigation and investigations is a rise of immunity bills, laws and orders that shield some health care and nursing facilities from lawsuits related to COVID-19 unless negligence can be proven. As of early fall at least a dozen states either passed or were working on such measures.

Allegations "that nursing homes are responsible for the deaths of residents in their care is nothing new. ... Nursing homes house a vulnerable population," said Sara Lord, Washington-based partner in the litigation, government investigations and health care practice for Arnall Golden Gregory LLP. "The industry is anticipating litigation" related to COVID-19, she said.

"I think people on the outside who did not expect to lose their loved ones but have lost them to the coronavirus look for answers ... and so people who have lost relatives or loved ones to COVID look to the nursing homes to see whether inefficiencies within the nursing homes contributed in some way," she said.

Ms. Lord said the questions are many: "Did the facility have effective infection control procedures in place? Were proper hygiene practices followed? Were people who came into the facility, as caretakers, nurses, therapists, food preparers taking proper precautions to ensure that they didn't bring the virus with them into the facility?"

Louise Esola

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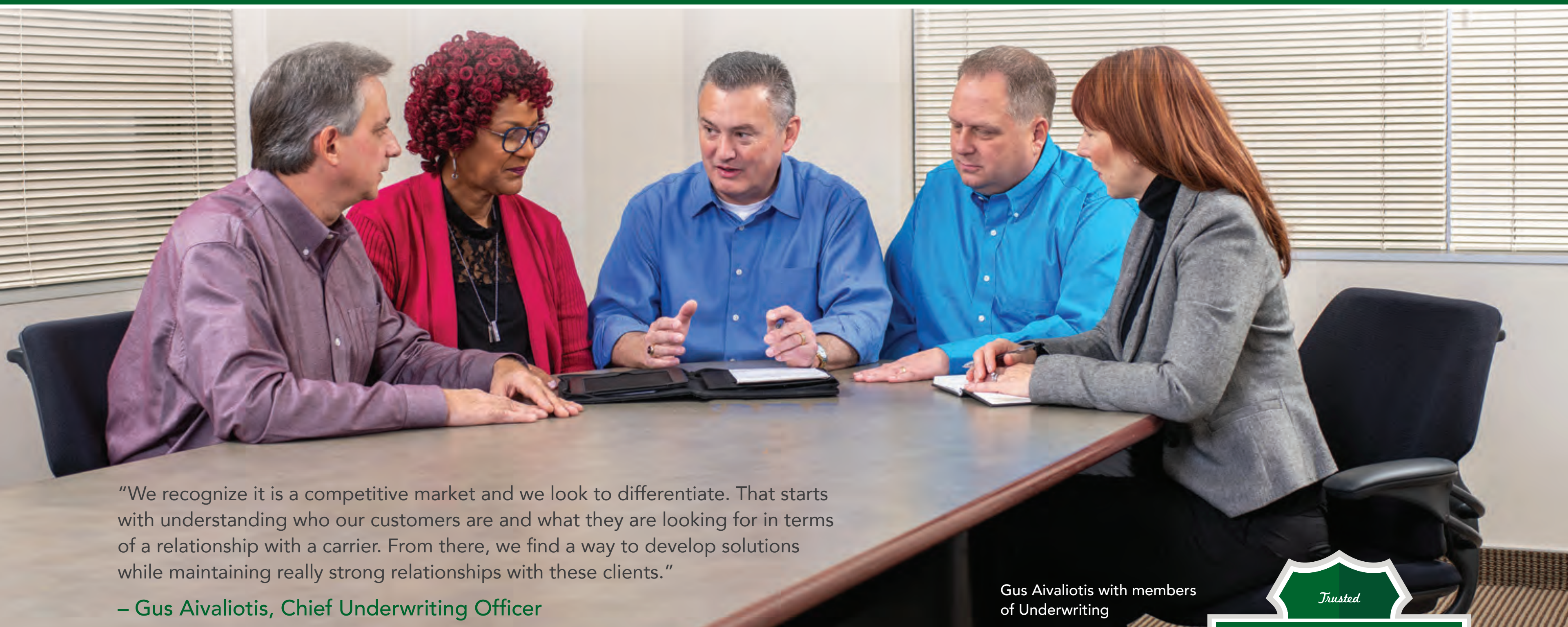

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RESILIENCE MEANS HAVING THE PLAYBOOK.

RESILIENCE IS A CHOICE.

Market adapts to pandemic, rates keep rising

INSIDE

VIRUS COVERAGE LOWDOWN
Market searches for clarity on coverage as claims pile up under old policies **PAGE 23**

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Buoyant catastrophe bond market, as end-of-year pace gathers momentum **PAGE 24**

REINSURANCE STATISTICS
Facts and stats on the largest reinsurers and brokers **PAGE 25**

BY GAVIN SOUTER
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The surge in reinsurance rates that began last year is expected to continue at year-end renewals and into next year.

While the extent of the rate hikes will vary by line of business, recent catastrophe losses, increased court awards and settlements, and low interest rates will continue to drive often sharp price increases, experts say.

Losses from the COVID-19 pandemic will also increase pressure on reinsurers, although from a practical standpoint the market has adapted well to placing business without the ability to negotiate face-to-face at the traditional reinsurance renewal meetings that for years had been held during the late summer and fall.

New capital entering the sector is not expected to significantly dampen the increases.

Year-end reinsurance renewal discussions traditionally start with the Rendez-Vous de Septembre in Monte Carlo, Monaco, in early September, which is followed by several other meetings, including the American Property Casualty Insurance Association's annual meeting.

All the major meetings were canceled or moved to a virtual format in response to the COVID-19 pandemic.

In interviews and during various webi-

nars and other online gatherings put on in lieu of the Rendez-Vous last month, reinsurers, reinsurance brokers and others said they expect reinsurance rates, which generally increased during 2019 year-end renewals and 2020 mid-year renewals, to keep rising in the coming months.

According to a survey of about 40 reinsurance buyers released by Moody's Investors Service Inc. in September, 90% of respondents expect price increases across all lines at year-end, and none foresee decreases, which compares with less than 50% expecting increases last year.

More than 50% of the respondents expect U.S. and Caribbean property rates to rise between 5% and 7.5%, and about 30% expect rate hikes of 7.5% to 15%.

Reinsurance executives at Aon PLC say rate rises will likely continue during the year-end renewal season.

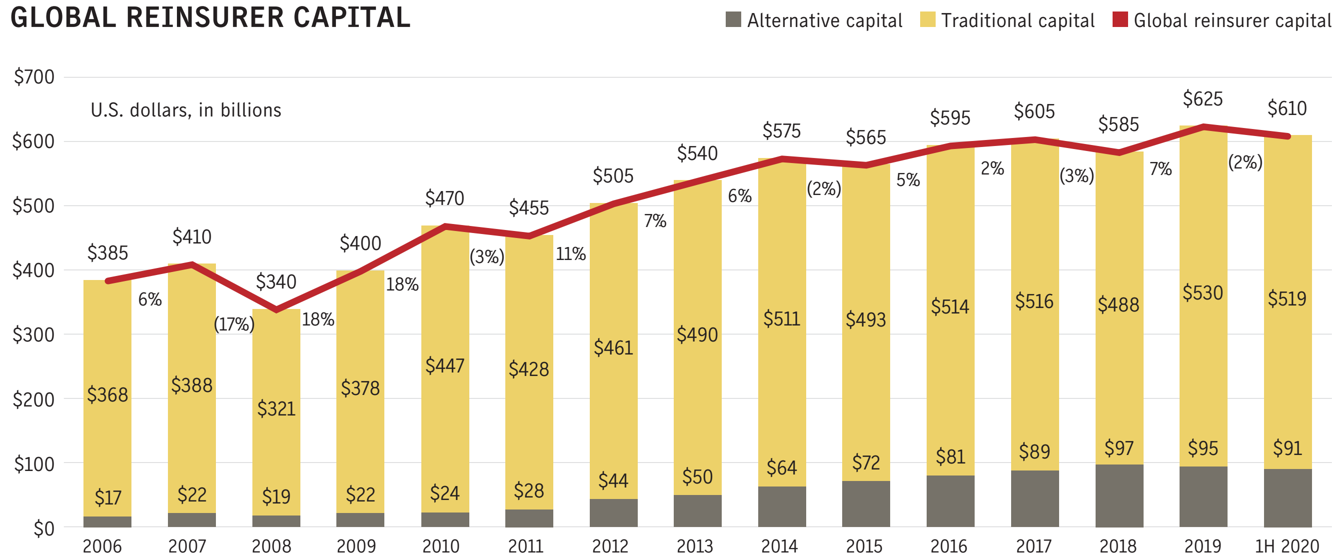
Reinsurers have faced "a confluence of impacts" on their business, including low interest rates, three years of high catastrophe losses, and high liability losses in the United States due to "social inflation" or increased court judgments and settlements, said Andy Marcell, New York-based CEO of reinsurance solutions at Aon.

"The outcome, as we move into 1/1 having already seen some rate rises happening in the property reinsurance market, is we expect that to continue, although we do expect that reinsurers will be focused on their specific partnerships with the clients they are targeting," he said.

Social inflation, increased weather-related losses and low interest rates are driving increases across the reinsurance market, said Keith Wolfe, president U.S. P&C at Swiss Reinsurance Ltd. in New York.

The environment of very low interest rates, which in some cases have moved to negative, "makes it really difficult when you have large portfolios of long-tail business, especially in the casualty space," he said.

As a result, reinsurers are pushing rates higher to ensure they make an underwriting profit, he said.



Source: Aon PLC

During mid-year renewals, Guy Carpenter & Co. LLC's global property catastrophe pricing index increased 6.2%, said David Priebe, chairman of the reinsurance brokerage.

Primary rates are increasing in many classes of business, he said.

"The need for primary insurers to generate underwriting returns in a low interest rate paradigm has created a tightening of capacity in certain classes of business and increased rate across the board," Mr. Priebe said.

