COVER CRUNCH: M&A insurance prices increase as claims surge - PAGE 4

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SPECIAL REPORTS

DIVERSITY SURVEY PAGE 24

REINSURANCE PAGE 28

BROKER TRENDS II PAGE 32

RESUMING OPERATIONS

Med mal lawsuits expected to rise as courts reopen, surgery returns

PAGE 18

COVER STORY

The COVID-19 pandemic is expected to bring increased medical malpractice claims, particularly related to delays in diagnosis or treatment as well as the increased use of telehealth. The med mal market overall continues to harden, as several major players have stopped writing the coverage. **PAGE 18**

INSIDE

SPECIAL REPORT: REINSURANCE

Large catastrophe losses this year could continue to drive reinsurance rates higher. Meanwhile, cat bond issuance is on pace to break 2020's record. **PAGE 28**

BROKER TRENDS II

A surge in acquisitions has shaken up the broker rankings. **PAGE 32**

NEWS ANALYSIS

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

RISING R&W RATES

Reps and warranties rates are trending upward amid the boom in mergers and acquisitions. **PAGE 4**

VACCINE MANDATE

Employers should take steps now to prepare for the forthcoming federal employee vaccine mandate. **PAGE 6**

INTERNATIONAL

Chile has a stable, deregulated commercial insurance market that is seen as offering attractive potential for growth and profitability. **PAGE 13**

PERSPECTIVES

For tax purposes, it's crucial to determine whether parametric coverage is insurance or a swap, writes Tom Dawson of McDermott Will & Emery LLP. **PAGE 41**

VIEW FROM THE TOP

DAVID DWORTZ

David Dwortz is president and CEO of third-party administrator Helmsman Management Services LLC, a Boston-based unit of Liberty Mutual Insurance Co. He joined Liberty Mutual from Ernst & Young in 2000 and took charge of Helmsman in 2016. He discusses the challenges of managing COVID-19 claims and the progress being made in treating workers compensation claimants on opioids. **PAGE 16**

LEGAL BRIEFS
Recent court opinions **PAGE 15**

MARKET PULSE
Products, deals and more **PAGE 39**

OPINIONS
Insurance conferences are back; surviving Hurricane Ida **PAGE 40**

PEOPLE
Insurance industry moves **PAGE 42**

OFF BEAT

The FTC trains its investigative firepower on McDonald's ice-cream machines. **PAGE 43**

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M&A cover costs rise with losses

BY CLAIRE WILKINSON
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A resurgence in mergers and acquisitions activity coming out of the pandemic has fueled a record volume of deals and unprecedented demand for representations and warranties insurance, industry experts say.

As the coverage has become more widely used and the pace of deals has accelerated, more claims are being filed, and as insurer payouts grow, the price of a reps and warranties policy has increased.

Deals are also facing more scrutiny because insurers are being more selective in the risks they write in response to the overwhelming level of submissions, experts say.

Rates are hardening due to the claims environment and the "steep increase" in the number of transactions seeking insurance, said Allyson Coyne, Philadelphia-based managing director and chief broking and administrative officer of M&A and transaction solutions at Aon PLC.

Rate increases started in 2020 and have trickled into 2021, with the average rate on line for primary reps and warranties deals increasing "about three-tenths of a percent over the average at the same time in 2020," Ms. Coyne said.

Some deals may be more challenged than others. "Small deals, health care deals are very challenging to get placed when there's so much volume in the market right now," she said.

"A rising M&A tide is raising all insurance boats," said Rowan Bamford, London-based president of Liberty Global Transaction Solutions, a unit of U.S. insurer Liberty Mutual Insurance Co.

Insurance is seen as an increasingly important deal tool. "We are insuring a higher percentage of the deals that are done, and on top of that more deals are being done," Mr. Bamford said.

Rates in the Americas have increased up to 25% since the third quarter of 2020, driven in part by increased claims activity, Liberty Mutual said in a September report. The region sees a higher proportion of "high" and "medium" severity claims and more claims for the full tower limit, the report said.

Rates on larger transactions have seen a "significant uptick," said Stavan Desai, New York-based senior vice president, M&A team leader at Mosaic Insurance Holdings Ltd.

The bigger a transaction is, the more insurance markets generally are involved to provide an adequate level of insurance coverage, and typically the primary market will charge an increased rate given it is taking the most amount of risk, Mr. Desai said.

"For a $3 billion deal where you're maybe getting $300 million of insurance coverage, that primary market was offering a $25 million limit and maybe pricing that at a 5% rate on line a few years ago," he said. "Now, we're seeing rates at 6.5%, 7.5%. ... We had a tower that was priced at 8.6% fairly recently," he said.

The market has been on a run, and insurers are trying to keep up with the demand for additional manpower and availability and putting more limits out into the market, said Larry Shapiro, San Francisco-based managing director and representations and warranties insurance team leader at Alliant Insurance Services Inc.

"Some took the opportunity to correct that rate to a level that they felt better reflects the risk exposures that are being covered," while others have used the pricing as "a proxy to handle deal flow," Mr. Shapiro said.

The latter trend has spilled over into more substantive aspects of coverage, he said. Insurers are managing capacity by taking the deals they feel they can execute on most efficiently or "they are quoting harder deals but on terms that have more substantive limitations than they may have in the past," he said.

Insurers are more likely to modify the reps and warranties in agreements for purposes of coverage than they have in the past, said Michael Wakefield, executive vice president and transactional insurance practice leader at CAC Specialty, who is based remotely in Tennessee. "I've seen more markups of a purchase agreement for policy purposes," he said.

Insurers are also inserting more restrictive limitations around data privacy and cybersecurity, and in some cases environmental and product liability issues, he said (see related story).

Now that reps and warranties insurance is a default source for coverage in a transaction, insurers have their pick of deals and they don't have to be as accommodating any more, said Randi Mason, co-head of the corporate practice at law firm Morrison Cohen LLP in New York.

"Where I'm seeing the most change is insurers are kicking the tires on due diligence that buyers are doing much more deeply than before," Ms. Mason said.

CLAIM PAYMENT FREQUENCY & VALUE BY DEAL SIZE — 2013-2020

Source: Aon PLC

CYBER, DATA FOCUS OF INSURER SCRUTINY OF DEALS

Insurers are paying more attention to the scope of what is covered in a reps and warranties policy and inserting more restrictions, especially around cyber and data privacy exposures, experts say.

Data privacy and cybersecurity comprise an area where insurers might point to other insurance coverage as primary sources of recovery for the client, said Michael Wakefield, executive vice president and transactional insurance practice leader at CAC Specialty, who is based remotely in Tennessee.

"In the past, it was more likely not to have specific exclusions in respect to those matters. We see insurers draw harder lines on it now," Mr. Wakefield said.

Increased insurer scrutiny on M&A deals is making negotiations more complex, said Randi Mason, co-head of the corporate practice at law firm Morrison Cohen LLP in New York.

In a recent deal, the insurer sent the middle-market buyer six pages of questions and proposed exclusions covering topics such as corporate, tax, insurance, benefits, intellectual property/cyber, real estate and financial matters, Ms. Mason said. "Ultimately, there were over 15 to 20 deal-specific exclusions in the policy, in addition to exclusions for known breaches," she said.

Standard coverage exclusions — which include covenants breaches, forward-looking statements and purchase price adjustments — have remained "pretty consistent" even with the changes in the market, said Paige Brewin, underwriting leader, transactional liability, at QBE North America.

"A trend we're seeing with the hardening market is that there's more of a need to negotiate terms early on, even at the quoting stage, before the underwriter has been engaged," Ms. Brewin said.

Claire Wilkinson


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Employers urged to prepare for shot mandate

BY LOUISE ESOLA
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Reuters

COMPANIES PREPARE TO ACT

A survey of 961 employers in August identified top actions other than vaccine mandates that companies are taking or considering as they rethink their reopening plans due to the COVID-19 delta variant:

- **Mask mandates:** 80% require employees to wear masks indoors at any location. Another 13% are planning or considering doing so.
- **Tracing:** 75% use workplace exposure tracing to alert employees to a potential exposure. Another 8% are planning or considering doing so.
- **Return to normal:** 39% now expect their organizations won't reach a new normal in terms of returning to the workplace and ending pandemic-related policies and programs until the second quarter of 2022. About a quarter (26%) expect a return to the new normal in the first quarter of next year.

Source: Willis Towers Watson PLC

While employers brace for the many unknowns connected to the forthcoming federal employee mandate on vaccinations, there is much that they can be doing to prepare for the heightened risks of requiring workers to be vaccinated, legal experts say.

President Joe Biden announced Sept. 9 that he had directed the Occupational Safety and Health Administration to introduce an emergency temporary standard that would mandate that companies with more than 100 workers require their employees to have COVID-19 vaccinations or submit to weekly testing.

Many details of the ETS have yet to be announced, and legal experts have raised many questions regarding OSHA's latest COVID-19 measure.

"When? What are the parameters? There are a lot of big-picture concerns," said Randi Winter, Minneapolis-based partner with Spencer Fane LLP, who said the recent announcement triggered calls from employer clients who are grappling with such issues as who will pay for the weekly testing, what proof of vaccination will be required and what other administrative costs are involved, such as keeping track of possible booster shots and the task of overseeing exemptions.

The administration did not set a timeline for OSHA to introduce the emergency standard. When Mr. Biden one day after his inauguration in January called on OSHA to create an emergency standard for COVID-19 workplace safety, the agency took more than four months to issue a standard. Eric Conn, Washington-based founding partner of Conn Maciel Carey LLP, said in an email that he expects a more compressed timeline for the vaccine standard given the urgency in the president's speech.

OSHA did not respond to requests for comment.

Elizabeth Wylie, Denver-based partner in the labor and employment practice of Snell & Wilmer LLP, said employers that have already set mandates in motion are wondering whether their own plans will be sufficient to satisfy the forthcoming federal requirement.

"Employers who have already gone through the pain of a vaccine mandate and dealing with employee blowback, they really don't want to revisit that," she said.

In the meantime, those consulting with companies say now's the time to prepare their human resources departments and U.S. Equal Employment Opportunity Commission processes for what's to come: requests for exemptions from workers who opt to not get the vaccine on religious or health grounds.

"Businesses owe it to themselves to put together a framework to manage this," said Chuck Kable, chief legal officer, general counsel and chief human resources officer for The Woodlands, Texas-based Axiom Medical Consulting Inc. "You have to have a protocol and a process that you have to administer consistently and over time, and you have to treat everybody equally."

"If an employer doesn't properly consider those requests that can be a liability," said George Ingham, Tysons Corner, Virginia-based partner with Hogan Lovells US LLP, adding that the process for getting an exemption through is an "involved" one that federal law requires employers to follow step by step or risk violating a worker's rights.

An employee who requests an accommodation goes through what is called an "interactive process."

"That process can take weeks, it can take months; sometimes you need to follow up several times, and it can be burdensome if you get a lot of (exemption) requests," Mr. Ingham said.

Employers that voluntarily initiated vaccine mandates have faced many exemption requests, according to numerous media reports. For example, "thousands" of employees with the Los Angeles Police Department filed for exemptions from the city's mandate that workers be vaccinated by Sept. 13.

Widespread questioning of the legitimacy of some requests is also being highlighted, with religious groups taking either side of the contentious issue of religious exemptions and medical experts chiming in on health exemptions that may not pass muster.

"There are not a lot of clinical reasons to not get vaccinated," said Dr. Jeff Levin-Scherz, Boston-based population health leader at Willis Towers Watson PLC and assistant professor in the Department of Health Policy and Management at Harvard University. Such requests could face challenges, he said.

"You have to have something that rises to the level of disability," Mr. Ingham said of health-related exemptions.

"Where employers can trip up is when they don't treat employees equally with those requests," he said.

