SPECIALTY & EMERGING RISKS

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SPECIAL ISSUE 2021

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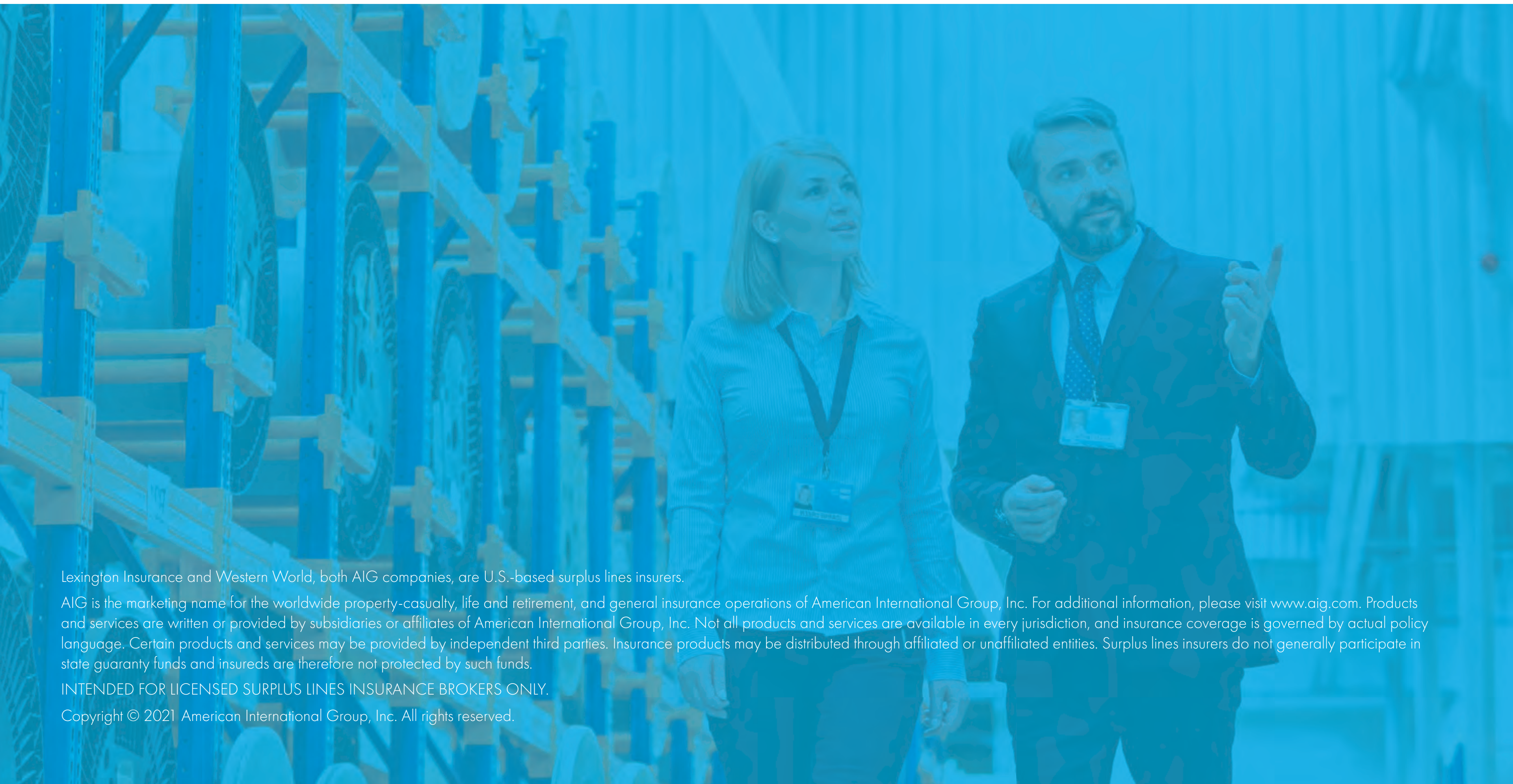

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Gavin Souter
EDITOR

Newer risks, tighter capacity

Upheavals over the past year in issues surrounding global health care, politics, the economy and society have had ramifications for many areas of insurance and risk management. Combine that with hardening rates for numerous coverage lines, and buyers and sellers of insurance must adapt to a markedly changed environment.

This is particularly true for newer and developing risks. As insurers focus on providing increasingly constrained capacity to traditional areas of the market, efforts to develop newer sectors become a lower priority. As we report in several stories in this annual special issue of *Business Insurance* on specialty and emerging risks, new industries are often struggling to understand and cover the liabilities they face.

In the rapidly expanding area of esports, underwriters and event organizers are still coming to grips with the array of risks they must mitigate or transfer.

In the cannabis sector, which seems to grow with every passing legislative session as more states enact laws legalizing medical or recreational marijuana use, insurance capacity is not keeping pace with demands for coverage.

And in more established parts of the specialty sector, buyers are also facing a crunch. In marine cargo and stock throughput, shipping delays during the pandemic have increased supply chain risks as insurance prices climb, and new concerns over environmental, social and governance issues are testing the directors and officers liability market.

Workers compensation insurance has been a more stable sector over the past few years, but even there changes are afoot.

As the outlook for controlling the pandemic becomes more hopeful, we can all be relieved, but it's far from the only problem that insurers and risk managers face.

INSIDE

ESPORTS RISKS

As the esports industry continues to grow at a rapid pace, attracting a larger audience than Major League Baseball and the National Hockey League combined, insurers are looking for ways to provide cover for associated risks such as media liability and cyber liability. **PAGE 4**

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The legal market for cannabis is growing, but operators still face myriad insurance restraints. **PAGE 6**

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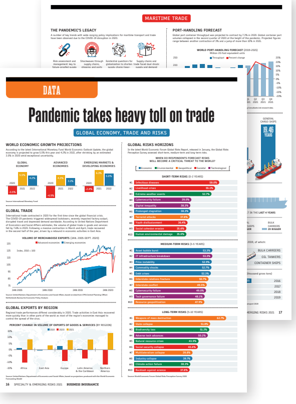
NLRB SHAKE-UP

Employers should prepare for a more pro-labor National Labor Relations Board. **PAGE 15**

DATA SPREAD

The International Monetary Fund projects the global economy will grow 5.5% this year after contracting an estimated 3.5% in 2020. The maritime industry was among those the pandemic hit hard last year. **PAGE 16**



NEWS ANALYSIS

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PERSPECTIVES

As environmental, social and governance issues move to the forefront, corporations need to be aware of potential ESG risk, write Phyllis A. Ingram and Sedgwick M. Jeanite of Robinson+Cole. **PAGE 18**

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Members of Phong Vu Buffalo battle against Vega Squadron during a League of Legends competition. Other popular esport games include Fortnite and Call of Duty.

Esports exposures evolve as events take off

BY ANGELA CHILDERS
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The COVID-19 pandemic led to the cancellation of many sporting events, but esports is one area of entertainment that continues to grow at a fast rate, as do the associated risks.

With media liability and cyber liability among the key risks associated with online sporting events, experts say the insurance sector is teeing up to serve the unique needs of this emerging market.

Esports is a $1.6 billion industry that has been growing in revenue at a rate of 27% annually, according to data analytics and risk assessment company Verisk Analytics Inc. The industry's audience is larger than that of Major League Baseball and the National Hockey League combined, and projected to hit 276 million viewers a month by 2022, according to a report by Goldman Sachs Group Inc.

The esports industry involves multi-player games where professionals compete for cash prizes, often in the millions of dollars. The biggest esports competitions involve games such as League of Legends, Fortnite and Call of Duty.

"There are followers of esports everywhere — it is now a force to be reckoned with," said Thomas Guesde, Brussels, Belgium-based senior vice president in the global sports and events practice of Marsh LLC. "(Esports) is an underserved market that needs to be helped in understanding its risks."

While esports risks can be likened to those in professional sports or the entertainment industry, the many different facets of risk that can affect esports players, event organizers and game publishers makes insuring against those various risks a challenge.

"Esports isn't a type of business as much as a type of industry," said Jade Giltrap, London-based team leader for media and entertainment at CFC Underwriters. "I think where brokers struggle a bit is finding a product fit for the purpose."

When Tysers Insurance Brokers Ltd. entered the esports market three years ago, it applied its knowledge of the live events and sports industries, said Gary Brooks, Manchester, England-based client director for the brokerage.

"In the early days, what I found was that some of the exposures (in esports) were a mix of sports and music insurance — a Venn diagram," he said. The brokerage started by working with tournament organizers, securing coverages such as event cancellation, liability and equipment insurance before expanding to cover esports teams, which make their money through tournament winnings, merchandise sales and sponsorships, Mr. Brooks said.

79%
of esports viewers are under 35 years of age

355B
minutes of Twitch were watched in 2017

Source: Goldman Sachs

While event coverage in esports differs little from traditional cancellation policies, with the COVID-19 pandemic, many esports events took place without live audiences or even players in attendance, with team members remaining in their homes and logging on with equipment and cameras that had been shipped to their homes by organizers, he said.