In addition, new capital is entering the market and existing reinsurers are expanding capacity, he said.

Reinsurance capital fell slightly during the first half of 2020, after investment markets dropped before partially recovering following the onset of the COVID-19 pandemic in March. Several insurers and reinsurers have raised capital over the past several months.

Despite the slip in capital, capacity remains plentiful, said Lara Mowery, global head of distribution at Guy Carpenter.

"While dedicated reinsurance capital is down slightly … we do remain in an environment of plentiful capital. The question is, 'How much are capacity providers willing to deploy?'," she said.

Casualty insurance and reinsurance rates have increased significantly and will likely continue to rise, said Ian Thompson, chief underwriting officer, casualty and specialty at Ascot Bermuda, a unit of Ascot Group Ltd.

"On casualty, we are going to see some really significant rate increases on the insurance side," such as excess casualty, medical malpractice, and directors and officers liability, which will carry over into proportional reinsurance treaties, he said.

In excess casualty, in particular, rates are increasing by multiples, Mr. Thompson said.

Since 2011 there has been a clear increase in frequency and severity of most casualty lines, said Christopher Ross, a managing director at Guy Carpenter.

"In response to this, we are seeing corrective action being taken by the marketplace, including price increases, limit reductions, attachment point changes and underwriting attachment point shifts," he said.

Reinsurance market premium will likely grow during the remainder of 2020 and into 2021, said Brian Schneider, senior director at Fitch Ratings Inc. in Chicago.

"We expect premiums to grow in both 2020 and 2021, driven by premium rate increases and market opportunities available to well-positioned companies in the hardening reinsurance market environment," he said.

"The outcome, as we move into 1/1 having already seen some rate rises happening in the property reinsurance market, is we expect that to continue, although we do expect that reinsurers will be focused on their specific partnerships with the clients they are targeting."

Andy Marcell, Aon PLC

Virus exclusions clarify but prior contract uncertainty persists

Reinsurers are adapting to COVID-19 but it remains unclear how hard they will be hit by the pandemic.

Since the pandemic began, reinsurers have applied virus exclusions across most property reinsurance contracts and have also inserted them into many casualty treaties.

But they continue to tally the size of coronavirus-related losses from prior reinsurance contracts.

Virus exclusions have "been largely a mandatory requirement for property renewals driven by board and investor response to the pandemic," said Lara Mowery, global head of distribution at Guy Carpenter & Co. LLC.

For property renewals that involve commercial exposure, the market has coalesced around three London Market Association wordings that exclude virus exposures and that will likely continue with the Jan. 1 renewals, said Keith Wolfe, president U.S. P&C at Swiss Reinsurance Ltd. in New York.

Casualty wordings are usually individual deal discussions around the underlying portfolios, depending on lines of business, he said.

The COVID-19-related losses under prior contracts, he said, fall into three main areas: event cancellation, credit and some other surety exposures, and business interruption, he said.

The extent of the losses, though, remains unclear as claims continue to be processed and litigated, Mr. Wolfe said.

In the U.S. market "there is largely very good contract clarity" for both explicit virus coverage and exclusions, he said, but in Continental Europe and the United Kingdom there is less clarity.

Fitch Ratings Inc. expects the reinsurers it tracks to report $9.3 billion in COVID-19 losses in 2020 and a further $1 billion in 2021, said Brian Schneider, senior director at the rating agency in Chicago.

The reinsurers will likely post a combined ratio of 105.8% in 2020, compared with 101% in 2019, he said.

COVID-19-related losses have not directly led to significant casualty price rises during the hardening market, said Ian Thompson, chief underwriting officer, casualty and specialty at Ascot Bermuda, a unit of Ascot Group Ltd.

"I don't think people are using it to push price; they are pushing price because the results in casualty have been so awful over the past few years," he said.

Meanwhile, while the pandemic restricted travel for reinsurers and reinsurance brokers, the market has adapted well to remote working, and reinsurance placements largely have been managed successfully, market participants say.

And some of the changes may be lasting, they say.

"I can see a significant, permanent shift in how we work going forward. I cannot imagine the industry as a whole traveling nearly as much as we did in the past now that we've seen how effective some of these technology tools to collaborate and connect online are," Mr. Wolfe said.

Gavin Souter

SPECIAL REPORT

Cat bonds thrive as cedents tap markets

BY MATTHEW LERNER
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The catastrophe bond market saw robust new issuance in the first half of 2020, and observers expect the fourth quarter will see more bonds issued.

The relatively long history of the financial instruments compared with some other insurance-linked securities and the bonds' noncorrelation with other financial markets have led to increased interest in a volatile year for investment markets, experts say.

Meanwhile, COVID-19 did little to dent the market, which paused only briefly after the pandemic hit in March before resuming activities.

There was $2.75 billion of property catastrophe bond limit placed in the second quarter of 2020 and a record $3.76 million issued in the first quarter, according to an Aon Securities report issued in late July. The midyear 2020 total is already higher than the $5.38 billion issued in all of 2019.

"The pipeline going into the rest of the year looks strong as well," said Paul Schultz, Chicago-based CEO of Aon Securities, a unit of Aon PLC.

Catastrophe bonds are "well-positioned in a reinsurance market that is going through some repricing and re-underwriting," Mr. Schultz said.

Reinsurance and retrocessional markets are seeing capacity constraints and a tightening of terms and conditions, Mr. Schultz noted. "That's why we're optimistic for future issuance," he said.

The cat bond market is "very healthy," said Jeff Mohrenweiser, senior director at Fitch Ratings Inc. in Chicago. "There's a lot of issuance, and there's more in the pipeline for the rest of the year."

As a percentage of total assets under management, Mr. Schultz said cat bonds have increased their share over the past few years at the expense of collateralized reinsurance due to pricing and performance. "Some of the product mix has changed," he said.

Reuters

Hurricane Sally caused significant damage in some southeastern states last month. Many catastrophe bonds are used to protect against hurricane exposures.

The fourth quarter is likely to be more active than the third, historically the slowest quarter for issuance, Mr. Mohrenweiser said. "Nobody really issues a catastrophe bond during the catastrophe season," he said, noting this has been an especially active year for named storms.

The hurricane season can affect market activities, said Perry Green, director, institutional business development at reinsurance broker TigerRisk Partners Inc. in New York.

"If 2020 winds up to be a clean year, I think you'll see additional inflows" of capital into the alternative capital and insurance linked-securities sector. Should 2020 "wind up to be a multiple-loss year again," it could hamper the deployment of capital, he said.

This year's issuance has largely featured investors familiar to the catastrophe bond market, Mr. Mohrenweiser said.

"As is typical when market conditions become more challenging, many of the 2020 structures have focused on previously accepted structures," said Cory Anger, managing director, GC Securities, a unit of Guy Carpenter & Co. LLC in New York.

This year's second quarter saw the issuance of Everglades Re II Ltd. 2020-2 from Citizens Property Insurance Corp., a nonprofit homeowners insurer in Tallahassee, Florida, a $110 million bond covering Florida named storm perils, and the latest in a series that also included Everglades Re II 2018-1, which provided $250 million in U.S wind coverage.

New York City's Metropolitan Transportation Authority also returned to the capital markets in the second quarter with MetroCat Re Ltd. 2020-1, covering storm surge and earthquake. The MTA's MetroCat Re Ltd. 2013-1 was its first foray into the markets after large losses from Superstorm Sandy in 2012.

The catastrophe bond market overall is dominated by U.S wind perils, Mr. Mohrenweiser said, accounting for more than half of the value and even as much as 60% to 70% when counting multiperil bonds that include U.S wind.

After three years of heavy losses due to hurricanes, wildfires, convective storms and other perils, investors in 2020 are looking for clearly structured bonds from cedents with strong track records, said Maren Josefs, a director at S&P Global Inc. in London.

Investors are "being more selective and have shifted allocations to sponsors and fund managers with the best track record, with good modeling capability, clear underwriting strategies, and strong reserving practices and governance," Ms. Josefs said.

"We are seeing investors showing preferences for robust structures, for well-modeled named peril bonds," said Quentin Perrot, vice president at Willis Capital Markets and Advisory in London.

New issuance in the catastrophe bond market shut down for a few weeks in the spring after the COVID-19 pandemic hit but soon resumed, Ms. Josefs said.

As fallout from the pandemic roiled markets, the noncorrelated nature of the insurance-linked securities market, compared with other investment instruments, allowed investors to seize short-term opportunities by trading out of cat bonds, which had held their value, she said.

"The diversification of insurance-linked securities really showed up on the catastrophe bond side," Ms. Josefs said. "Investors were able to trade out of their positions to make capital available to invest in other short-term opportunities."

Insurance-linked securities' exposure to pandemic-related losses vary by instrument, said Ms. Anger of GC Securities.

The market for 144A catastrophe bonds — a type of unregistered equity offering not listed on a U.S. securities exchange — has had little exposure to COVID-19-related losses with the exception of the World Bank's Pandemic Emergency Financing catastrophe bond, Ms. Anger said. Because of the named-peril nature of 144A catastrophe bonds, COVID-19-related losses have not been a concern.

For the sidecar and collateralized reinsurance segments of the insurance-linked securities market, investors could face COVID-19-related losses because those risk transfer contracts typically follow the fortunes of the underlying policies coverages, she said.

CYBER, OTHER PERILS STILL A WORK IN PROGRESS FOR CATASTROPHE BOND MARKET

Although the insurance-linked securities market focuses largely on peak perils such as natural catastrophes, there is ongoing discussion regarding what other perils could be transferred to the capital markets.

"We are still very optimistic that cyber risk will come into the ILS market," said Paul Schultz, Chicago-based CEO of Aon Securities, a unit of Aon PLC.

As the broader investment community becomes more interested in catastrophe bonds, they may want to include other perils in their investments, said Quentin Perrot, vice president of Willis Capital Markets and Advisory, a unit of Willis Towers Watson PLC in London.