Adam Kemper, Fort Lauderdale, Florida-based partner with Kelley Kronenberg PA, said companies instituting mandates expose themselves to numerous liabilities — from failing to maintain and keep private workers' health information to failing to follow steps in EEOC exemption requests.

"Any mishandling of an exemption request can run afoul of anti-discrimination laws," he said, adding "there's nothing that prevents a company, especially one not familiar with these issues, from now bringing in appropriate HR personnel, a consultant or employment counsel to understand what to expect."

VACCINE REQUIREMENT WON'T ERASE PROBLEM OF WORKPLACE COVID-19 SPREAD

A workplace vaccine mandate will not free employers from instituting and continuing other infectious disease control measures, according to experts.

"Something we have been advising our clients on since the beginning (is) to never differentiate between your vaccinated and unvaccinated employees with regards to your infection control program," said Dr. Scott Cherry, chief medical officer for The Woodlands, Texas-based Axiom Medical Consulting Inc., which provides human resources, legal and medical consulting for employers.

The reason is that vaccinated people can still spread COVID-19, he said.

The U.S. Centers for Disease Control and Prevention came to this conclusion at least twice. In August, the CDC released the finding of a study of a July outbreak in Provincetown, Massachusetts, where several hundred people attending a function were infected with COVID-19, about 74% of whom were fully vaccinated.

More recently, the agency released a study on Sept. 21 of a July/August outbreak of COVID-19 among 172 prisoners in an unnamed federal prison in Texas where 79% had been vaccinated. According to the CDC, 92.8% of the 42 unvaccinated inmates suffered an infection, as did 69.7% of the 185 fully vaccinated prisoners. However, the CDC said that severe illness was more common among the unvaccinated.

As much as there is a public policy benefit to vaccinations, there's still an opportunity to spread infection if an individual is vaccinated, said Chuck Kable, Axiom Medical's chief legal officer, general counsel and chief human resources officer.

"Ultimately when you think about this risk … it's (about) implementing a holistic, layered approach across your enterprise," he said, adding that companies "still need to do this other stuff," such as what is required by the Occupational Safety and Health Administration and promoted by the CDC guidelines. Such measures include mask-wearing, social distancing and contact-tracing.

Louise Esola

Exclusive remedy for COVID-19 claims hangs in the balance in California case

BY DANIELLE LING
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A lawsuit pending in a California appeals court threatens to upend a more than century-old workers compensation provision that legal experts say could subject employers to potentially unlimited tort liability and trigger an avalanche of litigation.

In the case of *Matilde Ek v. See's Candies Inc.*, the worker alleges she contracted COVID-19 while working on the packing line at a See's Candies Inc. distribution plant in Carson, California, in March 2020 and that she later exposed her 72-year-old husband to the novel coronavirus, which killed him one month later.

Ms. Ek alleges that the plant lacked sufficient safeguards against infection, ultimately causing Mr. Ek's death. In response, See's Candies invoked the "exclusive remedy" rule, which bars such negligence suits as part of the grand bargain of the workers comp system in California. Litigators say the exclusive remedy rule has shielded employers from civil court liability lawsuits for over 100 years.

But a trial court in Los Angeles in April 2021 allowed the case to continue, issuing a ruling that an opposing coalition of state and national employer groups argued in an amicus brief "flies in the face of the derivative injury rule" — a workers comp provision that prohibits injured employees from suing their employer for injuries that are collateral to or derivative of a compensable workplace injury.

In opposing See's Candies' objection, the judge cited a 2016 mesothelioma case, *Kesner v. Superior Court*, in which the California Supreme Court ruled employers have a "duty to exercise reasonable care to prevent the spread of pathogens, conditions, contaminants, toxins to foreseeable third parties." The case allowed an employee's spouse to proceed with a civil claim where it was alleged that the spouse developed mesothelioma from inhaling asbestos fibers on the employee's clothing.

NOT GOING AWAY

Experts say breakthrough COVID-19 cases, where fully vaccinated people contract the disease, are on the rise and could create further challenges for workers comp systems.

- Available data on breakthrough cases is limited to recorded deaths and hospitalizations, nationally. As of mid-September, the U.S. Centers for Disease Control and Prevention received reports of 15,790 patients with COVID-19 vaccine breakthrough infections who were hospitalized or died.
- Regionally, from Jan. 17 to Sept. 4, 2021, Washington state recorded 31,708 breakthrough cases. Of the cases with available data (approximately 50%):
  - 88% reported symptoms.
  - 9% were hospitalized.
  - 269 people died of COVID-19-related illness.

In the *See's Candies* case, the trial judge held that the COVID-19 transmission was similar and was grounds to allow the case to move forward.

In a brief filed with the appeal in California's 2nd District Court of Appeal, the employer coalition argues that the trial court's ruling violates the provisions of the derivative injury rule in such a way that "a large swath of COVID-related claims stemming from workplace conduct would be placed outside the scope of the workers compensation system."

Workers comp and employment attorneys in and outside of California echoed these concerns.

"The fear is it's going to create just a flood of potential lawsuits," said Jeffrey Adelson, general counsel, Adelson McLean APC in Newport Beach, California. "The concern I have with this case is it is hinging on a very thin wire; it's basically the interpretations of words. What is collateral or derivative of a workplace injury?"

And it's not just about COVID-19, Mr. Adelson said.

"At what point does it stop? There could be a never-ending chain of regression if this exception is taken away."

Davis Walsh, partner at McGuireWoods LLP in Richmond, Virginia, and lead editor of the book, *Infectious Disease Litigation: Science, Law, and Procedure*, said the "duty of care" provision cited in the asbestos case has pros and cons. But in the face of breakthrough infections, vaccine opposition and speculated booster guidance, eliminating liability risk for employers will be difficult if such a case is won by the worker.

"The consequence of this is that businesses, regardless of the actions they take to prevent the spread of COVID in the workplace, are going to get sued — some being found liable," Mr. Walsh said.

"Thus far, outside of the workers comp world, we've generally seen a very limited number of lawsuits related to tracking COVID. Now that the courts have allowed these cases to proceed, I think that's going to change — we're going to see more of those types of lawsuits," Mr. Walsh added.

Gregory Grinberg, managing partner of Gale, Sutow & Associates APC in Cypress, California, said that, if the decision stands, industrial COVID-19-transmission deaths could mimic asbestos liability litigation.

"If the court allows this, employers will likely find themselves facing liability in both the civil tort arena as well as before the Workers' Compensation Appeals Board," Mr. Grinberg said.

> "The concern I have with this case is it is hinging on a very thin wire; it's basically the interpretations of words. What is collateral or derivative of a workplace injury?"
>
> Jeffrey Adelson, Adelson McLean

In turn, Mr. Grinberg said, a second-hand implication of the ruling may be an uptake in different lines of liability coverage, "so that an early settlement of a workers compensation claim does not prejudice the defense of a civil tort claim."

The case is pending in the appellate court and as of late September, oral arguments have not been scheduled.

EMPLOYER GROUPS PUSH BACK HARD ON WORKER'S LIABILITY CLAIMS

In a 31-page amicus brief filed Aug. 31, a coalition of state and national employer groups — the U.S. and California chambers of commerce, California Restaurant Association, National Federation of Independent Business, National Association of Manufacturers and California Workers' Compensation Institute — contested the trial court ruling in *See's Candies Inc. v. Superior Court of Los Angeles*, citing violations of the state Workers' Compensation Act and arguments on its potential implications.

Among the main points, the brief states:

"Because plaintiffs' claims would not exist in the absence of the employee's workplace injury, they are barred from the courts and must proceed, if at all, under the workers' compensation system. The trial court nevertheless erroneously allowed plaintiffs to proceed with their negligence and premises liability claims against the employer on the theory that plaintiffs' alleged injuries were somehow 'independent' of the employee's workplace injury.

"The trial court's ruling, if it is sustained, could subject employers across the state to potentially unlimited tort liability for alleged workplace injuries that the Legislature intended to be addressed in the workers' compensation system."

The brief continues, "In enacting the WCA, the legislature ... sharply departed from (it), inventing a COVID-19 exception for injuries that derive from employees who allegedly contract the virus in the employer's workplace and then infect their family members."

The trial court's ruling, the coalition writes, "violates that well-established principle by judicially legislating a COVID-19 exception to the longstanding derivative injury rule."

Danielle Ling

Hurricane Ida tests revamped levee system

BY MATTHEW LERNER
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Levee systems, which came under scrutiny after Hurricane Katrina hit New Orleans 16 years ago, can still successfully mitigate water damage exposures from storms and floods, as was demonstrated in August when the city's upgraded levees largely contained flooding after Hurricane Ida.

Insurers and catastrophe modeling companies consider the protection offered by levees when they evaluate and rate risks.

"We have a team of engineers that focus on evaluating levees because we recognize the important role they play in the protection scheme for our clients," said Katherine Klosowski, vice president and manager, natural hazards and structures, for FM Global in Johnston, Rhode Island.

Levees, embankments and walls built or enhanced to contain rivers and other bodies of water, are a form of flood protection.

When there is an adequately designed and maintained levee in place, "we consider that client to be a much better flood risk and to have a reduced hazard flood risk," Ms. Klosowski said.

Boston-based catastrophe modeler AIR Worldwide also incorporates levees into its calculus when analyzing locations like New Orleans, according to Daniel Rees, senior scientist on the research and modeling team at the Verisk Analytics Inc. unit.

"We have a team of engineers that focus on evaluating levees because we recognize the important role they play in the protection scheme for our clients."

Katherine Klosowski, FM Global

The company's hurricane model assigns varying levels of protection to individual elements of New Orleans levee system, according to Mr. Rees. The research team also uses information about the city's canals and pumps for its inland flood model.

Ida made landfall as a category four hurricane Aug. 26 near Port Fourchon, Louisiana, about 60 miles south of New Orleans. According to early estimates from various catastrophe modeling companies, the storm caused more than $30 billion in insured losses in the Gulf region. Hurricane Katrina, a category five storm that inundated much of New Orleans in 2005, caused $65 billion in insured losses.

Reuters

The Hurricane and Storm Damage Risk Reduction System, which was built after Katrina, protects Jefferson, New Orleans and St. Bernard parishes.

Kelli Chandler, regional director for the Southeast Louisiana Flood Protection Authority East, said the protection system functioned properly, reducing the risk for the area for storm surge.

"It definitely did what it is supposed to do," Ms. Chandler said. "It was very effective and performed as expected."

The authority manages 192 miles of levees and flood walls along the east bank of the Mississippi River, she said.

Craig E. Colten, professor emeritus in the department of geography and anthropology at Louisiana State University in Baton Rouge, said not all sections of the New Orleans levee system were tested equally or at all.

Mr. Colten said the part of the levee system that was "relatively new and highly modified … seemed to have suppressed storm surge and kept it from getting into the industrial canal. The surge barrier and the strengthening of those levees I think did help. It closed off the Mississippi Gulf Outlet. Two avenues for water to get in from the east side of the city were basically blocked."

Elsewhere, however, improvements made in Jefferson Parish on what is called "The West Bank" were not significantly tested, he said.

The majority of losses to FM Global policyholders were associated with wind from Ida, not flooding, Ms. Klosowski said. "We look at that as a huge success for the local levee protection in that area," she said.

Ken Tolson, president of network solutions for Crawford & Co. in Atlanta, who was on the ground in New Orleans, said Crawford has opened support rooms in Lafayette, Mandeville and Metairie. "As we are able to move people closer to the damage concentrated areas, they can spend less time traveling and more time inspecting or writing up damages and communicating with insureds," he said. "This is improving every day and we are seeing the acceleration of claim closures/settlements like we always see after these events."

Investing in mitigating flood and water damages can be felt beyond the New Orleans city limits. The Port of South Louisiana ranks first in tonnage, according to the U.S. Bureau of Transportation Statistics, Ms. Chandler said.