"If there's any kind of transmission interruption … you have to have insurance to make sure you're covering your obligations under the contracts and players are getting paid — not unlike a (music) touring group," said Scott Milne, Los Angeles-based producer at Risk Strategies, a specialty brokerage under the entertainment practice of DeWitt Stern Group Inc.

In current policies, however, Mr. Brooks said it can be unclear who bears the responsibility for the financial losses in the event of a loss of transmission.

"An event cancellation policy … might include some sudden loss of transmission because it's not uncommon for most of the revenue to come from (streaming) rather than ticket sales," he said. "If it's not clear in a contract where the financial loss is, it's very hard to arrange insurance at the end of the day."

Some of these technology-based exposures may also fall under a cyber policy. In esports, exposures can be greater due to various factors, including the industry's heavy reliance on advertisements for revenue, the contractual obligations that the events run smoothly, and the requirement for sufficient system speed, said Lindsey Nelson, London-based cyber development leader at CFC Underwriters.

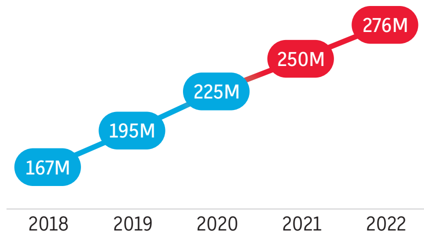
CFC entered the esports insurance market with a focus on intangible assets such as intellectual property, cyber and media liability, which are all big risks for the industry, Ms. Giltrap said. From publishers using a person's likeness or a certain make and model of vehicle in a game, to collaborations between designers and game-makers to make branded clothing available for a player's character to wear, there "are a lot of really interesting things happening … (and) those third-party brands do tend to want to create insurance to support the collaboration," she said.

Celebrities have sued games such as Fortnite for copyright infringement over the ability of players to purchase or earn a "dance" that they made popular in mainstream culture, though the courts have largely found that individual dance moves cannot be copyrighted as a choreographed routine.

"With media liability (in esports), broadly speaking, there are three things

STRONG, GROWING AUDIENCE

The monthly audience for esports continues to grow at a furious pace, and is projected to reach 276 million monthly viewers by 2022.



Source: U.S. Bureau of Labor Statistics 2018

to look at: libel, privacy risk and copyright risk," said Angela Weaver, London-based head of media and entertainment for Beazley PLC.

Copyright is the primary issue, she said, with image rights and the use of music the most problematic for the industry.

"Music is an area we always look at, regardless of the risk," Ms. Weaver said. "With the emergence of music streaming, music companies are not in the same position that they were 20 years ago, and it's very important to them that people are not using their music without a license."

For esports influencers, there remains an unresolved issue of whether they have fair use to broadcast themselves playing a game, she said.

"They probably don't have the rights from the game publisher to be doing that … but I don't believe there has been any litigation on that because (for) the game publishers and developers, it's entirely in their interest to have people promoting their games," Ms. Weaver said. "It's a technical legal problem, because I don't think anybody has solved it."

Misappropriation of trademarks, defamation and slander are also issues in esports that fall under the media liability umbrella.

"Even if they're baseless allegations, media liability is really an important piece of your risk management program," said William Hamory, New York-based vice president of sales at Founder Shield LLC, a brokerage primarily focused on venture-backed companies that has been placing coverage for the esports industry for the last five years. "There's just a lot more to pull from when you're putting yourself on camera for extensive periods of time."

It's also crucial that all esports stakeholders understand what may constitute breaches of intellectual property protocols, Mr. Guesde said.

"Contrary to what we know in (sports) federations, the decision as to the field of play and to changing the field of play rests with the publisher," he said.

Ms. Giltrap at CFC said she has seen an increased interest in coverage for defamation. "Things like bullying and harassment would fall within it, but it depends on the nature of what was said," she said. "It's definitely an area of interest."

"I'd like to see … influencers becoming more aware of their media liability exposures," Ms. Weaver said. "Even a fully grown individual probably doesn't always appreciate that when they post something on social media they are publishing — sometimes they can be publishing to tens of millions. I think U.S. influencers are a little more alive to it because (the U.S.) is such a litigious country."

In the next decade, as esports continues to grow, industry experts expect to see more insurers and brokers entering the sector.

"It's evolving — for most underwriters and executives, their only connection to this world is whether they have an 11-year-old playing Fortnite," Mr. Milne said. "It has been challenging to educate underwriters about esports."

Mr. Hamory hopes to see more insurance products that are tailored to the industry, noting that gaming tournaments are often classified as an arcade — with a rating that includes games like bumper cars even though the events just have people seated playing games.

With more specific products, "exposure will be properly rated and premiums will be much more approachable," he said. "The next 10 years are going to be really exciting."

Ms. Giltrap sees potential for new products centered around technology or the protection of intangible assets.

"Most of the revenue being generated today is based on technology and intellectual property," she said. "There's a lot of room for discussion around needs like the cyber space and tech space and media working together to create solutions for this industry."

VIRTUAL BATTLES STILL CARRY PHYSICAL INJURY RISKS

The risk of injuries is a major concern for traditional sports and is not to be overlooked with esports, experts say.

Repetitive motion injuries, such as carpal tunnel or trigger finger, and collapsed lungs from sitting in postures that cut off circulation to the organs, are among some of the injuries seen in online sporting.

While lots of esports leagues and teams will use standardized key person or disability insurance policies similar to those used in professional sports leagues and by teams, many policies exclude coverage for cumulative injuries, said Richard Giller, an entertainment and sports law attorney and partner in the Los Angeles office of Pillsbury Winthrop Shaw Pittman LLP.

In January, a 25-year-old top Call of Duty player known by the screen name ZooMaa announced on Twitter that he would be stepping away from esports because of a cumulative trauma thumb injury.

Esports athletes train for 10 to 12 hours a day and can make millions of dollars in what is usually a short career, said Thomas Guesde, Brussels, Belgium-based senior vice president in the global sports and events practice of Marsh LLC.

"The issue of disability is increasingly being considered," he said. "You can see more and more literature about orthopedic problems and musculoskeletal disorders, which are particular to esports."

A lot of the injuries in the industry are gradual, said Andrew Blancher, New York-based director of commercial auto product development and emerging issues at Verisk Analytics Inc.

"It's not like a sudden injury at a football field, and it can make it challenging to tie an injury to a particular event," he said. "Bodily injury is not as obvious in someone holding a controller in their hands."

Angela Childers

BAD BEHAVIOR CAN JEOPARDIZE ESPORT CAREERS BUT COVER LAGS

With an industry dominated by high school- and college-aged players, offensive behavior is an issue in esports and there are few solutions to hedge against the risk, experts say.

Esports players straddle the line between athlete and celebrity — participating in competitions while maintaining social media platforms, receiving money from streaming services for uploading videos of their play — and insurers need to consider how they will cover entertainment risks, said Andrew Blancher, New York-based director of commercial auto product development and emerging issues at Verisk Analytics Inc.

With the whiplash of social media condemnation, esports players are worried about being dropped from large contracts or their team, and teams, managers and sponsors fear a public relations nightmare, said Jade Giltrap, London-based team leader for media and entertainment at CFC Underwriters.

"A loss following (a scandal) is really hard to quantify," she said. "Is it the money they would have gotten from prizes … their sponsorship deals … or is it the legal costs to defend them or PR crisis management costs? There's certainly a need within the industry for products that cater to some elements of this."

Oftentimes, it makes more sense to cover the tangible loss under a breach of contract, Ms. Giltrap said.

"It's much more difficult to find coverage for an event not being as successful as it could have been because a particular party caused a scandal, or a team being dropped from a league or a player of influence losing a contract — that's certainly being discussed," she said.

With players concerned with a loss of income from accidentally offending someone online, "that's currently not insurable under a media liability product," said Angela Weaver, London-based head of media and entertainment at Beazley PLC. "We've thought about giving some crisis management cover for that kind of offense … but we've always stopped short of covering their own loss of income."

Sponsors, too, have taken an interest in disgrace insurance in case a team member who represents them engages in unbecoming behavior that damages the team, the brand and sponsorships, said Thomas Guesde, Brussels, Belgium-based senior vice president in the global sports and events practice of Marsh LLC.

Angela Childers

Insurance market fails to keep pace with rapidly expanding cannabis sector

BY MATTHEW LERNER
mlerner@businessinsurance.com

Reuters

Insurance supply for cannabis operators remains constrained as the legal market for their products continues to grow at the state level.

Lack of capacity for property coverage and directors and officers liability insurance is causing challenges for the sector as many insurers remain wary of supporting the industry while federal law still prohibits the use of cannabis.

Some European insurers, however, are showing an interest in the market and the change in White House administration has fueled hopes for legislative and regulatory changes at the national level.

The 2020 election cycle saw Arizona, Montana, New Jersey and South Dakota join the list of states allowing recreational cannabis use, bringing the total to 15. South Dakota also became the 34th state to approve medical cannabis use.

