CYBER CRIME: Insurers add capacity as social engineering attacks spread - PAGE 8

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MARCH 2021

SPECIAL REPORTS

CAPTIVE INSURANCE
PAGE 18

WORKERS COMP
PAGE 26

A YEAR OF LIVING DANGEROUSLY

Coronavirus pandemic creates upheavals in risk management, insurance sector

PAGE 4

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The Future of COVID-19: Vaccines and the Trajectory of Care

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COVER STORY

A year after widespread lockdowns went into effect to stop the spread of COVID-19, the risk management and insurance sector continues to cope with the pandemic's fallout. Lawmakers and regulators have implemented numerous measures to address the crisis but more action is expected. **PAGE 4**

INSIDE

SPECIAL REPORT: CAPTIVE INSURANCE

Interest in captive insurance is soaring amid the hardening commercial insurance market. While new formations are growing, experts say the COVID-19 pandemic is likely holding back some potential captive owners. **PAGE 18**

SPECIAL REPORT: WORKERS COMPENSATION

The workers compensation sector could be in for change as it grapples with COVID-19 presumption laws, declining interest rates, an aging workforce and the prospect of a hike in the national minimum wage. **PAGE 26**

NEWS ANALYSIS

FOR BREAKING NEWS COVERAGE, VISIT ***businessinsurance.com***

NEWS ANALYSIS

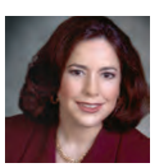
Cyber crime is on the rise as fraudsters exploit systems made more vulnerable by remote working. **PAGE 8**

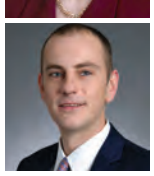
INTERNATIONAL

Hong Kong's domestic insurance market is quite small, but its open economy and proximity to China attract leading insurers, reinsurers and brokers. **PAGE 13**

SPECIAL FEATURE

Accident and health insurers face uncertainties over the economic recovery and vaccine rollouts. **PAGE 34**



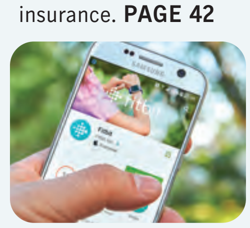


PERSPECTIVES

The book is far from closed on COVID-19 business interruption litigation, write attorneys Rhonda D. Orin and John M. Leonard of Anderson Kill. **PAGE 39**

OFF BEAT

An increasing number of consumers are willing to trade personal information for discounts on insurance. **PAGE 42**



VIEW FROM THE TOP

JOSHUA MOTTA

The co-founder and CEO of San Francisco-based Coalition Inc., which provides cyber liability insurance and security to organizations in the U.S. and Canada, discusses the COVID-19 pandemic's effect on cyber risks and insurance, the increase in ransomware attacks and the dilemma companies face when they are asked to pay to retrieve their own data. **PAGE 17**

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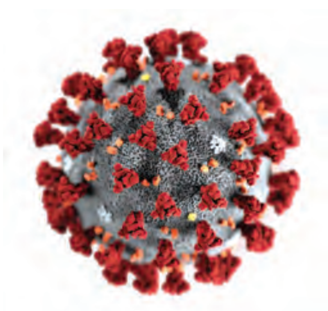
COVER STORY

COVID-19 ONE YEAR LATER

Unprecedented shutdowns change risk management, insurance industry



In March 2020, lockdowns were imposed in much of the United States and in many countries around the world in response to the rapid spread of the new virus SARS-CoV-2, or the coronavirus.

One year later, the virus is still raging, and COVID-19 has caused more than 500,000 deaths in the U.S., but the rollout of vaccines is building confidence that the pandemic may at least be more manageable.

As in other sectors, the outbreak caused huge amounts of uncertainty and confusion in the risk management and insurance field. Much remains unclear, but various decisions by courts, regulators and lawmakers have added some degree of clarity on COVID-19 issues. In this special report, we look back on the turmoil risk managers have faced and what's likely to happen in the years ahead.

BUSINESS INTERRUPTION

LOST INCOME CLAIM DISPUTES EVOLVE FURTHER

BY JUDY GREENWALD

Shortly after businesses suspended operations during government-mandated lockdowns that began last March the first suit seeking business interruption coverage for forced closures was filed.

A few months later, courts began issuing rulings in the cases and in most instances favored insurers, but policyholders have also scored several victories.

Policyholders are likely to start winning more COVID-19-related business interruption cases, but a clear picture of the litigation landscape will not fully emerge before appeals courts start to rule in the cases, many experts say.

About 80% of court rulings to date have been in insurers' favor, with many of the pro-policyholder rulings issued by state courts.

Policyholder attorneys say the early tilt in favor of insurers may in part be because many of the initial cases, which were often on behalf of small businesses such as restaurants, were filed by attorneys who do not specialize in insurance law.

But as more cases are filed by larger companies that are represented by specialized insurance attorneys, the win-loss ratio is likely to shift, although rulings will also depend on the court and jurisdiction.

Two factors that may determine the outcome of the cases are whether a court considers COVID-19 to inflict property damage, which tends to weigh in favor of coverage, and if the policy includes a virus exclusion, which could weigh against it.

Meanwhile, despite the current emphasis on business interruption, some experts believe other COVID-19-related issues, such as employment practices liability and cyber liability, will become a greater focus of pandemic-related litigation (see related story).

"The tide has already turned" toward policyholders, said policyholder attorney Michael S. Levine, a partner with Hunton Andrews Kurth LLP in Washington, discussing insurer victories.

"There are a lot of cases that were brought either prematurely or based on policies that don't provide coverage or are based on pleadings that don't adequately allege the salient facts, and those cases are being dismissed, but that was expected."

Insurers may start to encounter additional obstacles, said Daniel A. Rabinowitz, an insurer attorney with Kramer Levin Naftalis & Frankel LLP in New York.

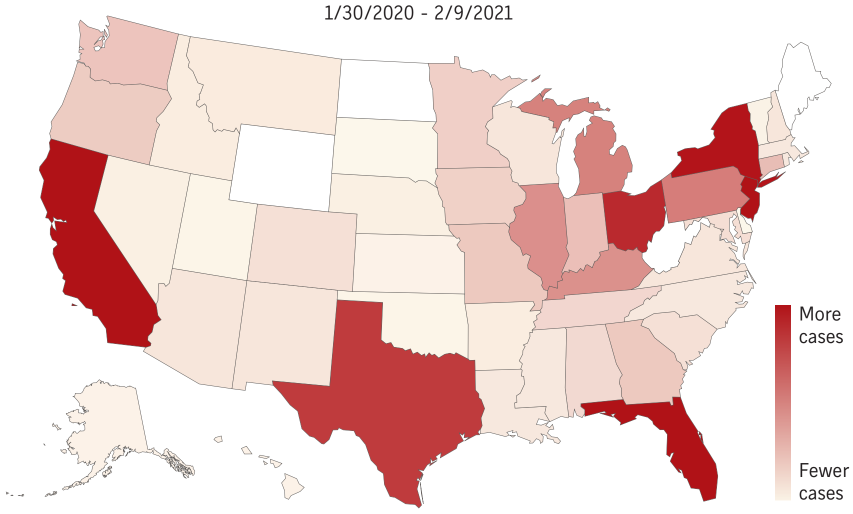
Policyholders have had success in arguing virus exclusions do not apply, he said, although each case must be evaluated individually.

However, Jeffrey M. Wank, an insurer attorney with Kelley Kronenberg LLP in Fort Lauderdale, Florida, said the courts have, for the most part, ruled correctly.

COVID-19 EMPLOYMENT LITIGATION TRACKER

TOTAL CASES: 1,606

1/30/2020 - 2/9/2021



Source: Fisher Phillips

"Most courts have found, based on science and based on what we know of the virus, that it does not cause actual physical damage" and therefore does not trigger coverage, he said.

The litigation picture will come more fully into focus once higher courts, including federal appeals courts and state supreme courts and perhaps ultimately the U.S. Supreme Court, weigh in, and these rulings may begin to be issued this year, experts say.

Appellate court rulings "will help the parties on both sides to better understand the legalities of the policy language" and "help streamline the process and minimize the litigation because it will allow the parties to resolve the claims," Mr. Levine said.

The issues of whether there has been physical damage and whether a policy has a virus exclusion will remain key, experts say.

Micah E. Skidmore, a partner with Haynes & Boone LLP in Dallas, said, "The trend seems to be that courts are persuaded by the argument that if you can document the presence of the virus on your property," if you had employees, patrons or others who you can say were infected and came onto the premises, "that seems to be among the more compelling arguments" for determining there has been a physical loss, although "it's hard to generalize."

Tyrone R. Childress, insurance recovery practice leader with Jones Day LLP in Los Angeles, said, "The battlefield is a little more level" between policyholders and insurers when there is not a virus exclusion.

Michael John Miguel, a principal with McKool Smith in Los Angeles, said it's too early to tell whether COVID-19 business interruption litigation will be like legal fights over insurance coverage for Y2K remediation costs, which ended within a few years of the millennium turning, or more like disputes over coverage for asbestos liability, which have been raging for decades.

Some observers believe that, although it cannot be cited as a precedent in U.S. courts, a United Kingdom ruling in favor of many policyholders on the business interruption issue may influence U.S. decisions.

The U.K.'s highest court ruled in a test case that some policies provided coverage under various disease or loss of access clauses.

"I think courts are going to look at the U.K. decision and say, 'That makes a lot of sense,'" said R. Hugh Lumpkin, a partner with Reed Smith LLP in Miami.

Attorneys say future rulings will depend on factors including the judge and jurisdiction involved.

Observers say there has been a mixed reaction by insurers regarding changes to their policy language to more clearly avoid litigation stemming either from COVID-19 or future pandemics.

Jonathan B. Sokol, a policyholder attorney with Greenberg, Lusker, Fields Claman & Machtinger LLP in Los Angeles, said, "I would assume the ones that haven't are certainly going to be when these policies come up for renewal." **BI**

LITIGATION SET TO EXPAND

While much of the focus of COVID-19-related litigation to date has been on business interruption claims, lawsuits are also being filed on other pandemic-related issues, including bodily injury, employment practices liability and other specialty risks, observers say.

"While there's been a huge amount of focus, obviously, given the number of lawsuits filed" related to business interruption, there are broader COVID-19 issues beginning to emerge, said Tyrone R. Childress, insurance recovery practice leader with Jones Day LLP in Los Angeles.

Bodily injury cases have already been filed by cruise lines passengers, among others, said R. Hugh Lumpkin, a partner with Reed Smith LLP in Miami.

Employers may also face suits filed by employees who are required to work and become sick, he said.

In addition, directors and officers liability suits have been filed against companies, such as suits alleging companies made unfulfilled promises about their ability to somehow profit from the pandemic.

Daniel A. Rabinowitz, an insurer attorney with Kramer Levin Naftalis & Frankel LLP in New York, said that although the cases will not be a "slam dunk," there is likely to be less litigation over policy language as there has been in business interruption cases, which hinge on interpretation of physical loss and damage.

Robin Cohen, chair of Cohen Ziffer Frenchman & McKenna LLP in New York, said that while other types of claims will evolve, "these business interruption claims are very, very large."

As a result, "while there's going to be other claims that are going to come out of this, I wouldn't underestimate the importance, or the significance, of the business interruption claims."

Judy Greenwald

STATE EFFORTS TO MANDATE COVER FALL SHORT

BY CLAIRE WILKINSON

Legislative efforts to force insurers to either retroactively cover business interruption claims due to COVID-19 or to provide prospective coverage for future pandemics are unlikely to gain traction this year, legal experts say.

So far in 2021, several states, including New York, Pennsylvania, Rhode Island and Washington, have introduced or reintroduced bills that would require insurers to provide some sort of retroactive business interruption coverage for COVID-19.

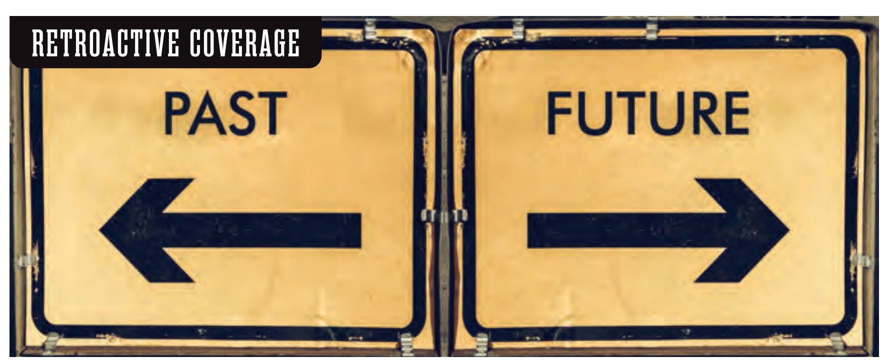
In December 2020, a bill was filed in Texas that would take effect Sept. 1, 2021, and apply to insurance policies written or renewed on or after Jan. 1, 2022. SB 249 would require business interruption insurance to "cover loss caused by a pandemic, including loss caused by the order of a civil authority made to prevent the spread of a pandemic, without regard to whether the pandemic caused a direct physical loss to the policyholder's property."

Jeffrey L. Kingsley, New York-based partner at Goldberg Segalla LLP, said he was not surprised to see efforts in certain jurisdictions last year "to try to retroactively eliminate an exclusion or declare that somehow this virus was a physical loss to cover."

Between March and May of 2020, numerous state legislatures introduced bills, some of which would have forced insurers to retroactively cover business interruption claims due to COVID-19.

The legislative moves came as businesses looked to their property insurance policies for business interruption coverage to recover lost income associated with closures following government-mandated shutdowns early in the pandemic.

With the lockdowns now easing in some jurisdictions and the lack of traction for the better part of 2020, "I don't see an uptick or a push for retroactive business interruption carveouts this year," Mr. Kingsley said.



The pressure to provide some sort of compensation has eased a little, because of the financial relief that has been provided by the federal government, he said.

"It would be a hard sell, unless there is some type of change in the direction of the pandemic, to see the legislators really take it up and push it forward," Mr. Kingsley said.

Steven Badger, Dallas-based partner at Zelle LLP, said there's no indication that legislative efforts to force retroactive coverage are moving forward in any state.

"Everyone has realized that's a non-starter," because it's both unconstitutional and fundamentally unfair to change contracts that were negotiated between insurers and their policyholders prior to COVID-19, Mr. Badger said.

Efforts to legislate prospectively to force coverage in the future are "equally as untenable," because they will threaten the financial viability of insurers, "or more likely in states where any such laws are enacted the insurance industry will just stop writing insurance because it cannot under any circumstance assume a risk that every one of its insureds will suffer," Mr. Badger said. **BI**

FEDS WEIGH PANDEMIC RISK BACKSTOP

BY CLAIRE WILKINSON

Revised legislation to create a federal pandemic backstop is in the works as businesses look to recover amid easing COVID-19 restrictions.

While the Pandemic Risk Insurance Act introduced in May 2020 by Rep. Carolyn Maloney, D-New York, was modeled on the Terrorism Risk Insurance Act that was enacted after the 9/11 terrorist attacks, a reconfigured bill may look quite different, experts say.

In addition to Rep. Maloney's bill, various plans were put forward last year, including a taxpayer-funded pandemic backstop plan proposed by major insurance industry groups.

Policyholder groups also formed a coalition advocating for a public-private backstop for pandemic business interruption insurance, while individual insurer plans were put forward by Chubb Ltd. and Zurich North America.

The proposals followed a letter sent to Congress in March 2020 by John Doyle, president of Marsh LLC, urging a public-private pandemic risk-sharing program.

The political dynamic has shifted in Washington from a year ago, which may have some bearing on this issue, said Robert Hartwig, clinical associate professor and director of the Risk and Uncertainty Management Center at the University of South Carolina in Columbia.

"Increasingly the industry is recognizing that the vast majority of response associated with pandemic events really has to be housed and organized by the government," Mr. Hartwig said.

Aid packages that passed Congress in 2020, along with the $1.9 trillion in relief proposed by the Biden administration, bolster the idea that the appropriate way to handle the economic consequences of pandemics is through a "robust federal government response," Mr. Hartwig said.

Insurers have also generally stated that they don't want a financial risk-sharing role along the lines of what they have with TRIA, he said.

"We are helping to facilitate Congress hearing from various participants as they work on a revised PRIA that will hopefully incorporate comments from insurers and policyholders," said Erick Gustafson, chief public affairs officer at Marsh & McLennan Cos. Inc.

"We think it's going to be a more thoughtful piece of legislation and reflective of input from both policyholders and insurers," Mr. Gustafson said.

Globally, the risk management and insurance communities recognize the importance of developing a plan that will help organizations more effectively manage future interruptions due to pandemics, said Whitney Craig, director of government relations at the Risk and Insurance Management Society Inc. in New York.

"A public-private partnership remains a RIMS priority as it will instill confidence in business leaders that their assets are protected, while also providing insurers with a financial backstop should we encounter another pandemic catastrophe," Ms. Craig said in an emailed statement.

In addition to Rep. Maloney, Rep. Emanuel Cleaver, D-Missouri, newly appointed chair of the House Financial Services Subcommittee on Housing, Community Development and Insurance has said pandemic risks are a focus, according to reports.

RIMS is ready to collaborate and "hopes to see a new bill introduced in the coming months," Ms. Craig said. **BI**

OSHA CHANGES ON THE HORIZON

BY LOUISE ESOLA

The COVID-19 pandemic and a new presidential administration have brought greater focus on workplace safety when it comes to infectious disease.

The U.S. Occupational Safety and Health Administration began working on an infectious disease standard for health care workers in 2010, but the effort stalled in recent years, prompting several unions to sue the agency on Oct. 29, 2020. The Department of Labor said in a Feb. 16 response to the lawsuit that OSHA would prioritize the development of the standard.

Meanwhile, employers have been bracing for OSHA to possibly create an emergency temporary standard for COVID-19 workplace safety. President Joe Biden issued an executive order on Jan. 21 calling on regulators to determine whether such a standard is necessary and, if so, to issue it by March 15.

The administration on Jan. 29 also introduced COVID-19 "guidelines" that mirrored what had been in place during much of the pandemic. The guidelines in general restated U.S. Centers for Disease Control and Prevention guidance, calling for face coverings, social distancing and contact-tracing.

OSHA also called on employers to implement COVID-19 prevention programs, separate and send home sick workers, improve safety communication with workers, install barriers, provide personal protective equipment, and routinely clean and disinfect workplaces.

Eric Conn, Washington-based chair of the OSHA practice at Conn Maciel Carey LLP, said his firm, along with labor organizations and other stakeholders, has been working with OSHA on developing an emergency standard for COVID-19 safety and that it is "imminent."

"It's not a traditional rulemaking," he said of OSHA's development of the emergency standard that does not give stakeholders an opportunity to see a draft and to comment.

"We are just doing everything we can to make sure that employers who have been managing around this crisis for a year now can share with OSHA what works, what doesn't work, what would be a waste of time and money and what wouldn't," he said.

By late February, three states had already introduced safety standards — California, Michigan and Virginia. Oregon in late 2020 announced it was implementing a rule-making process for such a standard.