"Cyber is certainly a topic which is frequently discussed," said Philipp Kusche, global head of ILS and capital solutions for TigerRisk Partners Inc., a reinsurance brokerage in New York, but it's "still in the (research and development) bucket."

It may be possible to add cyber risks to the ILS market, said Jeff Mohrenweiser, senior director at Fitch Ratings Inc. in Chicago. He added, however, "With the catastrophe bond space, they rely more on modeling, and there is no accepted model for cyber risk."

The focus of the ILS market is more around property risk, Mr. Schultz said.

"That's the foundation of the ILS market. Trading in property risks, which are more tested with underlying models. There's just more comfort trading around property."

Matthew Lerner

WORLD'S LARGEST REINSURERS

Ranked by unaffiliated gross premium written in 2019, in millions of dollars[1]

		REINSURANCE PREMIUMS WRITTEN				RATIOS		
		LIFE AND PROPERTY/CASUALTY		PROPERTY/CASUALTY ONLY				
Rank	Company	Gross	Net	Gross	Net	Loss	Expense	Combined
1	Swiss Re Ltd.	$42,228	$39,649	$26,095	$25,135	79.7%	31.7%	111.4%
2	Munich Reinsurance Co.	$37,864	$35,282	$24,742	$23,455	66.7%	34.4%	101.0%
3	Hannover Rück SE[2]	$25,309	$22,096	$16,555	$14,333	69.0%	29.5%	98.5%
4	SCOR SE	$18,302	$16,176	$8,005	$6,826	68.1%	30.9%	99.0%
5	Berkshire Hathaway Inc.	$16,089	$16,089	$11,112	$11,112	86.6%	25.1%	111.7%
6	Lloyd's of London[3]	$14,978	$10,433	$14,978	$10,433	71.0%	34.5%	105.5%
7	China Reinsurance (Group) Corp.	$13,161	$12,196	$5,218	$4,820	65.0%	36.4%	101.4%
8	Reinsurance Group of America Inc.	$12,150	$11,297	N/A	N/A	N/A	N/A	N/A
9	Great West Lifeco	$10,149	$10,055	N/A	N/A	N/A	N/A	N/A
10	PartnerRe Ltd.	$7,285	$6,909	$5,792	$5,439	72.4%	28.0%	100.4%

[1] All non-USD currencies converted to USD using the foreign exchange rate as of company's fiscal year-end. [2] Net premium written data not reported; net premium earned substituted.
[3] Lloyd's premiums are reinsurance only. Premiums for certain groups in the rankings may include Lloyd's syndicate premiums when applicable. N/A = Not available
Source: A.M. Best Co. Inc.

TOP 10 GLOBAL PROPERTY/CASUALTY REINSURANCE GROUPS

Ranked by unaffiliated gross premium written in 2019, in millions of dollars[1]

		REINSURANCE PREMIUMS WRITTEN		RATIOS		
		PROPERTY/CASUALTY ONLY				
Rank	Company	Gross	Net	Loss	Expense	Combined
1	Swiss Re Ltd.	$26,095	$25,135	79.7%	31.7%	111.4%
2	Munich Reinsurance Co.	$24,742	$23,455	66.7%	34.4%	101.0%
3	Hannover Rück SE[2]	$16,555	$14,333	69.0%	29.5%	98.5%
4	Lloyd's of London[3]	$14,978	$10,433	71.0%	34.5%	105.5%
5	Berkshire Hathaway Inc.	$11,112	$11,112	86.6%	25.1%	111.7%
6	SCOR SE	$8,005	$6,826	68.1%	30.9%	99.0%
7	Everest Re Group Ltd.	$6,356	$5,732	66.9%	28.4%	95.4%
8	PartnerRe Ltd.	$5,792	$5,439	72.4%	28.0%	100.4%
9	XL Bermuda Ltd.	$5,010	$4,252	65.4%	34.5%	99.9%
10	Transatlantic Holdings Inc.	$4,946	$4,495	68.4%	32.5%	100.9%

[1] All non-USD currencies converted to USD using the foreign exchange rate as of company's fiscal year-end. [2] Net premium written data not reported; net premium earned substituted.
[3] Lloyd's premiums are reinsurance only. Premiums for certain groups in the rankings may include Lloyd's syndicate premiums when applicable.
Source: A.M. Best Co. Inc.

WORLD'S LARGEST REINSURANCE BROKERS

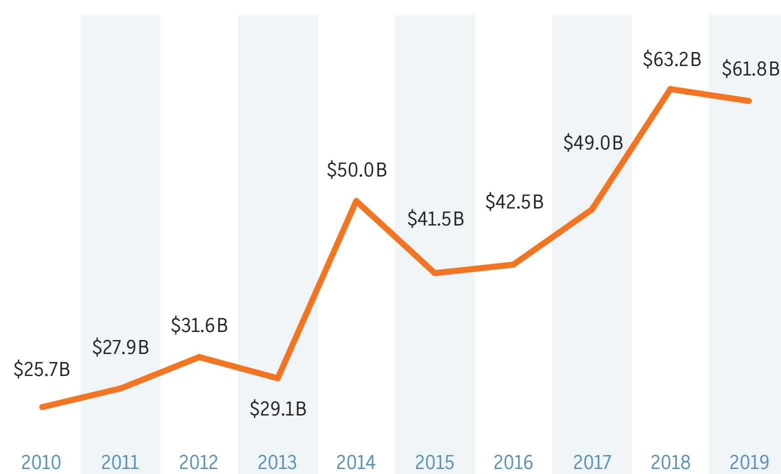
Ranked by 2019 gross revenue from reinsurance brokerage and related services*

Rank	Company	2019 gross revenue	2018 gross revenue	% increase (decrease)	2019 employees	Officers
1	Aon's Reinsurance Solutions	$1,665,000,000	$1,546,000,000	7.7%	3,074	Andy Marcell, CEO
2	Guy Carpenter & Co. LLC[1]	$1,482,096,000	$1,441,153,000[2]	2.8%	3,100	Peter Hearn, president-CEO
3	Willis Re	$1,021,803,000	$966,286,000[2]	5.7%	2220	James Kent, CEO
4	TigerRisk Partners LLC	$125,000,000	$95,000,000[3]	31.6%	192	Rod Fox, managing partner-CEO
5	Gallagher Re[4]	$100,000,000	$70,000,000	42.9%	165	Rupert Swallow, CEO

*Includes all reinsurance revenue reported through holding and/or subsidiary companies.
[1] Acquired JLT Reinsurance in April 2019. [2] Restated. [3] *BI* estimate. [4] Formerly Capsicum Reinsurance Brokers LLP.
Source: *BI* survey

10-YEAR TREND OF U.S. REINSURANCE

Net premiums written for U.S. reinsurers decreased 2% in 2019 from the previous year.
Net premiums written for major U.S. property/casualty reinsurers, 2010-2019, in billions of dollars:



Source: Reinsurance Association of America

R!SK PERSPECTIVES

Healthcare risks in era of COVID-19

Analytics helping providers improve quality, reduce risk

By Robert Hanscom | Vice President, Risk Management and Analytics, Coverys

The global pandemic has created some of the biggest challenges healthcare providers have yet encountered. With much of the world largely shutting down to contain the coronavirus, a large number of non-acute care patients have shifted to virtual visits or e-visits with providers. While this shift offers some significant benefits, it also is raising new risks.

Telehealth, or telemedicine, has many positive aspects to it. It can be a key to more efficient, less expensive care and can facilitate treatment, especially for populations that lack access to healthcare. In certain specialties, such as psychiatry, dermatology, and radiology, telehealth has been used safely and effectively for years, and it is a convenient way for specialists to consult with each other. In the COVID-19 era, however, telehealth has become the default channel for non-acute care delivery and check-ins with physicians for reasons that have nothing to do with the coronavirus. This is where risks are emerging.

There are many scenarios in which healthcare providers should perform physical examinations on patients, from checking vital signs to listening to patients' lungs, to palpating lymph nodes and vital organs. In virtual office visits, online encounters skip the physical exam and rely on patients to self-report symptoms. Let's consider some of the risks to this approach, which include:

Lack of guidelines. Despite the high number of COVID-related cases, there is a far larger number of patients who aren't suffering from the virus. For a relatively brief period of time, the pandemic essentially stopped routine care in its tracks in a number of healthcare specialties, and this badly interrupted providers' practices. A sudden shift to virtual visits and e-visits occurred, with limited time for creating guidelines and establishing thresholds for when a patient must still have an in-person visit, or even proceed directly to an emergency room.

Documentation. Delivering quality and continuity in healthcare has always relied on effective documentation. With virtual visits, documentation is essential. One critical piece to always document is the provider's communication with the patient that a virtual encounter is different and does not involve a physical examination. Providers should always document when they did not perform a physical exam or that the initial course of treatment was based on patient-reported symptoms.

Privacy and security. In today's world, well-resourced medical practices and hospitals have centralized, secure portals for interacting virtually with patients. But others may not have yet developed those capabilities. As a result, they have defaulted to allowing patients to use any device available for e-visits. Privacy and information security could be compromised in these circumstances, which can be particularly worrisome for providers. If personal health information is exposed or stolen, providers can face steep regulatory fines and liability lawsuits.

Despite the myriad risks, the pandemic also has introduced some unanticipated positives. In addition to a broader acceptance of telemedicine as an efficient way to expand access to care, there are now visibly safer intake processes for patients in treatment settings. Checking healthcare workers for symptoms and requiring ill individuals to remain at home is a practice that is likely to survive the end of COVID-19. More diligent hygiene and disinfecting practices developed during the pandemic also may contribute to fewer cases of ancillary infections during office visits and hospital stays in the future.

Decade of claims insights

In October, Coverys will release the results of a 10-year study of medical professional liability claims. Coverys uses advanced analytic tools to assess claim data and determine the root causes of risks. Among the study findings are improvements in some specialties, such as anesthesia, and medication error, and continued room for improvement in diagnosis and surgical cases.