"Economically, the flood protection for New Orleans is a wise investment," said Sandy Rosenthal, founder of Levees.org, a public education nonprofit founded in 2005 after Katrina devastated New Orleans. "The flood protection for New Orleans protects a region with a high density of people, property and infrastructure," as well as the port shipping operations.

Ms. Rosenthal added the New Orleans levee construction costs were pushed higher due to the urgency given the project after Hurricane Katrina and the resulting compressed time frame, putting the final cost of the project at about $15 billion.

The investment will continue to bear fruit. "Levees live for multiple decades," Ms. Klosowski said.

BRUNT OF STORM'S FLOOD DAMAGE FELT FAR FROM GULF

Hurricane Ida made landfall near New Orleans with some of the strongest ever sustained wind speeds, near 150 mph, but some of its worst flooding was in New York City.

"Ida was a rare storm in terms of wind speeds," said Craig E. Colten, professor emeritus in the department of geography and anthropology at Louisiana State University in Baton Rouge, but "most of the worst rain was not in New Orleans."

After moving across the country, Ida dropped 6 to 8 inches of rain in the Northeast from Philadelphia to Connecticut and set an hourly rainfall record of 3.15 inches for Manhattan, breaking the record set by Tropical Storm Henri less than two weeks prior to Ida, according to the National Weather Service.

Ida's one-two punch was like "working back-to-back hurricanes across a wide stretch of the country," said Steve Powell, executive vice president for specialty operations, property Americas, at Sedgwick Claims Management Services Inc. in Nashville, Tennessee.

The labor crunch among claims adjusters that followed Ida was more intense than in 2020, when 30 named storms occurred in one hurricane season. "There is an epic strain on the supply and demand of qualified claims professionals," Mr. Powell said.

Even though New York received historically intense rainfall, the flooding in the Northeast will cause shorter-term business interruption claims than Ida created in Louisiana because the Northeast didn't have the widespread power outages, he said.

Ken Tolson, president of network solutions for Crawford & Co. in Atlanta, said the company opened a support room in Philadelphia for the Northeast damage.

While levees helped protect against the storm surge in New Orleans, the prescription is different in more concentrated urban areas.

"An urban flooding event needs to be protected against in a different way," said Katherine Klosowski, vice president and manager, natural hazards and structures, for FM Global in Johnston, Rhode Island. "One of the things FM Global will talk to a client in New York City and other urban areas about is getting their electrical equipment out of the basement onto an upper level."

New York's damages and claims were extensive enough to prompt the New York State Department of Financial Services to issue a letter the day after Ida hit the region to New York-regulated insurers, directing them to expedite Tropical Depression Ida-related insurance claims with measures such as increasing their resources to ensure "proper treatment of their policyholders" and allowing claimants to make immediate repairs to damaged property "if necessary to protect health or safety."

Matthew Lerner

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SEC toughening cyber enforcement

BY JUDY GREENWALD
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The U.S. Securities and Exchange Commission will continue to pursue companies that breach securities laws by making inadequate cybersecurity disclosures, experts say.

"They have made that clear," said Alexander H. Southwell, a partner with Gibson Dunn & Crutcher LLP in New York, who co-chairs the firm's privacy, cybersecurity and data innovation practice group.

To avoid SEC actions, experts advise that companies establish clear internal communications strategies to address the issue.

Observers say the SEC's recent activity is part of a broader administrative response to the issue.

Tom Finan, director, cyber practice, for Willis Towers Watson PLC in Washington, said, "Obviously, the SEC is increasingly focusing on this topic of cybersecurity disclosure. I think it has a lot to do with the whole government approach that we're seeing play out in live action."

He pointed to the White House meeting on cybersecurity in August that insurance executive attendees said was productive and left them more optimistic about businesses' ability to tackle the issue.

Cybersecurity has become a high priority for federal agencies, and "the SEC is obviously using its tools to bring that home to publicly traded companies," he said.

The agency's enforcement actions "show us that the SEC is out of patience with companies that fail to implement the kind of internal controls that would allow a company to be accurate in its disclosures," said Priya Cherian Huskins, San Francisco-based partner and senior vice president at broker Woodruff-Sawyer & Co.

The agency will likely become even more aggressive in the future, said John Farley, New York-based managing director of Arthur J. Gallagher & Co.'s cyber liability practice. "As time goes on, the SEC is going to have less tolerance for organizations that don't take the basic steps to protect sensitive data," he said.

"The implication is, companies need to take a whole enterprise approach" and have a "powerful cybersecurity story that explains how they are viewing risks and aligning their resources to address those risks and how they are planning for the future," Mr. Finan said.

"At a general level, cyber risks have become a focal point for all companies," said Matthew McLellan, Marsh LLC's Washington-based U.S. D&O practice leader.

The issue has clearly had an effect across different business sectors, and companies have been ramping up their cyber controls and internal risk management systems, as well as their disclosure procedures for communicating with investors, he said.

The SEC issued guidance on cybersecurity disclosures in 2018, and an update is expected, experts say, pointing out it was among the items included in its Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions issued in June.

"I would expect there will be some new guidance," Mr. Southwell said.

Companies should develop incident response plans that include how to deal with a vulnerability's discovery before it becomes an intrusion, then make sure the infrastructure is in place to address that vulnerability, Mr. McLellan said.

Tamara D. Bruno, a partner with Pillsbury Winthrop Shaw Pittman LLP's insurance recovery practice in Houston, said companies should make sure they "fully understand their own cybersecurity environment." This means communicating regularly with staff who can bridge communication gaps between those who implement cybersecurity and those who handle disclosures.

"Essentially, it boils down to companies needing to know what is mission critical to their organizations" and preventing a cyber event that will shut them down, Mr. Finan said.

If there is a cyber incident, companies should be careful about their disclosures and make sure they are comprehensive, said Thomas O. Gorman, a partner at Dorsey & Whitney LLP in Washington.

A well-constructed directors and officers policy should cover investigation costs, said William Boeck, senior vice president, U.S. financial lines claims practice leader and global cyber product and claims leader for Lockton Cos. LLC in Kansas City, Missouri. It is unlikely that the coverage will extend to fines and penalties, although there are some specialized products available that may do so, he said.

A cyber liability policy could respond to an SEC investigation, depending on its wording, "but there's a big caveat to that, and that is that cyber policies typically exclude non-privacy-related fines," he said.

Most cyber policies also have exclusions for security-related claims, which may become an issue if there are more SEC enforcement actions, Mr. Boeck said.

CYBERSECURITY RISK GUIDANCE

The U.S. Securities and Exchange Commission said it plans to update its cybersecurity risk disclosure guidance. Its current guidance, released in 2018, says that in evaluating cyber disclosures, companies should consider:

- The occurrence of prior incidents.
- The probability of the occurrence and potential magnitude of cybersecurity incidents.
- The adequacy of preventive actions taken to reduce cybersecurity risks and the associated costs.
- The aspects of the company's business and operations that give rise to material cybersecurity risks.
- The costs associated with maintaining cybersecurity protections.
- The potential for reputational harm.
- Existing or pending laws and regulations that may affect company requirements.
- Litigation, regulatory investigation and remediation costs associated with cybersecurity incidents.

Source: U.S. Securities and Exchange Commission

FIRMS PAY PENALTIES FOR INADEQUATE DISCLOSURES

The U.S. Securities and Exchange Commission has announced two settlements related to cybersecurity disclosures and has sought voluntary information in its investigation of the SolarWinds Corp. cyberattack.

On June 15, without admitting or denying the SEC's findings, Santa Ana, California-based First American Financial Corp., a title insurance services company, agreed to pay a $487,616 penalty for allegedly failing to disclose a cybersecurity vulnerability.

In May 2019, the company learned its application for sharing document images had a vulnerability that exposed more than 800 million images dating back to 2003, including personal data, the SEC said. The company then issued a press statement and a Form 8-K.

However, the agency said the senior executives responsible for those public statements were not informed that the company's information security personnel had identified the vulnerability several months earlier but had failed to remediate it in accordance with the company's policies.

On June 21, the SEC said London-based educational publishing company Pearson PLC had agreed to pay $1 million to settle charges that it misled investors about a 2018 intrusion.

The SEC said Pearson made misleading comments and omissions regarding a 2018 data breach involving the theft of student data and administrator log-in credentials of 13,000 school, district and university customer accounts.

In June, the SEC said it was launching an investigation into the December 2020 SolarWinds cyberattack and was seeking voluntary information from those who may have been impacted.

The SEC said its enforcement division would not recommend enforcement action against companies that voluntarily provided the information requested in the letter.

Judy Greenwald

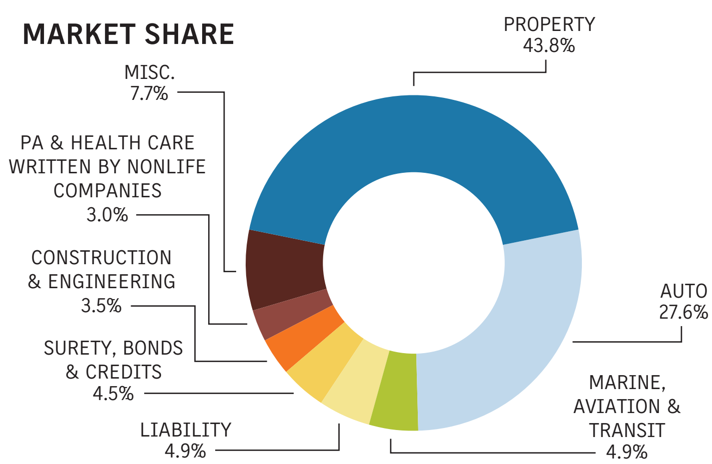
PROFILE: CHILE

37

GLOBAL P/C MARKET RANKING

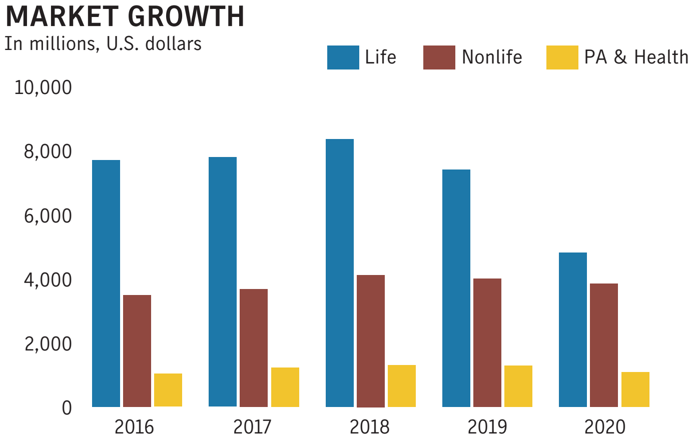
The Chilean property/casualty insurance sector remains a stable, deregulated, emerging market that is generally seen as offering attractive potential for growth and profitability. Various foreign players are said to view it as a convenient entry point to develop operations in Latin America generally. Chile ranked 37th worldwide in terms of 2020 premium income, just ahead of Colombia, and trailing only top-20 players Brazil, Mexico and Argentina among Latin American countries. Property remained the major class in 2020, accounting for some 45% of the market. With the support of reinsurers, the market has shown itself capable of coming through losses much greater than the estimated $1.3 billion resulting from the massive civil unrest and countrywide protests of 2019 known as the Social Outbreak.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA

291,933

square miles

POPULATION

18.3

million

MARKET CONCENTRATION

51.33%

market share of top five insurers

2021 GDP CHANGE (PROJECTED)

6.2%

MARKET DEVELOPMENTS

Updated September 2021

- The measures implemented by the Chilean government to contain the spread of COVID-19, together with weakening world economic growth, hit the country's economy, which shrank 8.5% in 2020.
- The economy grew only 1% in 2019 due to the disruption caused by the widespread civil unrest of the Social Outbreak, which resulted in more than 5,000 claims and an estimated total market loss of around $1.3 billion. Property damage included looting and burning of supermarkets, other commercial premises, cars and buses. The state-owned Santiago metro operator was no longer purchasing cover for stations and trains and alone possibly accounted for some $300 million of a total uninsured economic loss — material damage and business interruption — of around $2 billion.
- Although the most frequented and violent of the protests were over by the end of 2019 after various demands had been met, a level of dissatisfaction was still evident throughout 2020. From an insurance point of view, property rates increased significantly to recognize the risks arising from social unrest, which had previously been covered at a minimal charge within overall premiums. This contributed not only to a degree of premium growth being maintained in the property/casualty market despite the pandemic but much improved underwriting results compared with previous years.
- Legislation to establish a formal system of risk-based supervision, which government representatives in 2018 cited as the biggest reform to the insurance industry in 30 years, has not yet passed. The Financial Market Commission in March 2021 acknowledged the lack of progress but reaffirmed its commitment to the initiative and stressed the importance of it to the industry.