Legal experts say OSHA could include some elements of the states' standards, could re-state the new guidance issued in January as its temporary standard, or continue the work that has been done to create an infectious disease standard.

"They may dust that off and go with (an infectious disease standard) since they have been working on it," said Pat Tyson, partner and head of the OSHA practice in the Atlanta office of Constangy, Brooks, Smith and Prophete LLP, following January's announcement that OSHA would be considering an emergency COVID-19 standard.

Another significant development since the beginning of the pandemic was OSHA's notice that a workplace COVID-19 infection was a recordable illness, under its rules for reporting workplace injuries.

Meanwhile, according to a Reuters analysis, OSHA, which had issued more than $4 million in workplace citations to more than 300 employers since the start of the pandemic, had only collected $897,000 in fines from 108 companies, and that more than half of employers cited for COVID-19 safety problems by federal OSHA authorities had appealed. Most of the citations were issued for violations of the general duty clause and the respiratory protections standard, according to OSHA data.

Mr. Conn said he expects the contesting of citations to continue, even with a COVID-19 emergency standard in place.

There is "a lot of contesting because a lot of them are questionable," he said. "I am defending a lot of employers right now because it is such a novel area." **BI**

PRESUMPTION

COVID-19 PRESUMPTION LAWS EMERGE

BY ANGELA CHILDERS

The evolution of presumption measures continued in 2020 with the pandemic leading to executive orders and laws making it easier for certain classes of workers to obtain workers compensation for COVID-19.

Workers comp presumption laws — which place the onus on employers to rebut employees' claims that their injuries or illnesses arose out of the course and scope of their employment — have been on the books for nearly two decades. These include presumptions for firefighters for certain cancers and for first responders for mental illnesses caused by traumatic work-related events.

But the expansion of such laws to include a highly communicable disease like COVID-19 is an emerging issue that may have lasting effects on the workers comp industry, experts say.

"When you're looking at the fiscal impact of these different bills … what this is going to do to premiums and what it could potentially do to (the workers comp) marketplace could be considerable," said Bert Randall, president of Baltimore law firm Franklin & Prokopik PC.

"If we start expanding presumptions to private sector jobs, are we going to see some carriers move away from certain lines? Is it going to shrink the market, or is it going to cause premiums to rise considerably?"

By August 2020, 11 states had issued executive orders or emergency rules creating presumption of compensability for certain classes of workers who claimed they acquired COVID-19 on the job, and eight states passed legislation establishing presumptions of compensability. Most of the laws and orders covered first responders and health care workers, and some included essential workers such as retail and transit workers and essential governmental employees.

Some of the laws and orders have expired, leading to a wave of bills to extend or create a legislative presumption.

According to the National Council on Compensation Insurance, in the first two months of this year several states enacted new presumption laws, while two states rejected such measures. Approximately 20 other states have introduced presumption legislation so far this year.

"There will be a period of time before we'll know precisely what the financial impact (of COVID-19 presumptions) will be to the comp system," said John Hanson, Atlanta-based vice president at Alliant Insurance Services Inc. Much of that uncertainty is due to the wide variations in the classes of employees covered and the burden of proof in the various presumption laws, he said.

For instance, some presumptions are written very narrowly. At the other end of the spectrum, proposed legislation in Oregon doesn't require a positive COVID-19 test for the presumption to apply and allows workers in any industry with at least a 10% positivity rate to file a coronavirus comp claim, Mr. Hanson said.

California Gov. Gavin Newsom created a presumption via executive order last March, which was scaled back in legislation enacted in September that created a COVID-19 rebuttable presumption for first responders and health care workers. Although the number of coronavirus comp claims in the state is far less than the early doomsday prediction — with about one in six claims in the state related to COVID-19, according to the California Workers Compensation Institute — it's too early to tell how the industry might be impacted by continued presumption expansions, said Amy Puffer, San Francisco-based claims consulting project manager for brokerage Woodruff Sawyer & Co.

"I know there's concern that these compensability presumptions for contagious disease such as COVID might be widely adopted or permanently enacted and expanded to include other common diseases," she said. **BI**

COMP

WORKERS COMP CLAIMS PILE UP

BY LOUISE ESOLA

Workers compensation claims for COVID-19 in the first year of the pandemic proved less expensive than anticipated, yet gathering claims data hasn't been as easy as expected, experts say.

The biggest shock for the workers comp industry was that an infectious disease such as coronavirus would be compensable, according to experts trying to gauge the current and long-term effects.

"A year ago the majority of us in the claims arena would say, more likely than not, COVID claims would not be deemed compensable … with very little information on how an employee may pursue a claim that they got (the virus) at work," said Carol Ungaretti, Chicago-based managing consultant with Aon Global Risk Consulting.

Then came the wave of presumption executive orders and laws — as of February more than 20 states either had a COVID-19 presumption in place or were in the process of establishing one — and, along with that, came the claim activity. The presumption makes COVID-19 illness compensable for workers, who are presumed to have been infected at work. Experts say there was concern early on that the claims would prove expensive and difficult to manage given how novel the virus is.

Recent data, however, points to a milder effect on the workers comp industry, experts say.

"At the beginning of the pandemic, the hypothetical scenarios and projections related to direct cost impact were quite grim," Kim Haugaard, senior vice president of policyholder services at Austin-based Texas Mutual Insurance Co., wrote in an email. "The current impact has not been as bad as we anticipated that it could have been," he said, noting that COVID-19 claims made up just 2% of claim activity for the insurer in 2020.

Trying to obtain data on how much the claims are costing or how widespread claim activity is has been complicated, said Mark Walls, Chicago-based vice president of communication and strategic analysis for Safety National Casualty Corp., during a recent webinar.

"One of the big challenges in analyzing workers compensation data trends is there is no single source for workers compensation information," he said, adding that information from ratings agencies, various states, research organizations and self-insured entities is siloed.

The Boca Raton, Florida-based National Council on Compensation Insurance — which gathers data from 36 states — reported that most claims have not been severe. The top 5% of COVID-19 medical claims in the first half of 2020 drove about 70% of coronavirus-related payments, according to an NCCI analysis.

NCCI reported in January that 20% of COVID-19 claims included an inpatient hospital stay; of those, 19% required intensive care services. The cost of claims with a hospital stay averaged $38,500.

Overall, in analyzing COVID-19 claims activity in 27 states, the Cambridge, Massachusetts-based Workers' Compensation Research Institute in January reported "great variation in the percentage of COVID-19 claims among all workers compensation paid claims," ranging from 1% to 42% in the second quarter of 2020.

"A number of factors may have contributed to the variation, including severity of the COVID-19 outbreak, presumption laws, and compensability rules," the WCRI analysis stated. **BI**

Angela Childers contributed to this report.

Pandemic ushers in remote work cyber threats

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

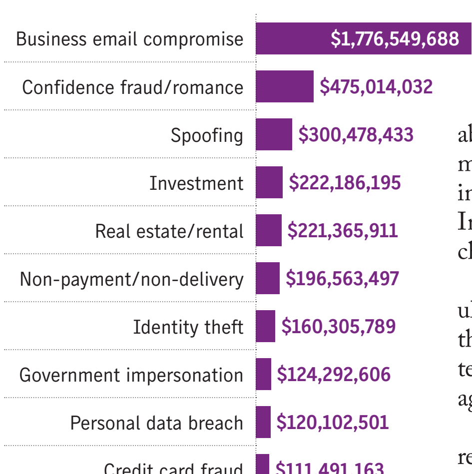
Embezzlement, fraud and theft crimes are a persistent threat to businesses, and the shift to remote working during the COVID-19 pandemic has heightened these risks, experts say.

Cyber-related crime is on the rise as fraudsters use social engineering techniques to exploit systems and procedures made more vulnerable by remote working, they say.

"The opportunity has never been higher for employees to turn to fraud and/or for outside fraudsters to attempt to defraud the company through various attacks, whether it be social engineering fraud attacks or hacking of their computer systems," said Christopher Arehart, Chicago-based senior vice president, crime insurance product manager, financial lines at Chubb North America.

The shift to working from home has fundamentally changed the way businesses operate and "some of those changes which are temporary now will become permanent over time," adding to the risk that policyholders face, Mr. Arehart said.

TOP 10 CYBER CRIMES
BY VICTIM LOSS



Source: FBI, 2019 Internet Crime Report

Business email compromise is an emerging area of risk for crime insurers, said Reid Eanes, Los Angeles-based senior vice president and financial services practice leader at Lockton Cos. LLC.

"There's been an increase in exposure and claims," Mr. Eanes said.

Business email compromises are a form of social engineering fraud in which attackers impersonate a CEO or executive authorized to conduct wire transfers and induce employees to transfer money to a fake client account.

While figures for 2020 are not yet available, some 23,775 business email compromise complaints resulted in $1.7 billion in losses in 2019, according to the FBI's Internet Crime Complaint Center (see chart).

"Over the last few years, it's been a popular scheme among criminals. It's an area that crime insurers are keenly focused on in terms of underwriting, as well as limit management and deductible," Mr. Eanes said.

Businesses are looking to add coverage for related exposures through their commercial crime insurance policies, experts say.

Brokers are asking for higher limits for social engineering coverage, said Bill Jennings, focus group lead-crime, at Beazley PLC in New York.

"With additional underwriting, additional questions, and if we can get comfortable with the controls our insured has, we can provide additional limits like $1 million or maybe $5 million," Mr. Jennings said.

The price of social engineering coverage varies by risk and limit, but typically it can be added to a crime policy for an additional premium of 25% to 50%, he said.

Agents and policyholders often struggle to find adequate capacity for social engineering coverage because it usually carries a sublimit, said Mike Henning, Chicago-based executive lines broker at Risk Placement Services Inc., the wholesale broking and managing general agency unit of Arthur J. Gallagher & Co.

"Typically, if you have a $1 million crime policy, social engineering most times is limited to $100,000 or $250,000, or maybe $500,000, because the loss with social engineering can be very large," he said.

The typical crime loss is like "death by a thousand cuts," he said. Two to three fraudulent transactions within a month can easily add up to six-figure losses, Mr. Henning said.

Social engineering fraud coverage is typically offered at a lower limit than the overall policy, but it depends on the individual characteristics of a risk, Mr. Arehart said.

Social engineering fraud often comes down to the failure of a process and whether an employee has attempted to make a phone call or verified with their boss that a wire transfer is legitimate, he said (see related story).

There are many variations of social engineering fraud, from phishing to ransomware, said Steve Dimakos, Chicago-based managing director of BDO USA LLP. "The difficulty of these crimes is that companies can't grasp the extent of the damage they can cause."

When you hear of the claims amounts involved with social engineering attacks "and you think of a crime policy you begin to understand the difficulty in placement of and the cost of this type of coverage," he said.

A growing number of commercial crime submissions come from companies that started up in the past five years and want crime and social engineering fraud coverage, said Melissa Schwartz, product manager-commercial crime at AmTrust Exec, a division of New York-based AmTrust Financial Services Inc.

"I've been seeing a lot of payment service provider submissions coming in," Ms. Schwartz said.

"It seems like everyone wants to set up their own payment service provider app," she said. Some well-known digital payment providers include Zelle, Stripe and PayPal.

With so many fraud vulnerabilities during the pandemic, those types of accounts can raise underwriting concerns from a cyber, social engineering and computer theft standpoint, she said. "I usually don't write those, but I have been seeing an uptick in those types of accounts," Ms. Schwartz said.

EMPLOYEE TRAINING KEY STRATEGY IN SOCIAL ENGINEERING RISKS

Businesses need to tighten up their processes and procedures to prevent crime losses as the pandemic brings new ways of working, experts say.

Business processes are changing such that the control environment is inherently strained, said Christopher Arehart, Chicago-based senior vice president, crime insurance product manager, financial lines at Chubb North America.

For example, an employee who previously sat outside the CFO's office and did the books is no longer there. "They are doing it from the comfort of their home but have all the same access that they did before," he said.

Educating employees to spot fake emails and regularly testing and monitoring are basic steps that companies can take to mitigate social engineering fraud, said Reid Eanes, Los Angeles-based senior vice president and financial services practice leader at Lockton Cos. LLC.

Training employees to incorporate basic controls into their daily workflow, such as verifying written instructions via a phone call, is critical, he said.

"That human-to-human connection can mitigate a ton of risk around change in banking instructions, change in payroll instructions, requests for emergency wire transactions to be sent," Mr. Eanes said.

Email communication is not enough, Mr. Arehart said.

"You have to start with the supposition that the party sending an email has had their email compromised, and it happens every day because vendors, suppliers have not turned on multi-factor authentication," he said.

In the work-from-home environment, new technology can be leveraged, such as verifying information in person via a video conference call, Mr. Arehart said.

Claire Wilkinson

CDC mask guidance raises supply concerns

BY LOUISE ESOLA
lesola@businessinsurance.com

Reuters

The latest face mask recommendations from the U.S. Centers for Disease Control and Prevention could further hinder frontline medical workers' access to personal protective equipment, which has been an ongoing struggle since the start of the COVID-19 pandemic, experts say.

The CDC in February released a series of guidelines that suggest the public may don certain medical-grade masks as protection from COVID-19. Regulators stated that N95 respirators — the gold standard for COVID-19 protection in the medical community and a requirement under the U.S. Occupational Safety and Health Administration's respiratory standard — "should not be used outside of health care settings because they should be reserved for health care personnel."

However, the same guidelines, which call for double-masking, include some details regarding the public's use of KN95 masks, which are also used in health care settings and are approved, under some conditions as pandemic shortages continue, as a substitute when N95 masks are unavailable.

The issue in health care is that as shortages of N95 masks — which filter out 95% of particles — continue to be a problem, some medical facilities have been relying on the less-protective KN95 masks for employees who are not working directly with COVID-19 patients, said Dr. Ernest Grant, president of the American Nurses Association in Silver Springs, Maryland.

"The new standard suggesting that the public wear the KN95 could interfere with the available supply that health care has," he said.

Bill Schwacke, Philadelphia-based health care practice leader for technology company Origami Risk LLC, said the push for more medical masks in the mainstream is "compounding" supply chain issues for hospital systems.

The new CDC guidelines have "a direct impact on their supply chain," he said. "This is something that is front and center with the risk management people on a day-to-day basis."

The CDC did not respond to a request for comment on the mask guidance.

On Oct. 2, 2020, months into well-documented shortages of N95 masks, OSHA issued notice that medical facilities, facing shortages of PPE, can use "discretion" in what to provide to workers. For many, that meant issuing KN95 masks, which are approved in other countries.

Adding to the confusion are media reports calling for everyone to wear the more-protective N95 masks, according to Get Us PPE, a Washington-based nonprofit organization advocating for more supplies for emergency medical workers amid the pandemic.

"Recently … some writers and public health professionals have advised the public to buy N95s," a spokeswoman with Get Us PPE wrote in an e-mail. "We disagree with this advice — as does the CDC — because there is a severe and worsening shortage of N95s, and we need to save them for health care workers."

Mr. Schwacke of Origami said the demand for N95 masks has also created issues with counterfeit masks on the market.

Reusing masks is another dilemma. Under the OSHA standard, N95 masks should be worn once and disposed of. Since the pandemic began, most workers have been reusing them, Dr. Grant said.

"They are asking health care personnel to reuse the mask for three, four or five days, and then re-sterilizing them," he said. "We are in a crisis and there is a shortage, and this process is allowed, but the initial guidelines are that they are to be used once and thrown away. That's still a concern we have," Dr. Grant said.

Another problem, according to those who help health care facilities manage legal risks, concerns OSHA, which has cited hundreds of medical facilities over the past 12 months for violations of its respiratory standard.

"Our clients have reported mask shortages and difficulties acquiring respiratory protection since the pandemic began," said Adam Young, a Chicago-based partner in the workplace safety and environmental practice at Seyfarth Shaw LLP. He said the firm is aware of OSHA citing medical facilities for COVID-19 violations, often alleging violations of the respiratory protection regulations, despite the shortages.

Andrew Brought, an attorney in the OSHA practice at Spencer Fane LLP in Kansas City, Missouri, said the problems with sourcing N95 masks will continue, and that any call for the public to wear such masks "presents a dilemma and challenge for health care professionals and their employers because they are the ones most directly at risk."

"All things being equal, given the variants (of COVID-19) that are now coming out, double masking and N95 make sense, but we are not at the point where all things are equal," he said. "PPE should be directed to all those employers (with employees) who are in the high-risk categories."

Mr. Brought said health care systems facing OSHA citations should "demonstrate that they have taken a variety of measures" to obtain adequate levels of PPE. "I think that those entities (that are cited) have a pretty strong basis to be able to push back against those citations issued."

N95 MASK ACCESS

The Washington-based American Nurses Association last year conducted a series of surveys on personal protective equipment to gauge supply issues at medical facilities. The latest survey of 21,503 nurses nationwide was conducted between July 24 and Aug. 14, 2020.

ACCESS TO N95 RESPIRATORS

9% of frontline nurses said they had no access to N95 respirators.

28% said N95 respirators were in "short" supply.

27% said they were "moderately able" to get N95 respirators.

25% said they were "fully able" to get N95 respirators.

12% said they do not use N95 respirators.

REUSING N95 RESPIRATORS

68% said it was "required by facility policy."

20% said it was "encouraged but not required."

9% said it was "neither encouraged nor required."

3% said they were "unsure."