Claims alleging missed or delayed diagnosis, particularly in patients with cancer, continue to dominate as a troublesome source of medical professional liability, the study found. In addition, surgical errors involving skill and process variabilities in the overall surgical experience (pre-op, intra-op, and post-op) have not seen a detectable decline. And surprisingly, despite significant attention paid over the last few years, wrong-site surgeries and retained foreign bodies have not yet been eliminated. For information on the study, please visit the Knowledge Center at www.coverys.com.

Analytics' role in mitigating risk

Advanced analytics, including artificial intelligence, offer the opportunity to transform risk management in healthcare. Risk management has historically been a reactive function — responding to events that already have happened, whether it's COVID-19 or another type of incident. Integrating this important discipline with data-driven analytics can help risk management become more predictive. In turn, data-driven risk intelligence will help healthcare providers take the necessary steps to mitigate their risks and improve outcomes before harm reaches the patient.

Robert Hanscom is vice president of risk management and analytics at Coverys, a leading provider of medical professional liability insurance. He oversees Coverys' operations and resources dedicated to developing actionable insights for clients and insureds to reduce risk.

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M&A continues to drive growth

Mergers and acquisitions drove the fastest-growing broker into the 2020 *Business Insurance* Top 100 agents and brokers rankings at No. 95. Founded in 2018, High Street Insurance Partners Inc. logged an impressive growth rate of 201.4% to top this year's fastest-growing broker list. This year's No. 2, World Insurance Associates LLC, saw a growth rate of 80.6%, with a total of 68 acquisitions.

The following pages present the second set of results from *Business Insurance*'s annual survey of agents and brokers; the first was published in July. Additional 2020 rankings include the top 25 benefits brokers by growth, most productive agents and brokers, brokers to watch, top brokers of wholesale business, fastest-growing brokers and largest U.S. commercial retail brokers.

TOP 25 BENEFITS BROKERS BY GROWTH

Ranked by rate of growth in 2019 employee benefits revenue*

Rank	Company	2019 employee benefits revenues	% increase	% of total revenue
1	Swingle Collins & Associates	$762,653	165.9%	3.0%
2	High Street Insurance Partners Inc.	$7,530,000	140.8%	25.3%
3	World Insurance Associates LLC	$6,114,880	131.1%	11.3%
4	The Liberty Co. Insurance Brokers Inc.	$2,213,488	75.7%	8.4%
5	Sunstar Insurance Group LLC	$4,935,000	64.5%	10.0%
6	The Hilb Group LLC	$61,970,670	62.7%	31.3%
7	Insgroup Inc.	$6,691,048	61.6%	18.9%
8	Rich & Cartmill Inc.	$1,518,252	56.6%	4.5%
9	Baldwin Risk Partners LLC	$32,090,118	44.5%	23.3%
10	Risk Strategies Co. Inc.	$100,256,200	42.9%	19.4%
11	BroadStreet Partners Inc.	$124,735,000	37.5%	16.8%
12	Holmes Murphy & Associates Inc.	$87,000,000	35.2%	38.9%
13	Brown & Brown Inc.	$453,694,347	35.0%	19.0%
14	Digital Insurance Inc., dba OneDigital Health and Benefits	$382,200,974	27.8%	94.9%
15	Acentria Insurance	$5,769,526	26.7%	7.5%
16	Haylor, Freyer & Coon Inc.	$4,841,000	26.1%	14.2%
17	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$164,235,174	25.0%	22.1%
18	Otterstedt Insurance Agency	$1,451,385	24.9%	6.0%
19	Higginbotham	$83,518,000	24.0%	34.2%
20	TrueNorth Companies LLC	$24,368,299	23.4%	28.5%
21	York International Agency LLC	$3,682,797	22.5%	16.8%
22	Insurance Office of America Inc.	$29,295,729	21.2%	13.2%
23	MJ Insurance Inc.	$17,266,611	21.1%	46.0%
24	AssuredPartners Inc.	$372,476,406	20.9%	25.8%
25	Underwriters Safety & Claims Inc., dba The Underwriters Group	$1,592,000	17.8%	5.7%

*To be ranked, brokers must have generated $500,000 or more in employee benefits revenue in 2019. Companies deriving more than 49% of their gross revenue in personal lines are not ranked.

Source: *BI* survey

BENEFITS SPECIALISTS

Brokers specializing in employees benefits, ranked by percentage of business*

Company	2019 employee benefits revenue	% increase (decrease)	% total
Burnham Benefits Insurance Services	$38,694,000	7.6%	100.0%
Digital Insurance Inc., dba OneDigital Health and Benefits	$382,200,974	27.8%	94.9%
Corporate Synergies Group LLC	$40,519,990	3.2%	82.7%
Patriot Growth Insurance Services LLC	$54,000,000	N/A	81.3%
LHD Benefit Advisors LLC	$8,140,000	0.1%	67.8%
Associated Benefits and Risk Consulting	$61,860,376	(1.2%)	67.2%
The Partners Group Ltd.	$23,845,847	12.3%	64.9%
First Person Inc.	$8,512,000	5.6%	64.4%
PSA Insurance & Financial Services Inc.	$19,500,000	2.8%	60.2%
CBIZ Benefits & Insurance Services Inc.	$146,000,000	4.3%	59.6%
Oswald Cos.	$55,640,000	11.5%	58.9%
R&R Insurance Services Inc.	$6,977,000	16.2%	58.5%
Willis Towers Watson PLC	$4,561,000,000	8.7%	51.0%

*Companies with 51% or more of brokerage revenue from employee benefits

Source: *BI* survey

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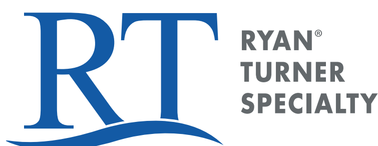

AGRIBUSINESS AVIATION CASUALTY CONSTRUCTION ENERGY ENVIRONMENTAL HEALTHCARE LIFE SCIENCES MARINE
PERSONAL LINES PROFESSIONAL & EXECUTIVE LIABILITY PROPERTY REAL ESTATE TRANSPORTATION WORKERS' COMPENSATION RT BINDING

MOST PRODUCTIVE AGENTS AND BROKERS

Intermediaries ranked by 2019 brokerage revenue per employee*

		Brokerage revenue per employee			Brokerage revenue			Employees		
Rank	Company	2019	2018	% increase (decrease)	2019	2018	% increase (decrease)	2019	2018	% increase (decrease)
1	Heffernan Group	$412,426	$244,113	68.9%	$171,981,679	$102,527,412	67.7%	417	420	(0.7%)
2	Alliant Insurance Services Inc.	$396,476	$373,311	6.2%	$1,576,387,172	$1,346,159,749	17.1%	3,976	3,606	10.3%
3	York International Agency LLC	$384,057	$365,007	5.2%	$21,891,225	$18,980,346	15.3%	57	52	9.6%
4	Burnham Benefits Insurance Services	$368,514	$403,989	(8.8%)	$38,694,000	$35,955,000	7.6%	105	89	18.0%
5	The Graham Co.	$334,915	$327,391[1]	(89.8%)	$61,959,264	$58,275,576[1]	(89.4%)	185	178	3.9%
6	Woodruff Sawyer & Co.	$313,780	$289,749	8.3%	$159,400,000	$138,500,000	15.1%	508	478	6.3%
7	HMS Insurance Associates Inc.	$310,966	$299,542	3.8%	$43,535,198	$41,037,272	6.1%	140	137	2.2%
8	Truist Insurance Holdings Inc.	$306,370	$278,471[1]	(89.0%)	$2,270,817,000	$201,6132,000[1]	(88.7%)	7,412	7,240	2.4%
9	Foa & Son Corp.	$305,556	$293,182	4.2%	$27,500,000	$25,800,000	6.6%	90	88	2.3%
10	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$286,311	$309,695	(7.6%)	$744,408,209	$588,420,891	26.5%	2,600	1,900	36.8%
11	Bolton & Co.	$282,744	$255,536	10.6%	$55,417,803	$48,551,757	14.1%	196	190	3.2%
12	Cobbs Allen	$276,544	$199,463	38.6%	$37,886,504	$32,911,464	15.1%	137	165	(17.0%)
13	M&O Agencies Inc., dba The Mahoney Group	$274,773	$263,706	4.2%	$46,161,860	$45,093,691	2.4%	168	171	(1.8%)
14	Risk Strategies Co. Inc.	$269,630	$297,974	(9.5%)	$516,880,000	$366,508,421	41.0%	1,917	1,230	55.9%
15	ABD Insurance & Financial Services Inc.	$266,512	$273,700	(2.6%)	$93,279,300	$79,099,180	17.9%	350	289	21.1%
16	Propel Insurance	$265,370	$249,956	6.2%	$93,145,000	$84,735,000	9.9%	351	339	3.5%
17	M3 Insurance Solutions Inc.	$261,333	$250,815	4.2%	$72,389,128	$67,218,378	7.7%	277	268	3.4%
18	Parker, Smith & Feek Inc.	$260,697	$243,649	7.0%	$68,042,000	$60,425,000	12.6%	261	248	5.2%
19	NFP Corp.	$256,715	$239,846	7.0%	$1,460,966,000	$1,246,000,000	17.3%	5,691	5,195	9.5%
20	Rose & Kiernan Inc.	$255,500	$241,089	6.0%	$51,100,000	$48,700,000	4.9%	200	202	(1.0%)
21	MJ Insurance Inc.	$255,423	$226,470	12.8%	$37,547,254	$33,064,630	13.6%	147	146	0.7%
22	Alera Group	$253,333	$261,923	(3.3%)	$456,000,000	$340,500,000	33.9%	1,800	1,300	38.5%
23	Paychex Insurance Agency Inc.	$249,356	$258,547	(3.6%)	$232,400,000	$231,400,000	0.4%	932	895	4.1%
24	Christensen Group Inc.	$247,817	$235,349	5.3%	$36,924,747	$34,125,566	8.2%	149	145	2.8%
25	Bowen, Miclette & Britt Inc.	$247,408	$238,506	3.7%	$53,934,945	$51,994,301	3.7%	218	218	0.0%

*Companies with more than 50 employees assigned to brokerage. Brokerages that derive more than 49% of their revenue from personal lines of business are not ranked. [1]Restated.