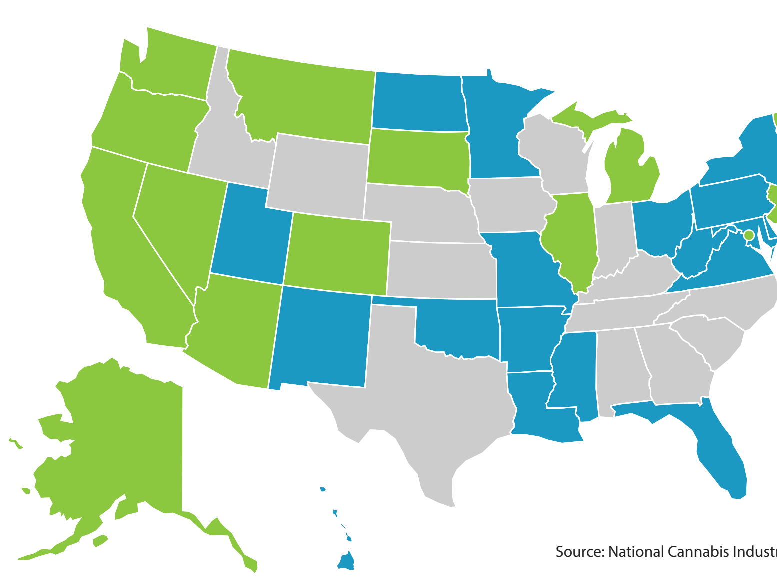
But cannabis operators everywhere face pricing and capacity issues.

"There's a whole bunch more cannabis companies out there now, in legal states, that need insurance, but there isn't a whole bunch more capacity available in the marketplace," said Mathew Grimes, practice leader for the cannabis specialty group at Hub Colorado, a unit of Hub International Ltd., who also sits on the risk management and insurance committee of the National Cannabis Industry Association.

Amid the tough market, Mr. Grimes said, the committee expects to publish the first version of its risk prevention manual in the first quarter of the year with ongoing updates to follow, as well as conduct a series of webinars about insurance for cannabis operators.

STATE-BY-STATE MARIJUANA POLICIES

Medical use | Recreational/Adult use



Source: National Cannabis Industry Association

On the property insurance side, some new capacity is emerging at the excess level, sources say.

Some capacity has become available over the past few months from European markets, said Justin M. Lehtonen, vice president at wholesaler Worldwide Facilities LLC in Los Angeles.

"We're seeing capacity enter the market now in anticipation that we are entering a more favorable regulatory environment," he said.

With more legalization in states and the Democrats, who have championed cannabis reform, in control of the White House and Congress, expectations are rising for cannabis industry growth (see related story).

There's been a "huge need" for excess property capacity, Mr. Lehtonen said.

"The No. 1 thing operators are looking for is capacity to handle their possible maximum loss. There are some operators which have an exposure, for instance, to a hurricane, which could be a $50 million or $100 million event, and they have only a fraction of that in capacity," he said.

Multistate cannabis operators with large grow and processing facilities often can access only $20 million to "maybe $40 million" in coverage, said Jay Virdi, chief sales officer for Hub's cannabis insurance and risk services in the U.S. and Canada.

> "There's a whole bunch more cannabis companies out there now, in legal states, that need insurance, but there isn't a whole bunch more capacity available in the marketplace."
>
> Mathew Grimes, Hub International Ltd.

"They need a lot more than that," he said.

Insurers have been more responsive with providing multistate policies, said Ian A. Stewart, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles.

"Operators are looking for one policy for general liability, for instance, which covers multiple operations in multiple states," he said. "Insurance buyers and brokers are

See CANNABIS next page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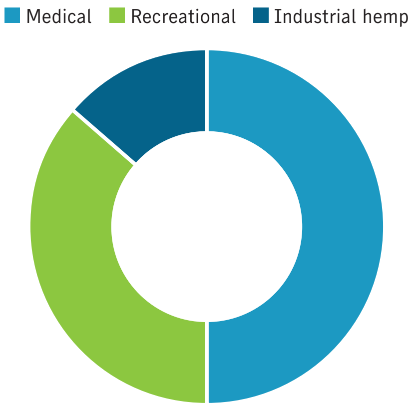
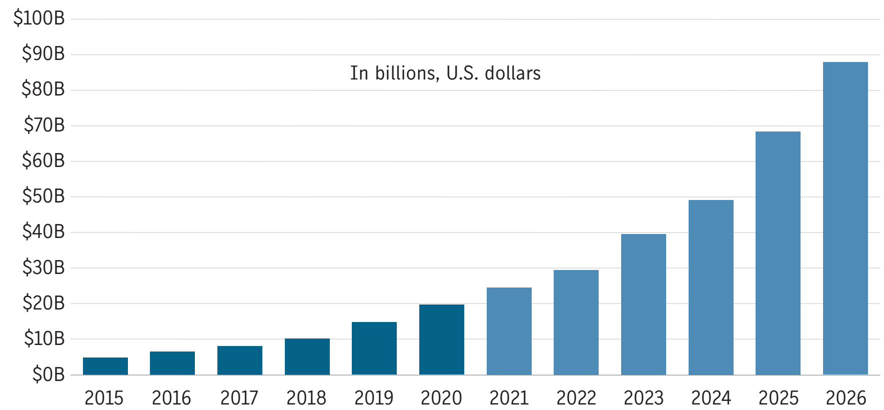
GLOBAL CANNABIS MARKET SHARE (2018)



Source: Fortune Business Insights

NORTH AMERICAN CANNABIS MARKET SIZE (2015-2026)



Source: Fortune Business Insights

demanding it, saying, 'This is what we need,' and insurers are responding."

Mr. Stewart added, however, that with many specialty lines "it's the same old story. The limits are not there and getting reinsurance is difficult."

Mr. Virdi also cited reinsurance as a limiting factor in cannabis insurance markets.

"A lot of insurance companies have told us that is another reason why their organization is not able to deploy any capacity or play in the space," he said.

The supply of D&O capacity is also tight, sources say (see related story).

"The supply demand curve is not where it needs to be right now," said Brad McDonald, executive vice president, financial lines co-practice leader, in Castle Rock, Colorado, for CAC Specialty, an affiliate of brokerage Cobbs Allen. "There's much more demand than there is supply."

There are, however, no signs of new capacity coming to the cannabis D&O sector, said Brian Savitch, senior vice president of financial services at Worldwide Facilities in San Francisco.

D&O is a "very challenging placement," said Mr. Virdi of Hub.

There are few insurers offering management liability coverage to cannabis companies, Mr. McDonald said. "It's a very limited marketplace. Less than a handful will write directors and officers and other executive liability lines."

> "The supply demand curve is not where it needs to be right now. There's much more demand than there is supply."
>
> Brad McDonald,
> CAC Specialty

D&O coverage for public cannabis companies with U.S. operations can start at $200,000 per million of coverage, he said.

Colin Daly, executive vice president, financial lines co-practice leader, in Littleton, Colorado, for CAC Specialty, said less expensive D&O coverage can have substantial exclusions.

"Some of the lower price cover may exclude broadly anything having to do with THC," he said, referring to tetrahydrocannabinol, the main psychoactive component of cannabis.

The rising market in many other insurance sectors is inhibiting further participation in the insurance market for cannabis operators.

"We're already in the closest thing to a hard market since 2002," Mr. Savitch said. "Carriers are limiting their capacity and getting more rate for it outside of cannabis, and their buckets are filled even with them charging more rate and deploying less limit. Why would now be the time they wanted to move into a more risky segment when they don't need the money?"

Still, the market is easier than a few years ago when the burgeoning sector began its rapid expansion.

"You can get more insurance of a better quality today than you could in 2015," said Mr. Lehtonen of Worldwide Facilities. "Things are trending in a positive direction as a whole."

Lack of affordable D&O coverage creates stumbling block to recruiting senior talent

The scarcity and prohibitive expense of directors and officers liability coverage for cannabis operators in the United States is complicating efforts to recruit talent into the nascent industry, according to sources.

Potential cannabis executives and board members may be deterred by a lack of protection, they say.

"They can't entice executives from other industries without adequate coverage," said Ian A. Stewart, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles.

Executives recruited to be part of cannabis operators will likely want to know that adequate D&O insurance is in place.

"That's going to be their No. 1 question: 'Do you have a directors and officers policy in place? What does the tower look like?'," said Brian Savitch, senior vice president of financial services with wholesaler Worldwide Facilities LLC in San Francisco. "Most seasoned C-suite individuals who have sat on other boards of other successful companies outside of the cannabis space, they've never had to worry about a company not having D&O."

Recruiting successful executives from other related industries, such as the beverage, food and transportation sectors, can be challenging.

"If you want these people to come into a large multistate operator and you don't offer them adequate directors and officers coverage, why would they come?" Mr. Stewart said.

Matthew Lerner

MARIJUANA POLICY REFORM COULD BRING RELIEF

Speculation that a change in political leadership could provide a boost to the legalized cannabis market has made insurance and other sources hopeful about future market expansion and more choices for U.S. cannabis operators.

Democrats have generally been more supportive of legalizing cannabis, and President Joe Biden said during his campaign that he supported decriminalizing cannabis.