Source: American Nurses Association

SAFETY CITATIONS MOUNT FOR VIOLATIONS RELATED TO COVID-19

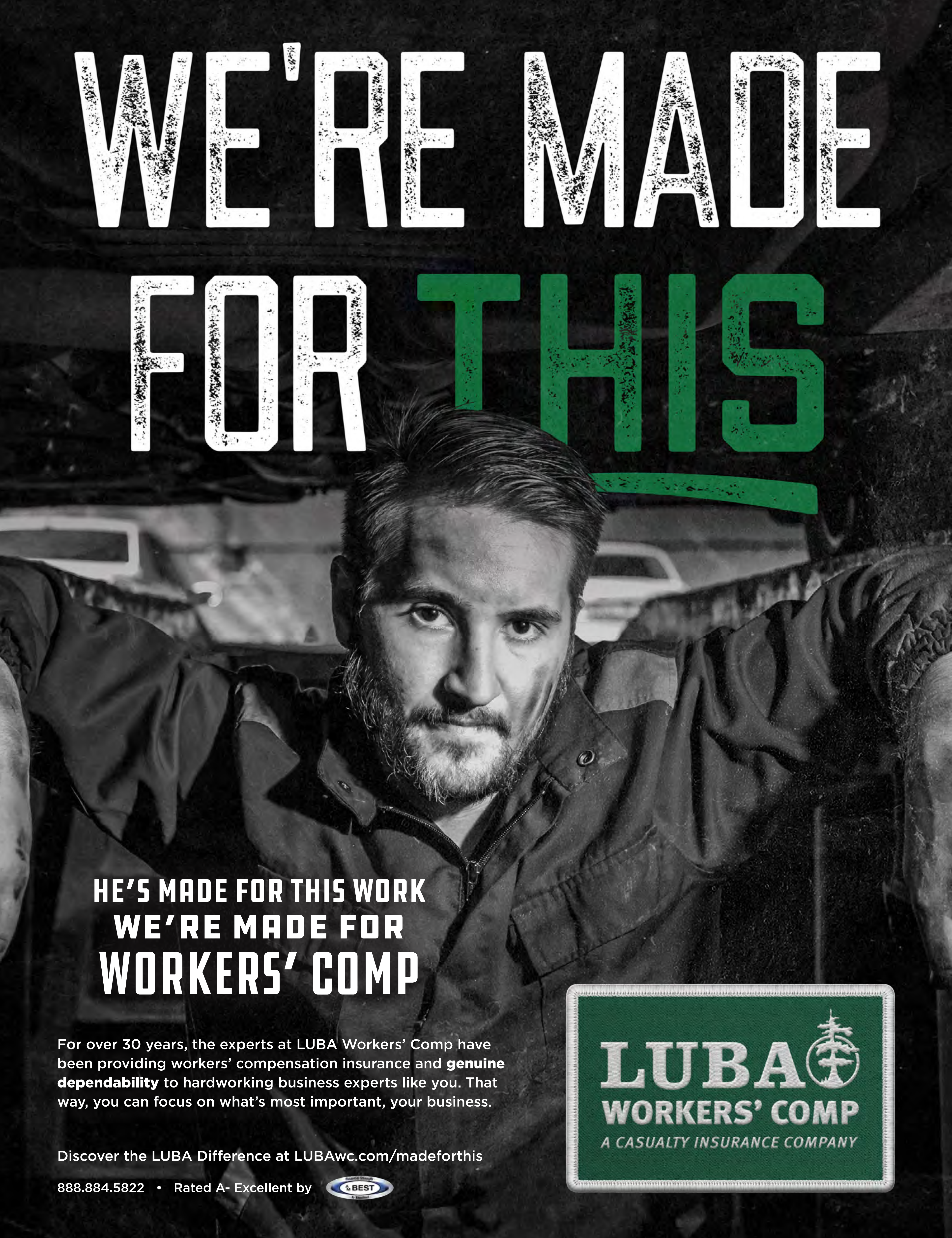
From the start of the pandemic to mid-January, the U.S. Occupational Safety and Health Administration issued citations arising from 300 workplace inspections for COVID-19-related violations, resulting in proposed penalties totaling just over $4 million.

Many of the citations were issued to health care facilities for violations of the agency's respiratory protection standard.

COVID-19-related citations issued as of Jan. 14 included 683 mentions of the respiratory standard, which in part requires medical facilities to provide workers with adequate personal protective equipment. Some facilities were cited for violations of the respiratory standard, with proposed fines in some cases totaling more than $25,000.

In addition to failing to provide PPE, some facilities were cited for alleged training lapses such as failing to implement written respiratory protection programs and failing to provide a medical evaluation, respirator fit test and training on the proper use of a respirator and other PPE.

Louise Esola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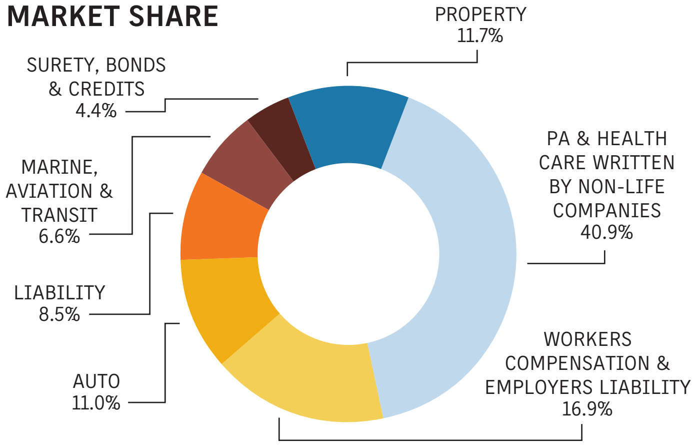
PROFILE: HONG KONG

42
GLOBAL P/C MARKET RANKING

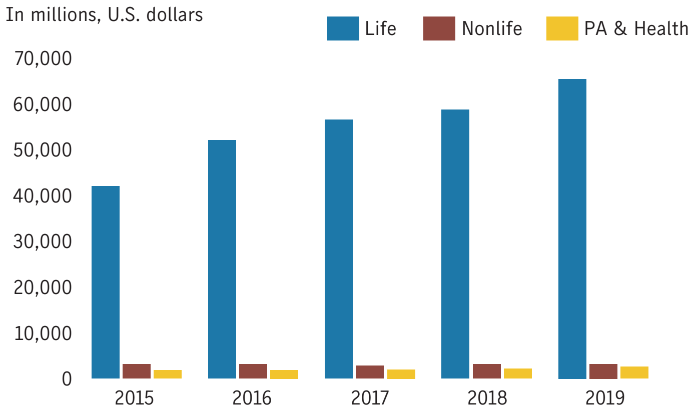
Hong Kong is a special administrative region of the People's Republic of China. Under the "one country, two systems" model, the territory has its own insurance regulatory system and has retained its U.K. common law inheritance. It is therefore the most litigious society in Asia, and its insurance market has a large element of long-tail liability lines, principally auto third-party liability and employees compensation — the Hong Kong equivalent of workers compensation/employers' liability. Although Hong Kong's domestic market is quite small — nonlife premiums, excluding accident and health, were only HKD 24.83 billion ($3.18 billion) in 2019 — its open economy, geographical proximity to China, and its cultural and economic links with the mainland have prompted many of the world's leading insurers, reinsurers and brokers to set up in the territory. The excess of insurance and reinsurance capacity has created a structurally soft market.

MARKET SHARE

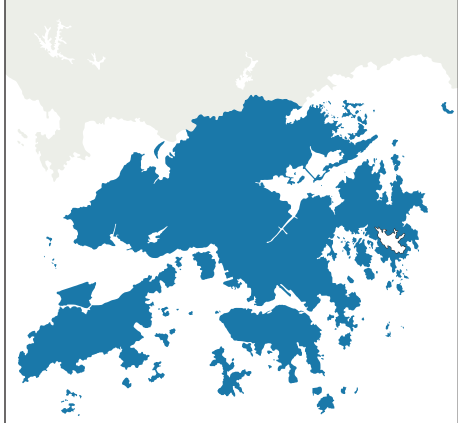


MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA

427.8

square miles

POPULATION

7.26

million

MARKET CONCENTRATION

33.6%

market share of top five insurers

2021 GDP CHANGE (PROJECTED)

3.7%

MARKET DEVELOPMENTS

Updated January 2021

- Despite the government's early success in controlling the spread of COVID-19, Hong Kong has suffered successive waves of infection that have resulted in its borders remaining effectively closed to visitors, including visitors from the Chinese mainland. This has devastated its hospitality and retail sectors, which were already suffering from the negative effects of 12 months of political violence.
- The strikes, riots and civil commotion risk in Hong Kong has risen dramatically since June 2019 when a series of increasingly violent demonstrations were sparked by the government's plans to legislate for an extradition treaty with mainland China. Property damage and business interruption claims as of the end of December 2019 were officially estimated at HKD 1.29 billion ($165.5 million).
- Legislation has been passed to allow the issue of insurance-linked securities in Hong Kong and to improve the supervision of insurance groups based there. The Insurance Authority became the licensing body and conduct regulator for insurance intermediaries in September 2019. It has set up a register of licensed intermediaries and published two new codes of conduct for agents and brokers, respectively.
- The IA is in the process of developing a modern risk-based capital system to replace the current solvency standard.
- To increase Hong Kong's attractiveness as an international insurance and reinsurance hub, the government has legislated to reduce to 8.25% the corporation tax rate payable by direct insurers and brokers in respect of certain lines.
- Two nonlife insurers have been licensed by the IA under its "fast-track" procedure for digital start-ups: Avo and OneDegree Hong Kong.

COMPULSORY INSURANCE

- Employees compensation (the Hong Kong equivalent of workers compensation/employers liability)
- Auto third-party bodily injury
- Professional indemnity for insurance brokers
- Directors and officers liability for Hong Kong Stock Exchange-listed companies
- Liability insurance for air carriers for injury to passengers and damage to baggage or goods
- Third-party liability insurance for hotels and guesthouses
- Shipowners liability against marine oil pollution (financial guarantee or insurance)

NONADMITTED

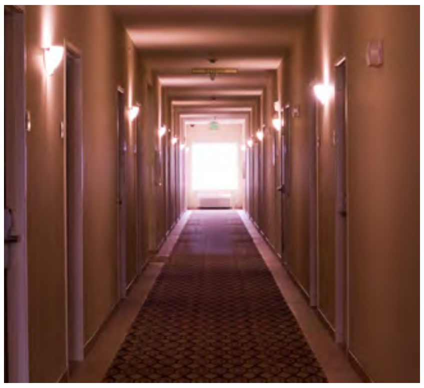
Unlicensed insurers are not allowed to carry on insurance business in Hong Kong. At the same time, there is nothing in the law to indicate that insurance must be purchased from locally licensed insurers, apart from some compulsory classes. This is generally interpreted to mean that insurers can issue certain types of policies from abroad if approached by an insurance buyer or an intermediary.

INTERMEDIARIES

A person may not "carry on a regulated activity" — i.e. sell insurance or give insurance advice — in Hong Kong without being licensed by the Insurance Authority. An insurance company may not conclude a contract of insurance through an intermediary in Hong Kong or accept a referral of business from an intermediary in the territory unless the intermediary is licensed by the IA.

MARKET PRACTICE

Although multinational corporations have the option of insuring their Hong Kong operations directly with their global program insurers or captives, most multinational subsidiaries are insured under local policies or fronting policies.



Travelers wins case against hotel chain

A federal district court in Cleveland agreed to dismiss COVID-19 business interruption litigation filed by a hotel chain against a Travelers Cos. Inc. unit, holding that the mere physical presence of the virus on its property did not constitute physical loss under its coverage.

Westlake, Ohio-based Ceres Enterprises LLC, which operates hotels in Ohio, Indiana and Minnesota, filed claims for lost business income under its insurance policy with Travelers Insurance Co. and was denied by the insurer, according to the ruling by the U.S. District Court in Cleveland in *Ceres Enterprises LLC v. Travelers Insurance Co.*

The hotel alleged in its lawsuit, which charged Travelers Insurance with breach of contract and insurance bad faith, that the pandemic and closure orders had caused direct physical loss that entitled it to coverage under its policy.

The court disagreed. Noting the case turned "on the meaning of the language 'physical loss of or damage to' property in the insurance policies," it said the wording in Ceres' policy was "not ambiguous."

"Taking these words together according to their ordinary meanings, 'physical loss of' property means material, perceptible destruction or deprivation of possession. 'Physical damage to' property means material, perceptible harm," the ruling said.

"In other words, the phrase intends a tangible loss of or harm to the insured property, in whole or in part. As the trigger for coverage, this policy language excludes financial or monetary losses for the novel coronavirus, SARS-CoV-2, which occasions this dispute for the simple reason that the virus did not work any perceptible harm to the properties at issue even if (construing the allegations in Plaintiff's favor), the virus may be found on surfaces there," the ruling said.

Disabled man can't sue restaurant

A federal appeals court ruled that a wheelchair-bound plaintiff who admitted he does not enjoy Chinese food did not have legal standing to sue a Chinese restaurant under the Americans with Disabilities Act.

Scott Smith has arthrogryposis, a rare congenital joint disease, and uses a wheelchair, according to the ruling by the 8th U.S. Circuit Court of Appeals in St. Louis in *Scott Smith v. Golden China of Red Wing, Inc.; Vu Thu Lam*.

In May 2017, he was driven more than 50 miles from his home to Red Wing and Winona, Minnesota, for the sole purpose of testing whether various businesses were ADA compliant, the ruling said.

At Golden China restaurant in Red Wing, he noted various deficiencies — including the lack of a fully compliant, accessible parking space — but never left his vehicle, according to the ruling.

He later filed 13 lawsuits in U.S. District Court in Minneapolis as a result of his trip, including claims against Golden China under the ADA and the Minnesota Human Rights Act.

The district court found Mr. Smith had standing to bring the suit based on his testimony that he visits Red Wing and had plans to return to the restaurant should the barriers be removed.

On appeal, a three-judge appeals court panel disagreed with the district court as to whether Mr. Smith had standing to file suit.

Mr. Smith had never been to Golden China and his only return to the establishment was in June 2017 "to see the changes had been made," the panel's unanimous ruling said.

"Smith, who does not enjoy Chinese food, stated that if he were to go back, it would only be because he was in the area for 'something else' and his friends or family wanted to go," the ruling said.

Firm needed AIG's OK to settle case

The Arizona Supreme Court agreed with American International Group Inc., in a divided opinion, that a higher education service provider should have gotten the insurer's OK before settling a directors and officers liability lawsuit.

Apollo Education Group Inc. had a D&O policy with AIG unit National Union Fire Insurance Co. of Pittsburgh that provided up to $15 million in coverage, according to the ruling in *Apollo Education Group, FKA Apollo Group Inc. v. National Union Fire Insurance Co. of Pittsburgh, PA, a Pennsylvania Corporation*.

The policy said Apollo could not enter into any settlement agreement without AIG's prior written consent, according to the majority ruling.

In October 2006, the company's stock dropped 22.9% following a *Wall Street Journal* article detailing an industry practice of backdating stock options for corporate executives; an investigation of Apollo by the U.S. Attorney's Office for the Southern District of New York and the Securities and Exchange Commission; and an internal investigation followed by a public disclosure by Apollo that admitted to "various deficiencies" in the process of granting and documenting stock options.

A class action on the matter was dismissed by the U.S. District Court in Arizona, and appealed to the 9th U.S. Circuit Court of Appeals in San Francisco.

While the appeal was pending, the plaintiffs and Apollo agreed to settle the litigation for $13.1 million, which added up to $13.5 million including costs incurred to that point.

National Union refused to consent to the settlement, but Apollo entered it anyway, paying the plaintiffs out of pocket, then filed suit against the insurer.

The U.S. District Court granted summary judgment to National Union, and Apollo appealed. The 9th Circuit then asked the Arizona Supreme Court's advice on the issue. In a 5-2 ruling, the Supreme Court said that under the policy terms Apollo could not "enter into any settlement without the insurer's consent."

Restaurant wins COVID-19 ruling

A Missouri state court ruled that a Zurich Insurance Group policy was ambiguous and that a restaurant's COVID-19-related business interruption claim was covered.

In a brief Feb. 4 order in *Ja-Del Inc. v. Zurich American Insurance Co. et al*, the Kansas City-based court ruled "this Court finds and concludes that the language of the policy at issue is ambiguous and, therefore, the claim is covered under the policy."

Ja-Del, which operates Jack Stack Barbecue Restaurants, sued Zurich and its brokers last year saying it had suffered lost income and "direct physical losses" as a result of mandated shutdowns related to the pandemic, but Zurich had denied its business interruption claim.

The case is one of numerous legal disputes over pandemic-related business interruption claims. Insurers have so far won most of the trial court rulings, but policyholders have also scored victories in the various disputes.

DOCKET

GOOGLE SETTLES BIAS ALLEGATIONS

The U.S. Department of Labor said Google LLC will pay more than $3.8 million to resolve allegations of systemic compensation and hiring discrimination against more than 5,500 female and Asian employees and job applicants. The department's Office of Federal Contract Compliance Programs identified pay disparities affecting female employees in software engineering positions. It also identified hiring rate differences that disadvantaged female and Asian applicants for software engineering positions.

OWNER MAY FACE MANSLAUGHTER CHARGE

The owner of a construction company can be charged with second-degree manslaughter in connection with a workplace fatality, the Washington State Supreme Court ruled. As a result of the Feb. 4 decision in *Washington v. Numrich*, Phillip Numrich, owner of now-closed Alki Construction Co., may be charged with a felony in the death of a 36-year-old employee who was buried under 6,000 pounds of mud and sand after the dirt walls of a 7-foot-deep trench he was working in collapsed, the Washington State Department of Labor and Industries said.

SNOWPLOW INJURIES NOT COMPENSABLE

A librarian's injuries from being struck by a snowplow in a township-owned parking lot at the end of her shift are not compensable under the New Jersey Workers Compensation Act, an appellate court ruled. In *Lapsley v. Sparta*, the New Jersey Superior Court, Appellate Division, in Jersey City reversed a workers compensation judge's decision that the librarian's injuries were compensable and that her negligence lawsuit against the township was barred by the exclusive remedy provision of the act. Diane Lapsley, who worked at the Sparta Township Library, was struck in February 2014 by the township-owned snowplow.


RISK CENTRAL
Bermuda is one of two global jurisdictions awarded full equivalence to the EU's Solvency II regime and one of only three to have earned US NAIC Reciprocal jurisdiction status. This truly global market has, in the last two decades, paid out more than a quarter of a trillion dollars to businesses and consumers. With decades of experience and a forward-thinking approach, Bermuda brings capital and innovation together to cover the world's most complex risks.
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Joshua Motta

COALITION INC.

Joshua Motta is co-founder and CEO of San Francisco-based Coalition Inc., which provides cyber liability insurance and security to organizations in the U.S. and Canada. Prior to Coalition, Mr. Motta was a senior executive and head of special projects at Cloudflare Inc., a web infrastructure and security company, following roles at Goldman Sachs Group Inc., the CIA, and Microsoft Inc., among others. Mr. Motta discussed the pandemic's effect on cyber risks and insurance with Senior Reporter Judy Greenwald. Edited excerpts follow.

Q How has the cyber market been impacted by the pandemic?

A The impact of the pandemic on the cyber market has been profound, both in the near term and in the long term. The move to working from home, the dramatic acceleration of the use of technology in most organizations has made cyber as critical as it's ever been for most organizations, but also increased their exposure to cyber risk. In the long term, it will continue to be profound, as the pandemic has really forced an acceleration of technology that would otherwise have taken years and compressed it into months, if not weeks, for organizations. I think it will have a very positive impact in the long term in that the market for cyber insurance products is as critical and as important as it's ever been.

Q Has working from home led to a significant increase in cyber losses?

A It has, and the reason it has is it has opened new opportunities for criminal actors to victimize organizations. For example, many organizations used to only accept checks by mail but, given the move to working from home, criminals were able to take advantage of the change in behavior and trick people into wiring funds, instead of mailing them, to accounts that the criminals control. Working from home has led to an increase in social engineering losses, in ransomware-related losses and data breaches.

Q What permanent changes will there be in the market because of the pandemic?

A Remote access is going to become a more permanent feature, maybe not to the extent it is today but certainly to a much greater extent than prior to the pandemic. There are certainly going to be permanent changes as to how organizations can configure their networks to facilitate remote working. From the perspective of the insurance market, the deterioration in the loss environment has already led a number of cyber insurance markets to pull out. Obviously, there's been significant restrictions in coverage by many cyber insurance markets. Some of those changes will be permanent, but others, even in the near term, have been profound.

Q What do you see as the outlook for the cyber insurance market?

A My overall outlook is positive because there has never been a greater need for cyber insurance. It is critical for insureds to manage what has become the most pervasive risk they face.

Q Has the pandemic slowed or disrupted you?