Source: *BI* survey

BEYOND THE TOP 100 BROKERS

BROKERS TO WATCH

Ranked by 2019 brokerage revenue generated by U.S.-based clients

Rank	Company	2019 brokerage revenue	% increase (decrease)
101	Lipscomb & Pitts Insurance LLC	$26,912,869	5.7%
102	The Liberty Co. Insurance Brokers Inc.	$26,317,683	31.8%
103	Ross & Yerger Insurance Inc.	$26,137,890	6.1%
104	Gibson Insurance Agency Inc., dba Gibson	$26,133,000	(0.2%)
105	Swingle Collins & Associates	$25,316,419	12.2%
106	Otterstedt Insurance Agency	$24,189,758	17.3%
107	Foa & Son Corp.	$23,375,000	6.6%
108	EHD Insurance Inc.	$22,941,634	7.2%
109	York International Agency LLC	$21,891,225	15.3%
110	Pritchard & Jerden Inc.	$21,453,271	6.2%
111	Wallace Welch & Willingham Inc.	$19,201,394	7.8%
112	Maximum Independent Brokerage LLC	$18,500,000	27.6%
113	Reliance Partners Inc.	$13,500,000	28.6%
114	First Person Inc.	$13,215,000	1.0%
115	Ames & Gough Insurance/ Risk Management Inc.	$12,575,000	3.9%
116	LHD Benefit Advisors LLC	$12,000,000	1.5%
117	R&R Insurance Services Inc.	$11,924,000	(12.6%)
118	BKCW LP, dba BKCW Benefits, Insurance, Relationships	$10,638,305	3.2%
119	LaPorte & Associates Inc.	$10,600,000	9.3%
120	Insurance Marketing Agencies Inc.	$9,600,000	0.0%

TARGET INDUSTRIES

Industries targeted by brokers to watch

Industry	No. of brokers	Percent
Construction	15	75%
Nonprofit organizations	14	70%
Real estate	13	65%
Food and beverage	10	50%
Financial services	10	50%
Automotive	6	30%
Consumer durables	5	25%
Aviation	1	5%

TARGET CLIENTS

Target clients by revenue among the brokers to watch

Revenue	No. of brokers	Percent
Up to $10 million revenue	8	40%
More than $10 million up to $50 million	14	70%
More than $50 million up to $100 million	15	75%
More than $100 million up to $500 million	12	60%
More than $500 million up to $1 billion	3	15%

Source: *BI* Survey

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TOP BROKERS OF WHOLESALE BUSINESS*

Ranked by 2019 wholesale revenue, including property/casualty

Rank	Company	2019 wholesale revenue	2018 wholesale revenue	% increase (decrease)
1	Truist Insurance Holdings Inc.	$1,083,901,000	$949,653,000[1]	14.1%
2	Arthur J. Gallagher & Co.	$801,962,000	$651,880,000[1]	23.0%
3	Brown & Brown Inc.	$784,008,788	$739,036,429	6.1%
4	Willis Towers Watson PLC	$233,000,000	$222,000,000[1]	5.0%
5	Alliant Insurance Services Inc.	$175,409,404	$125,696,890	39.5%
6	Hub International Ltd.	$155,989,241	$126,809,000	23.0%
7	Lockton Cos. LLC	$97,792,000	$63,167,000	54.8%
8	USI Insurance Services LLC	$73,911,832	$35,901,970	105.9%
9	Acrisure LLC	$51,639,844	$37,125,230	39.1%
10	Risk Strategies Co. Inc.	$45,950,600	$12,569,850	265.6%

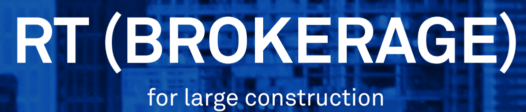
*Brokers deriving less than 50% of revenue from wholesale brokerage business. [1]Restated.
Source: *BI* survey

FASTEST GROWING BROKERS

Ranked by rate of growth in 2019 U.S. brokerage revenue*

Rank	Company	2019 revenue	% increase
1	High Street Insurance Partners Inc.	$29,730,000	201.4%
2	World Insurance Associates LLC	$53,349,421	80.6%
3	Baldwin Risk Partners LLC	$137,840,695	72.8%
4	Heffernan Group	$170,261,862	66.1%
5	Acentria Insurance	$76,510,971	64.7%
6	Risk Strategies Co. Inc.	$516,880,000	41.0%
7	The Hilb Group LLC	$197,983,681	39.7%
8	Alera Group	$456,000,000	33.9%
9	The Liberty Co. Insurance Brokers Inc.	$26,317,683	31.8%
10	Acrisure LLC	$1,716,240,800	29.7%
11	Digital Insurance Inc., dba OneDigital Health and Benefits	$402,816,215	28.6%
12	Reliance Partners Inc.	$13,500,000	28.6%
13	Maximum Independent Brokerage LLC	$18,500,000	27.6%
14	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$736,070,837	27.1%
15	Insgroup Inc.	$35,434,927	26.5%
16	BroadStreet Partners Inc.	$743,048,000	22.9%
17	Higginbotham	$244,029,000	22.0%
18	Brown & Brown Inc.	$2,384,737,230	18.7%
19	ABD Insurance & Financial Services Inc.	$93,279,300	17.9%
20	Otterstedt Insurance Agency	$24,189,758	17.3%
21	Alliant Insurance Services Inc.	$1,576,387,172	17.1%
22	AssuredPartners Inc.	$1,429,414,301	16.9%
23	NFP Insurance Solutions	$7,443,000	16.8%
24	Towne Insurance Agency LLC	$76,169,587	15.9%
25	Cottingham & Butler Inc.	$224,338,000	15.9%
26	Sterling Seacrest Partners Inc.	$45,485,341	15.4%
27	York International Agency LLC	$21,891,225	15.3%
28	Cobbs Allen	$37,886,504	15.1%
29	Woodruff Sawyer & Co.	$159,400,000	15.1%
30	TrueNorth Companies LLC	$85,385,000	14.9%

*Companies with less than $1 million in brokerage revenue and/or deriving more than 49% of their brokerage revenue in personal lines are not ranked.
Source: *BI* survey



RT (BINDING)

for vacant warehouses

BINDING AUTHORITY
FOR DIFFERENT SIZES OF E&S RISK

For risks big and small, RT Specialty is the solution. Our RT Binding underwriting professionals deliver swift, expert E&S coverage for small- and mid-sized accounts. We are excited to welcome All Risks to the RT family as we continue to raise the bar for excellence in providing insurance solutions together.

Retail brokers and agents, contact your local RT Binding Underwriter today in one of our 50+ offices at rtbinding.com.

GENERAL LIABILITY PROPERTY UMBRELLA LIQUOR LIABILITY INLAND MARINE EVENT WORKERS' COMPENSATION PERSONAL LINES

LARGEST U.S. COMMERCIAL RETAIL BROKERS

Ranked by 2019 commercial retail brokerage revenue from U.S. offices

Rank	Company	2019 commercial retail revenue*	% increase (decrease)	% of U.S. brokerage revenue
1	Marsh & McLennan Cos. Inc.	$4,119,000,000	12.5%[1]	52.7%
2	Aon PLC	$2,129,000,000	5.4%	42.7%
3	Arthur J. Gallagher & Co.	$1,515,335,000	10.2%	38.4%
4	Alliant Insurance Services Inc.	$1,118,047,014	17.5%	70.9%
5	Willis Towers Watson PLC	$1,103,000,000	5.3%[1]	25.7%
6	Acrisure LLC	$973,183,343	38.1%	56.7%
7	USI Insurance Services LLC	$933,792,881	6.4%	51.5%
8	Hub International Ltd.	$911,698,532	9.1%	49.5%
9	Lockton Cos. LLC	$827,270,000	8.8%	58.1%
10	Brown & Brown Inc.	$806,087,855	31.3%	33.8%
11	AssuredPartners Inc.	$694,374,328	17.1%	48.6%
12	Truist Insurance Holdings Inc.	$691,413,000	10.6%[1]	30.4%
13	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$516,580,289	25.2%	70.2%
14	BroadStreet Partners Inc.	$515,054,100	20.0%	69.3%
15	Risk Strategies Co. Inc.	$291,141,700	27.2%	56.3%
16	Leavitt Group	$157,327,000	10.4%[1]	57.7%
17	Insurance Office of America Inc.	$153,011,415	6.3%	69.1%
18	Higginbotham	$128,061,000	11.9%	52.5%
19	Woodruff Sawyer & Co.	$127,229,000	20.6%	79.8%
20	Holmes Murphy & Associates Inc.	$106,445,000	16.6%	47.6%
21	The IMA Financial Group Inc.	$105,597,696	12.9%	60.0%
22	The Hilb Group LLC	$91,133,339	24.9%	46.0%
23	BXS Insurance	$88,080,854	3.7%	71.5%
24	Hylant Group Inc.	$86,473,085	0.6%	61.0%
25	Cottingham & Butler Inc.	$86,157,000	13.6%	38.4%
26	Paychex Insurance Agency Inc.	$85,500,000	(5.2%)	36.8%
27	PayneWest Insurance Inc.	$85,438,342	2.1%	63.8%
28	Insurica Inc.	$84,450,473	12.4%	73.5%
29	Insurors Group LLC	$79,681,500	6.9%	82.0%
30	AmeriTrust Group Inc.	$77,063,306	1.3%	61.1%
31	Cross Financial Corp., dba Cross Insurance	$77,000,000	(8.3%)	41.4%
32	Heffernan Group	$65,539,209	(3.3%)	38.5%
33	Propel Insurance	$62,330,000	-0.2%	67.6%
34	TrueNorth Companies LLC	$52,554,000	32.6%	61.5%
35	CBIZ Benefits & Insurance Services Inc.	$50,600,000	3.1%[1]	20.6%
36	The Graham Co.	$49,513,477	4.7%	79.9%
37	Parker, Smith & Feek Inc.	$49,431,000	12.2%	72.6%
38	Houchens Insurance Group Inc.	$46,521,257	9.2%	68.3%
39	Sterling Seacrest Partners Inc.	$45,713,911	15.4%	100.5%
40	Marshall & Sterling Enterprises Inc.	$44,345,542	1.9%	60.6%
41	Relation Insurance Inc.	$44,345,000	5.2%	42.3%
42	Sterling & Sterling LLC, dba SterlingRisk	$43,516,364	2.4%	78.1%
43	Fisher Brown Bottrell Insurance Inc.	$42,242,677	8.1%	100.0%
44	James A. Scott & Son Inc., dba Scott Insurance	$41,801,000	6.6%	63.1%
45	ABD Insurance & Financial Services Inc.	$41,320,000	21.1%	44.3%
46	Towne Insurance Agency LLC	$40,739,595	20.9%	53.5%
47	Eastern Insurance Group LLC	$39,665,698	1.8%	43.7%
48	Acentria Insurance	$39,553,099	44.2%	51.7%
49	Burnham Benefits Insurance Services	$38,694,000	7.6%	100.0%
50	Lawley Service Inc.	$38,174,055	3.6%	46.1%