"With a party which has made cannabis reform part of their platform being in control of the White House, Senate and House, it indicates change is on the horizon, and markets want to be a part of that," said Justin M. Lehtonen, vice president at wholesaler Worldwide Facilities LLC in Los Angeles.

Change could come in different forms, according to Ian A. Stewart, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles, such as passage of the SAFE Banking Act.

"That would take most of the pressure off the carriers," Mr. Stewart said, adding that broad-based national legalization is probably less likely.

H.R. 1595, whose full title is the Secure and Fair Enforcement (SAFE) Act and is also referred to as the SAFE Banking Act of 2019, is "An Act to create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes," according to the legislation, which has passed the House.

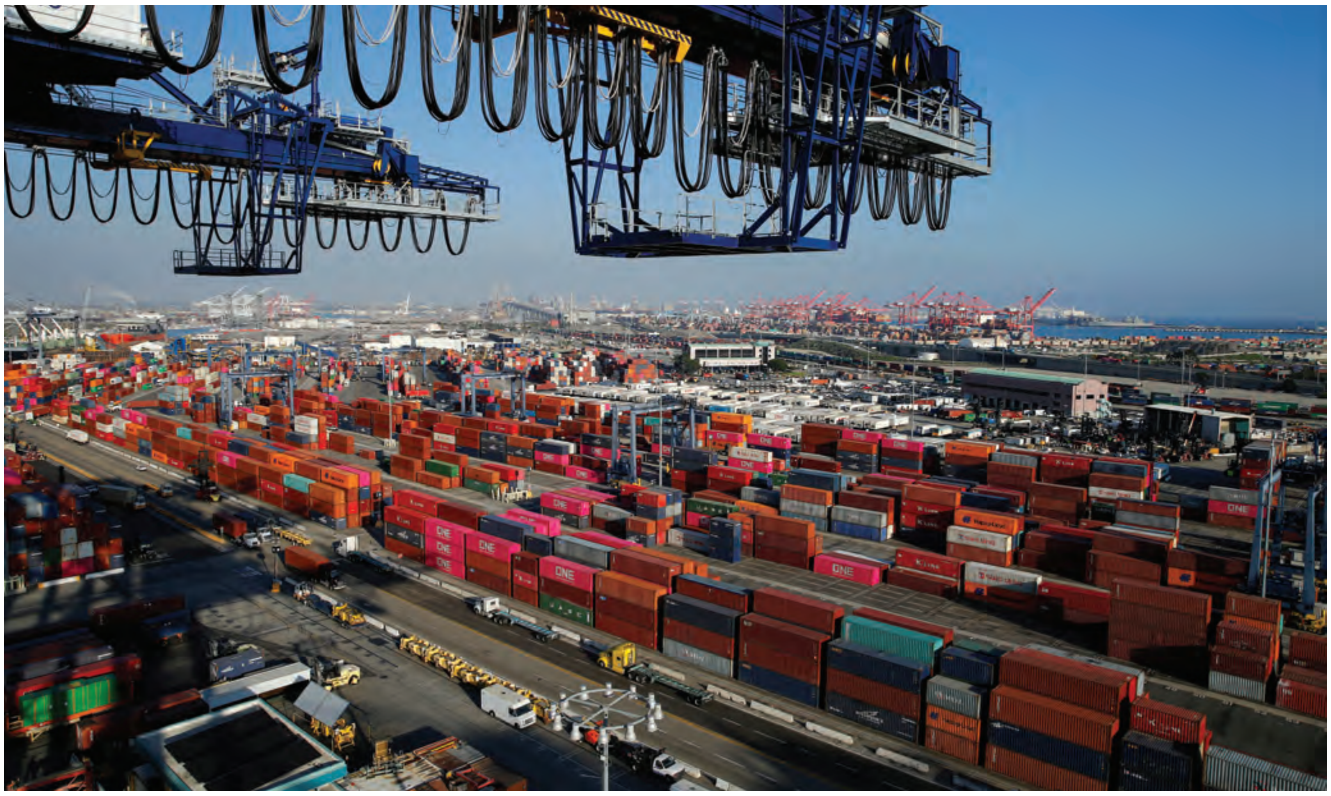
Still, change is not likely to be immediate.

"A change of guard in Washington may mean different things, but none of that legislation is likely to be in place before 2022 in any event, so the market remains unchanged," said Mathew Grimes, cannabis special practice leader at Hub Colorado, a unit of Hub International Ltd., who also sits on the risk management and insurance committee of the National Cannabis Industry Association.

Matthew Lerner

Cargo rates increase as cat losses rise, exposures accumulate during pandemic

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com


Reuters

Rate increases, higher retentions and tighter terms and conditions continue to be widespread in the marine cargo/stock throughput insurance market even as the economic fallout from COVID-19 continues, industry experts say.

Higher demand for goods, combined with pandemic-related disruptions to trade, has led to a backlog of shipments sitting on vessels, at ports and in warehouses, resulting in rising exposures for insurers.

> "(March 2020 tornado) losses were rumored to be north of $300 million alone. … When an event like that happens, it turns a very difficult year into a loss-making year."
>
> Kevin Rimmer, McGill & Partners

The pandemic has also highlighted the issue of data sharing and loss prevention in the transportation of cargo, especially for temperature-sensitive goods like vaccines (see related story).

Leading up to 2020, there had been a hard push to increase rates and a restriction of capacity in the cargo marketplace, primarily due to several years of underwriting unprofitability, said Lars Gustafson, New York-based managing director of Arthur J. Gallagher & Co.'s marine practice.

At Lloyd's of London, one of the biggest insurers for cargo insurance, a performance review forced syndicates that were unable to devise a path to profitability to withdraw from the market, Mr. Gustafson said.

After a lot of "remedial work" in the cargo market, 2020 continued along that theme, said Kevin Rimmer, partner-head of cargo at McGill & Partners in London.

Most cargo insurance buyers saw rate increases of 20% to 25% across their portfolios, in addition to reduced coverage, Mr. Rimmer said.

Then, in March 2020, a series of tornadoes in Tennessee, including one that hit Nashville, made a challenging marketplace worse, he said.

"The losses were rumored to be north of $300 million alone … so you can forget rate rises and restrictions in wordings. When an event like that happens, it turns a very difficult year into a loss-making year," Mr. Rimmer said.

The cargo market was also hit by several other significant losses in 2020 after a series of container ships, including the vessel ONE Apus, lost their containers at

Richer data over entire supply chain essential to reduce claims in stock throughput market

Better data and insights are critical to preventing losses in the stock throughput market going forward, experts say.

There is a much greater focus on technical underwriting and data-driven offerings, said Kevin Rimmer, partner-head of cargo at McGill & Partners in London.

While in the past underwriters only knew about certain segments of a journey, that is changing, he said.

"It's the beginning-to-end answers. ... If you've got technology that gives you information at every point in the journey you can start to predict where losses will happen or what carriers you need to be aware of and you can plan for it," Mr. Rimmer said.

While the pandemic has forced many businesses to reassess their risk management techniques, any effective risk mitigation plan needs to have a connected trading risk exposure strategy, said Suki Basi, CEO of London-based Russell Group, a data and analytics company.

Data is at the heart of the strategy, Mr. Basi said. By having a real-time view of current conditions, companies can build their supply chain knowledge and build their mitigation strategies, he said.

While there are temperature controls and systems that monitor cargo during transit, the data has only been available to the end user, said Lars Gustafson, New York-based managing director of Arthur J. Gallagher & Co.'s marine practice.

Now insurers are gravitating to the idea of sharing that data so they can better manage risks and know exactly what cargo or client is on board which ship, he said.

Claire Wilkinson

RATE PREDICTIONS

Conditions remain hard for cargo. For hull, 2020 was one of the hardest marine markets in more than 20 years.

	TREND	RANGE
TRANSIT ONLY		
Good loss experience	▲	+10% to + 15%
Marginal to poor loss experience	▲	+15% to +20% and higher
STOCK THROUGHPUTS		
Good loss experience	▲	+15% to + 25%
Marginal to poor loss experience	▲	+25% to +40% and higher
HULL AND MACHINERY		
Good loss experience	▲	+10% to +15%
Marginal to poor loss experience	▲	+20% to +30%
MARINE GENERAL LIABILITIES		
Primary	▲	+5% to +10%
Excess	▲	Flat to +10%
USL&H (workers comp)	▲	Flat to +5%

Source: Insurance Marketplace Realities 2021, Willis Towers Watson PLC

sea in bad weather.

The Nashville tornado further hardened the market and prompted changes in wordings, said Michael Falvey, president and CEO of Falvey Insurance Group, in North Kingstown, Rhode Island.

"Wording has tightened up," certainly for catastrophe definitions, Mr. Falvey said. For policies that include coverage for cat perils, aggregates and limits now apply to tornadoes as well as to named windstorms, he said.

Stock throughput policies, known as "cradle-to-grave" coverage, protect a company's goods through the supply chain from production to their final destination.

Because cargo in the pandemic is not being processed and sold as quickly as it normally would, accumulation risk in the stock throughput program is a concern, Mr. Gustafson said.