A Quite the opposite. The pandemic has accelerated our growth. There's a greater awareness among organizations of the risks that technology and cyber threats pose to them. There's a growing awareness that cyber insurance is an effective tool to transfer the risk.

Q&A

Q Will business revert to pre-pandemic norms whenever we return to a normal environment?

A Absolutely not. It will be a new normal, and that new normal will include more technology, more risk from technology. There's no backwards, only forwards.

Q How do you view the issue of ransomware?

A The topic du jour is ransomware. Ransomware is really the main culprit behind the significant deterioration in loss ratios across the cyber insurance market. That's been the No. 1 challenge in 2020, and I don't predict that will change in 2021.

Q Do you think companies should pay ransomware?

A No one more strongly than me wishes that extortion ransomware should not be paid. Unfortunately, that's not the reality. I do believe there are circumstances under which they must be paid. In many cases, it's an existential choice between paying the ransomware or death (for the organization). It's unavoidable, so my belief is that it should be paid, in that respect, as an absolutely last resort.

Q What about the argument that paying ransomware encourages criminals?

A I'd say, "yes," but also it's sort of a silly argument in that the criminals are going to keep doing it, irrespective of whether insurance companies cover the loss. Kidnap and ransom insurance has existed for a very long time, and there is a risk of a moral hazard, but I do not believe that the fact that an insurance policy covers an extortion makes a material difference in the criminal behavior. Organizations are going to have to pay the ransomware whether or not they're covered by insurance because, again, it's a choice between ruin and saving the business. It's not a pleasant choice to make, and obviously there's a lot insurance companies can do together with the government in combating this threat, but I believe that criticism is a bit unfounded. Personally, as I've said, we would never recommend that a customer pay a ransom, but that said, we're in the business of helping a customer survive.

Q What are Coalition's plans?

A Our plans are to grow, to protect millions of organizations both inside of the markets we're currently in, in the U.S. and Canada, as well as internationally. We also intend to introduce new products that help cover other forms of loss that organizations face, for example, directors and officers liability insurance. If an organization were to experience a cyber loss, and it was believed the directors and officers were negligent in protecting the company, they could have litigation from shareholders as a result. Cyber risk and cyber insurance are two different things, and simply put, our plan is to create insurance products, or expand the availability of our insurance products, to affirmatively cover cyber risks in other lines of insurance.

In many cases, it's an existential choice between paying the ransomware or death (for the organization). It's unavoidable, so my belief is that it should be paid, in that respect, as an absolutely last resort.

Captives seen as refuge as rates keep rising

INSIDE

BY GAVIN SOUTER

gsouter@businessinsurance.com

Interest in captive insurance has soared during the hardening commercial insurance market of the past two years and new formations are growing, although economic uncertainty related to the COVID-19 pandemic is likely holding back some potential captive owners, captive experts say.

Existing owners are also expanding the use of their captives as they face higher insurance rates and tightening capacity in traditional markets.

Most of the largest captive domiciles reported a surge in formations last year (see chart page 22), though others, particularly those with significant numbers of small captives, saw decreases. Regulatory pressure on microcaptives has intensified over the past 18 months (see story page 22). All of the largest captive managers reported increases in captive numbers (see chart page 25).

Captive managers and other experts expect the growing interest in alternative risk transfer vehicles to continue through 2021 as the hardening insurance market shows little sign of abating.

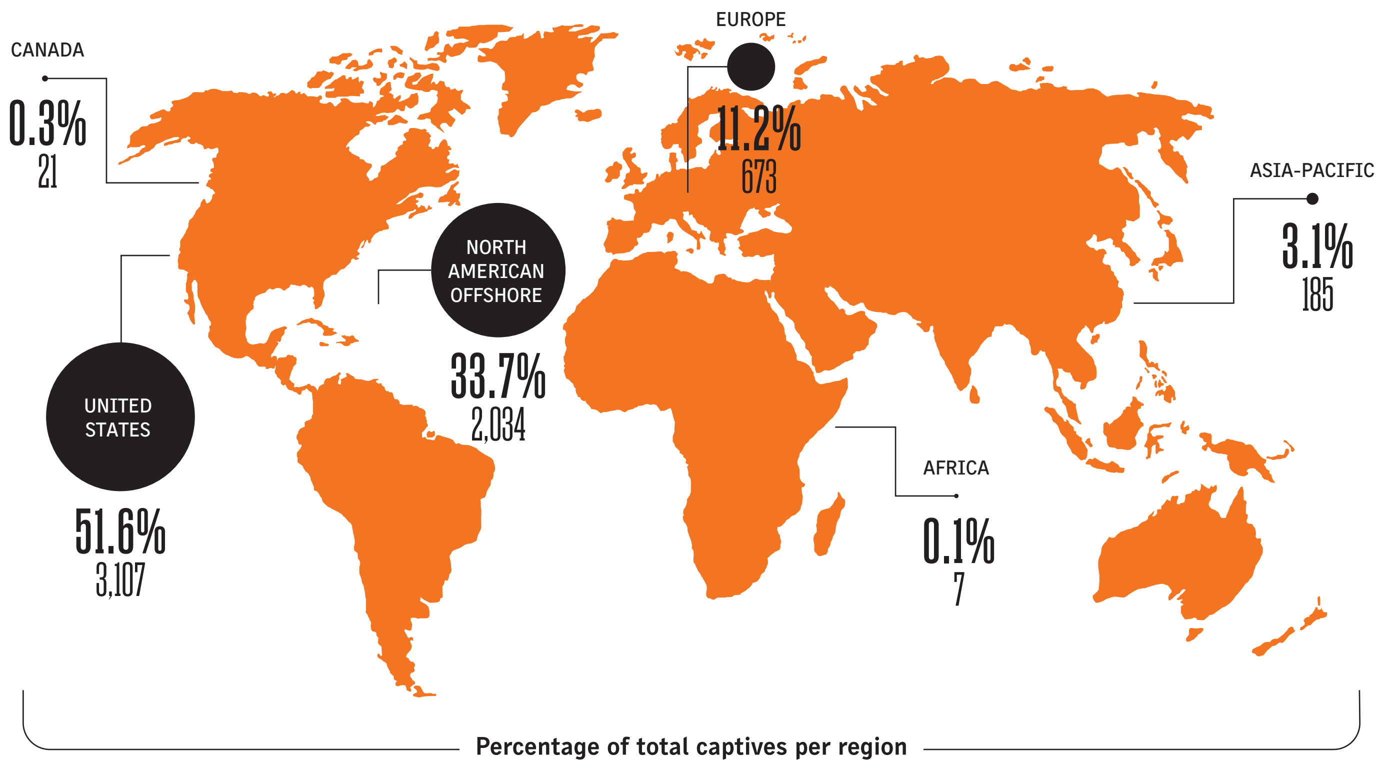
"Companies that had captives in the past or explored them are certainly revisiting and forming captives now, and people who hadn't explored them are really looking pretty hard at it and pursuing forming a cap-

ONSHORE/ OFFSHORE

BY THE NUMBERS

There were 6,027 captives in 2020, not including microcaptives, series captives, or individual cells or cell members in protected cell companies.

Source: *BI* survey



tive because of the hard market," said Anne Marie Towle, Indianapolis-based global captive solutions leader for Hylant Inc.

There has been unprecedented interest in captives over the past year, said Ellen Charnley, president of Marsh Captive Solutions, a unit of Marsh LLC.

Existing captive owners are making more use of their captives, for example by increasing their retention levels to control their total cost of risk, and more companies without captives are looking to form them, she said.

"It's all about flexibility. Ultimately a captive allows a captive owner and an organization to have flexibility in arranging and taking control of their overall total cost of risk, so when markets are hard they can leverage their captive to be flexible with their program structure and to manage that volatility," Ms. Charnley said.

"There's been a significant increase in captive formations because of the hardening market," said Sandy Bigglestone, director of captive insurance in the captive division of Vermont's department of financial regulation in Montpelier.

Vermont, which is the largest and one of the longest established U.S. captive domiciles, licensed 38 new captives in 2020, compared with 22 new licenses in 2019, and by mid-February had already licensed eight new captives this year, she said.

Interest in forming captive cells within segregated cell companies has increased sharply during the hard market as companies look to quickly expand risk financing tools, several experts said.

Vermont approved about 60 new captive cells in 2020, taking the state's total cells to about 300, Ms. Bigglestone said.

"The amount of interest is through the roof and the amount of formation is high as well," said Patrick Theriault, managing director at Strategic Risk Solutions Inc. in Burlington, Vermont.

Industries such as long-term care and trucking have seen significant reductions in capacity and are looking at captives as their other coverage options recede, he said.

"It's a mix of capacity or lack thereof in some places and reduced capacity and increased prices in other places," he said.

Pandemic pressure

But financial pressures related to the pandemic have held back formations by some companies, Mr. Theriault said.

"For certain companies cash has become more important than ever," he said. "They may hesitate to commit capital and significant funding in a captive at this time. … But many others have gone forward."

Some businesses facing pressure during the pandemic are confronting opposing forces, several captive experts said.

"On the one hand, in the pandemic all businesses are keeping a close eye on cash flow; on the other hand, you have a hardening insurance market, or a hard insurance market in certain lines of coverage, that's forcing businesses to take a good hard look at captives," said Matt Atkinson, senior vice president at Artex Risk Solutions, the captive management unit of Arthur J. Gallagher & Co.

Vermont has added more due diligence questions related to captive funding during the pandemic, Ms. Bigglestone said.

"If a company is hurting, it may not be the best time to fund a captive and pay the expense of operating it," she said.

The pandemic slowed formations for a few months in the first half of 2020, but the pace picked up again in June, said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont.

"Ultimately companies need insurance in place, so it's not like you could delay, and the captive became a useful tool in terms of managing any new renewals," she said.

Negotiations

Captives are increasingly being used as a negotiation tool by their owners during renewals, Ms. Bigglestone said.

Companies prepare feasibility analyses for a variety of limits that their captives may cover and may take higher retentions to lower prices for coverage in the commercial market, she said. Once the negotiations are complete, they present a final business plan to the regulators, she said.

International Paper Co. has used its captive for many years to cover various risks, including general liability, auto liability, property, contractor risks and employee benefits risks, said David Arick, assistant treasurer, global risk management at the Memphis, Tennessee-based company.

"We are already taking substantial deductibles across most of our programs so we avoided some of the hurdles that a lot of people are seeing for the first time because the soft market allowed people to have much lower deductibles than probably would be sustainable in the long run," he said.

International Paper had captives in Vermont and Tennessee and last year decided to redomesticate its Vermont captive to its home domicile, said Mr. Arick, who is also a director of the Risk & Insurance Management Society Inc.

While Vermont is the most well-established U.S. domicile, Tennessee also has a supportive regulatory structure in place, and ease of travel and administration were the main considerations behind the move, he said.

Increasing insurance prices are also prompting commercial insurance companies to establish captives.

More managing general agents and managing general underwriters are looking to form "companion captives" to take a quota share of the business they are handling, said Ms. Towle of Hylant.

U.S. companies remain more interested in establishing captives in domestic domiciles, in part due to costs, and particularly those in states with well-established captive laws, but captives are also establishing offshore, she said.

About 50% of the U.S. captives formed by Davies Captive Management are in domestic domiciles with the remainder formed offshore, said Nick Frost, Bermuda-based president of the captive manager, which is owned by Davies Group Ltd. "We are domicile neutral," he said.

Reinsurance

One of the often-cited benefits of forming a captive is that the vehicles allow policyholders direct access to capacity in the reinsurance market, but rates have been tightening in that sector, too, captive managers say.

"Businesses need to go through proper risk engineering, they need to have buy-in from the highest levels in their leadership, and they need to interact with the reinsurance market and tell their stories," Mr. Atkinson said.

While reinsurance markets are hardening, captives still allow captive owners to access additional capacity in a tight market, said Ms. Gray of Aon.

"What the captive provides is additional capacity through the reinsurance market, so if you are not getting capacity directly it provides another source," she said. "It's mostly about accessing additional capacity, but in some cases the reinsurance pricing is cheaper than going directly."

SPECIAL REPORT

Managing new risks in uncertain times

BY GAVIN SOUTER
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Captive owners are making greater use of their captives to cover risks that are tough to place in the commercial insurance market.

"We are seeing an increased number of captives expanding lines of business," said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont.

While they remain a minority, some captive owners are covering risks such as cyber liability, which is often placed in a captive to access reinsurance, and medical stop loss, which is usually retained within a captive, she said.

"Once a captive is established, that's when they become a useful tool to explore how they can be used to reduce total cost of risk," Ms. Gray said.

In the hard market, captives are being used to cover risks that previously were infrequently covered by captives, such as high severity/low frequency risks, said Ellen Charnley, president of Marsh Captive Solutions, a unit of Marsh LLC.

"Mature captives with perhaps an abundance of surplus have played a very important role in this hardening market," she said.

Captives are also being used more frequently to support insurtech initiatives, said Dennis Silvia, Cleveland-based executive vice president of Davies Captive Management, a unit of Davies Group Ltd.

"They have such confidence in the performance of the product that they want to take risk as well," he said. "Some are parametric weather coverages, some are microinsurance deals, some are accident and health coverages — it runs the gamut."

Using a captive allows the companies to access a fronting insurer and reinsurance, Mr. Silvia said.

Interest in using captives to cover some directors and officers risks has increased as the cost of buying D&O insurance in the commercial market has soared, several captive managers said.

Few captives are being formed specifically to cover D&O, but some companies with well-established captives are looking at the possibility of covering D&O risks through their captives due to the significant hardening of that sector of the market, said Patrick Theriault, managing director at Strategic Risk Solutions Inc. in Burlington, Vermont.

> "We are seeing an increased number of captives expanding lines of business."
>
> Nancy Gray, Aon PLC

Some policyholders can't buy sufficient D&O limits "and a captive in certain situations can be a good alternative," Ms. Charnley said.

While captive owners have been wary of including Side A D&O coverage in captives — due to potential problems in indemnifying directors for exposures that corporations are prohibited from funding, among other things — Side B and Side C coverages, which provide cover for companies, have more frequently been covered by captives, captive managers say.

"Businesses are looking at Side B and C for better ways to manage that risk because we are seeing increases in that line that just aren't feasible," said Matt Atkinson, senior vice president at Artex Risk Solutions, the captive management unit of Arthur J. Gallagher & Co.

In the wake of the pandemic, companies with trade credit risks are increasingly looking to captives to cover them, said Anne Marie Towle, Indianapolis-based global captive solutions leader for Hylant Inc.

International Paper Co. has recently added trade credit risk to its captive, said David Arick, assistant treasurer, global risk management, at the Memphis, Tennessee-based company.

"We have a large trade credit program and a lot of industries have been stressed by the pandemic, so credit insurance has firmed a bit and our businesses don't really want that deductible. …We are able to use the captive to give them basically a guaranteed cost program and give the insurers the buffer they wanted," he said.

The company is also looking at the possibility of taking a larger property insurance retention, given the constricted property insurance market for paper and forestry products companies, Mr. Arick said.

Captives are being used to cover a variety of risks that had not been significant concerns for their owners prior to the pandemic, said Nick Frost, Bermuda-based president of Davies Captive Management.

Coverage for business interruption exposures related to the loss of a key supplier, loss of a key employee, civil unrest or breach of data related to people working at home are more frequently being included in captives, he said.

"There's lots of risks that have become more problematic and you can put them in a captive for a save-for-a-rainy-day type of coverage," Mr. Frost said.

Some owners are using captives to cover a portion of their business interruption risks on a difference in conditions or difference in limits basis to support their commercial insurance programs, Ms. Towle of Hylant said.

"People are taking on a $5 million or $10 million or $20 million policy, they are not taking unlimited risk," she said.

Cyber risks are also being written through captives, sometimes to fill out higher layers of coverage towers, Ms. Towle said.

"Cyber is one of the fastest growing areas of interest," said Mr. Atkinson of Artex.

Businesses are growing more comfortable placing cyber risks in captives as more data on the exposure becomes available and cyber risk mitigation services expand, he said.

Increased regulatory scrutiny may raise costs to self-insure

BY GAVIN SOUTER
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Regulatory scrutiny of captives continued over the past year with Washington state introducing legislation to increase taxation of captives and the IRS intensifying its crackdown on microcaptives.

While most commercial insurance buyers won't be affected by the moves, the regulatory and legislative actions are causing some concern in the captive insurance sector, experts say.

Last month, a bill was introduced in Washington, which is not a captive domicile, that proposes a 2% captive premium tax on risks based in the state.

The bill follows four years of investigations into captives in Washington by the state's insurance commissioner, Mike Kreidler.

After being challenged over the alleged nonpayment of premium taxes, various large captive owners, including Microsoft Inc. in 2018 and Costco Wholesale Corp. in 2019, paid back taxes and penalties to settle with Washington's insurance department.

The actions in Washington are a concern for captive owners, said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont.

"It's not just Washington state but what happens with the next state that starts coming after captives, basically increasing costs for organizations to self-insure in some cases," she said.

Several other states are looking at the issue of captive taxation, said Chaz Lavelle, a partner at Dentons Bingham Greenebaum LLP in Louisville, Kentucky.

"Other states, while they haven't taken the route of Washington — states like Oregon, Minnesota, New York, Texas historically — are looking at various aspects of how they can tax captive transactions, either from income tax or some version of premium tax," he said.

Meanwhile, the IRS has stepped up its pursuit of microcaptives.

Over the past several years, the IRS has investigated alleged breaches of tax rules by owners of captives electing to be taxed under Section 831(b) of the Internal Revenue Code. The so-called 831(b) captives, which have a premium limit of $2.3 million, are taxed only on their investment income, not their underwriting income. Larger captives are usually taxed under Section 831(a) of the tax code.

The 831(b) captives are often used by small and midsize companies that are too small to establish conventional captives, but many observers say they have also been used by wealthy individuals, their family members and others to create the appearance of insurance coverage while being used to avoid taxes.

"Once they get done with developing the law for the small captives, they may again look at the large captives."

Chaz Lavelle, Dentons Bingham Greenebaum LLP

The IRS has won several tax court rulings concerning 831(b) captives and since 2019 has made various settlement offers to hundreds of captive owners.

The IRS added to its audit resources for 831(b) captives and expanded the number of owners it made settlement offers to last March, and in October it introduced a second settlement program. In addition, the IRS also began some investigations of captive managers.

"They are full court press out there," said Chaz Lavelle, a partner at Dentons Bingham Greenebaum LLP in Louisville, Kentucky.

Captive owners that don't take the 831(b) election should still be concerned about the IRS' investigation of microcaptives, he said.

The IRS has a decades-long history of investigating captives and although captive owners have won most of the court challenges to larger captives, the IRS may not be finished, Mr. Lavelle said.

"Once they get done with developing the law for the small captives, they may again look at the large captives," he said.

In addition, a lot of businesses that may have considered establishing microcaptives are hesitant to move forward until there is more clarity from the IRS, said Patrick Theriault, managing director at Strategic Risk Solutions Inc. in Burlington, Vermont.

"The industry wants clarity on the analysis to achieve proper tax treatment and once you've done that whether you elect to be an A or a B should be a pure election based on the amount of premiums written," he said.