COMPULSORY INSURANCE

- Aviation liability for commercial aircraft
- Various insurances and/or guarantees for insurance and reinsurance brokers, fund administrators and loss adjusters
- Workers compensation (state scheme)
- Shipowners liability for marine oil pollution (financial guarantee or insurance)
- Clinical trials liability (insurance or other guarantee) for pharmaceutical products
- Personal accident insurance for motor vehicles

NONADMITTED

By law, insurers must be locally authorized to carry on insurance business in Chile. At the same time, the law specifically states that insurance may be taken out abroad, with some exceptions, and is silent on the freedom of intermediaries to place insurance outside the country.

INTERMEDIARIES

Local insurance brokers must be registered. The law makes exceptions in some cases for individual and corporate intermediaries established in other countries with respect to international marine transport insurance, international commercial aviation risks and goods in international transit.

MARKET PRACTICE

No case is known of an unauthorized insurer writing business in Chile, and brokers are said to respect the prohibition on placing business directly overseas. Direct purchase of business overseas is understood to be limited, but there is considerable recourse to fronting.

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BUSINESS INSURANCE

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EMEA | 10 NOVEMBER 2021

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Willis sues Marsh over poaching

■ Willis Towers Watson has sued Marsh LLC in state court in Chicago in connection with the poaching of 25 employees.

The employees, primarily Chicago-based members of Willis' senior living group, left the brokerage to join Marsh in August. Marsh has denied Willis' charges and asked that the case be dismissed.

Willis charges that since Sept. 10, Marsh and its former employees have wrongfully solicited about 24 Willis clients to move their business to Marsh, resulting in a loss of more than $7.5 million in revenue, according to court papers in *Willis Towers Watson Midwest Inc. and Willis Americas Administration Inc. v. Marsh and McLennan Cos. Inc. et. al.*

According to Willis' complaint, six of its brokers who were producers in Chicago, including executive vice presidents John Atkinson and Michael Pokora, simultaneously resigned on Aug. 5 , joined Marsh on Aug. 23, and were subsequently followed by the others.

All but two of the employees who left were in Willis' senior living group, and all but five were based in Chicago.

The complaint states "the Former Employee Defendants who were leaders in the Willis Chicago office violated their fiduciary duties of loyalty and contractual non-solicitation provisions, by approaching their team of employees in Chicago with the plan for them to resign together to go work for Marsh."

Willis contends in the complaint that "Marsh's participation in this scheme is readily apparent. …. This was a calculated effort on the part of Marsh to severely harm Willis's Midwest business."

The complaint seeks injunctive relief and charges the former employees and Marsh with violations of the Illinois Uniform Deceptive Trade Practices Act, misappropriation of trade secrets, breach of contract, tortious interference with contractual relations and prospective economic advantage, unfair competition and civil conspiracy.

Captive manager granted injunction

■ A federal court granted a preliminary injunction in favor of a captive management company that alleged the IRS overstepped its authority in imposing a reporting requirement on microcaptives without first submitting it for congressional review.

The decision follows a U.S. Supreme Court ruling in the case, which also went in favor of the captive manager.

In *CIC Services LLC v. Internal Revenue Service*, Knoxville, Tennessee-based CIC Services sued to stop an IRS reporting requirement for microcaptives, which are often known as 831(b) captives.

The IRS has been investigating microcaptives for several years and has won several cases in which it alleged the vehicles were used by wealthy families to avoid taxes. As part of its investigations, in 2016 it imposed rigorous reporting requirements on captive managers, which included stiff penalties for noncompliance.

CIC sued the IRS, saying the requirements would cost more than $60,000 a year to comply with and could not be imposed without going through a "notice-and-comment" rule-making process. The IRS argued the suit was barred by federal law, but after a lower court ruling in the IRS's favor the Supreme Court allowed the suit to proceed, and it was returned to the U.S. District Court for the Eastern District of Tennessee in Knoxville.

In its ruling, the district court said the key issue in the case was whether the IRS reporting requirement was a legislative rule, which is subject to review, or an interpretive rule, which is not.

"CIC has demonstrated that it is likely to succeed on its claim that Notice 2016-66 constitutes a legislative rule and that it is invalid because the Secretary failed to comply with required notice-and-comment procedures," the court ruled.

Insurers prevail in 'Cheers' case

■ The company that operates the bar that inspired the TV show "Cheers" lost its lawsuit seeking COVID-19 business interruption coverage.

As with other cases, the U.S. District Court in Boston denied the coverage to Boston-based Hampshire House Corp. in litigation it filed against Allianz SE units on the basis it had not alleged "direct physical loss of or damage to property" at its four locations, according to the ruling in *Hampshire House Corp. v. Fireman's Fund Insurance Co. et al.*

Hampshire's locations include the Cheers restaurant on Beacon Hill in Boston, which, when it operated under its previous name of the Bull & Finch Bar, inspired the TV series.

To state a claim under its policy's business income and extra expense provisions, Hampshire House must allege "direct physical loss of or damage to property" at its four locations, the ruling said.

Courts in Massachusetts have adopted that interpretation when considering insurance claims for losses due to the COVID-19 pandemic, the ruling said, citing decisions including a March ruling in *Legal Sea Foods LLC v. Strathmore Ins. Co.*

ADA ballpark case remanded

■ The Seattle Mariners baseball team and its stadium's operator may have failed to adequately follow federal guidance for spectators who use wheelchairs under the 1991 Americans with Disabilities Act, a federal appeals court said in overturning a lower court ruling.

Plaintiffs alleged in litigation filed in U.S. District Court in Seattle that spectators who use wheelchairs at T-Mobile Park, where the Mariners play, had inadequate sightlines under the ADA, as spelled out in the Department of Justice's 1996 Accessible Stadiums guidance, according to the ruling by the 9th U.S. Circuit Court of Appeals in San Francisco in *Clark Landis et al. v. Washington State Major League Baseball Stadium Public Facilities District et al.*

The district court held the defendants complied with the ADA, but a three-judge appeals court panel overturned that decision.

The district court erred by only analyzing the Accessible Stadiums' "requirement that a person using a wheelchair must be able to see the playing surface between the heads and over the shoulders of the persons standing in the row immediately in front," the panel said in its ruling, noting the guidance's "additional requirement that a person using a wheelchair must be able to see the playing surface over the heads of the person standing two rows in front of them."

In remanding the case for further proceedings, the appellate court said, "We express no opinion at this point as to the ultimate issue — whether the Stadium's sightlines for spectators using wheelchairs are sufficient to satisfy the ADA."

DOCKET

COURT RULES UNIFORM LINKED TO ILLNESS

An appeals court in New York affirmed a state Workers' Compensation Board ruling that a Delta Airlines Inc. flight attendant suffered an occupational illness related to the chemicals in her issued uniform. The flight attendant filed a workers compensation claim in 2019 after her doctors became suspicious that her skin, respiratory and other physical problems were connected to the work uniform she had begun wearing in 2018, according to documents in *Matter of Valdez v. Delta Airlines, Inc.*

WISCONSIN INSURER WINS 17 VIRUS CASES

A Chicago judge ruled in favor of a Wisconsin insurer in 17 separate COVID-19-related business interruption cases. The rulings issued by Judge Moshe Jacobius of the Cook County Circuit Court in Chicago included a decision in *Station Two LLC, d/b/a Firehouse Grill et al. v. Society Insurance Inc.*, which was filed by a group of restaurants against Fond du Lac, Wisconsin-based Society Insurance Inc. As with other rulings that have gone against policyholders, Judge Jacobius said the plaintiffs in the case had not established the direct physical loss or damage required by the coverage. "The Court does not find any ambiguity in the Policies regarding 'direct physical loss or damage to covered property,' which triggers coverage," the ruling said.

HOTEL SERVER'S INJURY NOT COMPENSABLE

An Arkansas appeals court affirmed a ruling by the state's Workers' Compensation Commission that an Embassy Suites employee failed to establish that she suffered a compensable injury working for the hotel. Roberta Jones, a server at Embassy Suites, alleged that she injured her spine during breakfast service in 2018 when she attempted to lift a coffee pot "weighing 15 to 20 pounds" on to a counter and heard a "pop" in her neck, according to documents in *Jones v. Suites*.

David Dwortz

HELMSMAN

David Dwortz is president and CEO of third-party administrator Helmsman Management Services LLC, a Boston-based unit of Liberty Mutual Insurance Co. After joining Liberty Mutual from Ernst & Young in 2000, Mr. Dwortz held various leadership roles in finance, underwriting, distribution and claims before being named to lead Helmsman in 2016. He recently spoke with *Business Insurance* Editor Gavin Souter about the TPA's growth strategy, the challenges of managing COVID-19 claims and the progress being made in treating workers compensation claimants on opioids. Edited excerpts follow.

Q How are you looking to grow Helmsman?

A Our strategy has always been on organic growth and that will continue to be the foundation, but we are opening in some new markets and looking at some new products. For example, we were recently approved by Lloyd's and so we're opening to the London market, and we're also exploring expanding into Canada. We've also been working with some partners to provide our services to group captives and program business and just generally working more with MGAs. Another area that is relatively new for us is we're working with some carriers to bolster their claims departments for their insured business.

We will also look at M&A. We made our first acquisition at Helmsman in 2020 with the addition of Eberle Vivian, which has been a terrific addition to our team, and we definitely will look for more acquisition opportunities where we find the right culture and the right strategic fit.

Q Does being owned by an insurer hinder your ability to work with other insurers?

A It is a more complicated conversation sometimes because Helmsman is owned by Liberty Mutual. While we act independently, we have to have a little bit more conversation to gain the trust of carriers that we work with.

Most people don't realize that the vast majority of our business is with carriers other than Liberty.

Q The big story of the past 18 months has been COVID-19; what was your experience and how have you managed COVID-19-related claims, including long COVID?

A The keys are getting the right experts on the right plane at the right time. We rely pretty heavily on our medical directors and nurse case managers, and our medical directors are constantly tracking the medical studies and literature, the CDC guidelines and other sources to understand short- and long-term impact and treatments. We always try to follow the evidence-based guidelines wherever possible and fully engage the worker in their recovery.

There's a lot of extra thought that goes in, and we have a dedicated team just for COVID and support them with experts to make sure they've got all the right resources.

And then we coordinate with our customers and the jurisdictional requirements that have been coming out to make sure everyone's making timely and efficient decisions state by state and providing our customers with additional resources.

Q Comp has become so much about evidence-based treatment. If there's little evidence there how do you manage the claims?

A COVID claims are unlike anything we've ever seen and the scale is also unprecedented, but, if you go back, new and very complex claims have emerged and as a TPA we have a pretty solid history of rolling up our sleeves and trying to understand the complexities. Again, we rely very heavily on our medical directors.

Q One of the other big issues with comp over the past few years has been the opioids epidemic. What remains to be done?

A I am proud with the progress that's been made — we've got a 44% decrease in the patients receiving an opioid from 2017 to 2020 and opioid prescriptions overall declined 40% from 2017 to 2020 — but there's a lot that we still have to do.