"When you do have a cat type of loss, a wildfire in California that wipes out warehouses or windstorm activity like we've seen in 2020, the exposures are greater," he said.

Convective storms, tornadoes, hailstorms, derechos and riots — events that until recently weren't seen as frequently — are creating concerns among insurers over aggregates and concentration of exposure, said Samuel Chung, New York-based vice president of cargo underwriting at AmWINS Specialty Logistics Underwriters.

As a result, cargo underwriters will continue to be more selective about risks, Mr. Chung said.

"We're seeing pushback on more of the stock-driven risks. If something is clearly more property than anything, should a cargo or a marine underwriter really be taking on billions of dollars in inventory to basically bail out, credit the property underwriter because the rates are harder there?" he said.

Given the losses in 2020 and the still evolving effect of COVID-19, double-digit rate increases in the first half of 2021 are likely, experts say, and insurer scrutiny of storage locations and pullbacks on limits will continue.

While the cargo market was not significantly exposed to immediate claims resulting from the virus, the bigger concern is the wider impact on businesses and trade due to the pandemic, Mr. Rimmer said.

> "When you have a cat type of loss, a wildfire in California that wipes out warehouses or windstorm activity like we've seen in 2020, the exposures are greater."
>
> Lars Gustafson, Arthur J. Gallagher & Co.

This includes reduced global GDP, declines in seaborne trade and delays in trade, he said.

Delays in and of themselves are not covered by a stock throughput program, because there has to be a physical loss, such as a fire, experts say.

If a transit that's supposed to take 10 days actually takes 15, "you're still covered during that transit period, but if the proximate cause of loss is delay, then most policies would exclude those losses," Mr. Rimmer said. If it's a perishable product, losses caused by delay can be a real issue, he said.

Spoilage due to delay can be covered but it has to be specifically written back into the policy, Mr. Falvey said. This is an important coverage for life sciences businesses and their products, he said.

Insurers offer Texas employers alternatives as state remains lone locale for comp opt outs

BY LOUISE ESOLA
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Texas is the only state that does not require employers to carry workers compensation coverage, but employers in the state have other options when it comes to protecting themselves from work injury liabilities and for providing benefits to injured workers.

The growing number of companies offering alternative coverage means that Texas employers that opt out of the comp system can provide comp benefits that are tailored for their employee base, experts say.

But despite potential cost savings, opting out is not the right move for all companies, they say.

Twenty-two percent of employers with more than 500 workers in Texas opted out of the workers compensation system in 2020, according to a report released in December by the Texas Department of Insurance, Division of Workers' Compensation. (See related story.)

COST SAVINGS FOR NONSUBSCRIBERS

A 2016 Stanford University study of 15 large, multistate nonsubscribers that provided their Texas employees with customized occupational injury insurance benefits in lieu of workers compensation coverage between 1998 and 2010, found:

- Costs per worker hour fell by 44%.
- The savings were driven by a drop in the frequency of more serious claims involving replacement of lost wages, and by a decline in costs per claim.

Source: Stanford University

Citing expensive comp premiums at the time, Texas reformed its workers comp law in 1989, allowing employers to become so-called nonsubscribers. By 1993, when the state started creating reports on nonsubscribers, 44% of private Texas employers — the largest percentage ever — had opted to not carry comp coverage, according to state data.

Texas isn't the only state that has a history with what is commonly referred to as "opt out." Oklahoma's three years of allowing it, following reforms in 2013, came to a halt when the state's Supreme Court in 2016 ruled the option was unconstitutional for creating two classes of workers. Also in 2016, legislation to offer Tennessee employers the option was unsuccessful.

The recent Texas report also showed that 37% of nonsubscribers in 2020 opted to provide an alternative occupational benefit plan for their employees in case of a work-related injury, and that 59% of employees who work for the non-subscribing employers were covered by such a plan.

Texas law only requires employers to file forms annually with the Texas Division of Workers' Compensation stating they are opting out of the system and to notify their employees that they are a nonsubscriber. The move opens the employer, which may or may not offer group health coverage for injuries, to litigation if a worker is injured and can prove negligence. Alternative products help fill the gap and manage the risk, experts say.

"Large employers are looking for ownership of their programs and (to) privatize their model," said Jeremy Leonard, president of Providence Risk and Insurance Services Inc. in San Antonio, a third-party administrator for employers with alternative programs in place. "They want the benefits specifically for their employees, and to them it's sometimes better than what workers comp can offer."

For some, it's a matter of being open to other options, said Blake Stock, CEO of brokerage Combined Group Insurance Services in Dallas.

"It's a matter of the culture and the objective of the employer. Some feel like staying in workers comp is a satisfactory election, and there are other employers who feel like they can design a program that is more in alignment with the needs of their teammates," he said.

A handful of major insurers write coverage in the specialty space providing such protections as employers liability, wage replacement, medical and accidental death coverage in the event of an occupational injury. Deductibles, limits and exclusions are subject to individual policies.

> "It's a matter of the culture and the objective of the employer. Some feel like staying in workers comp ... and there are other employers who feel like they can design a program."
>
> Blake Stock,
> Combined Group Insurance Services

The market for alternative coverage is stable, brokers say.

Schaumburg, Illinois-based Zurich North America was among the latest insurers to unveil a product aimed at the Texas nonsubscriber market. In September 2020 it launched its occupational accident and employers work injury liability insurance policy for nonsubscribers in Texas.

The product was developed in collaboration with CPro Associates Inc., which provides specialty support services for Texas nonsubscribers, said Mike Saporito, Chicago-based senior vice president and head of occupational accident at Zurich North America.

"The main differences are benefits and control," said Alan Hardin, CEO of CPro in Dallas. "The way workers compensation is set up in Texas is that the benefits are designed by the state, and it's one size fits all."

For example, the state's workers comp law requires that wage replacement kick in at seven days following an injury. Alternative injury products, such as that offered by Zurich, could have benefits kick in immediately and could — depending on the individual employer's policy — surpass the state's mandated maximum indemnity of $1,009 a week by nearly double at $2,000, Mr. Hardin said.

Nonsubscriber products also can offer more control over treatments for injured workers needing medical benefits, Mr. Stock said.

Under traditional comp, employers must send workers to doctors who treat workers comp patients under state regulations, while nonsubscribing employers

PROPORTION OF TEXAS EMPLOYERS BUYING COMP COVERAGE HOLDS STEADY

The number of Texas employers that do not purchase workers compensation insurance remained essentially flat from 2018 to 2020, going from 28% to 29% of private-sector employers, according to a report released in December by the Texas Department of Insurance, Division of Workers' Compensation.

According to the biennial report, an estimated 117,624 private-sector employers do not have workers comp coverage, and they employ approximately 2.1 million workers. By comparison, about 283,437 private-sector employers do have workers compensation coverage, and they employ approximately 9 million workers.

The report also showed that 22% of employers with more than 500 employees did not carry the coverage, a figure that has grown steadily since 2010, when 15% of large employers did not purchase comp coverage.

Fifty-nine percent of nonsubscribing employers cited that comp isn't required by law — among other justifications — as the reason for not purchasing the coverage.

Meanwhile, the most frequently cited reasons employers gave for purchasing workers comp coverage included that they thought it was required by law, 43%, they were concerned with lawsuits, 41%, and there were lower workers comp insurance rates, 27%.

Louise Esola

can create their own network of treating physicians, who are not subject to the "significant workers comp administration requirements imposed on physicians" under the state comp law, he said.

"Some doctors want to avoid all that. They would rather focus on treatment," Mr. Stock said.

Meanwhile, most unions have been vocal about the need for employers to carry comp coverage, and opt out is not without its shortcomings.

Insurers have been critical, too. In 2016, the Property Casualty Insurers Association of America released a paper on opt out, stating that it was concerned with cost-shifting for lifelong injuries to other health plans, including public entities: "PCI research has failed to identify any Texas plan that provides 'lifetime' medical benefits."

All nonsubscriber plans are governed by the federal Employee Retirement Income Security Act, which requires nonsubscribers to provide details on what federal regulators consider to be a benefit plan for workers. Nonsubscribers with five or more employees must also report each work-related fatality, occupational disease, and injury that results in more than one day of lost time to the Texas Division of Workers' Compensation.

The alternative insurance products typically cost less than workers compensation, said Mark Moitoso, Atlanta-based risk practices leader for Lockton Cos., adding that costs are a main driver in why companies opt out of workers comp and seek alternatives.

Yet, the move can carry risk, he said.

"You lose exclusive remedy when you take that option," he said.

In losing immunity from lawsuits by injured workers, nonsubscribers could face hefty jury awards if an injured employee can prove in court that the employer was negligent.

"You see everything going on with the tort system and severity, and you have to be concerned about that risk," Mr. Moitoso said.

How do nonsubscribing employers and their insurers manage these challenges? Insurers should be selective in employer clients, and employers should require arbitration agreements with employees and also review their safety programs, experts say.

"There are fewer and fewer nonsubscription carriers that will look at an employer that doesn't have an arbitration agreement," said Scott Foree, Dallas-based account executive with Marsh & McLennan Agency LLC. "Insurers would prefer to have a negligence lawsuit settled via arbitration than over a jury."