COUNTING CAPTIVES

Ranked by number of captive licenses at year-end 2020

Rank	Domicile	2020	2019
1	Bermuda	680	715
2	Cayman Islands	652	618
3	Vermont	589	585
4	Utah	396	432[1]
5	Delaware	288	366
6	Barbados	276	275[1]
7	North Carolina	250	235
8	Hawaii	242	231
9	Tennessee	212	194[1]
10	Luxembourg	199	196[1]
11	Guernsey	191	197[1]
12	South Carolina	175	179
13	Nevada	166	174
14	Arizona	131	128
15	Nevis	116	147
16	Montana	114	121[1]
17	District of Columbia	106	104
18	Isle of Man	100	102
19	Anguilla	99	129
20	Singapore	80	73
21	Turks & Caicos Islands	70	69
22	Dublin	67	69
23	Texas	57	45
24	Georgia	56	52
25	Labuan	55	52[1]
26	Alabama	53	48
27	British Virgin Islands	52	59
28	Missouri	51	52
29	Kentucky	45	64
30	New York	43[2]	49[2]
31	Sweden	37	39
32	St. Lucia	32	34
33	Michigan	26	24
34	Switzerland	25	27
35	Federated States of Micronesia	23	25
36	Connecticut	22	16[1]
36	Bahamas	22	18
38	British Columbia	21	20
39	New Jersey	20	21
40	Puerto Rico	18[3]	18
41	Malta	16	10
42	South Dakota	15	16
43	Oklahoma	13	11
44	Arkansas	12	9
45	New Zealand	11	10[1]
46	Gibraltar	10	11
47	Germany	9	6
48	Denmark	8	10
48	Liechtenstein	8	8
50	Curacao	7	7
50	Ohio	7	6
50	Egypt	7	5
53	Colorado	6	7
53	Panama	6	5
55	Vanuatu	5	5
56	Hong Kong	4	4
56	Nebraska	4	4
56	U.S. Virgin Islands	4	5
59	Illinois	3	4
59	Jersey	3	3
59	Guam	3	3
59	Maine	3	3
63	Dubai	2[3]	2[3]
63	Mauritius	2	2
65	Kansas	1	1
65	West Virginia	1	1
	TOTAL	6,027	6,160[1]

[1] Restated. [2] From website. [3] *BI* estimate
Source: *BI* survey

PERSPECTIVES

Companies increasingly turn to captives as employee benefits evolve due to COVID-19

Matt Drakeley is vice president, accident & health specialty markets, at QBE North America. He can be reached at matthew.drakeley@us.qbe.com.

COVID-19 has been the biggest disruptor in the health care sector in years, catapulting change in the delivery of care and putting greater focus on the emotional and financial well-being of employees as part of a broader business resiliency effort. To manage this more expansive set of benefits, companies are increasingly turning to captives for their potential benefits that include greater flexibility and control over their health care expenditures.

A holistic approach

Many employers have transitioned from "check-the-box" benefit packages to a holistic approach to benefit offerings. Creativity and innovation of employee benefits bloomed due to the pandemic, especially for employers hit hardest by the economic realities of 2020. While enhancing traditional benefits wasn't feasible for many, employers' focus was on flexibility in work conditions and benefit offerings that catered to the financial and emotional well-being of their employees. In short, companies have worked to provide a foundation for employees to do their jobs, giving them perhaps one less thing to worry about as they deal with pandemic stress and different ways to use their employee benefit programs.

The biggest expansion of care has been the acceleration and acceptance of telemedicine benefits. Providers of care advanced their digital capabilities and rapidly rolled out the technological advancements necessary to offer telehealth options to patients. Employers that lacked telemedicine offerings prior to the pandemic have quickly added them as a welcome benefit to ensure their employees seek care without concerns over exposure to the virus. In addition, some employers have rolled out testing sites, access to personal protective equipment and improved employee assistance program benefits.

Employers are also taking an active role in education on the virus, offering behavioral health services, workshops, childcare and tutoring services for working parents, and flexible work hours to accommodate caring for loved ones, as well as additional paid time off for testing, treatment or vaccination – essentially creating an extensive support system that has not traditionally been the norm in the workplace.

In the future, voluntary benefits will likely increase as expenditures on employees are redirected and employers allow greater flexibility in a traditional workday. A larger remote workforce will lead to a reduction in employee dollars spent on wardrobe, transportation and parking, and could result in increased health and well-being offerings.

Turning to captives

Companies have increasingly turned to captive insurance to provide coverage for their more expansive, holistic, post-pandemic employee benefits programs. The trend toward companies self-insuring is not new; the Affordable Care Act was the catalyst for many employers to transition from being fully insured to self-insuring.

> Many companies initially set up their captives to retain commercial property/casualty risks, then added medical stop loss to the captive to complement the longer-tail risk of other property/casualty lines.

Frustrated with the lack of claim transparency from their fully insured medical insurers, employers have increasingly sought ways to more actively manage risk and assert greater control over their health care spend. Many companies initially set up their captives to retain commercial property/casualty risks, then added medical stop loss to the captive to complement the longer-tail risk of other property/casualty lines.

Using an existing single parent captive or collaborating within a group captive insurance program is an extension of this market trend. Smaller and mid-size employers are joining group captives to reap the benefits of self-insurance while attaining protection from volatility by pooling risk.

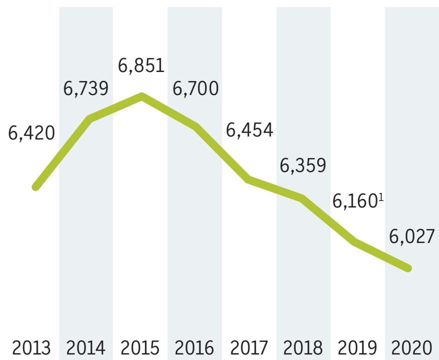
Captive solutions can often provide employers greater insight into claims, exposure identification, and access to specialized partners to help manage risk. These solutions, along with medical stop loss, allow employer health plans to customize solutions and budget more often, which creates flexibility to offer new or improved benefit options for employees with cost stability. Flexibility like this was critical during the height of pandemic-induced uncertainty for many employers. Many insurers in the employer medical stop loss insurance sector helped alleviate concerns over coverage for furloughed team members, with several agreeing to extend coverage for furloughed employees by temporarily waiving the policy's actively-at-work provision.

In addition to increased flexibility, there can be a cost advantage to shifting profit typically retained by the commercial insurer into the captive with a lower expense charge as compared with traditional fully insured coverage. Plan stability and savings are often created by captive retention and management of these layers of predictable risk, while insuring higher layers of risk that may not be as probable but represent potential volatility. Other financial advantages may include control of cash flow, flexibility of plan and cost containment measures, pricing stability and, in some cases, tax benefits and potential increased investment income.

As business models change, employers will continue to play a more significant role in their employees' lives. The year 2020 was a good preview of how the employee benefit package will evolve to attract and retain talent and keep a workforce engaged. The potential for captive solutions to provide flexibility and cost benefits warrants consideration by employers as they seek to provide holistic benefits offerings to their employees.

RANKINGS OF CAPTIVE DOMICILES & CAPTIVE MANAGERS

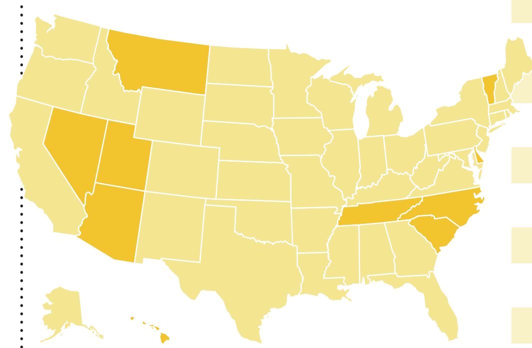
TOTAL CAPTIVES WORLDWIDE



[1] Restated.
Source: *BI* survey

TOP U.S. CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2020



Rank	Domicile	2020	2019
1	Vermont	589	585
2	Utah	396	432[1]
3	Delaware	288	366
4	North Carolina	250	235
5	Hawaii	242	231
6	Tennessee	212	194[1]
7	South Carolina	175	179
8	Nevada	166	174
9	Arizona	131	128
10	Montana	114	121[1]

[1] Restated.
Source: *BI* survey

TOP 10 CAPTIVE MANAGERS

Ranked by the numebr of captives managed worldwide in 2020

Rank	Company	2020 total captives[1]	CAPTIVE TYPES: Captives	831(b) microcaptives	Protected/ segregated cell companies [individual cells]	2020 captive premium volume[2]	Domiciles	Total staff	Officers
1	Marsh Captive Solutions	1,480	1,389	27	64 [226]	$59,633,350,245	48	439	Ellen Charnley, president; Julie Boucher, islands practice leader; Chris Varin, U.S. practice leader; Will Thomas-Ferrand, international practice leader
2	Aon Captive & Insurance Management	928	860	15	53 [241]	$44,514,336,385	43	550	John English, CEO
3	Artex Risk Solutions Inc.	824	545	160	119 [910]	$14,300,000,000	32	533	Peter Mullen, president-CEO, Jennifer Gallagher, president-North America, Nick Heys, CEO-International
4	Strategic Risk Solutions Inc.	401	323	—	78 [398]	$8,246,000,000	28	161	Brady Young, president-CEO; Michael O'Malley, senior vice president-managing director; Andrew Berry, COO
5	Willis Towers Watson PLC, Global Captive Practice	335	298	9	28 [53]	$6,953,000,000	30	214	Peter Carter, CEO; Sumit Mehra, COO
6	Davies Captive Management	170	154	1	15 [230]	N/A	21	38	Nicholas Dove, chairman; Nicholas Frost, president; Jeff Kenneson, president-Quest USA
7	USA Risk Group	116	89	10	17 [34]	$1,600,000,000	10	25	Paul Macey, president; Rob Leadbetter, vice president; Charmain Aggarwal, vice president
8	Innovative Captive Strategies/ Global Captive Management	98	78	—	20 [93]	$719,501,705	10	23	Tom Stewart, president; Jennifer Reid, senior vice president
9	Beecher Carlson Insurance Services LLC	83	64	9	10 [33]	$5,199,749,000	17	34	Pete Kranz, executive managing director-captive practice leader; Matthew Takamine, executive managing director-captive operations leader
10	Atlas Insurance Management	79	15	57	7 [64]	$250,149,393	15	24	Martin Eveleigh, chairman; Elaine Tapp, executive vice president; Tania Davies, vice president

[1] Includes all licensed insurance entities managed at year-end 2020.
[2] Premium volume includes total gross volume of captives managed by the company or on its behalf.
Source: *BI* survey

TOP EUROPEAN CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2020

Rank	Domicile	2020	2019
1	Luxembourg	199	196[1]
2	Guernsey	191	197[1]
3	Isle of Man	100	102
4	Dublin	67	69
5	Sweden	37	39

[1] Restated.
Source: *BI* survey

TOP NORTH AMERICAN OFFSHORE CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2020

Rank	Domicile	2020	2019
1	Bermuda	680	715
2	Cayman Islands	652	618
3	Barbados	276	275[1]
4	Nevis	116	147
5	Anguilla	99	129

[1] Restated.
Source: *BI* survey

TOP ASIA-PACIFIC CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2020

Rank	Domicile	2020	2019
1	Singapore	80	73
2	Labuan	55	52[1]
3	Federated States of Micronesia	23	25
4	New Zealand	11	10[1]
5	Vanuatu	5	5

[1] Restated.
Source: *BI* survey

SPECIAL REPORT

Comp outlook shifts amid rapid changes

INSIDE

LOUISE ESOLA

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The uncertainties of COVID-19, unemployment, aging workers, national proposals to raise the minimum wage and a decline in interest rates, are set to change the workers compensation market, experts say.

The pandemic is a leading factor in what's to come, they say, having already prompted a wave of COVID-19 presumption laws, executive orders and pending proposals in more than 20 states as of February. The legislative actions mark a first step into the realm of infectious disease compensability for many states.

"COVID has been the big wild card," said Mark Moitoso, Atlanta-based risk practices leader for Lockton Cos. LLC, on how the disease will affect claim activity and future rates.

The COVID-19 presumption laws have "changed how folks think about comp," said Matt Waters, Boston-based executive vice president and general manager of middle markets for property/casualty at Liberty Mutual Insurance Co.

Data collection when it comes to COVID-19 claims has been essential, experts say.

"We are collecting COVID claims to see what they look like," said Jeff Eddinger, Boca Raton, Florida-based senior division executive for the National Council on Compensation Insurance, which has released some data.

In studying third-quarter 2020 industry figures, NCCI found that 20% of COVID-19 claims reported an inpatient hospital stay, with 19% of those claims requiring intensive care services. The cost of hospital stays averaged $38,500.

Most claims, however, "tend to be mostly inexpensive," Mr. Eddinger said, adding that NCCI will continue to examine the costs associated with the infectious disease and what that will mean for rates.

Meanwhile, there remains uncertainty about the duration of the pandemic, said Mauro Garcia, Schaumburg, Illinois-based technical director and head of workers compensation underwriting for Zurich North America.

"COVID is going to be a driver" of the future of the workers comp market, Mr. Garcia said. "There's a lot of uncertainty on the impact that COVID is going to have."

On renewals in early January, experts predicted that this year would see a reversal of the trend of flat or lower renewals for workers comp coverage.

"In the rate environment we are starting to see it tick up from a flat renewal to the low single digits" on average, said Rob Stein, New York-based middle market client segment leader for Aon PLC. "This is a reverse trend from the large decreases that we have seen."

Low interest rates have caused the industry to "shift gears and focus on the underwriting results," Mr. Garcia said. "You can't rely on the investment income for a long-tail line like workers comp to boost profitability."

Dan Aronson, New York-based U.S. casualty practice leader for Marsh LLC said, "The interest rate concern is a main driver as to why carriers are looking for increases in rate."

"It's driven by (the) interest rate environment that continues to get worse for carriers," he said. "Some of the rhetoric as to why rates are going up is the unknown of COVID. What we have seen so far is while COVID claims are up, core operational claims are down. … COVID claims are not as significant as they could have been."

"You have to make an underwriting profit because you can't make an investment income," said JJ Irkhe, Minneapolis-based head of analytics and chief scoring officer at Insurity LLC, a data analytics company whose workers comp trends report for January 2021 highlighted interest rates as a key driver for higher comp premium going forward.

> "Some of the rhetoric as to why rates are going up is the unknown of COVID. What we have seen so far is while COVID claims are up, core operational claims are down."
>
> Dan Aronson, Marsh LLC

Meanwhile, adding to the effects of the pandemic are U.S. employment figures — and related total workers compensation premium. After plummeting last March amid government lockdowns to slow the spread of the coronavirus, the economy ticked up gradually in the months that followed. NCCI in its January economic outlook report predicted that the economy is likely to recover more "slowly" this year than in the later months of 2020.

Permanent job cuts are also an issue: At year-end 2020, four out of five lost jobs were concentrated in service sectors, characterized by high physical proximity and low essentiality, with two out of five lost jobs in leisure and hospitality, according to the NCCI report.

"The pandemic is really causing consternation" in the market, said Mr. Irkhe, whose trends report also pegged job losses as having a major effect on workers comp business. (See chart.)

"New business quotes are down. With new business down … you have to maintain your renewal business. On the surface it looks like your renewal business was OK, but you will be returning a lot of premium to those policyholders because there were no losses. That's what we are expecting ... a lot of those workers aren't working," he said.

A national proposal to increase the minimum wage is another issue that could affect workers comp going forward, according to Robert Hartwig, clinical associate professor and director of the Risk and Uncertainty Management Center at the University of South Carolina in Columbia.

Nearly half of the states each year have increased their minimum wage for the past several years, Mr. Hartwig said in an e-mail. With the Congressional Budget Office projecting that a rise in the minimum wage to $15 per hour would result in 1.4 million job losses, "it's difficult to say what the net/net of this is for (worker comp) insurers," he added. "The increase in premium exposure due to the increase in the minimum wage will be partially offset by job losses among the same categories of workers."

The aging workforce is also contributing to the market conditions, said Mr. Waters of Liberty Mutual. In 2021, 25% of workers are over the age of 55, he said.

"In 2009 that was 12%. ... With an aging workforce you get a slower return to work and an onslaught of comorbidities, and that will only increase severity," he said.

Angela Childers contributed to this report.

Curbside delivery, remote work change risks

The renewal process for 2021 included several changes spurred by the pandemic, as companies changed workers' job duties and insurers wanted to know more about what was being done to manage risks associated with COVID-19.

Much depended on the type of business involved, said JoEllen Thelen, St. Louis-based middle market practice leader for the central region for Aon PLC.

"With health care and anything food-related, anything retail, you can expect to have to prepare the client for a significant number of questions about COVID, about COVID-related (safety) procedures," she said.

COVID-19 also added complexity to underwriting workers comp, experts say. For example, some restaurants have staff delivering food in vehicles, retailers deliver items to customers curbside, and much of the workforce is working from home.

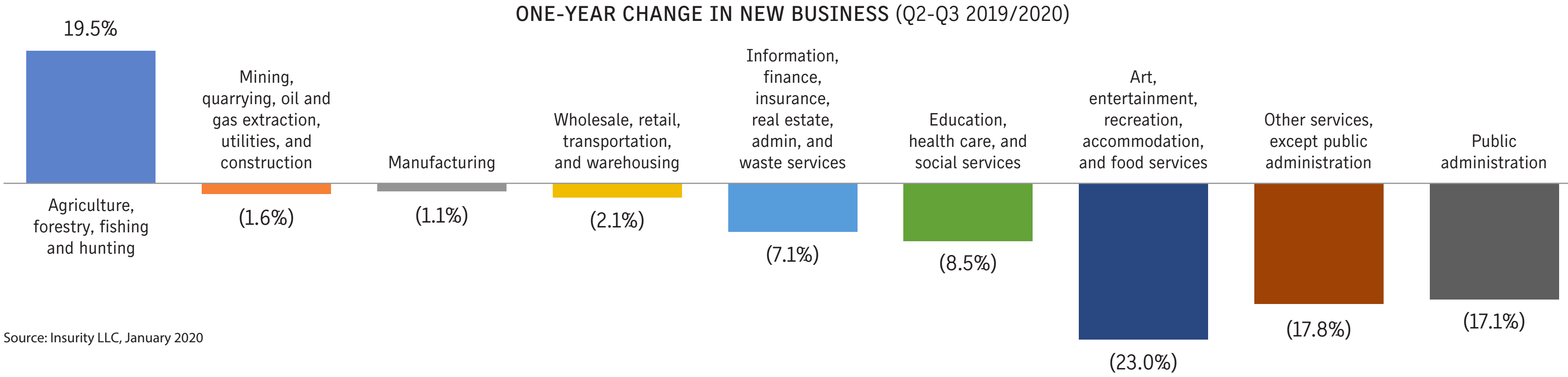
"We have had to adjust to the major shift in exposures," said Matt Waters, Boston-based executive vice president and general manager of middle markets for property/casualty at Liberty Mutual Insurance Co. "Exposures can go either way: Your risk profile can get better or worse."