We've incorporated a new generation of predictive models. We've incorporated increased risk of opioid abuse and addiction into our models and data analytics to help identify high-risk claims, highlighting them for our claims teams so we can get the right experts on the right claims even earlier.

One of the many remaining things we need to do here, though, is address those long-tail claims with opioid dependency. As an industry, we all have gotten better at managing the exposures to opioids going forward, but we still have a pretty big challenge in front of us to help the people who have become dependent on long-term usage.

Q Does that involve weaning programs, etc., and are you having successes?

A Absolutely, yes. It's an uphill battle, but we celebrate the wins where we're able to get someone who was on just massive amounts of prescriptions and we're able to say they're effectively off opioids and looking at getting back to work.

Q How do you see the TPA sector developing over the next few years?

A I see a lot of opportunity and a lot of challenges. We as TPAs are going to be tackling a lot of the same industrywide challenges, like the fight for talent and driving progress on diversity, equity and inclusion. We need to attract and prepare the next generation of insurance and claims experts and the next generation needs to look a lot different than today.

Q How do you do that?

A Just speaking for ourselves, this is maybe one of the top issues that our leaders are tasked with. It starts with current leaders looking inward and educating ourselves and broadening our perspectives and then getting the courage to have uncomfortable conversations and talk about it more broadly and then ultimately building it into the DNA of your organization that you're looking to have diversity of perspectives.

Related to talent, we've got to adapt to a more remote and flexible workforce. The challenge is how do you maintain your culture and that connection to each other in a different work environment where you're not coming to the office every day. So, it really drives up those in-person opportunities and interactions have to have a real purpose.

As an industry, we all have gotten better at managing the exposures to opioids going forward, but we still have a pretty big challenge in front of us to help the people who have become dependent on long-term usage.

COVER STORY

PANDEMIC'S UNEXPECTED SIDE EFFECT

Med mal claims fell last year as court closures stalled litigation, but the pause may soon be over

BY JUDY GREENWALD
jgreenwald@businessinsurance.com

The COVID-19 pandemic is expected to lead to increased medical malpractice claims, particularly those arising from delays in diagnosis or treatment caused by health care providers' distraction as they care for pandemic victims.

For now, though, claims overall are down, in large part because many courts were closed for months, they say.

NEW ENTRANTS IN PROFESSIONAL LIABILITY MARKET HELP BALANCE INSURER EXITS

Some major insurers have left the medical malpractice insurance market, although new players are replacing their capacity to a large extent, experts say.

Med mal insurance experts say new entrants include Bowhead Specialty Underwriters Inc., CapSpecialty Inc., Munich Reinsurance Co., Underwriters Inc. and Vantage Group Holdings Ltd.

They say those that have left recently are CNA Financial Corp., Hallmark Financial Services Inc., QBE Insurance Group Ltd. and Zurich Insurance Group.

Bruce Dmytro, CNA senior vice president, healthcare, said in a statement that the insurer "will take a pause with respect to offering professional liability insurance due to the frequency of high-severity claims experienced by this sector of the industry." He said CNA will continue to offer fronting and alternative risk solutions to hospitals and health care systems.

Paula Sullivan, Chicago-based senior vice president at Marsh LLC., said, "What is most important when looking at the new markets is we have very experienced underwriters, some coming from the existing markets, who understand the business." In addition, they are coming into the market with a clean slate, she said.

Dennis Cook, president of IronHealth, a Liberty Mutual Insurance Co. subsidiary, said, "Overall, it's about a wash," with the new markets that have come in replacing the departing insurers' capacity.

John Livatino, Chicago-based focus group leader for U.S. miscellaneous medical and life sciences at Beazley PLC, said the new entrants will replace capacity "to a certain extent," but "I don't know if they're jumping in that deep. Most of the new entries seem to be competing in smaller to medium risks," rather than larger, complex risks, he said.

Judy Greenwald

There is also frequently a gap between incidents and claims, which means it could be 2022 or 2023 before some of these claims emerge.

The federal Public Readiness and Emergency Preparedness Act provides immunity from liability for the administration of disease countermeasures, and parallel state laws grant at least temporary immunity for COVID-19-related medical claims. But many question how well the state laws will hold up against expected challenges.

The increased use of telehealth during the pandemic and litigation funding activity in the sector could also lead to more lawsuits, experts say.

Meanwhile, the med mal market continues to harden. Several major players have left the market, although others have entered (see related story).

> "People are caught up in other things right now, but I expect the litigation environment to increase again."
>
> Lainie Dorneker,
> Bowhead Specialty Underwriters Inc.

Many cases stalled in the judicial system while the courts were closed, and there is a question as to "what will happen when they turn the spigot back on," said Rob Blasio, Houston-based managing director, GB Specialty, at Gallagher Bassett Services Inc.

Many believe that when things return to some degree of normality, the number of malpractice claims will increase. However, the outlook is unclear due to the delta variant, the possible emergence of other dangerous variants, the large number of people who have not been vaccinated, and the ongoing controversy over mask use.

"There's the potential for a big increase (in med mal claims), but there's so much uncertainty right now with how it will all play out," said Sharon Marks, associate director at Oldwick, New Jersey-based A.M. Best & Co.

"People are caught up in other things right now, but I expect the litigation environment to increase again," said Lainie Dorneker, Miami-based head of health care at Bowhead Specialty Underwriters Inc.

Observers generally say senior living and senior health care facilities will be the biggest target, followed by hospitals and then individual physicians.

Meredith Akerlind, senior vice president and chief claims officer at IronHealth, a Liberty Mutual Insurance Co. subsidiary, said nursing homes are a primary target of COVID-19-related claims because plaintiffs attorneys must establish

See **MEDICAL** next page

MEDICAL

Continued from previous page

their clients contracted the virus at a facility run by the defendant. "That's an easier hurdle to get over in a site like a senior living facility," she said.

Dan Joyal, vice president at EPIC Insurance Brokers & Consultants in Boston, said he expects med mal claims to increase "especially in those areas where COVID is more rampant, and people are less vaccinated and the hospitals fuller."

Mike Stinson, vice president of government relations and public policy at the Rockville, Maryland-based Medical Professional Liability Association said there could be claims for delayed treatment for other medical issues, especially in states where health facilities turned people away because of providers' focus on treating those in the greatest need.

Brian Tucker, senior vice president, medical professional liability, at Aspen Insurance Group in San Francisco, said in an email that while the insurer has seen relatively few COVID-19-related claims, "we expect a greater impact due to the disruption in preventive medical care, routine cancer screenings and ordinary patient-doctor visits resulting from office closures and other measures that have been in place to limit contact or discourage patients from seeking care when they otherwise would."

Failure to diagnose and delays in diagnosis "have always been top claims, traditionally, and I think we'll see more of that going forward," said Vicky Riggs, A.M. Best Co. Inc. senior financial analyst.

Health care facility staffs have "been gutted" by COVID-19, with remaining employees being asked to work graveyard or 24-hour shifts, leaving them exhausted, said Chad Follmer, health care practice leader at Woodruff Sawyer & Co. in San Francisco. "When that happens, mistakes happen."

"There's the potential for a big increase (in med mal claims), but there's so much uncertainty right now with how it will all play out."

Sharon Marks,
A.M. Best Co. Inc.

In senior facilities, the concern is there will be charges of failure to treat pressure ulcers, to adequately provide care, to properly supervise and to prevent slips and falls cases "because you were so wrapped up in COVID, and managing for that, that you weren't doing the day-in, day-out care for residents," said Joe Levy, Philadelphia-based senior vice president, traditional health care practice for Risk Strategies Co. Inc.

Physicians may be benefiting from the halo effect of being viewed as heroic amid the pandemic, but that could prove temporary, observers say.

Kati Bynon, Jersey City, New Jersey-based claims team leader, health care claims, at Beazley PLC, said, "We will see in the coming months if juries are really going to appreciate the sacrifice and commitment" health care providers made during the pandemic.

The increase in telemedicine's use during the height of the pandemic may lead to claims, experts say. The University of Kansas Medical Center, for instance, went from fewer than five telemedicine consultations per week in February 2020 to more than 1,800 per day in April, according to a study.

Mr. Stinson said there will likely be an increase in claims related to telemedicine simply because it has been used so much more in the past year and a half.

While pre-COVID-19, the claims experience for telehealth was better than for in-person practitioners, during the pandemic, telehealth practitioners were doing more in terms of making diagnoses and writing prescriptions Mr. Follmer said, adding, "I fully expect the claims to match that going forward,"

The potential effect of litigation funding, in which money is provided by a third party to finance lawsuits in return for a share of the ultimate settlement or award, is another concern.

"There's no question that litigation funding does create the possibility for more litigation in the future," said Bob White, chief operating officer of The Doctors Co., based in Napa, California.

One of the concerns surrounding litigation funding is the prospect of the firms putting together class-action litigation, said Rob Francis, Birmingham, Alabama-based executive vice president, health care professional liability, for med mal insurer ProAssurance Corp.

Meanwhile, health care providers are well protected by the immunity provided by the PREP Act, said James M. Beck, senior life sciences policy analyst with Reed Smith LLP in Philadelphia. "That's pretty much at the heart of the PREP Act and I don't think any litigation over that's going to go very far," he said.

"The federal PREP Act will be effective to the extent you're talking about the provision of care that is directly related" to the vaccine administration and other countermeasures, Mr. Stinson said. But it "isn't a kind of blanket immunity for the health care provider," he said.

As for the state laws, "some are more effective than others," he said.

In addition to these laws not being tested so far, and each being worded differently, "we'll see whether or not they remain in place and for how long," said IronHealth president Dennis Cook, referring to expiration dates for some of the laws.

Shellé Hendrickson, Hamilton-based head of healthcare, Bermuda, for Axa XL, said in an e-mail, "There are also some gray areas as to whether long-term care organizations will benefit from immunities in place."

"One thing for certain is, a lot of the (plaintiffs) attorneys are very much waiting to see what happens with some of the early lawsuits to see whether the immunity laws," will be upheld, said Tim Boyce, London-based head of professions and healthcare for CFC Underwriting Ltd.

If state immunity laws are successfully challenged "that could spur claims," Mr. Levy said. "We have to see how those play themselves out in the legal system."

MED MAL INSURANCE RATES KEEP RISING AS INSURERS STRUGGLE WITH LOSSES

Medical malpractice rates, which were already increasing pre-pandemic, are still hardening, although the hikes have started to moderate.

"The market has been in a state of correction for the last 24 to 36 months, and that's the result of several years of loss ratios that were really exceeding any sort of metrics acceptable to the underwriting community," said Martha Jacobs, Aon PLC's Pittsburgh-based national health care practice leader.

The med mal insurers "are catching up and trying to get adequate rates," said Chris Zuccarini, Radnor, Pennsylvania-based managing director of Risk Strategies Co. Inc.'s national health care practice, who said he is seeing rate hikes range from 5% to 25%, with hospitals and senior care facilities seeing higher rates than physicians.

Rate hikes are "very much jurisdictional or venue driven," so in tough legal venues, such as Cook County, Illinois, "those rate charges are a lot more substantial," said Paula Sullivan, Chicago-based senior vice president at Marsh LLC.

There is a broad range of increases because of the number of variables involved, including hospital systems' revenue and individual experience. "It's not a one-size-fits-all approach," said Jeff Holthaus, Kansas City, Missouri-based health care team leader for Lockton Cos. LLC.

"I feel that much of the market correction that we've seen in the past 12 months will be impactful going forward" and that rate hikes will moderate, Ms. Sullivan said.