*Excludes revenue from placement of employee benefits. [1]Restated.
Source: *BI* survey

TARGETS OF THE TOP 15

TARGET INDUSTRIES

Industries targeted by the top 15 brokers of U.S. business

Industry	Number of brokers	Percent
Construction	15	100%
Financial services	15	100%
Real estate	15	100%
Transportation/logistics	15	100%
Public sector/government	15	100%
Nonprofit organizations	14	93%
Energy	14	93%
Health care	14	93%
Aviation	14	93%
Food and beverage	14	93%
Higher education	14	93%
Marine	14	93%
Agribusiness	13	87%
Entertainment	12	80%
Technology	12	80%
Retail	12	80%
Automotive	11	73%
Private equity/investment capital	11	73%
Power industry	10	67%
Pharmaceutical/chemical	10	67%
Consumer durables	9	60%
Mining	9	60%
Biotechnology	9	60%
Consumer nondurables	8	53%
Clothing, textile	8	53%
Media	8	53%
Telecommunications	7	47%

TARGET CLIENTS

Target clients by revenue among top 15 brokers of U.S. business

Revenue	Number of brokers	Percent
Up to $10 million revenue	6	40%
More than $10 million up to $50 million	10	67%
More than $50 million up to $100 million	11	73%
More than $100 million up to $500 million	8	53%
More than $500 million up to $1 billion	5	33%
More than $1 billion up to $3 billion	4	27%
More than $3 billion up to $5 billion	2	13%
More than $5 billion up to $10 billion	1	7%

Source: *BI* Survey

MARKET PULSE

Lockton allies with minority-owned brokerage

■ Lockton Cos. LLC announced a partnership with Birwood Services Group, a Detroit-based minority-owned brokerage that was formed earlier this year.

The partnership with Birwood will include risk management and employee benefits placements, Lockton said in a statement.

"Birwood will tap into Lockton's experts, as needed, in disciplines like actuarial service, compliance and claims management. Over time, Birwood will continue to grow its team, creating career opportunities for diverse populations across the country in the insurance brokerage industry," the statement said.

Birwood is headed by Ken Hurtt, who previously owned Employee Solve Inc. in Detroit. It has four staff and is a certified minority business enterprise. MBEs must be at least 51% owned and operated by minority individuals.

Zurich unveils policy for injured workers

■ Zurich North America announced an occupational accident and employers work injury liability insurance policy for nonsubscribers to the workers compensation system in Texas.

Similar to traditional workers compensation insurance, Zurich's Texas product provides employers liability, wage replacement, medical and accidental death coverage in the event of an occupational injury. It also provides a combination of customizable options of wage replacement up to $2,000 weekly at 100% of the average weekly wage, unlimited medical expenses, separate employer liability limits, and lump-sum accidental death and dismemberment benefits, according to a spokeswoman for the Schaumburg, Illinois-based U.S. insurer, a subsidiary of Zurich Insurance Group.

The product is the result of a collaboration with program administrator CPro Associates, whose principals over 30 years ago developed occupational injury coverage for Texas employers who opt out of the workers compensation system, referred to as "nonsubscribers," according to the statement.

Gallagher Bassett launches transportation claims unit

■ Gallagher Bassett Services Inc. has launched a claims handling center that focuses on transportation exposures, the third-party administrator said in a statement.

The Transportation Major Case Unit, part of Gallagher Bassett's transportation practice group, will focus on severe, complex and high-exposure claims, the TPA said.

Travelers launches AI for ergonomic assessments

■ The Travelers Cos. Inc. has introduced virtual and on-site ergonomic assessments using artificial intelligence to reduce the risk of musculoskeletal disorders in its customers' workforce, the insurer said in a statement.

The AI technology can analyze a smartphone video of a worker performing a task and identify movements and postures that could lead to injuries, Hartford, Connecticut-based Travelers said. The technology quantifies the risk and creates a report that Travelers can then use to modify workspaces to reduce workers' risk of injury.

The technology is available now to all Travelers' customers.

CFC Underwriting offers upgraded cyber app

■ London-based CFC Underwriting Ltd. said it has introduced an upgraded cyber incident mobile app.

CFC said in a statement the app provides proactive and targeted cybersecurity alerts for its cyber insurance policyholders and immediate access to cyber security risk mitigation experts.

A spokeswoman said in an email that with the upgraded app, using its data, CFC can identify in real time what potential threat actors are doing, including, for example, how these criminals are refining and changing their tactics and demands.

She said this can be drilled down to identifying specific threats and vulnerabilities that target particular sectors and business types as well as the appearance of specific businesses on the dark web.

MGA introduces online agents platform

■ Dovetail Insurance Inc. has launched Dovetail for Agents, an online quote, bind and issue platform for independent agents in the U.S.

Columbia, South Carolina-based Dovetail is a digital managing general agent in the small commercial insurance market, and part of managing general underwriter Victor Insurance Holdings, Dovetail said in its statement.

Dovetail for Agents will allow small commercial agents to access business owners policies, workers compensation, general liability, professional liability, commercial auto and umbrella policies for their small commercial clients from multiple insurers, the statement said.

Workers compensation coverage from AmTrust Financial Services Inc. is the first insurance offering on the platform, and more insurers from Dovetail's legacy platform will be onboarded in the coming months, the statement said.

Mike Ferber, CEO of Dovetail, said in the statement that Dovetail plans to add more carriers and products soon.

Insurer unveils digital platform for accident cover

■ Great American Insurance Group announced the launch of pomi, a digital platform and website for accident and health insurance.

The Cincinnati-based insurer says pomi, an acronym for "peace of mind insurance," is the company's first all-digital platform where brokers can quote and bind most blanket special risk policies.

The platform has been customized for brokers selling accident and health insurance to industries such as daycares, nonprofits, after-school activities and camps, according to a statement.

In addition to the digital platform, the platform will provide self-service online custom quote submissions for businesses, such as public and private K-12 schools, colleges, universities and health clubs. Appointment request forms and other information will also be available via the portal.

DEALS & MOVES

Gallagher purchases nonprofit-focused agency

Arthur J. Gallagher & Co. said it has acquired Schenectady, New York-based Charles W. Merriam & Son Inc., which does business as The Merriam Agency, in a deal that strengthens its nonprofit expertise.

Terms of the transaction were not disclosed.

The Merriam Agency, which was founded in 1895 and has offices in upstate New York and Colorado Springs, Colorado, provides commercial, personal lines and employee benefits coverages and services to nonprofit and social service clients.

Brown & Brown unit buys Tennessee agency

Brown & Brown of Tennessee Inc., a subsidiary of Brown & Brown Inc., has acquired the Frank E. Neal & Co. Agency of Nashville, Tennessee, Brown & Brown said.

Terms of the deal were not disclosed.

Frank E. Neal provides commercial, surety, personal and employee benefits insurance in the Southeast U.S. and specializes in providing surety bonds and commercial insurance to the construction industry.

AssuredPartners acquires Connecticut bank agency

AssuredPartners Inc. has acquired People's United Insurance Agency for $120 million cash.

The acquisition, from People's United Bank NA, a subsidiary of People's United Financial Inc., is expected to close in the fourth quarter of 2020.

People's United Insurance Agency, based in Bridgeport, Connecticut, provides commercial and personal insurance as well as employee benefits, AssuredPartners said in a statement.

Risk Strategies buys private equity specialist

Risk Strategies Co. Inc. has acquired Philadelphia-based specialty brokerage Securitas Insurance Partners LLC.

Terms of the deal were not disclosed.

Securitas specializes in insurance and risk management services for venture capital and private equity-backed portfolio companies.

COMMENTARY

Options available in hard market

For many risk managers, the ongoing pandemic has made a bad situation worse.

Already dealing with steep rate hikes and restricted capacity as insurance markets harden globally due largely to conventional losses, commercial insurance buyers are coming under more pressure with insurers tightening their offerings further as they face up to the threat of present and potential future virus claims.

The size of the increases being pushed through, which are way up in the double digits for some lines, and some severe restrictions in capacity, especially for umbrella liability coverage, have stretched risk management budgets and complicated placements at a time when many organizations are enduring incredibly difficult times economically.

Gavin Souter
EDITOR

In addition, more restrictive policy wordings and the realization that a worldwide health crisis is a reality rather than a theoretical threat, means that insurance coverage for virus-related losses is even less available than it was before COVID-19 struck.