Louise Esola

WORKERS COMP NEW BUSINESS DECLINES

The drop in new business for workers compensation insurers between second-quarter 2019 and third-quarter 2020 varied widely by sector, with the art, entertainment, recreation, accommodation and food services category hit especially hard.

ONE-YEAR CHANGE IN NEW BUSINESS (Q2-Q3 2019/2020)



Source: Insurity LLC, January 2020

SPECIAL REPORT

Fatigue, stress take toll on frontline workers

BY ANGELA CHILDERS
achilders@businessinsurance.com

Health care workers are more frequently reporting symptoms of anxiety, depression, post-traumatic stress disorder and increased substance abuse, as they work through the COVID-19 pandemic. Without interventions, experts fear this could lead to a rise in compensable mental health claims down the road.

Several studies released in the past few months have identified the troubling mental health effects that coronavirus has had on the health care workforce. A study from King's College London found that nearly half of all intensive care unit staff in the United Kingdom are likely to meet the threshold for PTSD, and a University of Utah study found that more than half of doctors, nurses and emergency responders involved in COVID-19 care are at risk of acute traumatic stress, depression, anxiety, problematic alcohol use and insomnia.

> "Just one of those diagnoses alone could be upwards of $40,000 to $50,000 for treatment and time away from work."
>
> Tammy Bradly,
> Mitchell International Inc.

"What we're seeing with COVID … is probably a 100% increase in stress and anxiety claims," said Lori Daugherty, St. Petersburg, Florida-based CEO of IMCS Group Inc., which provides behavioral health care to injured workers in the workers compensation system.

Even before the pandemic, health care workers reported higher rates of stress, burnout and addiction resulting in disability and workers compensation claims than the general public, said Dan Jolivet, Portland, Oregon-based workplace possibilities practice consultant and licensed clinical psychologist at brokerage Standard Insurance Co.

Standard's research found that reports of serious mental health issues among health care workers rose 10% in 2020 compared with the prior year and that more than half the workers surveyed said behavioral health issues had been affecting their work more since the start of the pandemic.

"It's no secret that health care workers are really struggling," Mr. Jolivet said.

Third-party administrator Sedgwick Claims Management Services Inc. has not seen an uptick in mental health claims, but "it's something we're watching very closely," said Dr. Teresa Bartlett, Troy, Michigan-based managing director, senior medical officer. "Perhaps we will see some PTSD out of this. (Health care workers) are so inundated and so severely needed, they just keep trudging on day in and day out, and some day that may catch up with them."

One of the biggest concerns, experts say, is not being able to get in front of these potentially costly claims.

If untreated early on, mental health issues may develop into severe conditions, such as depression, anxiety, psychosis and thoughts of suicide, said Tammy Bradly, Birmingham, Alabama-based vice president, clinical product development at Genex | Coventry, part of Mitchell International Inc.

"Just one of those diagnoses alone could be upwards of $40,000 to $50,000 for treatment and time away from work. Most people may be experiencing more than one diagnosis. … Their cost and time from work are going to be even higher."

The Genex | Coventry crisis response team has been fielding calls from ICU nurses seeking behavioral health support.

"What they're seeing, it's horrific … and there's no endpoint," said Natasha Charleston, the TPA's crisis response program coordinator and vocational field case manager.

There has been an increase in employer interest in addressing stress and other behavioral health issues, said Mary Langowski, Washington-based CEO of Solera Health Inc., which connects patients and payers with nonclinical health care.

"Payers are really trying to figure out, how do we get to people earlier, so we can build the resilience, so they don't end up at the higher end of the (behavioral health) acuity spectrum," she said.

In early February, IMCS launched a program to treat the behavioral health issues of essential workers brought on by the pandemic.

"Our clients are coming out of the workers comp system. … (We're) giving them the skills to cope with whatever their situation may be to make them productive members of that employer," Ms. Daugherty said.

Dr. Bartlett said she's seen health care systems create peer support programs or engage in morning huddles to allow stressed-out employees to vent and share their recent experiences and prepare for what they might see that day in the COVID-19 wards. Others have promoted their employee assistance programs, she said.

Sedgwick has started analyzing its COVID-19 claims for key words that might point to stress, anxiety, depression or addiction issues so those workers can be referred to a behavioral health specialist for help.

"You want to create opportunities for dialogue," Mr. Jolivet at Standard said. "As we're seeing increases in anxiety, depression and PTSD … hospitals, like all of us, need to be prepared to address that."

STRESSED OUT

In a survey of U.S. health care workers conducted between June and September 2020, nonprofit Mental Health America found:

93% said they were experiencing stress.

86% reported experiencing anxiety.

77% reported frustration.

76% reported exhaustion and burnout.

75% said they were overwhelmed.

39% said they did not feel like they had adequate emotional support.

Source: Mental Health America

Gradual adoption of behavioral health in comp as stigma eases

One of the biggest challenges for health care employers in addressing the mental and behavioral health needs of their employees is overcoming the stigma associated with getting help.

"Particularly with health care workers, historically there has been a stigma around seeking mental health treatment," said Tammy Bradly, Birmingham, Alabama-based vice president, clinical product development, at Genex | Coventry, part of Mitchell International Inc. "Some fear if they seek treatment, it could affect their licensure."

Stigma around behavioral health issues and addiction is "overwhelming," said Dan Jolivet, Portland-Oregon-based workplace possibilities practice consultant at Standard Insurance Co.

In a study of health care workers, the brokerage found that more than half believed that if they disclosed an addiction issue to their employer they would be fired. In addition, the study found that the number of workers who reported that they were struggling with mental health and/or substance abuse issues increased 4% in 2020 over 2019, with nearly 30% saying they had missed work due to these issues.

The pandemic is raising awareness about the importance of behavioral health care in treating stress, depression and anxiety, said Lori Daugherty, St. Petersburg, Florida-based CEO of IMCS Group Inc., which provides behavioral health care to injured workers in the workers compensation system.

"One of the interesting things is that COVID has made adoption of behavioral health in workers compensation systems … better than it was," Ms. Daugherty said.

Angela Childers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Employers eye less favorable legal landscape

BY SHERRI OKAMOTO

Recent legal developments in workers compensation have not been favorable for businesses, with supreme courts in Ohio, Texas, Pennsylvania and New Jersey handing down decisions against employers on issues such as medical reimbursements, the suspension of benefits, and compensability for volunteer activities.

Ohio

Self-insured employers in the Buckeye State had little to be thankful for from the Ohio Supreme Court's decision in *State ex rel. Manor Care Inc. v. Bureau of Workers' Compensation*, published the day before Thanksgiving.

The court ruled that a self-insured employer that was overpaying the Disabled Workers' Relief Fund could not obtain a writ of mandamus compelling the Bureau of Workers' Compensation to reimburse it or award a credit against its future liabilities.

In Ohio, self-insured employers pay permanent total disability compensation directly to injured workers, and the BWC pays relief fund benefits. The bureau then levies assessments on self-insured employers for the exact amount paid to their respective workers.

After an audit revealed Manor Care Inc. had been underpaying PTD benefits to two employees for several years, the BWC ordered the self-insured employer to make lump-sum payments to the workers to correct the underpayments.

The workers had never been undercompensated despite the underpayment of their PTD benefits because they received more from the relief fund than they should have. Manor Care had also paid the total amount of benefits the workers were due because the Disabled Workers' Relief Fund assessments were equal to the amount the fund paid the workers.

Manor Care, therefore, objected to making the lump-sum payments, contending that if it were making up the PTD shortage, it was entitled to a refund of the overpayments to the DWRF in the same amount.

The BWC refused the reimbursement, and the Ohio Supreme Court found that Manor Care was not entitled to mandamus relief.

Attorneys Preston J. Garvin and Michael J. Hickey represented the Ohio Chamber of Commerce and Ohio Self-Insurers Association as amici in the case.

Mr. Garvin said their argument had been based on the equitable idea that, "if you underpay one fund, and overpay the other, you should get a credit for what was overpaid."

He said the court agreed with that, but "we lost … because there was no statute or rule that had been violated."

Robert "Buz" Minor, a retired Ohio attorney who serves as the executive director of the National Council of Self-Insurers, said the Supreme Court's ruling was "not an equitable result," as the workers were "double compensated" and the "employer paid twice what it should have."

The Supreme Court acknowledged that its conclusion "offends notions of fairness," and it specifically advised that its decision did not foreclose Manor Care from seeking an equitable remedy by other means.

Mr. Garvin said he thought it was clear "the court felt something should be done," but that he would defer to Manor Care's attorneys — David M. McCarty, Randall W. Mikes and Jane K. Gleaves – as to what that should be.

Texas

In late January, the Texas Supreme Court ruled that an employer or insurer aggrieved by a decision in a medical fee dispute resolution proceeding has the burden of proving that a service provider is not entitled to the requested payment.

The decision in *Patients Medical Center v. Facility Insurance Corp.* overturned a ruling from the Court of Appeals for the 3rd District of Texas that held the provider has the burden of proof at every level of review if it initiated the dispute resolution process.

Attorney T. Daniel Hollaway, who represented Patients Medical Center in the case, said the Texas Supreme Court decision reinstated the status quo that had existed before the Court of Appeals "turned it upside down."

Had the Court of Appeals decision stood, Mr. Hollaway said, the medical fee dispute resolution process would become "completely futile" for providers seeking relief, since there are five levels of review available, and the provider would have the burden of proof each step of the way.

The Texas Supreme Court's decision restores what had been the norm of placing the burden of proof on whichever party is seeking review.

While Mr. Hollaway said the medical fee dispute resolution process "is not perfect," the Court of Appeals almost took the system "from having some semblance of reasonableness and fairness to having none whatsoever," and the Supreme Court prevented that from happening.

Pennsylvania

The Pennsylvania Supreme Court in January ruled in *Sadler v. WCAB* that an injured worker must be incarcerated after a conviction before Keystone State employers can avail themselves of a statutory right to unilaterally terminate benefits.

Attorney Richard Jaffe, who represented injured worker Carl Sadler, a production manager for Philadelphia Coca-Cola Bottling Co. Inc., said the appropriate interpretation of the law — Pennsylvania Statutes Section 306(a.1) — was definitely not a "run of the mill" issue, but it was "something that has and continues to come up."

The court said the statute means what it says: An employer can suspend a payment of benefits "for any period during which the employee is incarcerated after a conviction."

Mr. Sadler was incarcerated before trial because he was not able to make bail. Court documents do not describe the criminal charges against Mr. Sadler. He was sentenced to time served, so he didn't spend time in jail after his conviction. The court said his employer couldn't suspend his benefits during his period of incarceration.

"By its express terms, the statute authorizes the termination of benefit payments only during periods of incarceration served after conviction," the court said. "Conversely, the provision makes no reference to the termination of benefit payments during periods of incarceration served prior to conviction."

Mr. Jaffee said the decision will be "very helpful to those who are similarly situated" and has "hopefully settled the issue so we don't have to deal with it in the future."

New Jersey

In February, the New Jersey Supreme Court ruled in *Goulding v. NJ Friendship House Inc.* that a worker was entitled to benefits for injuries suffered while volunteering at an employer-sponsored event.

Kim Goulding worked as a cook for a nonprofit organization that helps individuals with developmental disabilities. She injured her ankle while volunteering at a family event her employer hosted for the organization's clients.

The New Jersey Workers' Compensation Act excludes coverage for injuries suffered during "recreational or social activities," but the court determined that the Family Fun Day was not a recreational activity for Ms. Goulding, since she was there to work as a cook.

"The question I asked was, how does the character of her work change just because it is not paid?" said Ms. Goulding's attorney, Richard A. Grodeck. "It doesn't."

Even if the event could be deemed a recreational activity, the court said Ms. Goulding's injury was still compensable because injuries that occur at a recreational event that is a "regular incident" of employment, for the benefit of the employer, are compensable. The court said the family day satisfied both criteria, since it was intended to be an annual event and it helped generate goodwill for the employer.

Mr. Grodeck said he expected the second part of the court's analysis to be the more "useful" portion for practitioners, because it has application to other nonprofits that hold events to benefit the community and elevate the visibility of the host organization.

Sherri Okamoto is a legal reporter at Work Comp Central, a sister publication of Business Insurance.

SPECIAL REPORT

LARGEST WORKERS COMPENSATION INSURERS

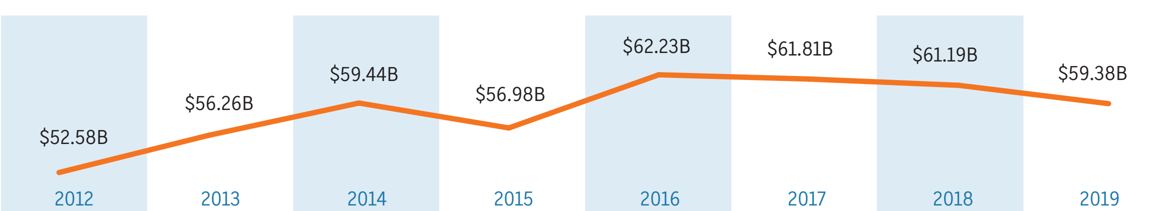
Ranked by direct premiums written in 2019

2020	2019	Insurer	2019 direct premiums written	% increase (decrease)	Direct premiums earned	Direct loss ratio	Market share
1	1	Travelers Cos. Inc.	$4,211,527,000	(1.6%)	$4,243,272,000	49.8%	7.0%
2	2	Hartford Fire & Casualty Group	$3,365,298,000	(0.5%)	$3,388,992,000	48.3%	5.1%
3	4	Zurich Insurance Co.	$2,640,320,000	(2.0%)	$2,700,245,000	52.8%	4.4%
4	7	Liberty Mutual Holding Co. Inc.	$2,447,306,000	(1.1%)	$2,450,287,000	45.3%	4.1%
5	6	Chubb Ltd.	$2,430,566,000	(2.0%)	$2,450,847,000	42.4%	4.1%
6	3	Berkshire Hathaway Inc.	$2,311,261,000	(16.0%)	$2,310,210,000	41.9%	3.9%
7	5	AmTrust Financial Services Inc.	$2,172,219,000	(17.6%)	$2,295,073,000	41.9%	3.6%
8	8	State Insurance Fund	$1,996,372,000	(11.5%)	$2,057,856,000	62.4%	3.3%
9	9	Washington State Fund	$1,927,083,000	(8.1%)	$1,927,083,000	88.6%	3.2%
10	11	Blue Cross Blue Shield of Michigan	$1,744,640,000	11.3%	$1,685,248,000	51.5%	2.9%
11	10	American International Group Inc.	$1,453,686,000	(14.0%)	$1,525,690,000	41.4%	2.4%
12	12	Old Republic International Corp.	$1,409,565,000	(3.9%)	$1,440,606,000	54.1%	2.4%
13	16	Ohio Bureau of Workers Compensation	$1,325,821,000	9.9%	$1,322,274,000	28.0%	2.2%
14	15	American Financial Group Inc.	$1,312,919,000	(1.2%)	$1,327,699,000	38.8%	2.2%
15	13	W.R. Berkley Corp.	$1,260,683,000	(7.3%)	$1,311,318,000	45.6%	2.1%
16	14	State Compensation Insurance Fund	$1,206,038,000	(9.9%)	$1,204,547,000	38.8%	2.0%
17	17	Texas Mutual Insurance Co.	$1,069,298,000	(2.5%)	$1,052,316,000	35.0%	1.8%
18	18	ICW Group Insurance Cos.	$1,040,567,000	8.6%	$886,679,000	47.5%	1.7%
19	19	Fairfax Financial Holdings Ltd.	$852,111,000	(8.2%)	$858,146,000	30.7%	1.4%
20	20	CNA Financial Corp.	$827,537,000	3.4%	$807,317,000	40.1%	1.4%
		Industry total	$59,379,424,000	(3.0%)	$59,652,035,000	47.5%	100.0%

Source: National Association of Insurance Commissioners

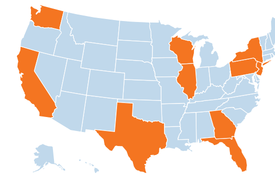
TRENDS

Direct premiums written for workers compensation insurance, 2012-2019, in billions of dollars



Source: National Association of Insurance Commissioners

TOP STATES



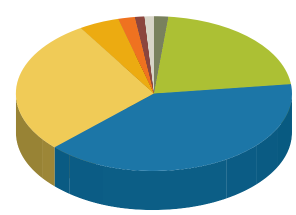
States with the most direct premiums written for workers compensation in 2019

State	Direct premiums written	Direct premiums earned	Loss ratio
California	$11,437,892,000	$11,499,591,000	40.23%
New York	$5,621,013,000	$5,683,733,000	46.87%
Florida	$3,115,238,000	$3,142,142,000	49.19%
Pennsylvania	$2,620,627,000	$2,700,852,000	54.43%
Texas	$2,525,436,000	$2,491,551,000	36.99%
New Jersey	$2,436,669,000	$2,444,224,000	54.33%
Illinois	$2,383,918,000	$2,397,385,000	45.02%
Washington	$1,948,479,000	$1,947,293,000	86.90%
Wisconsin	$1,931,595,000	$1,934,925,000	55.17%
Georgia	$1,681,121,000	$1,668,903,000	44.75%

Source: National Association of Insurance Commissioners

WORKERS COMP PRICING

Of survey respondents, 63.1% saw no increase or a decrease in premium rates for workers compensation coverage during the third quarter of 2020.

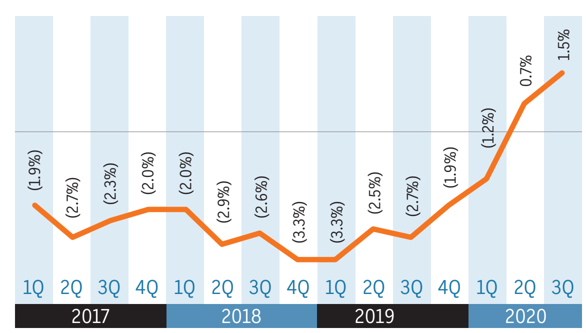


Decrease 10%-19%	1.9%
Decrease 1%-9%	21.4%
No change	39.8%
Increase 1%-9%	28.2%
Increase 10%-19%	4.9%
Increase 20%-29%	1.9%
Increase 30%-50%	1.0%
Not sure	1.0%

Source: Council of Insurance Agents and Brokers

RENEWAL PRICING

Workers compensation price increases of 1.5% in Q3 2020, up from 0.7% in Q2, may have reached an inflection point. Average comp renewal pricing changes by quarter since 2017.



Source: Council of Insurance Agents & Brokers

NON-FATAL WORK INJURIES

Private-industry employers reported 2.8 million nonfatal workplace injuries and illnesses in 2019.

Year	Injuries
2015	2,905,900
2016	2,857,400
2017	2,811,500
2018	2,834,500
2019	2,814,000

FATAL WORK INJURIES

A total of 5,333 workers died from a work-related injury in the U.S. in 2019, up 2% from the 2018 total of 5,250. The fatal work injury rate was 3.5 fatalities per 100,000 full-time equivalent workers, which was the rate reported in 2018.