Avoiding negligence claims, which often accompany severe injuries or death, is one area where the products mimic workers comp, experts say.

"We do some things similar to workers comp," in that if a company's safety track record "shows they are not a safety-focused organization, we are not interested," Mr. Hardin said. High-risk industries are often not considered, he said.

"No roofers, no oil field" workers, he said. "(These industries) are fraught with opportunity for severity and long-term injuries. They do not fit in nonsubscription."

Employers should expect NLRB to become strongly pro-labor

BY JUDY GREENWALD
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Employers should brace themselves for a significant return by the National Labor Relations Board to Obama administration policies — and related employment practices liability risks — as portended by the recent turmoil in the agency's general counsel's office, experts say.

It will be the end of the year before the NLRB has a Democratic majority, as Republican commissioners' terms expire, but by putting in place a pro-labor general counsel now, as expected, the Biden administration is gearing up for some major policy changes involving issues such as joint employers and handbook policies, they say.

In rapid succession, late last month, President Joe Biden fired the NLRB's general counsel, Peter B. Robb, and then acting general counsel Alice B. Stock after they refused to resign. Mr. Robb's term had been scheduled to expire in November.

> "President Biden has a strong commitment to labor, and that was the centerpiece of his campaign, so I think his actions demonstrate that commitment and probably should not be a surprise."
>
> Mike McGuire,
> Shawe Rosenthal LLP

Career NLRB employee Peter Sung Ohr was named acting general counsel, but some experts believe President Biden will select a pro-union advocate to permanently fill the position.

President Trump and President Obama both allowed the sitting NLRB general counsels to finish out their terms despite being from the opposing party. Mr. Robb was the first NLRB general counsel since 1950, during the Truman administration, to be forced out, and observers note that in that case, the general counsel agreed to resign.

"It really is unprecedented to remove the sitting general counsel in the fashion it's been done, and to follow it up with the No. 2 and her removal" is further unprecedented, Nelson D. Carey, a partner with Varies, Sater, Seymour & Pease LLP in Columbus, Ohio said.

Observers characterize the terminations as President Biden's "thank you" for labor support. "President Biden has a strong commitment to labor, and that was the centerpiece of his campaign, so I think his actions demonstrate that commitment and probably should not be a surprise," said Mike McGuire, a partner with Shawe Rosenthal LLP in Baltimore.

"I don't think anyone really expected the President to demand (Mr. Robb's) immediate resignation just minutes after his inauguration," said Daniel B. Pasternak, a partner with Squire Patton Boggs in Phoenix. But members of the labor community had been pushing for such action "because of the perception that Mr. Robb kind of had his thumb on the scale for employers, and was not interested in advancing a balanced agenda," he said.

Experts say the general counsel plays a significant role in determining the board's policies, and putting a pro-union general counsel in place now means cases that may result in a reversal of Trump administration policies can be put in the pipeline and be ready to be presented to a Democratic-controlled board.

With a new general counsel in place, policies will be rescinded "much more quickly than would otherwise have been the case" had Mr. Robb been allowed to remain in the position, Mr. Carey said.

"A lot of what the current board has done will be reversed, and we can expect to go back to a lot of the policies from the Obama years," said Todd H. Lebowitz, a partner with Baker & Hostetler LLP in Cleveland. Businesses "just need to understand it, expect it and plan for it," he said. "It may take a year to get there, but that's where we're headed."

Joshua A. Viau, a partner with Fisher Phillips LP in Atlanta, said he anticipates a return to an Obama administration campaign that made sure nonunion employees understood that they, as well as unionized workers, have rights under the National Labor Relations Act.

"Nonunion employers certainly have to be concerned regarding the expansion of the protected, concerted activity doctrine" implemented by the Obama-era NLRB, which essentially protected workers who complained about working conditions, Mr. McGuire said.

Mr. Ohr could be named permanent NLRB chairman, but observers suspect that will not be the case. The chairman is more likely "to be drawn from either the ranks of organized labor or a union-side lawyer, someone that has more of a direct connection to labor than a career NLRB employee," Mr. Pasternak said.

> "A lot of what the current board has done will be reversed, and we can expect to go back to a lot of the policies from the Obama years."
>
> Todd H. Lebowitz,
> Baker & Hostetler LLP

KEY ISSUES LIKELY TO BE ON AGENCY'S AGENDA

Following the change in administration, experts say issues that may be reconsidered by an eventual majority Democratic National Labor Relations Board include:

- **E-mail.** The Trump NLRB in *Caesars Entertainment et al. and International Union of Painters and Allied Trades et al.* overturned the Obama-era *Purple Communications* ruling and held that prohibiting employees' email system use does not violate Section 7 of the National Labor Relations Act, which protects employees' concerted activity regardless of whether they are union members.
- **Joint employers.** The Republican-controlled NLRB reinstated the joint-employer standard that was in place prior to the Obama administration's 2015 *Browning-Ferris Industries* ruling, which said a company only needs to have indirect control of a worker, and does not have to even exercise that control, to be considered a joint employer.
- **Misclassification.** In its 2019 *Velox Express* ruling, the Republican-controlled NLRB retreated from the Obama Administration-era policy and said an employer does not violate the NLRA when it misclassifies its workers as independent contractors.
- **Handbooks.** The Republican-controlled NLRB overturned a 2004 decision and held that Chicago-based Boeing Co. had lawfully maintained a no-camera rule in its employee handbook. Mr. Robb subsequently issued a memo that said employer handbook policy ambiguities should no longer be interpreted against the employer. In a memo addressed to regional directors and others, among other measures, Mr. Ohr rescinded that memo, stating "it is no longer necessary, given the number of cases interpreting *Boeing* that have since issued."

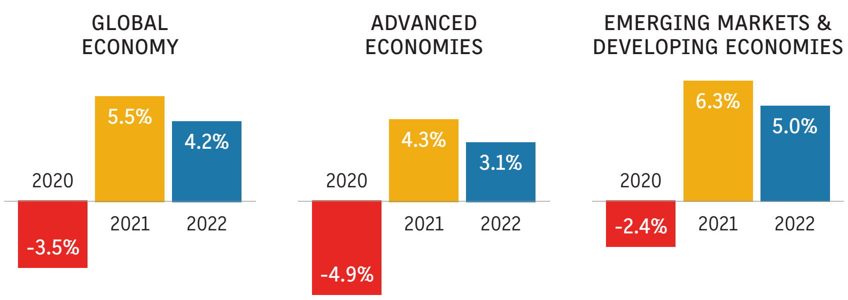
Judy Greenwald

Pandemic takes heavy toll on trade

GLOBAL ECONOMY, TRADE AND RISKS

WORLD ECONOMIC GROWTH PROJECTIONS

According to the latest International Monetary Fund World Economic Outlook Update, the global economy is projected to grow 5.5% this year and 4.2% in 2022, after shrinking by an estimated 3.5% in 2020 amid exceptional uncertainty.

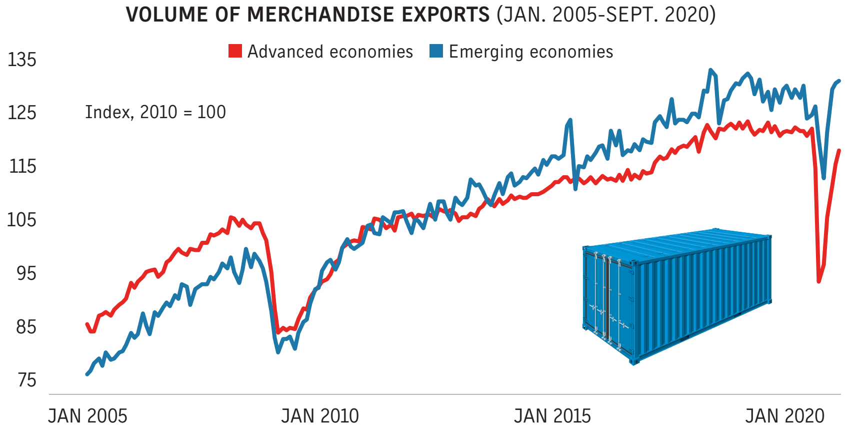


Source: International Monetary Fund

GLOBAL TRADE

International trade contracted in 2020 for the first time since the global financial crisis. The COVID-19 pandemic triggered widespread lockdowns, severely impacted factory output, disrupted travel and depressed demand worldwide. According to United Nations Department of Economics and Social Affairs estimates, the volume of global trade in goods and services fell by 7.6% in 2020. Following a massive contraction in March and April, trade recovered in the second half of the year, driven by a rebound in economic activities in East Asia.