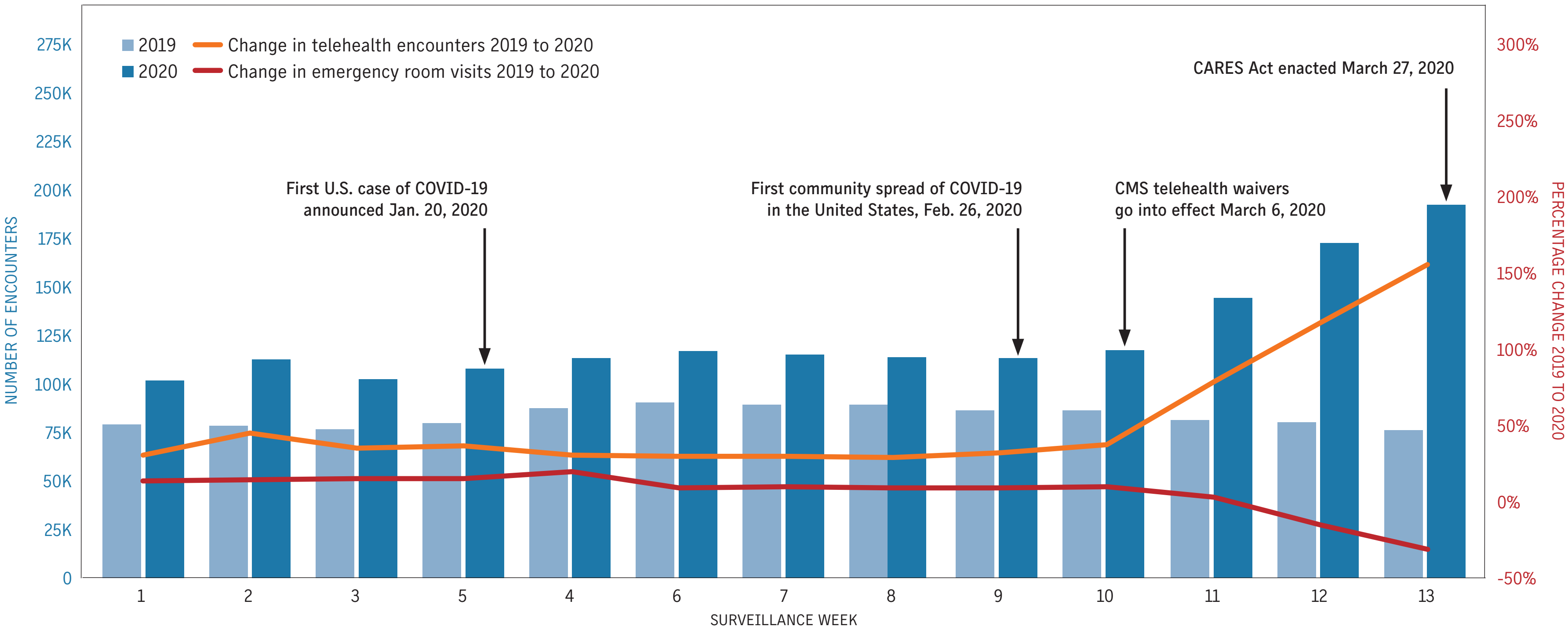
A.M. Best Co. Inc. retains a negative outlook on the sector. While there have been positive rate changes, there are still issues of rising severity, frequency, losses and concerns about social inflation, said Sharon Marks, associate director at the Oldwick, New Jersey-based ratings agency. "None of this is going away," she said.

Judy Greenwald

TELEHEALTH & EMERGENCY ENCOUNTERS — 2019 VS. 2020

The number of telehealth patient encounters reported by four telehealth providers that offer services in all states and percentage change in telehealth encounters and emergency department visits from Jan. 1 to March 30, 2019 (comparison period) and Jan. 1 to March 28, 2020 (early pandemic period).

CARES Act = Coronavirus Aid, Relief, and Economic Security Act; **CMS** = Center for Medicare & Medicaid Services



Source: U.S. Department of Health and Human Services/Centers for Disease Control and Prevention

BUSINESS INSURANCE®

Voices of Innovation

HOW DOES YOUR ORGANIZATION ENCOURAGE INNOVATION IN SERVING THE NEEDS OF RISK PROFESSIONALS?

Earne Bentley, Origami Risk: The Origami culture supports the premise that an idea for innovation can come from anywhere, including our clients. All it takes is a champion, regardless of tenure or title, to share the idea. When the idea takes hold, we're able to respond quickly to pivot resources for design, build and deployment. For example, we launched a COVID-19 Risk & Safety solution last year to help our clients initially track cases and outbreaks. This week, we updated that solution to help companies manage the vaccine and testing mandates.

Michael Combs, CorVel: At CorVel, innovation has been an essential aspect of our culture and our success these last 30 years. We encourage innovation by inspiring our team to challenge the status quo. We celebrate success and strive to fail fast, understanding that to be successful with innovation there's a need to constantly explore new ideas. It is our belief that using technology to augment and expand human capacity is especially important for the next generation of risk professionals.

Todd Jones, QBE North America: Innovation is part of the fabric of our culture. We leverage QBE's market strength and expertise, and augment these with emerging technologies to create new value for our customers, partners, and the communities in which we operate. Both internally and externally, we make innovation a focal point of what we do. For example, we sponsor the Accelicity Resilience Challenge. This unique collaboration encourages entrepreneurs across the United States whose ventures can effectively manage and respond to an evolving environment of physical, economic, and social risk. Internally, we host a Global Challenge to encourage ideas. Most recently, this challenge resulted in our launching a Sustainability Assessment tool, which helps our customers assess their ESG risks and gives them ways to improve their position.

Megan Linkin, Swiss Re: We strive to make the world more resilient, and increasing resiliency in our globalized world requires constant and consistent innovation. Swiss Re has been a leader in the parametric natural catastrophe insurance space since it launched approximately 20 years ago and continues to grow and innovate in the space. We were the first reinsurer to have a team dedicated to the needs of public sector insurance buyers, who often need non-traditional insurance products to complement their traditional insurance buying and cover the large range of potential sources of loss after a natural catastrophe. We were among the first to partner with data providers in the insurance space, like RMS HWind and CoreLogic, to design parametric products that better addressed clients' needs. We continue to lead in the innovation space, utilizing digital technology to improve and design covers that better protect our clients.

WHERE DOES YOUR ORGANIZATION TEND TO LOOK FOR INNOVATIVE IDEAS?

Earne Bentley, Origami Risk: We have ongoing collaboration with our clients, and this continues to drive new and timely functionality that meets their emerging needs. We also have a pulse on the market and technology trends that are driving innovation. For example, there's a lot of talk about applying Artificial Intelligence/Machine Learning to risk management practices, and this is something we're exploring.

Michael Combs, CorVel: With almost 4,000 team members and hundreds of partners, we don't need to look far to find innovative ideas. Our responsibility is to foster a culture of innovation so that the ideas of our team and partners can be brought to fruition. Owning our technology produces a closeness between the innovators and our development teams, which brings additional value to the created offering.

Todd Jones, QBE North America: Innovation can come from anywhere. We start by fostering a customer-focused culture of continuous improvement — whereby innovation is encouraged, and we give our people the tools to experiment and fail fast. This approach ensures more success over the long run. And, when employees are constantly asking themselves, "How can we better serve our customers?" innovation flows naturally.

Megan Linkin, Swiss Re: Our HAIL product is an excellent example as to how we develop innovative ideas and respond to client needs. In recent years, the traditional insurance market for hail coverage in a number of different industry segments (e.g. auto dealer open lot, renewable energy, public entity, and many others) has undergone significant displacement; certain capacity providers have exited the space, while others have applied terms and conditions in the form of sublimits and deductibles for hail that leave clients without adequate coverage for catastrophic events. Instead of allowing these clients to go bare on hail, we worked with both a broker and a data provider to design and launch a parametric hail product that would provide our clients the necessary protection against severe hailstorms. HAIL settles based on the maximum hailstone size that occurs at the insured's location(s) and allows for a prompt and transparent claims adjudication process and funds transferred to the clients quickly to allow them to address the impact of the hailstorm.

HAS COVID-19 CHANGED YOUR ORGANIZATION'S APPROACH TO INNOVATION AND CHANGE? IF SO, HOW?

Earne Bentley, Origami Risk: Origami is positioned well to respond to rapidly evolving changes. Our no-code, true SaaS platform allows us to pivot and respond quickly to emerging risks and deploy solutions. Our approach is to continue to be agile and aim to support our clients' innovation and change within their business through our growing list of capabilities across the markets we serve on our platform. Centralizing data and business workflows within Origami allow our clients to make connections across verticals within the organization.

Michael Combs, CorVel: During COVID-19, health care for injured workers was disrupted. However, because CorVel was already firmly established in the use of telehealth for connecting and treating injured workers, our approach did not change significantly. In fact, we were able to accelerate initiatives and quickly expand our telehealth and virtual care services to provide end-to-end treatment for injured workers, both those affected by COVID-19 and those with other types of illnesses and injuries.

Todd Jones, QBE North America: In this remarkably fluid environment where digitalization, the operational landscape, and customer preferences are rapidly shifting, it is critically important for us to look forward to anticipate these changes and have a clear set of priorities to help us achieve our goals. COVID-19 has served as a catalyst for speeding up some of the transformational elements of what we want to achieve, particularly as they relate to our customers. We'll continue to focus on further modernizing QBE North America by infusing relevant products with advanced technology to solve unique risks with ease. For example, in response to response to the need for social distancing, we launched a new tool that enables us to leverage remote estimation/inspection technology as well as another AI-based system to help identify ergonomic risks for employees. Even with more people headed back to the office, many of our customers prefer the convenience of these tools, and we expect that we will continue to use them.

Megan Linkin, Swiss Re: The COVID-19 pandemic laid bare how interconnected the economy is, and that financial disruption to corporates and governments can occur not only locally, but remotely as well. A corporate based in California might not only have physical and financial exposure to California earthquake, but financial exposure to Asia-Pacific (Taiwan, Japan) earthquake as well if they have a critical supplier in that region. This non-damage business interruption exposure requires innovative and novel insurance products, such as parametric products, that don't require that the client have a physical loss, but only financial losses in the aftermath of a natural catastrophe.

WHAT PERCENTAGE OF INNOVATION IN YOUR ORGANIZATION IS INSPIRATION VS. EXECUTION?

Earne Bentley, Origami Risk: The reality is that innovation is all about executing on inspiration — the initial creative idea is the spark, but it will never go anywhere without organizational buy-in and alignment to move the idea forward to a solution. At Origami, I would say it's 10% inspiration and 90% execution.

Michael Combs, CorVel: Inspiration vs. execution is a matter of perspective. Those working in the business at an operational level are more inclined to introduce innovative ideas which focus on execution, whereas our thought leaders have a greater opportunity to view the business at a holistic inspiration level. In the most practical sense, inspiration is the first step toward innovation, and execution is required to bring it to fruition; they go hand in hand.

Todd Jones, QBE North America: Maybe 50/50. While we often have many ideas, execution takes significant investment and time. We work to narrow the ideas down and prioritize them with our customers in mind.

Megan Linkin, Swiss Re: Swiss Re's company mission is to make the world more resilient, and we try to live that every day. At the forefront of what we do is try to close the protection gap and help corporates, governments and citizens bounce back in the aftermath of a natural disaster. Inspiration and execution are intertwined — we must constantly ponder how to best respond to our clients' ever-changing and ever-complex needs, and then bring these non-standard solutions to the market in digestible ways for our clients. As mentioned earlier, we took just this approach with our HAIL product — we identified the market displacement problem, designed a parametric solution to address the problem and rolled it out into the marketplace for the 2020 hail season.

WHAT FACTORS DOES YOUR ORGANIZATIONS CONSIDER IN DECIDING WHEN AN INNOVATION IS READY FOR THE MARKETPLACE?

Earne Bentley, Origami Risk: From idea to rollout to the market, we have a series of checkpoints we send market innovations through, leveraging the experience of colleagues across departments. From service, to sales, to marketing, we have a team of individuals with vast client and market experience that help us vet innovation. During the design phase of an innovation, we talk to clients to ensure we're solving a business problem and discovering any additional needs. Even when an innovation has hit the marketplace, we're still seeking feedback. Does the innovation meet our clients' needs? We put solutions in our clients' hands to get their feedback, iterate and improve.