Year	Fatalities
2015	4,836
2016	5,190
2017	5,147
2018	5,250
2019	5,333

Source: U.S. Bureau of Labor Statistics

MOST HAZARDOUS OCCUPATIONS

Top 10 occupations by number of non-fatal occupational injuries and illness in 2019

Occupation	Number of injuries
Laborers and freight, stock and material movers, hand	64,160
Heavy and tractor-trailer truck drivers	47,990
Nursing assistants	27,590
Stockers and order fillers	27,390
Retail salespeople	24,870
Light truck drivers	23,070
Maintenance and repair workers, general	21,490
Registered nurses	20,150
Construction laborers	19,790
Janitors and cleaners, except maids and housekeeping cleaners	18,680

Source: U.S. Bureau of Labor Statistics

SPECIAL FEATURE

Accident and health market rides out virus

BY MATTHEW LERNER
mlerner@businessinsurance.com

The COVID-19 pandemic outbreak caused drastic fluctuations in medical care as portions of the country and economy shut down, leading to postponements, deferrals and cancellations of procedures and services, creating some uncertainty for providers of accident and health insurance and related coverages, industry sources say.

Moving into 2021, uncertainties over the speed of economic recovery and the success of vaccine rollouts could add to the market's challenges.

"Utilization declined most substantially in those business lines where routine services were prohibited by local regulation — the dental business in Q2 being the primary example where for most practices non-emergency care was prohibited for the entire month of April," said Tim Zawacki, Charlottesville, Virginia-based lead insurance industry analyst for S&P Global Market Intelligence.

Accident and health policies, which are often available through employers, vary in what they cover but typically are designed to cover medical and injury-related expenses not covered by a conventional health plan, including medical deductibles.

With fewer people seeking medical care due to quarantine and social distancing restrictions, claims volume dropped off as much as 40%, according to Tim Nimmer, global chief actuary for Aon PLC in Denver.

"There was a period, mostly in the March-April-May time frame, in which various local economies were shut down, with dentist offices and optometrist offices closed. That certainly had an impact on depressing claim activity," said Rich Fuerstenberg, senior partner at Mercer LLC in New York.

"We did see a downtick in claims," said Ken Gumbiner, head of accident and health sales at Swiss Re Corporate Solutions in Fort Wayne, Indiana, which supplies medical stop loss coverage to commercial customers. "Since we deal with claims above a certain threshold, the vast majority of the downturn was at the employer level."

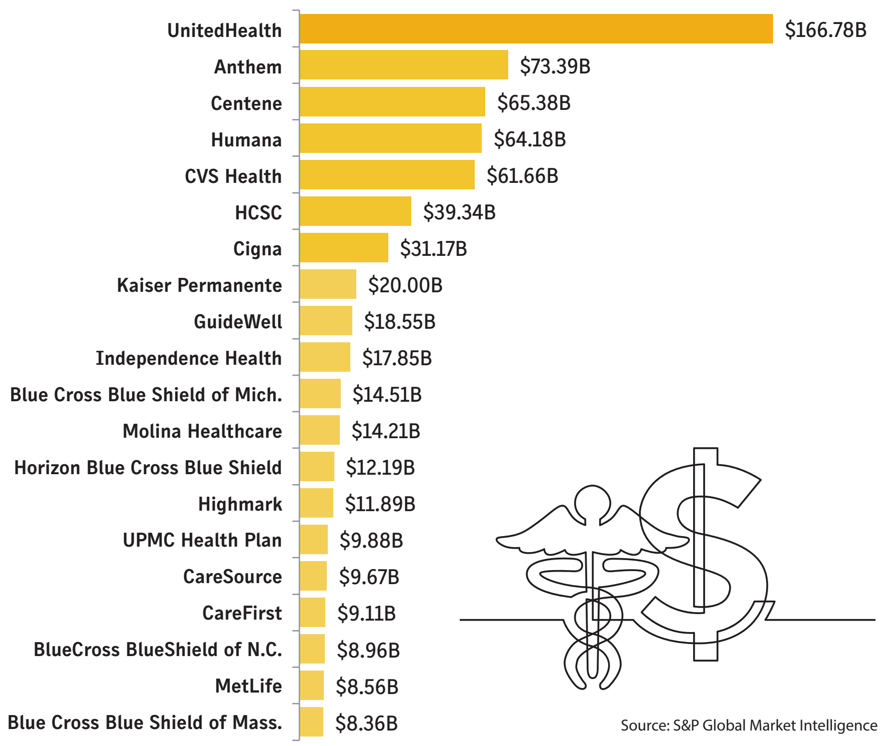
Medical stop loss coverage, which covers self-insured employers for catastrophic losses, attaches at different points for each employer, whether it be $50,000 or into the low-to-mid six figures, Mr. Gumbiner said. Therefore, the decline in maintenance utilization of medical services, such as dental checkups and inexpensive office tests and procedures, generally fell below that threshold, or attachment point.

Insurers, however, did not see a big reduction in premiums as a result of "numerous rounds of stimulus and different regulations that were put in place," according to Doniella Pliss, director at A.M. Best Co. Inc. in Oldwick, New Jersey. "The premiums didn't suffer, so what health insurers ended up with was a stable top line and significantly lower claims."

See **MEDICAL** page 36

TOP 20 U.S. ACCIDENT & HEALTH CROSS-SECTOR GROUPS & STAND-ALONE ENTITIES

Ranked by 2019 direct premiums earned in billions, U.S. dollars



Source: S&P Global Market Intelligence

The pandemic did leave employers with some unforeseen situations.

Disability was one area in which employers had to come up with novel solutions, Mr. Fuerstenberg said.

"From a disability perspective, if you just need to quarantine, that normally doesn't qualify you for short-term disability," he said, adding short-term disability applies if you have an illness that prevents you from working.

Employers responded to the situation in different ways, with some using some combination of sick leave, vacation or "emergency leave," Mr. Fuerstenberg said. Some employers expanded short-term disability plans to include the new circumstance while other employers set up separate lead policies to deal with COVID-19 absence.

As the reopening of the economy progresses and workers again begin to travel, employers may have to review coverage such as business travel accident and sickness, and leisure travel coverage, said James Walloga, New York-based executive vice president, Chubb Accident and Health. "With the return to business travel, corporate leaders are asking questions about their travel exposures, such as: who will travel, to where and whether their current travel risk policies meet their needs," he said.

As demand for travel insurance increases, it could be viewed by some travelers as a "need to have" insurance rather than a "nice to have," Mr. Walloga said.

Employers are also looking at travel coverages in light of the changes in working environments, with many workers moving to remote working at home or closer to where they live. "With all of these new workplace scenarios, employers are evaluating accident and sickness coverages that respond to these emerging risk and benefit needs," he said.

Health care utilization began to return to more normal levels in the third and fourth quarters of 2020, sources said, and the industry is trying to forecast what 2021 might look like after such an unusual 2020.

"We expect first-quarter 2020 to look a lot like fourth-quarter 2020 from everything we've seen so far," Aon's Mr. Nimmer said.

Swiss Re Corporate Solutions' Mr. Gumbiner said that health care claims have seen a return to pre-pandemic levels but have not exceeded those levels.

"Our outlook assumes utilization returns to normal levels on an industrywide basis in 2021 and, in some cases, exceeds the longer-term trend as patients seek deferred care, but this is obviously subject to change depending upon how the pandemic plays out," S&P's Mr. Zawacki said.

INSURERS EMBRACE TELEMEDICINE AS REGULATORS EASE REQUIREMENTS

Just as the pandemic has accelerated digital transformation in the property/casualty insurance world, the outbreak has also hastened the development of telemedicine, sources say.

"One thing that may be accelerating is the growing acceptance of telemedicine," said James Auden, Chicago-based managing director of insurance at Fitch Ratings Inc.

Insurers were "dabbling" in telemedicine in "a lot of areas," said Brad Ellis, senior director at Fitch Ratings in New York. The pandemic forced insurers to move faster in the implementation of telemedicine.

"We're actually seeing the development of 'virtual first' health plans," under which a first visit must be virtual prior to going to a physical office, he said.

In a recent report, A.M. Best Co. Inc. stated that "the COVID-19 pandemic has pushed telemedicine to the forefront of innovation in the health industry."

The report noted that pre-pandemic usage was minimal at best. "Stay-at-home requirements designed to contain the spread of COVID-19, combined with fear of exposure to COVID-19, has resulted in greater acceptance of telehealth solutions by health care providers, insurers, and patients," the report said.

Health care, however, is a highly regulated segment of the insurance market, said Doniella Pliss, a director at A.M. Best Co. Inc. in Oldwick, New Jersey, and it was the relaxation of "numerous" regulations that allowed for more replacement of physical visits with telehealth visits.

While some of the regulations were removed permanently, others were relaxed as emergency measures and it is unclear if all of the changes will remain in place, which could have an effect on the further proliferation of telemedicine and telehealth plans, she said. For example, relaxing reimbursement regulations to allow payments for telehealth.

Matthew Lerner

MARKET PULSE

PRODUCTS & SERVICES

Sedgwick releases vaccine tracking tool

Sedgwick Claims Management Services Inc. said it has released a cloud-based vaccination tracking program to help employers monitor the COVID-19 vaccination status of their workers.

The tool uses a questionnaire to collect employee data on a voluntary basis and records who has been vaccinated, whether a second dose is needed and reported side effects, according to the third-party administrator.

Liberty Mutual unveils war, terror coverage

Liberty Mutual Insurance Co. said that its war and terrorism coverage is now available in the U.S.

Coverage is available through Ironshore Inc. and Liberty Specialty Markets, with a per-risk limit of $250 million, Liberty Mutual said.

Ironshore will be able to underwrite war and terrorism alongside property, "a significant time-saver for brokers," according to Marc Orloff, global risk solutions, North America, president of field operations.

McGriff offering excess auto cover for freight brokers

McGriff said it has introduced on-demand excess auto liability coverage for freight brokers.

TripExcess is a per shipment excess liability product that allows shippers and others to maintain a required $2 million auto liability limit, the broker, a unit of Charlotte, North Carolina-based Truist Insurance Holdings Inc., said in a statement. Carriers can use it to contract loads that may be outside of their existing liability coverage, McGriff said.

McGriff executive vice president Bret McGinnis said in the statement, "Traditionally, insurance has been purchased through annual contracts, but with servicing now tighter than ever, the trucking industry has become more and more transactional," and TripExcess addresses this. The insurer was undisclosed.

Beazley adds online research platform

Beazley PLC has added to its reputational risk insurance policy with services from online data firm Polecat Intelligence, Beazley said in a statement.

Coverage now includes a subscription to Polecat; economic, social & governance; and risk intelligence provided by Polecat Intelligence. Polecat's platform uses online and social data to assess an organization's reputational profile and performance globally, benchmarking these against competitors and peers.

The Polecat platform is available to policyholders through a web-based portal and allows companies to research potential threats to their reputation.

The coverage is designed for consumer-facing companies across a range of industries including leisure, hospitality, technology, manufacturing, transportation and health care. Reputational risk is available to companies globally, subject to licensing.

Core Specialty, insurtech firm partner on D&O

Core Specialty Insurance Holdings Inc. said it has entered an underwriting arrangement with Celerity Pro, an insurtech professional liability and cyber risk underwriter backed by a Munich Reinsurance Co. unit, to provide directors and officers liability insurance for the U.S. management liability market.

Cincinnati-based Core Specialty said in a statement the program will be available to the wholesale market in the Northeast and Mid-Atlantic regions on a nonadmitted basis. It is offering limits of up to $5 million per incident, with a $15 million aggregate, according to a spokesman.

Celerity Pro will offer public and private company D&O and related lines on a primary and excess basis, Carl Pursiano, New York-based president and founder of Celerity Pro, said in the statement.

Celerity Pro officially launched in December, with cyber liability and miscellaneous professional liability products designed for small to midsized businesses.

RMS updates cyber underwriting application

Catastrophe modeler Risk Management Solutions Inc. said it has issued an update to its RMS Cyber Solutions Version 5.0 that includes a new cyber solutions underwriting application.

The Newark, California-based company said the application will allow users to price and select cyber risks without the need for large sets of in-house claims data.

According to RMS, the application models cyber risk by using various scientific methods and integrating large datasets from the RMS Cyber Incident Database – which includes 100,000 data breach events – threat intelligence, dark web scanning, vulnerability management and "outside-in/cyber-hygiene scorers."

RMS said it has also rolled out the latest iteration of its RMS Solutions Portfolio Management application, which is designed to help insurers understand the extent of previously unquantifiable cyber risks.

The company said the combination of the RMS pricing engine and portfolio management application is designed to drive consistency between a customer's underwriting and portfolio management workflows.

SafeHerb offering cannabis insurance

SafeHerb, a division of Specialty Program Group LLC, said it is introducing cannabis and hemp insurance to provide "seed to sale" coverage.

The SafeHerb coverage includes general liability, product liability, property, equipment breakdown, indoor crop loss or damage, and cargo.

Coverage is underwritten by Obsidian Insurance Group.

Limits are $5 million for liability; $10 million for primary and excess property, with an additional $15 million of property available; and cargo is $1 million, according to an email from a spokeswoman.

Coverage is available for cultivators (indoor, outdoor and greenhouse); processors for harvesting, processing, quarantining and testing; manufacturers for product development and manufacturing; wholesalers for selling to retailers and distributors; transporters for services with approved classification; dispensaries for retail operations; laboratories, either stand-alone or large-scale operations; and property owners for lease, sublease and property exposure.

Coverage is available in all states and Washington, D.C., for both cannabis and hemp businesses.

In-house loss control services and claims are handled by Avant Specialty Claims.

DEALS & MOVES

Gallagher makes aviation acquisition

Arthur J. Gallagher & Co. acquired Ormond Beach, Florida-based aviation and aerospace brokerage Air-Sur Inc.

Terms were not disclosed.

Founded in 1976, Air-Sur serves air transport operators, service companies, component manufacturers, engine/airframe overhaul and modification centers as well as general aviation operators, Gallagher said in a statement.

Thomas K. Coughlin, Air-Sur president and CEO, and about 10 employees will continue to operate from their current location under the direction of Scott Firestone, head of Gallagher's Southwest region retail property/casualty brokerage operations, Gallagher said.

AssuredPartners expands footprint in Pennsylvania

AssuredPartners Inc. has acquired Murray Insurance Associates Inc. of Lancaster, Pennsylvania, AssuredPartners said in a statement.

Terms were not disclosed.

Murray's 170 employees will remain with the broker, with Richard Rankin as chairman, president and CEO.

Hub purchases Canadian broker

Hub International Ltd. announced it has acquired Canada-based Galon Insurance Brokers.

Terms were not disclosed.

Based in Saskatoon and Regina, Saskatchewan, Galon provides commercial, agribusiness and personal insurance, as well as government auto and other professional services coverages, Hub said in a statement.

The acquisition will strengthen Hub's existing capabilities in the region, Keith Jordan, president and CEO of Hub International Manitoba Ltd., said in the statement.

Hilb expands operations in Northeast with buy

The Hilb Group LLC said it completed its acquisition of New York-based Rampart Brokerage Corp. & Affiliates, effective Dec. 1.

Terms were not disclosed.

With nearly 200 employees, Lake Success, New York-based Rampart provides upper middle-market commercial lines, high net worth personal lines, individual life and group benefits to clients in the New York Tri-State area and across the U.S., Hilb said in a statement.

COMMENTARY

Insurers survive tumultuous year

This time last year, before more than 500,000 died in the United States, millions were laid off and thousands of companies closed their doors temporarily or permanently due to COVID-19, it would have been reasonable to suggest that the risk management and insurance sector would have been devastated by such a scenario.

As service providers to just about every area of the economy, the insurance industry is vulnerable to all types of catastrophes — including ones it has not experienced before.

However, a year on from the imposition of widespread lockdowns that crippled many businesses, upset social structures but saved lives, the toll on the sector remains murky.

Gavin Souter
EDITOR

While the speed and agility with which insurers, brokers, claims management companies and others overcame hitches and glitches to move to remote and virtual operations was staggering, other challenges remain.

As we report in our package of stories starting on page 4, property, liability and workers compensation insurers and policyholders all had to deal with new court rulings, hurriedly prepared legislation and regulatory changes as the pandemic progressed.

Perhaps the biggest unknown for insurers remains how courts will interpret coverage for business interruption claims. So far, most decisions have gone in favor of insurers, but the fight is far from over and policyholders have scored significant wins, too. If there's one lesson to learn it's that lost income policy wordings need to be reviewed by both sides.

The result of the court fights could have implications for another offspring of the virus: the effort to create a government backstop for future pandemic-related losses. Perhaps not surprisingly, given the political and economic environment last year, initial attempts to create a TRIA-like structure did not bear fruit, but supporters of a backstop are expected to revise and resubmit their proposals. If, however, insurers are found liable for COVID-19 losses, as they have been to varying degrees in some other countries, and the industry does not collapse, the legislative drive may prove more difficult. Opponents may argue that the massive government bailouts that saved so many businesses are a more appropriate response to such crises.

On the workers comp and safety front, employers face a mixed bag. Presumption laws passed by numerous states threaten to shift significant health care costs onto workers comp programs due to the difficulty in rebutting claims that workers contracted COVID-19 on the job rather than elsewhere. Absent a scientific miracle that pinpoints where a person contracted the virus, those laws should remain nothing more than temporary measures.

Workers comp claims, though, have been manageable so far. Delays in medical treatment outside of COVID-19 have largely been favorable for insurers and self-insureds.

There's still a long way to go and much could go wrong, but there should at least be some degree of relief that the sector just has to fix some problems rather than reconstitute itself.

TOP 10 COSTLIEST U.S. NATURAL CATASTROPHES[1]

In millions, U.S. dollars

The February 2021 winter freeze, at an initial insured loss estimate of **$18B**, is likely to be among the top 10.

RANK	YEAR	PERIL	ESTIMATED INSURED PROPERTY LOSS: DOLLARS WHEN OCCURRED	ESTIMATED INSURED PROPERTY LOSS: IN 2020 DOLLARS[2]
1	2005	Hurricane Katrina	$65,000	$85,570
2	2012	Hurricane Sandy	$30,000	$33,530
3	2017	Hurricane Harvey	$30,000	$31,590
4	2017	Hurricane Irma	$29,900	$31,320
5	2017	Hurricane Maria	$29,670	$31,100
6	1992	Hurricane Andrew	$16,000	$29,360
7	1994	Northridge Earthquake	$15,300	$27,060
8	2008	Hurricane Ike	$18,200	$21,510
9	2012	Drought loss	$14,390	$16,420
10	2005	Hurricane Wilma	$10,670	$13,840

[1]Natural disasters that cause at least $25 million in insured losses; or 10 deaths; or 50 people injured; or 2,000 filed claims or homes and structures damaged. Includes Puerto Rico and the U.S. Virgin Islands. Includes losses sustained by private insurers and government-sponsored programs such as the National Flood Insurance Program. Subject to change as loss estimates are further developed. As of Nov. 25, 2020.

[2]Adjusted for inflation by Aon using the U.S. Consumer Price Index.