VOLUME OF MERCHANDISE EXPORTS (JAN. 2005-SEPT. 2020)

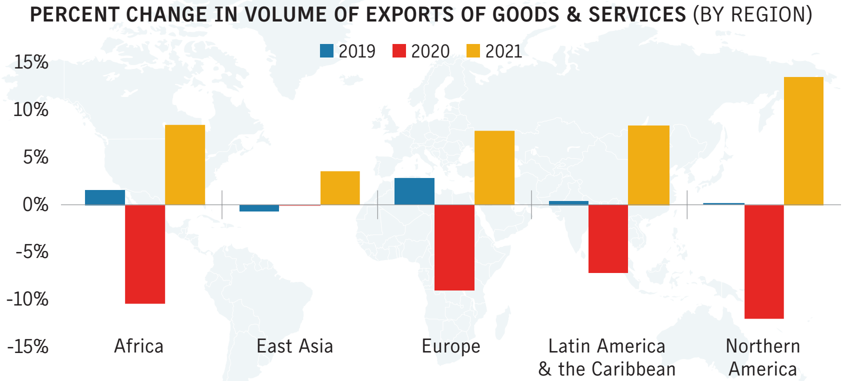


Source: United Nations Department of Economics and Social Affairs, based on data from CPB (Central Planning Office) Netherlands Bureau for Economic Policy Analysis

GLOBAL EXPORTS BY REGION

Regional trade performances differed considerably in 2020. Trade activities in East Asia recovered more quickly than in other parts of the world as most of the region's economies managed to control the spread of the virus.

PERCENT CHANGE IN VOLUME OF EXPORTS OF GOODS & SERVICES (BY REGION)



Source: United Nations Department of Economics and Social Affairs, based on projections produced with the World Economic Forecasting Model

GLOBAL RISKS HORIZONS

In the latest World Economic Forum Global Risks Report, released in January, the Global Risks Perception Survey assessed short-term, medium-term and long-term risks.

WHEN DO RESPONDENTS FORECAST RISKS WILL BECOME A CRITICAL THREAT TO THE WORLD?

Economic | Environmental | Geopolitical | Societal | Technological

SHORT-TERM RISKS (0-2 YEARS)

#1	Infectious diseases	58.0%
#2	Livelihood crises	55.1%
#3	Extreme weather events	52.7%
#4	Cybersecurity failure	39.0%
#5	Digital inequality	38.3%
#6	Prolonged stagnation	38.3%
#7	Terrorist attacks	37.8%
#8	Youth disillusionment	36.4%
#9	Social cohesion erosion	35.6%
#10	Human environmental damage	35.6%

MEDIUM-TERM RISKS (3-5 YEARS)

#1	Asset bubble burst	53.3%
#2	IT infrastructure breakdown	53.3%
#3	Price instability	52.9%
#4	Commodity shocks	52.7%
#5	Debt crises	52.3%
#6	Interstate relations fracture	50.7%
#7	Interstate conflict	49.5%
#8	Cybersecurity failure	49.0%
#9	Tech governance failure	48.1%
#10	Resource geopolitization	47.9%

LONG-TERM RISKS (5-10 YEARS)

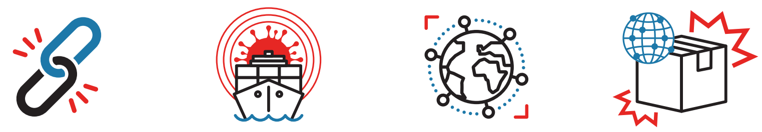
#1	Weapons of mass destruction	62.7%
#2	State collapse	51.8%
#3	Biodiversity loss	51.2%
#4	Adverse tech advances	50.2%
#5	Natural resource crises	43.9%
#6	Social security collapse	43.4%
#7	Multilateralism collapse	39.8%
#8	Industry collapse	39.7%
#9	Climate action failure	38.3%
#10	Backlash against science	37.8%

Source: World Economic Forum Global Risks Perception Survey 2020

MARITIME TRADE

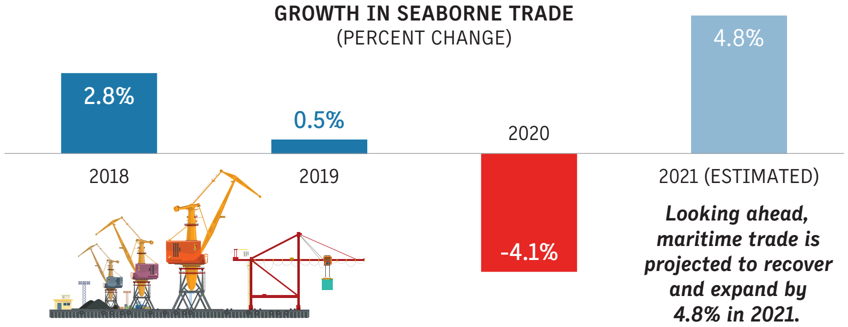
THE PANDEMIC'S LEGACY

A number of key trends with wide-ranging policy implications for maritime transport and trade have been observed due to the COVID-19 disruption in 2020.



- Risk assessment and management: key to future-proofed supply chains and maritime transportation
- Shockwaves through supply chains, shipping and ports
- Existential questions for globalization to shorten supply chains (near-shoring, reshoring) and redundancy (excess stocks and inventory)
- Supply chains and trade faced dual shock: supply and demand

The United Nations Conference on Trade and Development projected a 4.1% decline in the volume of international maritime trade in 2020 amid supply-chain disruptions, demand contractions and global economic uncertainty caused by the pandemic.

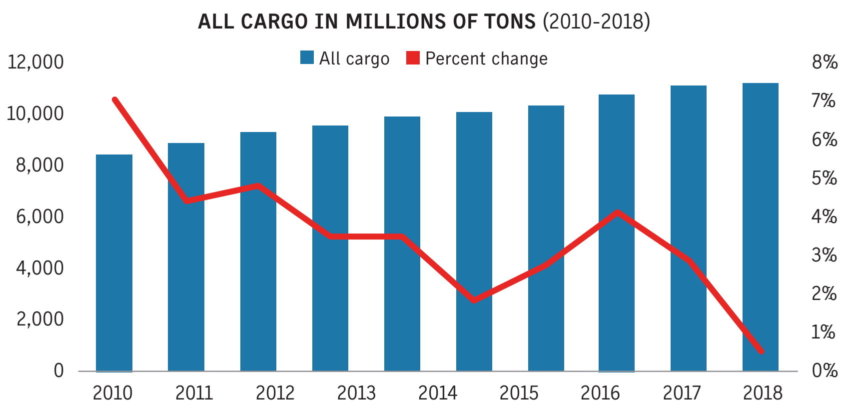


Looking ahead, maritime trade is projected to recover and expand by 4.8% in 2021.

Source: United Nations Conference on Trade and Development, Review of Maritime Transport 2020

CONTRACTING MARITIME TRADE

UNCTAD estimates the total volume of maritime trade in 2019 at 11.08 billion tons. Data pointed to a negative outlook for 2020, with maritime trade projected to contract by 4.1%.



Source: United Nations Conference on Trade and Development, Review of Maritime Transport 2020

SEABORNE TRADE BY TYPE (2019)

Seaborne trade by type of cargo, loaded and unloaded*, in 2019, in metric tons in millions

EXPORTS	
Crude oil loaded	1,860.2
Other tanker trade loaded	1,308.4
Dry cargo loaded	7,907.4
TOTAL GOODS LOADED	11,075.9

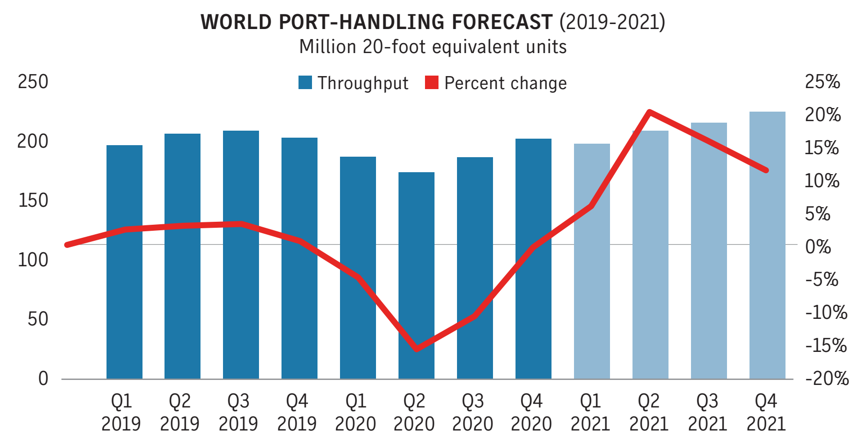
IMPORTS	
Crude oil unloaded	2,033.4
Other tanker trade unloaded	1,329.3
Dry cargo unloaded	7,720.3
TOTAL GOODS UNLOADED	11,083.0

**Goods loaded for international shipment are assumed to be exports, while goods unloaded from ships are assumed to be imports.*