Michael Combs, CorVel: Some of the most impactful innovative ideas — telehealth, for example — was not largely embraced when we introduced it to the workers compensation market more than five years ago. However, we had a steadfast belief that it would, eventually, be a preferred approach. Dogmatic belief, more often than not, is a key component of success with innovative ideas.

Todd Jones, QBE North America: As our environment continues to evolve, we need to move as fast, if not faster. That means innovating for ease of doing business, operational resilience, and value differentiation for our customers. And we always do this with our purpose in mind — to help people achieve their ambitions. If an innovation can help move that purpose forward, we know it's ready. This could mean benefits to our employees, our partners, our communities or our customers.

Megan Linkin, Swiss Re: I think one of three scenarios often occur that lead to the launch of a new product in the market. First, market displacement — clients are no longer able to obtain the necessary or desired protection from traditional or previous sources of capacity, and are seeking non-standard solutions to do so. Second, client/broker demand — clients have performed an assessment of their physical and financial risks and believe they are retaining an unsustainable percentage of their natural catastrophe risk. Third, a major natural catastrophe — significant hurricanes, like Irma, Maria, Harvey, Laura and Ida, or earthquakes, like the 1994 Northridge earthquake or 2011 Tohoku earthquake, can reveal and lay bare exactly how many different sources losses can come from, beyond just physical damage and extending into balance sheet disruption, necessitating new and non-traditional insurance solutions, like parametric insurance, to address these losses.

Michael Combs
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President, Risk Solutions
Origami Risk

Todd Jones
Chief Executive Officer
QBE North America

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Diversity in the workplace:

The pandemic's impact on the insurance workforce

BY ANDY TOH
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After a tumultuous 2020, the pent-up frustrations from the pandemic lockdowns and the Black Lives Matter protests may have calmed down in 2021. In fact, over 75% of the insurance professionals who responded to *Business Insurance*'s fifth annual diversity survey said they feel optimistic about their career prospects. As we continue to monitor the surge of the Delta variant in the U.S. and worldwide, we want to look at how the industry's workforce is snapping back from the challenges of 2020.

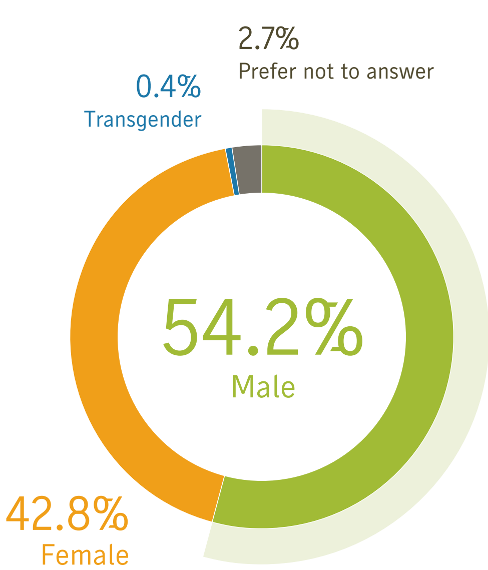
Business Insurance commissioned Signet Research Inc. to conduct the survey between July 13 and Aug. 17. It generated 765 responses from U.S.-based professionals who indicated they work or worked for a company that sells or distributes insurance, or who are or were involved as a buyer of insurance for their organization. The base used is the total answering each question.

At the time of the survey, the COVID-19 infection rate was dropping, and many of the mask requirements and social distancing rules were being relaxed. Thus, the focus of this year's survey was on how companies were coming out of the pandemic and its effects on their workforce.

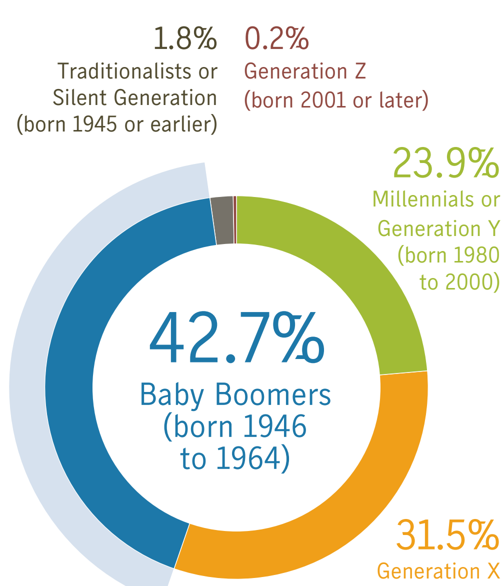
We kept questions regarding racism in the industry in the survey. The toning down of the discourse on racial inequality and social injustice compared with 2020 and the end of mandated lockdowns likely contributed to a drop in the overall response rate to this year's survey from last year's, which generated an unprecedented 2,200 responses. This drop-off significantly impacted our ability to compare responses among the different minority groups.

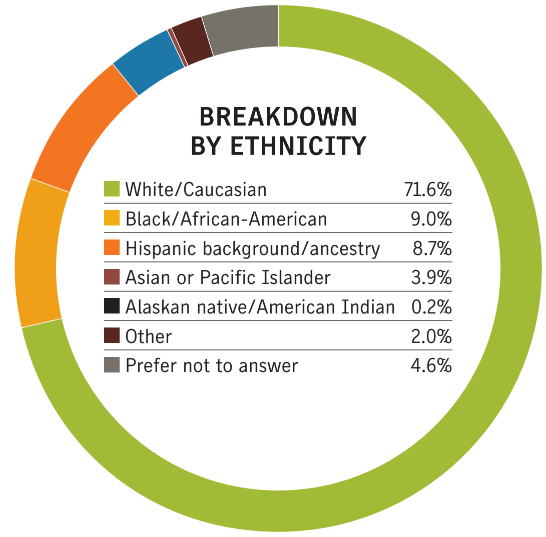
Following is the profile breakdown of this year's survey respondents (some percentages may not total 100% due to rounding):

BREAKDOWN BY GENDER

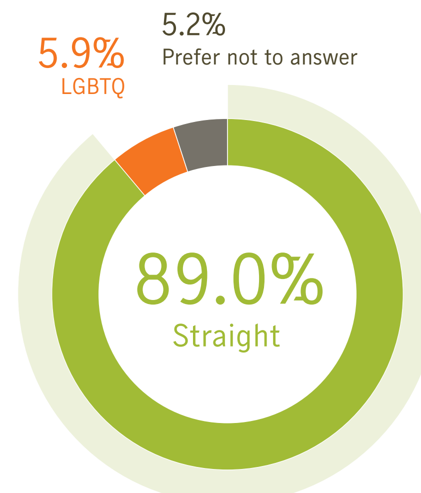


BREAKDOWN BY GENERATION

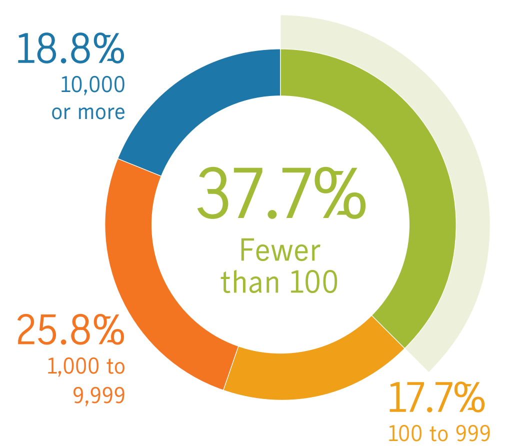




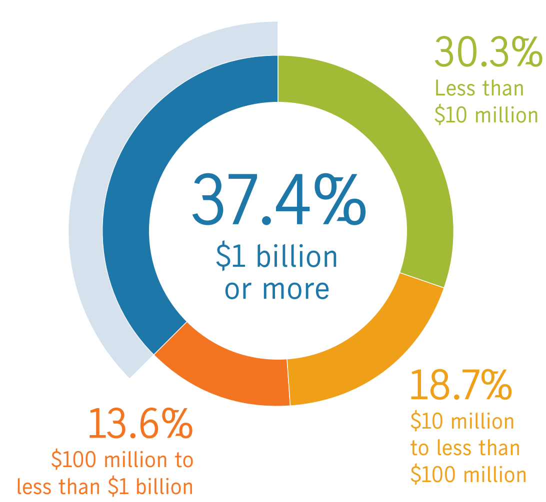
BREAKDOWN BY SEXUAL ORIENTATION



COMPANY SIZE BY FULL-TIME EMPLOYEES



COMPANY SIZE BY ANNUAL REVENUE



THE PANDEMIC EFFECT

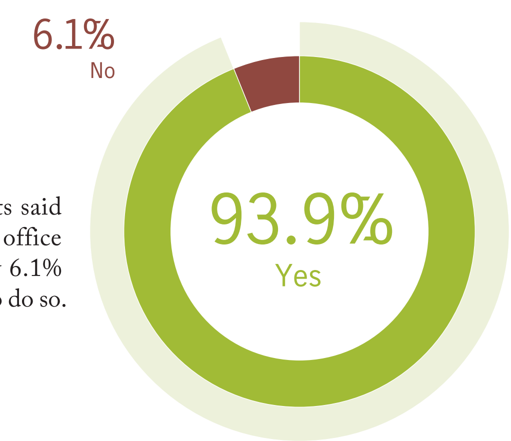
The pandemic has profoundly changed the ways companies operate and how employees work. This is not all bad news for insurance professionals, as three-quarters of respondents overall said they feel optimistic about their career. More men (76.8%) than women (64.6%) expressed this sentiment. Women were more likely to say they feel either pessimistic or unsure about their career prospects as a result of the pandemic.

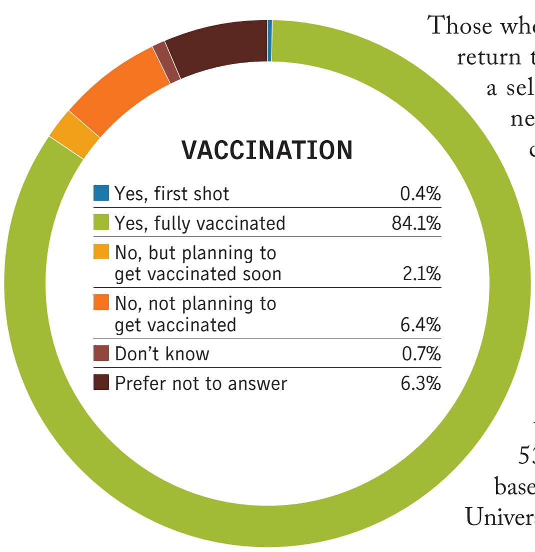
CAREER PROSPECTS

	ALL	Men	Women
Optimistic	75.9%	76.8%	64.6%
Pessimistic	6.6%	6.0%	9.8%
Don't know	15.5%	13.1%	22.8%
Prefer not to answer	2.0%	4.1%	2.8%

ABLE TO RETURN TO IN-PERSON WORKFORCE

Just under 94% of respondents said they were able to return to the office in-person, compared with only 6.1% who said they wouldn't be able to do so.

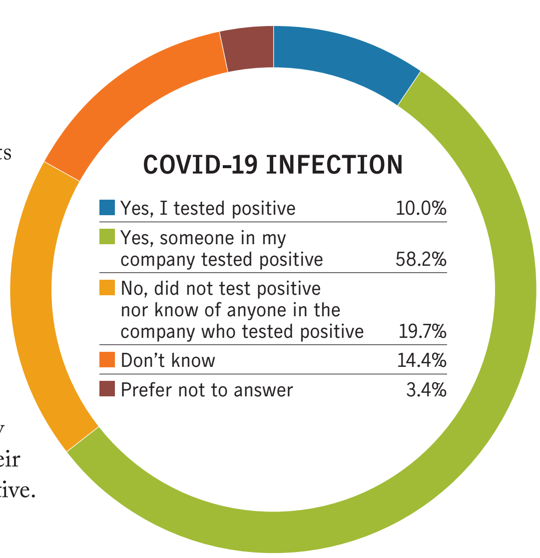




Those who said they will not be able to return to in-person work were given a selection of reasons, including: nervous and afraid over health concerns; job no longer available; cannot find child care/elder care; unemployment benefits pay more. No respondent chose unemployment benefits pay more.