As a result, risk managers must come up with alternative approaches for a wide range of risks.

One of the main resources at hand is, of course, captive insurance. Risk managers have a long history of using captives to help manage hard markets. The structures allow them to better manage retentions, access additional capacity in the reinsurance market and gain more direct control over their exposures.

Captives can also be turned into profit centers by writing third-party risks and go some way to easing financial pressures on their parent companies.

And many organizations have quickly turned to their captives during the current hard market. According to a report issued last month by Marsh LLC, which owns the world's largest captive management firm, most captive owners expect to expand the use of their captives (see chart).

Perhaps the most interesting expansion of captives in the current environment is to use the vehicles to cover emerging risks.

Caution is needed because one of the main reasons for buying insurance is to offload liabilities an organization can't handle on its own, but if insurers are not willing to cover a risk, then maybe managing the risk through a captive is a better option.

For several years, captive managers have promoted the use of captives to cover newer risks such as cyber liability, which in most cases is only partially covered by products offered by insurers, but with the onset of COVID-19 some are also saying pandemic exposures are another emerging risk that captives can cover.

According to Marsh, at least 25 of the captives it manages write coverage for pandemic risks, and the firm expects more to use them in the future.

While there is no perfect solution to the risk management problems that COVID-19 presents, there are tools at hand that could help manage the crisis, provided they are handled with care.

CAPTIVE USE

More than half of captive owners plan to expand their use.

Response	Share
No changes planned at this time	38%
Expand the use of current captive by adding additional lines of coverage	32%
Expand the use of current captive by increasing our retentions	24%
Add an additional captive	3%
Other	3%

Source: Marsh LLC

VIEWPOINT

Time for action on backstop

BY CLAIRE WILKINSON
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Many businesses continue to struggle with the economic challenges posed by the COVID-19 pandemic and the associated business shutdowns. Risk management professionals, whose purpose is to minimize possible risks and losses and to protect the financial assets of their organizations, are trying to manage the ongoing effects of the pandemic, even as many existing insurance policies fail to cover their losses.

Meanwhile, litigation over whether policyholders' business interruption policy provisions cover losses due to government-mandated shutdowns during the pandemic have so far largely favored insurers, even though a few of the early victories have gone the way of policyholders. That momentum may shift, legal experts suggest, as varying state law precedents and policy language come under closer scrutiny in courts, so the ratio of policyholder-to-carrier wins may even out, as we report on page 4. A recent ruling in the United Kingdom in favor of policyholders in a case filed by insurance regulatory body the Financial Conduct Authority, may also be influential, legal experts say.

Still, as risk managers and their businesses head into the last quarter of the year, much remains up in the air regarding both past and potential future losses.

A virtual discussion hosted on Sept. 11 by Democratic U.S. Rep. Carolyn B. Maloney of New York, who is a senior member of the House Financial Services Committee, brought together key stakeholders and underscored the need for a public-private program to manage pandemic risk insurance. Rep. Maloney in May had introduced the Pandemic Risk Insurance Act of 2020, modeled after the Terrorism Risk Insurance Act, which would provide a framework for insurers to offer business interruption policies that cover pandemics, creating a reinsurance program with a federal backstop.

The Risk & Insurance Management Society Inc. does not agree with those who say that pandemics are not insurable, said Patrick Sterling, head of risk management for Texas Roadhouse Inc., a Louisville, Kentucky-based restaurant chain, and a member of the RIMS board of directors, during the virtual discussion.

"As a united front, carriers and the federal government can develop a solution to share the financial risk of future pandemics," Mr. Sterling said.

Other industry participants have expressed broad consensus that a public-private risk-sharing program, like the one that would be created by PRIA, could provide stability to business owners and the economy in the event of a future pandemic. But there are different views on what share of pandemic risk the insurance industry should cover.

Marsh LLC, an early advocate for a public-private risk-sharing mechanism, says that such a program is "essential" for large and small organizations to accelerate economic recovery and to protect against future pandemic risks.

John Doyle, CEO of Marsh LLC, said in a June report: "Only the credit and power of the U.S. government can help create the necessary risk program to harness the financial and social benefits of insurance to mitigate pandemic-related economic losses and provide greater certainty about a sustained recovery."

Reaching consensus on what share of the risk private insurers should assume may be difficult — especially during what's expected to be an exceptionally contentious election period — but without a viable government-backed plan to handle pandemic losses, businesses will continue to face financial ruin and insurers will get hit with losses they didn't price for. No one can say when the next pandemic will hit, so time is of the essence.

How insurers, brokers, policyholders can reduce the effects of social inflation

Social inflation is a term we hear a lot today about what is driving up the cost of insurance. Simply defined, the term means more losses and more expensive losses. We will discuss what causes this and how policyholders, brokers and insurers can mitigate the effect.

Social inflation relates to many claims. This article will focus on the most common property claims relating to fire, windstorm, water and hail, and liability claims related to bodily injury such as slips and falls and construction accidents.

So why have we missed the mark when it comes to anticipating losses?

- **Inflation.** Losses on a liability policy written today will be typically paid three to five years from now, or 10 years or more on complex claims. While we try to estimate what the future cost will be for medical inflation or general inflation, insurers have underestimated inflation trends, and there is "sticker shock" from the value of a claim as compared with what a similar claim would settle for a few years earlier. Also, a more generous societal view on compensation or expansion of the definition of tort liability is typically not contemplated in pricing.
- **Higher verdicts and runaway verdicts.** Bodily injury claims must pay for medical liens and legal fees and must be sufficient to compensate the claimant for their injury; however, expectations have risen in terms of what is needed to adequately compensate an injury. Juries by their nature empathize with victims, but excessive verdicts ultimately go into the loss cost pool and drive up premiums.

For property insurance, there are increased construction costs and increased frequency and severity of regional exposures, such as sinkhole losses in Florida and hail losses in Texas and Colorado.

- **Litigation funding.** Claimants and/or lawyers are being paid up front by litigation financing firms to proceed with a case. With interest charged on the funds advanced and other costs, traditional settlement values leave little money for claimants because they have huge interest bills and have spent a good part of the money they received. This creates a natural incentive not to settle, thus driving up settlement values and legal costs. The very high interest rates charged by the lenders will ultimately be reflected in premiums.
- **Bad faith.** Depending on the state, expansive plaintiff-oriented definitions of bad faith will materially increase the cost of claims since the demands are often over and above the policy limit or expected settlement value. Claimants and their plaintiff attorneys will use bad faith allegations to gain leverage over an insurer and win payments on questionable or exaggerated claims. This has been pronounced for hail claims in Texas and Colorado, which has adversely affected the availability of this coverage in those areas.

In addition, in certain jurisdictions, plaintiff attorneys have been successful in broadening the standard for when someone is liable, such as through vicarious liability.

Real or anecdotal?

Rating agency A.M. Best Co. Inc. commented in a June 2020 report that "Social inflation (broader interpretations of contract language and more plaintiff friendly juries) has helped drive unfavorable loss frequency trends for liability claims, particularly for umbrella and excess casualty business."

Skeptics of the insurance industry might say insurers are using the concept of social inflation as an excuse to raise prices. However, statistics showing claims costs are rising are compelling.

For example, calendar year loss ratios, per Schedule P in insurers' annual financial statements, for the general liability line increased 15 points from 2013 to 2018. If we look at the average of 2011-2013 as compared with 2016-2018, the increase is 12 points. This is meaningful and would be a function of more losses — both frequency and severity, prior year reserve inadequacy and lower pricing. From the data, we see increased losses and price decreases — which fell 7.5% cumulatively 2015-2017 — are the largest drivers.

From a severity point of view, there are numerous data sources showing the existence of social inflation.

For example, the Insurance Services Office's recent "General Liability Trend Data and Analysis" shows an increase in severity for the Owners Landlords and Tenants classification of 60.4% for bodily injury (indemnity only) and 79.6% for property damage from year-end 2013 to June 30, 2019, which is roughly a 9% annual increase for bodily injury and 11% for property damage.

In addition, the Schedule P line for "Other liability — Occurrence" from 2013 to 2017 showed an increase in severity of over 40% as compared with prior historical periods. This reflects all claims, whether they were settled, litigated or resulted in a jury verdict.

Meanwhile, Jury Verdict Research stated in a recent report that "median jury verdicts are more than 2½ times what they were seven years ago." This is consistent with a white paper from Swiss Re Group Ltd. that noted that the median of the 50 largest verdicts doubled from 2014 to 2018. This is also consistent with a report from the Insurance Information Institute that noted that average awards for all lines increased 83% from 2013 to 2017.

All the data is pointing the same way, although not identical in result.

Pricing and loss costs will ultimately become synchronized for the most part. However, we have had convulsive dislocations over the past many decades, such as the liability crisis in the early 1980s, ongoing issues with medical malpractice insurance and huge property underwriting losses following the Sept. 11, 2001, terrorist attacks.

Current social inflation is more akin to the 1980s liability crisis, with the value of the claims, both in terms of frequency and severity outpacing our expectations.

What does it mean?

The insurance industry cannot pay losses without ensuring a reasonable return over the long term. On a short-term basis, the industry will take it on the chin, but on a long-term basis the cost will come back to the policyholder in the form of higher premiums, higher deductibles, more restrictive coverage, avoidance by insurers and less availability of limits, and migration to the excess and surplus lines market with considerably higher pricing and more restrictive coverage.

What can be done?

By the insurance broker or agent:

- Educate your policyholder and manage expectations.
- Understand the market and develop long-term relationships with insurers that are comfortable with your client's business at a reasonable premium with reasonable terms and conditions (i.e. they do not overreact by erratic pricing or withdrawing from classes of business).
- Explore risk mitigation strategies with your client and discuss with your insurers why this makes a difference to justify better pricing.
- Make sure your client has taken sufficient steps to be categorized as a "best-in-class" risk.