Source: United Nations Conference on Trade and Development

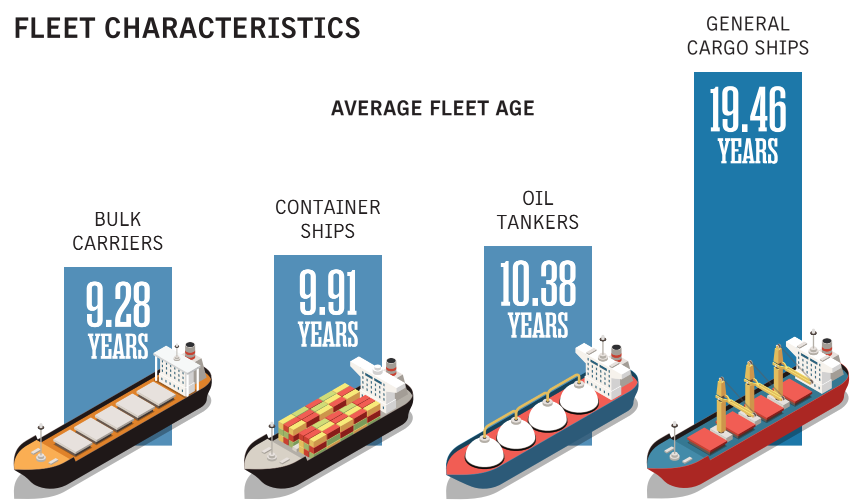
PORT-HANDLING FORECAST

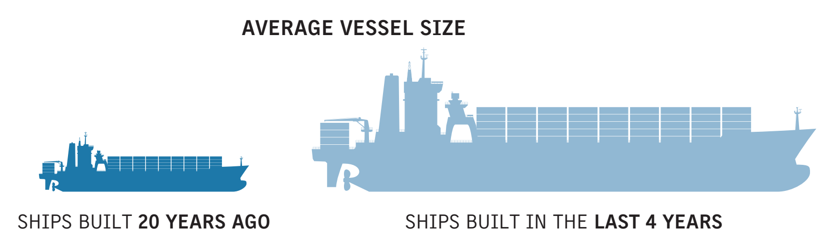
Global port container throughput was projected to contract by 7.3% in 2020. Global container port volumes collapsed in the second quarter of 2020 at the height of the pandemic. Projected figures range between another contraction of 3% and a jump of more than 10% in 2021.



Source: United Nations Conference on Trade and Development, based on Drewry Shipping Consultants Ltd. research data.

FLEET CHARACTERISTICS

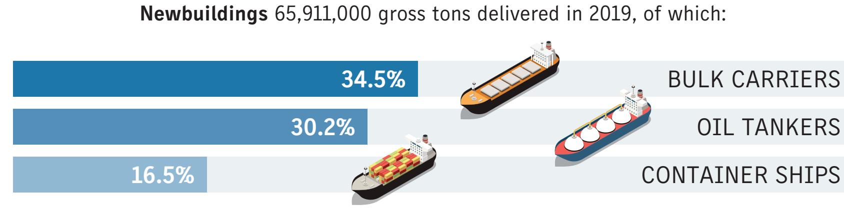




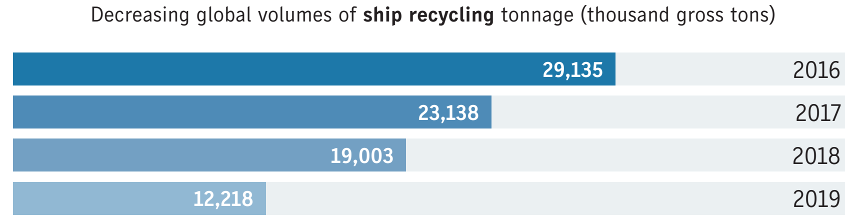
- OIL TANKERS **9X BIGGER**
- CONTAINER SHIPS **4X BIGGER**
- GENERAL CARGO SHIPS **3X BIGGER**
- BULK CARRIERS **2X BIGGER**

FLEET GROWTH

Newbuildings 65,911,000 gross tons delivered in 2019, of which:



Decreasing global volumes of **ship recycling** tonnage (thousand gross tons)



Source: United Nations Conference on Trade and Development, Review of Maritime Transport 2020

Environmental, social and governance considerations for corporations, D&O insurers

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Shareholder interest in environmental, social and governance issues is more than a growing trend. Investors are increasingly considering ESG initiatives along with more traditional financial considerations in their investment decision-making process.

As ESG factors have become more mainstream in investor decision-making, corporations have responded by making voluntary corporate ESG disclosures. This in turn is producing greater scrutiny of public ESG commitment disclosures as investors seek to hold corporations and their directors and officers accountable when corporate policies and practices fall short of stated objectives. Corporations and their directors and officers liability insurers should therefore be mindful of a corporation's potential susceptibility to ESG risk in today's D&O marketplace.

To date, assessment of a corporation's commitment to ESG has been largely qualitative rather than quantitative, but that is changing as organizations integrate their ESG policies into their broader strategies.

The qualitative nature of ESG assessment, evolving ESG reporting and the fragmented standards that provide the framework for sustainable disclosures present challenges for corporations as they set their goals and strategies, interact with their shareholders and, more broadly, with other stakeholders within the sustainability landscape.

Corporate navigation through this landscape impacts director and officer obligations and creates risk exposures that may result in D&O claims. Similarly, the failure of corporations to take any action in this developing landscape may also result in claims. Where fiduciary duties traditionally impose obligations on corporate boards to make decisions that are in the best financial interest of the company and its shareholders, corporate commitment to ESG considerations extends that focus to broader constituencies and goals that require a balancing of long-term and short-term interests and alignment of strategic policies and practices. Corporate board accountability for ESG disclosures is likely to increase as the trend toward reporting standards develops.

Recent shareholder litigation appears to signify a trend by shareholders to attempt to influence corporate programs and board conduct and to hold companies accountable to stated ESG disclosures and criteria. Several recent social and environmental events have been the driving force behind a number of securities class actions, including the Deepwater Horizon oil spill (environmental); the #MeToo movement, the COVID-19 pandemic and the social justice movement (social); and cybersecurity and data privacy breaches (governance).

Since July 2020, several shareholder derivative actions have been filed against public corporate boards of directors for allegedly violating their duties to the company and its shareholders by falling short of stated objectives on diversity and inclusion.

The allegations in the derivative actions are substantially similar and include assertions that despite stated commitments to diversity and inclusion, the companies allegedly failed to create diversity on their boards and among senior executives. The relief sought includes workplace initiatives in addition to monetary damages. Notably, on Nov. 30, 2020, a California Superior Court approved the settlement of the Alphabet-Google shareholder lawsuit that followed the #MeToo movement. In that action, the shareholder plaintiffs alleged that the directors and officers of Alphabet, Inc., the parent company of Google LLC, breached their fiduciary duties and committed other misconduct in connection with protecting male executives accused of sexual harassment or misconduct and monetarily rewarding them upon their exits from the company, amid a broader culture of discrimination against women at the company. The settlement includes a commitment to broad corporate governance, workplace reforms, including adoption of five "guiding principles," and a $310 million commitment to fund the workplace initiatives.

ESG issues have become a mainstream component of investor and shareholder interest when considering investment options and assessing corporate responsibility and value.

These lawsuits present important implications and challenges for D&O insurers because they will be tasked in the short term with funding defense costs arising from the lawsuits. While the lawsuits largely seek to impose changes to corporate diversity and inclusion practices, they also seek monetary damages. To the extent monetary damages are subsequently sought or awarded, and whether D&O insurance applies, will turn on the claim facts and the nature of the settlement. In the future, it is likely that more D&O claims will be driven by ESG factors.

Consequently, corporate boards will need to identify and/or refine their commitment to ESG goals; establish policies and practices to implement identified goals supported by a demonstrated commitment to oversight; implement plans to communicate such goals to the marketplace; and, importantly, identify metrics to measure their accomplishment and commitment to those goals.

Boards will also need to confirm that disclosures regarding ESG goals are accurate, consistent and appropriately qualified, not only in public filings with the Securities and Exchange Commission, but in all corporate statements intended to reach shareholders and the investing public. Failure to do so can, and likely will, increase exposure to liability.

The challenges facing corporations and their boards as they navigate the developing ESG landscape translate into significant concerns for insurers that may be tasked with funding liability risks. To effectively evaluate potential exposures, underwriters should be cognizant of ESG risk exposures as they conduct their due diligence analysis. In this regard, underwriters may want to consider:

- An insured's history of promoting socially responsible positions.
- Whether those positions have the potential to negatively impact business and reputation.
- Whether there are substantial oversight mechanisms in place, demonstrating effective ESG practice implementation.
- If the company has been transparent regarding the positions it has taken.
- Whether the company is susceptible to "event-driven" litigation due to its positions on ESG issues.

Importantly, it might be prudent to ask an insured about ESG representations in SEC filings or marketing materials, in addition to general questions regarding its operations.

ESG issues have become a mainstream component of investor and shareholder interest when considering investment options and assessing corporate responsibility and value. As a result, publicly listed companies will likely increase their voluntary statements in press releases, proxy statements and public filings with the SEC regarding their ESG goals. Corporate ESG disclosures may result in risk to the company as well as to unwary directors and officers who do not address this environment in a meaningful and sustained manner. Ultimately, those decisions may increase risk exposure for their insurers. Therefore, accuracy in disclosures and communications regarding corporate commitment to ESG criteria will be critical to the long-term success of corporations and their insurers in this developing environment.


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