Source: Aon

VIEWPOINT

Better storm prep essential

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

It's taken 15 winters living in the Northeast for our family to finally decide that a snow blower would be a sound purchase, after many hours spent shoveling the driveway. Conventional wisdom would suggest that once said machine was acquired, there would be no more snow this winter. As it turns out, the snowblower has gotten us through at least four snowfalls in its first month of use.

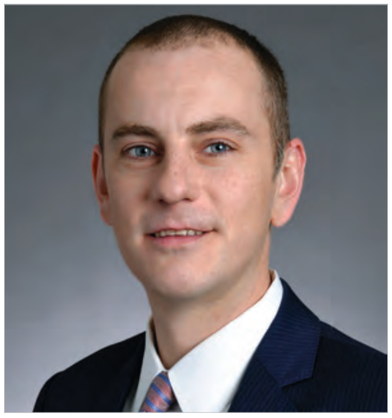
But obstructed driveways and sidewalks were the least of the problems for some. As this issue goes to press, the aftermath of Winter Storm Uri's impact on Texas and other Southern U.S. states is playing out. The more than week-long snow, ice and freeze rendered roads impassable and triggered widespread power outages and rolling blackouts, leaving businesses and homeowners without basic necessities like water, heat and food.

While power has been restored to millions, the effects for businesses and their insurers will be longer-lasting. The storm could be the driver of record first-quarter insured property catastrophe losses for U.S. property/casualty insurers, A.M. Best Co. said last month. Many of the property losses will be from water damage caused by frozen and broken pipes. Initial estimates suggest insured losses could exceed $18 billion, the majority of which will be commercial losses. Texas accounts for a significant percentage of U.S. total direct premiums written for the lines of coverage likely to be most affected by insured losses from this event. The sheer volume of claims from the storm could result in the largest claims event and costliest storm in the state's history. If initial estimates hold, the February 2021 winter freeze will cumulatively go down as one of the Top 10 costliest natural disasters in U.S. history, according to insurance industry groups.

First-party property claims and business interruption — including contingent business interruption — losses are expected to account for the lion's share of claims, but other lines of insurance will be included. The event could give rise to business litigation that triggers commercial general liability, directors and officers liability, pollution and marine insurance policies. Already numerous lawsuits have been filed and more are expected to be filed against Austin-based power grid operator the Electric Reliability Council of Texas, or ERCOT, and electricity transmission company CenterPoint Energy by family members of those who died and those who incurred property damage during the storm. The lack of power also led to price spikes, with some customers facing exorbitant bills, according to reports. Top officials on the board overseeing ERCOT have resigned and investigations by state and federal officials and the governor are underway into the power grid operator's alleged failure to prepare for cold weather.

Risk managers and insurers are used to responding to catastrophes with cascading impacts, such as hurricanes, and the collapse of the electrical infrastructure in the second most populous state in the U.S. in a winter storm is now on the radar, even if it wasn't before. The past year has taught us to expect the unexpected. A friend who grew up in the South suggested that the Texas winter storm was no different than a hurricane hitting the Northeast. Perhaps there's some truth to that, but much more needs to be done to prepare for climate risks and keep essential infrastructure, such as utilities, operating.

Ode to COVID-19 coverage litigation: 'We've only just begun …'



Rhonda D. Orin, managing partner of Anderson Kill's Washington office, represents policyholders in coverage cases nationwide. She has served as lead counsel in multiple jury and bench trials and appeared in two cases before the U.S. Supreme Court. She can be reached at rorin@andersonkill.com. John M. Leonard, an attorney in Anderson Kill's New York office, represents policyholders in a variety of coverage matters, including business interruption losses, directors and officers liability and errors and ommissions litigations, and environmental coverage disputes. He can be reached at jleonard@andersonkill.com.

As everyone knows who lived through the coverage wars over asbestos liability and environmental liability, nationwide coverage issues that significantly affect the economy do not get resolved fast.

For asbestos and environmental claims, the law was in flux for years — even decades — on key coverage issues in many states. New York's highest court handed down a clarifying decision about the state law on allocation of asbestos claims as recently as 2016, almost 30 years after those issues first arose.

This history shows that the book is far from closed on insurance coverage for business interruption and other losses arising from COVID-19. We have barely started the first chapter.

Since March 2020, more than 1,400 lawsuits have been filed by businesses across the United States seeking coverage for property damage and business interruption due to the pandemic. Business interruption is a form of insurance coverage typically found in first-party property insurance policies. It is designed to do exactly what the words say: provide insurance relief for businesses that incur financial losses when their ordinary operations are interrupted by loss or damage.

Most of the early cases were filed by businesses dependent on foot traffic, such as restaurants, barbershops, spas and the entertainment industry. They alleged they suffered losses from being deprived of ordinary access to their physical locations.

Many of these early cases fared badly. As of Feb. 1, courts had handed down approximately 190 decisions. Slightly more than half were full dismissals with prejudice, granted to insurance companies that argued that coverage could not be found.

The most common ruling was that an airborne virus did not cause "physical loss or damage," a threshold requirement of most property insurance policies. A close second was the ruling that coverage was barred by one or more exclusions in the policies, such as exclusions for viruses, microorganisms, contamination and even pollution.

The insurance industry touted these early wins as proof-positive that there never has been, or will be, any coverage for losses that arise from COVID-19. But proclamations that such coverage is dead are as "greatly exaggerated" as the reports that Mark Twain famously read of his own death.

First, many of the early cases failed to allege property damage. The insurance industry leaped on this gap as an admission there can be no covered property damage without structural alteration. But policy language and case law is to the contrary. Even the insurance companies themselves have historically recognized invisible, nonstructural harm as covered damage, such as from smoke, fumes from Chinese drywall, methamphetamine fumes, asbestos fibers, ammonia leaks and the insertion of malware on computer systems. The problem in these early cases was not in the substance; it was in the form of the complaints.

Second, most of the dismissals were in cases in which a "virus exclusion" specifically precluded coverage. But, as the developing case law shows, not all exclusions are created equal. While some may preclude coverage in certain circumstances, others do not. The coverage analysis is far from over when a so-called virus exclusion is found.

> Even the insurance companies themselves have historically recognized invisible, nonstructural harm as covered damage, such as from smoke, fumes from Chinese drywall, methamphetamine fumes, asbestos fibers, ammonia leaks and the insertion of malware on computer systems.

Third, more than half of the decisions about coverage for COVID-19 arise from only three states: California, Florida and Pennsylvania. Many states have not rendered any decisions on this issue or only one or two. So, the impression that "most courts" have ruled against coverage is grossly misleading. Outside of California, Florida and Pennsylvania, most courts have not.

Fourth, policyholders are learning from experience. In the current round of coverage cases, policyholders consistently allege the existence of property damage under standard-form provisions that provide coverage, separately, for "physical loss or damage." While insurers contend that the two words mean the same thing, and that being deprived of a property's functionality is not a "loss," policyholders — and an increasing number of courts — disagree.

Moreover, even if both sides could be right, that means there is coverage. It is a basic insurance principle that when policy language can be interpreted in diametrically opposed ways, it is ambiguous and a finding of coverage should prevail.

Policyholders and courts also are focusing more carefully on virus exclusions. While virus exclusions will preclude coverage in many cases, not all exclusions containing the word "virus" are created equal. Rulings for the policyholder have been handed down so far in 16 of 122 COVID-19 cases involving such exclusions. Thus, the inclusion of "virus" in an exclusion does not necessarily preclude coverage.

While some policies explicitly bar coverage for pandemics, viruses or any agent that threatens human health, in others the word "virus" is simply tacked on to an exclusion for something else, such as mold, bacteria or pollution. These exclusions do not always stand up to the insurance industry's heavy burden of proving that an exclusion — that it drafted unilaterally — bars coverage in the circumstances here.

Policyholders have argued that coverage cannot be barred simply by slipping in the word "virus" where it does not belong, and some courts, such as in *Urogynecology Specialist of Florida LLC v. Sentinel Ins. Co., Ltd.*, (Florida. Sept. 24, 2020), have agreed. With respect to an exclusion barring coverage for damage caused by "fungi, wet rot, dry rot, bacteria or virus," that court found that , "denying coverage for losses stemming from COVID-19 … does not logically align with the grouping of the virus exclusion with other pollutants. such that the Policy necessarily anticipated and intended to deny coverage for these kinds of business losses..."

Moreover, in cases involving policies without virus exclusions, roughly one third of the rulings — 19 out of 59 — have favored coverage.

With the initial round in the rearview mirror, cases seeking coverage for losses from the pandemic are gaining traction. History teaches that you should stay tuned. These are early days, with many twists and turns to come.

"My goals include mentoring and training employees on the modern approach to account adjusting in the complex global insurance market while delivering our mission on restoring and enhancing lives, businesses and communities."

UP CLOSE

Baoling Wang

NEW JOB TITLE: Los Angeles-based vice president, managing director and international executive general adjuster, Crawford Global Technical Services.

PREVIOUS POSITION: Los Angeles-based executive general adjuster, McLarens.

OUTLOOK FOR THE INDUSTRY: Over the past several years, the use of artificial intelligence has increased immensely across industries. The outlook for claims includes the potential of integrating AI to shape the claim process and experience for clients and employees. In addition, the outlook for claims includes the growing usage of parametric insurance solutions in place of or as a supplement to traditional insurance packages to streamline the claims process.

GOALS FOR YOUR NEW POSITION: My goals include mentoring and training employees on the modern approach to account adjusting in the complex global insurance market while delivering our mission on restoring and enhancing lives, businesses and communities. My main consideration is encouraging diversity and inclusion in the marketplace through thought-provoking dialogues to empower minority groups.

CHALLENGES FACING THE INDUSTRY: Challenges we face in claims involve developing the next generation of insurance professionals. It is no secret that the insurance industry is facing a war on talent as more employees are retiring from the industry than are entering, so there is a need to focus on cultivating new talent. I wholeheartedly commit to providing my accumulated knowledge, understanding and access to the highly complex global insurance market to elevating the next generation of insurance professionals.

FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET: My first experience in the field as an adjuster was inspecting a water loss at a hoarder house. The dwelling had limited access and was excessively overfilled with contents. This made for a fun and unique experience in measuring and sketching the structure while accurately scoping the loss.

ADVICE FOR A NEWCOMER: "To be yourself in a world that is constantly trying to make you something else is the greatest accomplishment." — Ralph Waldo Emerson ... Strive to have a strong understanding of your organization's culture and ability to effect change. Always be yourself, especially in the face of adversity. Display curiosity and the drive for continuous improvement and education. Be open and respectful to others' perspectives, experiences and skillsets.

DREAM JOB: Event planning.

LOOKING FORWARD TO: As a minority woman leader, I am cognizant of the need for inclusivity and diversity. As such, I am looking forward to sharing my platform both socially and technically to further help the path to inclusivity and diversity in the marketplace.

COLLEGE MAJOR: Sociology.

FAVORITE MEAL: Korean barbeque — I love the multitude of flavors and the versatile dining experience that allows for a fun shared meal among any group.

FAVORITE BOOK: "The Life-Changing Magic of Tidying Up," by Marie Kondo.

HOBBIES: I love traveling and immersing myself in the local culture and cuisine. I also enjoy trying new recipes with my family and friends. Crafting has always been a huge hobby and a way for me to relieve stress.

TV SHOW: "I Love Lucy." I grew up watching the show with my family, which helped us learn our new language, English.

ON A SATURDAY AFTERNOON: Spend quality time with family, friends and my French bulldog.

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

New York-based **Leigh Anne Sherman** has been appointed division president of Chubb Ltd.'s third-party administrator ESIS Inc. She previously held the role of executive vice president, leading private/not-for-profit management liability business, North American financial lines. Ms. Sherman is replacing Keith Higdon, who is no longer with the insurer. She was a 2017 *Business Insurance* Woman to Watch honoree.

AssuredPartners Inc. named **Andrew Krasner**, formerly global treasurer and head of mergers and acquisitions for Willis Towers Watson PLC, as its chief financial officer. Mr. Krasner is based in Miami.

Marsh LLC appointed San Francisco-based **Gisele "Gigi" Norris** to lead its U.S. health care practice, succeeding Mark Karlson, who will serve as a subject matter expert for managed care. Ms. Norris had been Western region health care leader and pandemic task force co-leader at Aon PLC.

Hub International Ltd. promoted **Michael Chapman** to national director of commercial markets for the brokerage. Charleston, South Carolina-based Mr. Chapman will retain his current position as president of Hub's South region.

Alliant Insurance Services Inc. hired former Willis Towers Watson PLC executive vice president **Andrew Catapano** as executive vice president, Alliant Construction Services Group. He will be based in the broker's New York office.

Lockton Cos. LLC named **Matt Heinz** partner in its transaction liability practice. Based in New York, Mr. Heinz had been senior managing director and co-practice leader of Aon PLC's North American transaction liability team.

Subway says suit smells fishy

A lawsuit that claims Subway's tuna fish is not made with tuna is swimming in a sea of "baseless allegations," according to a statement issued by the sandwich chain in the face of widespread media reports.

The lawsuit, filed in federal court in California, alleges that the "'tuna' is a mixture of various concoctions that do not constitute tuna, yet have been blended together (by Subway) to imitate the appearance of tuna." It does not state what is in the tuna.

Firing back and accusing the plaintiffs of being "reckless" in damaging franchises, Subway says plaintiffs' attorneys are fishing for notoriety: "Unfortunately, this lawsuit is part of a trend in which the named plaintiffs' attorneys have been targeting the food industry in an effort to make a name for themselves in that space."

Whole Foods unwholesome?

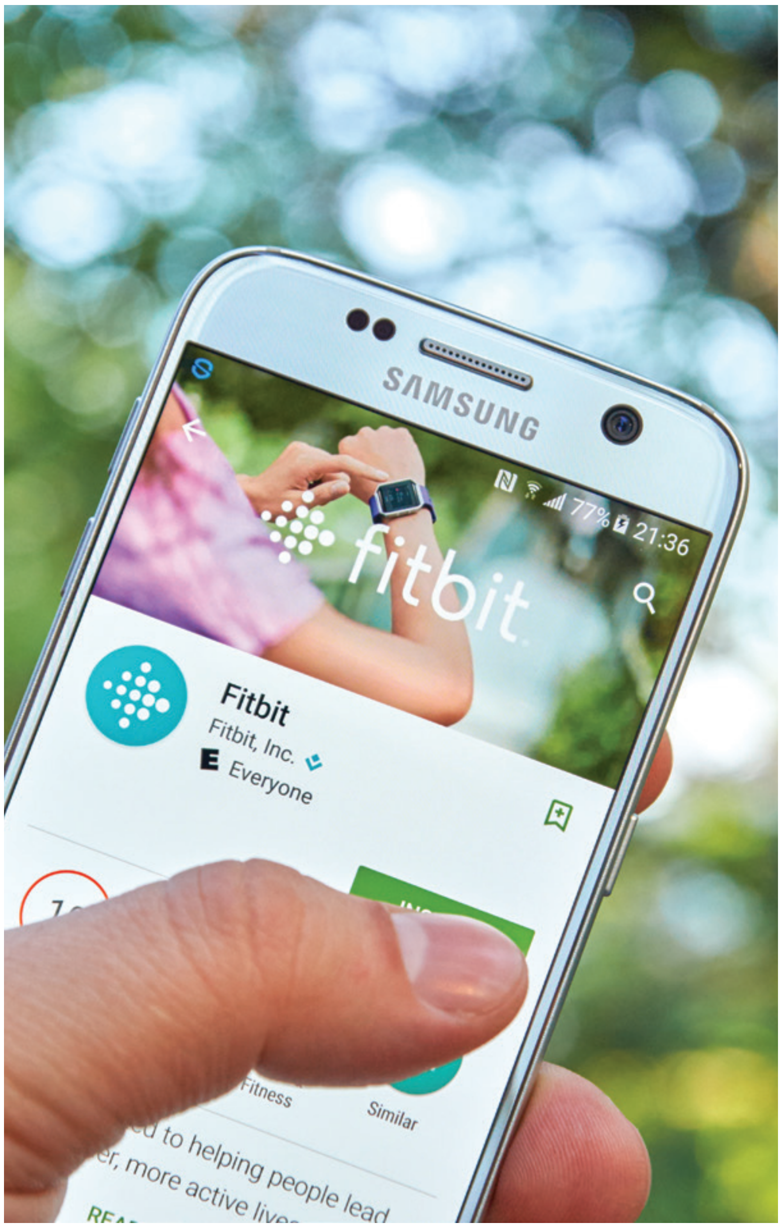
Whole Foods Market's 365 Organic Honey Graham Crackers are healthy? What a crock, says a proposed class action that the health food store is deceiving shoppers about the contents of the crackers.

A federal judge in Manhattan recently ruled that the plaintiff may have a point, and that Whole Foods Market must face the suit over its box of crackers, which display a honey dipper in a bowl of honey.

As reported by Fox Business, the judge said the sole plaintiff — for now — plausibly alleged that the words "Honey" and "Graham" on the box misled reasonable consumers into thinking that the crackers contained more healthy whole grain flour than non-whole grain flour, and that honey rather than sugar was the main sweetener.

"It is not implausible that consumers would understand the words on the box to say what they mean," the judge wrote in a 31-page decision.

MORE CONSUMERS DITCH PRIVACY FOR CHEAPER INSURANCE



How many steps one takes in a day. One's resting heartbeat. Their calorie consumption. How fast they drive.

Such is some of the data 69% of consumers say they would share on their health, exercise and driving habits in exchange for discounts on their insurance, according to a study released by Accenture.

Based on a survey of more than 47,000 consumers globally, that number is up from the 2019 survey, which found that 58% would give insurers access to the information.

In addition, 66% of consumers said they would also share significant data for personalized services to prevent injury and loss — up from 54% in the 2019 report.

Court weighs in on candy dispute

A federal court judge recently tossed another lawsuit challenging the volume of treats in movie theater candy boxes, dismissing the lawyer's half-baked argument that the half-full boxes were deceptive.

The New Jersey federal court dismissed an argument filed by two law firms that customers were misled by the size of boxes of Junior Mints and Sugar Babies, according to an article from Legal Newsline.

The motion to dismiss noted that the sugary treats were sold by weight, not volume, and that the boxes clearly stated that fact.

This latest attempt to argue candy deception is the fifth such lawsuit, Legal Newsline said. Three have been tossed out, but two still hope to convince a judge that the boxes are sadly half-empty.

Millennials ponder life, insurance

A recent survey by Greenwald Research shows that millennials' thoughts have wandered a variety of places during the pandemic, even to thinking about life insurance.

The Millennial Life Insurance Survey found that while eight in 10 millennials believe "people like me" need life insurance, less than half know how much life insurance coverage they need.

And while seven in 10 millennials want insurance and investment options and expertise from insurers, only 26% of millennials have set aside savings or created an emergency fund.

"The global COVID-19 pandemic has radically changed each generation's outlook on both their physical and financial health and wellbeing — especially millennials," said Lisa Greenwald, CEO of Greenwald Research.

BACK
TO BUSINESS FASTER

Innovative Risk Solutions:
Flexible. Transparent. Fast Payouts.

Advancing Business Interruption Protection Together.

Swiss Re
Corporate Solutions