By the policyholder:

- Understand what is driving up rates and explore risk mitigation strategies such as effective safety programs, good maintenance of property, leases that properly transfer risk to other parties, and sufficient security. Make your business a best-in-class risk.
- Choose insurance agents or brokers who understand your risk profile and can place your account with insurers that understand your business and will give you credit as being a best-in-class risk.

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By the insurance company:

- Understand what is driving up loss costs. Avoid risks with poor risk profiles relative to premium.
- Increase price, increase deductibles and tighten coverage, as warranted.
- Identify and prioritize writing best-in-class risks.
- Communicate to your producers what you believe are best-in-class risks.
- Make sure that your policyholders have above-average loss control for both their property and liability exposures.

Social inflation is insurers' problem in the short term but will ultimately become a problem for policyholders. Therefore, it is good practice by policyholders and brokers to understand the underlying causes of loss cost drivers, to mitigate such exposures and be presented as a best-in-class risk by their broker or agent to the insurer.

PEOPLE

"One of the largest challenges faced in claims has been preventing smaller, easier claims from getting in the way of more significant and complex claims."

UP CLOSE

Carey Bond

NEW JOB TITLE: Greenville, South Carolina-based head of claims, Americas for Lloyd's of London.

PREVIOUS POSITION: Greenville, South Carolina-based claims team leader for Canal Insurance Co.

OUTLOOK FOR THE INDUSTRY: Positive. Innovation and technology are leading the way in offering products and services to the industry that can only improve the customer experience. This is an exciting time to become a part of Lloyd's, as we work to reimagine what the claims process looks like for the entire market. As the industry innovates, I'll be working with my London colleagues at the forefront of that change in the Lloyd's market.

GOALS FOR YOUR NEW POSITION: My main goal will be to provide extraordinary service to our customer base, including an immediate focus on providing support for the U.S. hurricanes, like Hurricane Laura. As I jump into my role, I'll be working with the Lloyd's market in the U.S. to ensure that customers affected by Laura and all other hurricanes have their claims addressed promptly. And tied to that, my other goal will be to lead the Future at Lloyd's Claims Service through a successful implementation in the U.S. that meets the unique requirements of the U.S. market.

CHALLENGES FACING THE INDUSTRY: One of the largest challenges faced in claims has been preventing smaller, easier claims from getting in the way of more significant and complex claims. As we work to improve our claims solutions with the Future at Lloyd's, we're working toward automating those more regular claims so that our experts can immediately be routed to the more complex claims and process them faster, helping our customers sooner.

FIRST EXPERIENCE: My first role was as a multiline field adjuster, handling all varieties of claims. Learning the business as I was doing it was an enlightening experience.

ADVICE FOR A NEWCOMER: Seek opportunities and feedback. It is a unique and rewarding time to be in the insurance industry, as today's technology seemingly evolves constantly. Be sure to seek those opportunities that will sharpen your perspective.

DREAM JOB: Public speaking.

LOOKING FORWARD TO: I look forward to developing meaningful relationships within the Lloyd's market that will enhance the Future at Lloyd's strategy. Working with a variety of stakeholders, I'm hoping my past and future relationships will help shape a Lloyd's market that is better for all. Additionally, I'm looking forward to providing insight and input to improve the customer experience. Through my experience with past employers, including Canal, Nationwide Mutual Insurance Co. and The Travelers Cos. Inc., I'm looking forward to bringing a unique experience to help inform our claims process.

COLLEGE MAJOR: Business administration.

FAVORITE MEAL: T-bone steak and broccoli.

FAVORITE BOOK: "My American Journey" by Gen. Colin Powell.

HOBBIES: Sports and motorcycles.

TV SHOW: "How It's Made."

ON A SATURDAY AFTERNOON: Long rides on my motorcycle.

SEE MORE ONLINE

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*.

ON THE MOVE

Alliant Insurance Services Inc. named former Willis Towers Watson PLC broker **Larry Shapiro** to lead its representations and warranties business. Mr. Shapiro, who will be based in San Francisco, most recently was a senior vice president at Willis.

Sedgwick Claims Management Services Inc. has hired former Walmart Inc. risk manager **David Stills** to the newly created position of global risk management executive. Mr. Stills most recently served as Walmart's vice president of global risk management, a role he held for 18 years.

Hamilton Insurance Group Ltd. named Bermuda-based **Megan Thomas** CEO of Hamilton Re Ltd., succeeding Kathleen Reardon, who left Hamilton Re in August. Ms. Thomas comes from Axis Capital Holdings Ltd., where she was most recently chief underwriting officer, reinsurance.

Marsh LLC named New York-based **Tamara Simpkins Franklin** chief digital, data and analytics officer, replacing Sastry Durvasula who joined McKinsey & Co. Previously, Ms. Franklin was vice president of media and entertainment solutions, North America at IBM Corp.

Zurich Insurance Group appointed **Sierra Signorelli** group chief underwriting officer. Ms. Signorelli, who joined Zurich as chief underwriting officer for commercial insurance in 2017, was named one of the *Business Insurance* Women to Watch last year.

Liberty Mutual Insurance Co. named Boston-based **Marc Orloff** president, North American field operations, global risk solutions, replacing Shaun Kelly, who has decided to leave the company. Previously, Mr. Orloff led Liberty Mutual's GRS field distribution team.

KFC cautions licking your fingers not safe

Kentucky Friday Chicken says it is dropping its famous "Finger Lickin' Good" catchphrase in several of its markets worldwide, as the practice of licking one's fingers is too risky due to COVID-19.

The move to pull the slogan, which KFC began featuring in 1956, comes after the restaurant chain faced 163 complaints with the United Kingdom's Advertising and Standards Authority and after KFC pulled advertisements in March 2020, over fears it could encourage the spread of coronavirus, the Sun newspaper reported.

"That thing we always say? Ignore it. For now," KFC said in a video it posted to YouTube.

"We find ourselves in a unique situation, having an iconic slogan that doesn't quite fit in the current environment," Catherine Tan-Gillespie, global chief marketing officer at KFC, told the Sun.

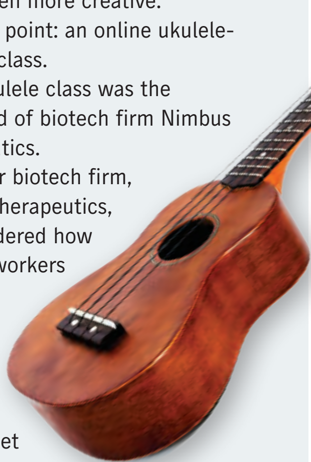
If you build this uke, you will stay

Companies have long introduced workplace perks such as lunch treats and parties as a way to attract and retain talent, and the pandemic has prompted employers to get even more creative.

Case in point: an online ukulele-building class.

The ukulele class was the brainchild of biotech firm Nimbus Therapeutics.

Another biotech firm, Arrakis Therapeutics, also pondered how to keep workers engaged while at home, its CEO told The Wall Street Journal.



The solution was to hire a professional bartender to lead a virtual cocktail-making class and to have the ingredients shipped out to homes in advance, he said.

WORK-FROM-HOME INTERRUPTION RISK: WOOF

Better mute that Zoom session or conference call. The mailman is here. A car is pulling in the driveway. Then there's the doorbell. The doorbell on a television show. And the inevitable barking for no reason.

A new study found that more than half of telecommuters have had their workday interrupted by a pet, according to a survey of 1,011 people conducted by Shelby Township, Michigan, homebuilder Lombardo Homes. Of nationwide survey participants, 79% of them owned a dog, 46% owned a cat and 50% said they owned another type of pet.

In addition to 58% of workers reporting that their days have been interrupted by a pet, 42% report they have gotten frustrated with or annoyed by a pet during quarantine.

The good news? The survey also found that 94% lean on their pet for emotional support and 42% have considered adopting another during the pandemic.

A call is a call, of course, of course

Whether a racehorse should lose the trophy and its owners the $1.5 million purse in the Kentucky Derby after being the first to cross the finish line and later found to have committed fouls is up to the race stewards, and not any judicial system, a federal appeals court in Cincinnati ruled.

The owners of racehorse Maximum Security filed their lawsuit in federal court just days after the famed 2019 race, calling for a judicial review of their loss. Both a federal judge and later the appeals court said the stewards' decision was not subject to a judicial review under Kentucky law.

Who helped justify the latter decision? Mister Ed, the talking horse, of course, of course.

As a judge wrote, "perhaps only a racehorse itself could tell us whether it was fouled during a race."

Smile, it´s likely you are on camera

If it always feels like someone is watching you, they are.

A study by security camera company Safety.com found that security cameras put everyday Americans in the spotlight an average of 238 times a week.

Lauded by businesses and insurance companies as a risk management strategy that in some ways can result in insurance premium savings, the explosion of the surveillance technology market means that even driving around your neighborhood puts you on camera an average of 160 times a week, according to the study.

At home or walking around the neighborhood? Fourteen times per week on average. Shopping or running errands? Lights, cameras, action: 24 times per week on average.

BUSINESS INSURANCE
WOMEN TO WATCH
#BI_WOMENTOWATCH

2020 AWARDS SAVE THE DATES

NOVEMBER 13 | DECEMBER 10

Celebrating 15 years of recognizing over 500 outstanding women leaders in commercial insurance

During these turbulent times, **women of all backgrounds have stood up and risen to the challenge** as effective leaders for risk management, commercial insurance and related fields. Over two virtual events, *Business Insurance* will recognize the 2020 Women to Watch winners and host leadership conferences with professional development and networking opportunities. BI is excited to celebrate the successes of our winners and continue to support efforts that help the industry achieve greater gender diversity in leadership roles!

2020 winners will be announced in October on BusinessInsurance.com

SAVE THE DATES & LEARN MORE >>

Women to Watch EMEA Virtual Awards & Leadership Conference | November 13: businsmag.com/w2wemea

Women to Watch Virtual Awards & Leadership Conference | December 10: businsmag.com/w2w

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