Eighty-four percent of survey respondents said they have been fully vaccinated, which is high compared with 53.0% of the U.S. population based on data from Johns Hopkins University School of Medicine.

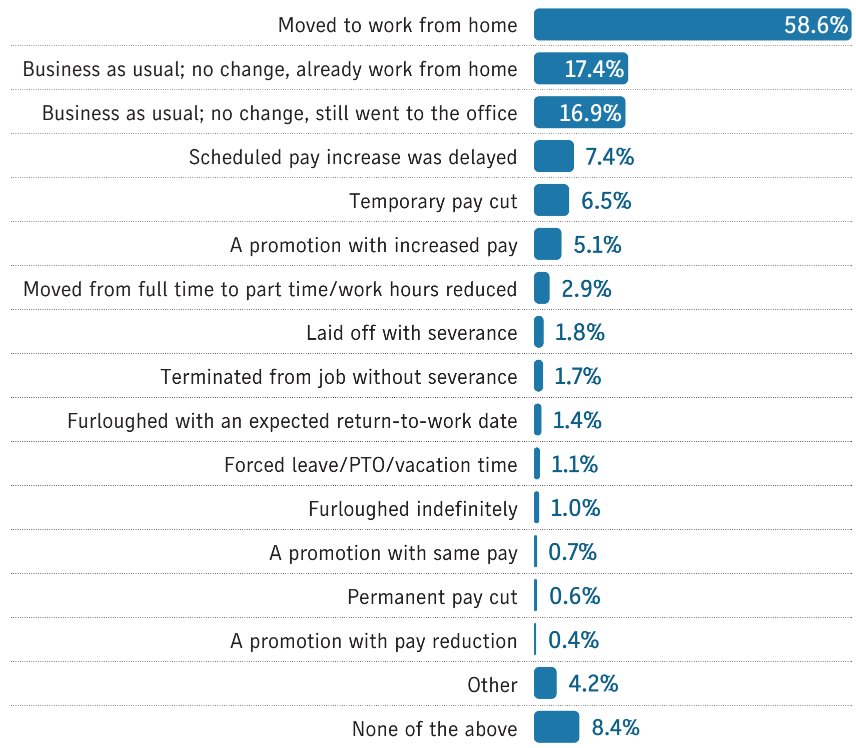
Only 10.0% of respondents said they have tested positive for COVID-19 more than a year and a half into the pandemic, but 58.2% said that someone in their company had tested positive. About a fifth of respondents have not tested positive nor have they known of any colleague at their company who has tested positive.



Companies have had to adapt and learn to operate with the COVID-19 virus. More than half of the respondents said they have moved to work-from-home, while 16.9% said they still have to go into the office; 17.4% were already working from home before the pandemic.

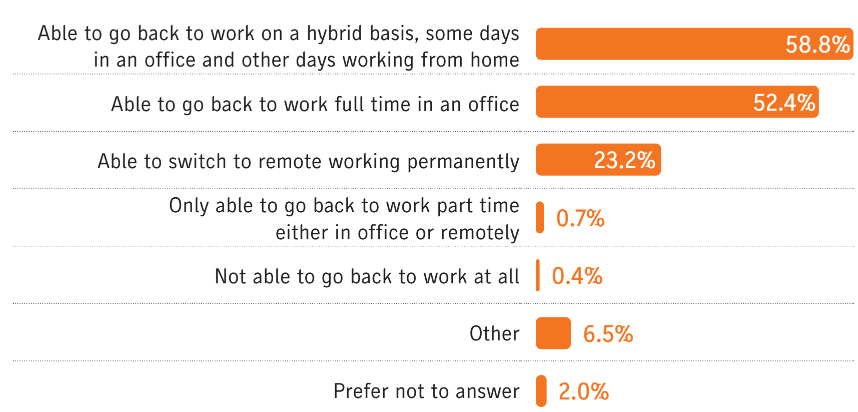
About 7% of respondents said they saw some form of pay cut, while 5.9% received a promotion, albeit some without a pay increase.

ADAPTING



At the time of survey, the country was looking to reopen. More than half of respondents said their company was able to have them go back to work in the office either on a hybrid basis or full time; 23.2% said they were able to switch to remote working permanently.

BACK TO OFFICE



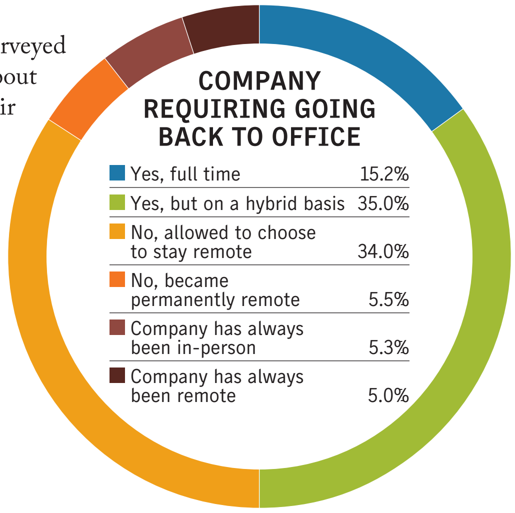
Not surprisingly, larger companies have more flexibility than smaller companies when it comes to having a hybrid work arrangement.

BACK TO OFFICE

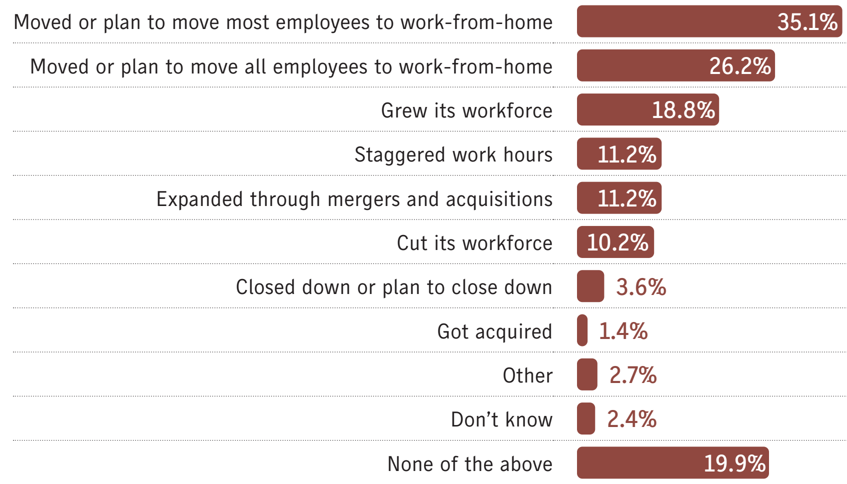
	Fewer than 100 employees	100 to 999 employees	1,000 to 9,999 employees	10,000 or more employees
Able to go back to work on a hybrid basis, some days in an office and other days working from home	40.1%	67.3%	71.4%	77.1%
Able to go back to work full time in an office	56.6%	52.6%	50.7%	39.9%
Able to switch to remote working permanently	24.3%	21.8%	21.7%	22.2%

RESEARCH

A large percentage of those surveyed are fortunate to have options. About a third of respondents said their companies do not require them to go back to work in the office and allow them to keep working remotely if they so choose. Thirty-five percent of respondents said their companies require them to go back to the office but on a hybrid basis.



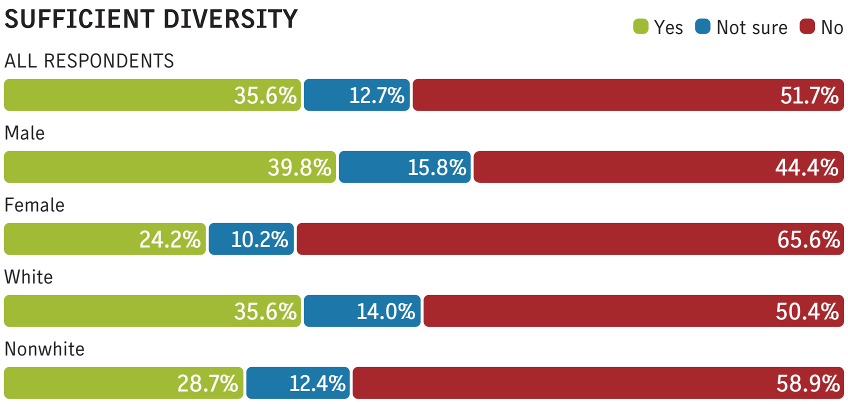
The pandemic provided opportunities for some companies to grow; 18.8% of respondents said their company grew its workforce, while 11.2% said their companies expanded through mergers and acquisitions.



DIVERSITY AND RACISM

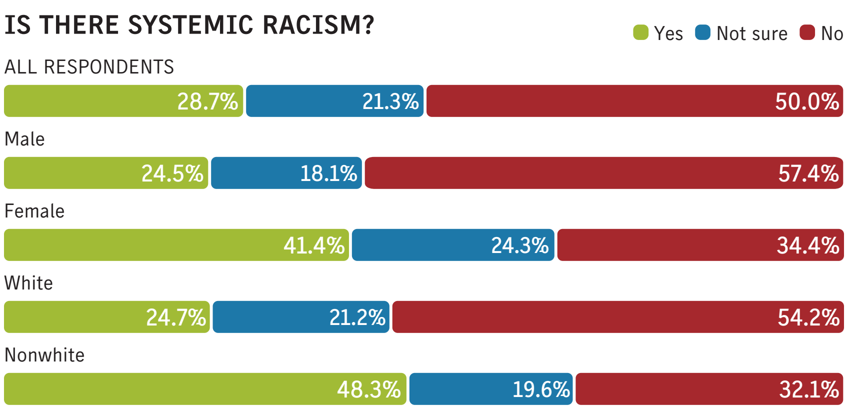
As companies try to navigate the physical working environment due to COVID-19, they also face the racial dynamics that have resulted from the Black Lives Matter protests of 2020. Although the heated discourse has calmed down significantly, it will take time and real changes to bridge the gap between white and nonwhite and between male and female in the insurance industry. More than half of those surveyed said there is insufficient diversity in the industry, with 65.6% of female respondents and 58.9% of nonwhite respondents saying so, compared with 44.4% of male respondents and 50.4% of white respondents.

SUFFICIENT DIVERSITY



Furthermore, female and nonwhite respondents are almost twice as likely as male and white respondents to feel that there is systemic racism in the insurance industry.

IS THERE SYSTEMIC RACISM?



Almost 30% of nonwhite respondents said they have personally experienced racism in their organization compared with just 14.6% of white respondents. Female respondents (25.5%) are also more likely to say they have personally experienced racism than their male colleagues (14.0%). Those working in larger companies are more likely to have personally experienced racism in their organization.

PERSONALLY EXPERIENCED RACISM

	ALL	Male	Female	White	Nonwhite
Yes	16.2%	14.0%	25.5%	14.6%	29.7%
No	69.6%	75.0%	56.2%	73.1%	51.8%
Not sure	11.6%	9.2%	15.4%	10.5%	14.9%
Prefer not to answer	2.5%	1.8%	3.0%	1.7%	3.6%

	Fewer than 100 employees	100 to 999 employees	1,000 to 9,999 employees	10,000 or more employees
Yes	6.7%	18.5%	25.5%	18.6%

When asked whether they have experienced discrimination in the insurance industry, female respondents were more than twice as likely (59.3%) as male respondents (27.9%) to say they have. Almost half of the nonwhite respondents (48.8%) said they have experienced discrimination, compared with 36.8% of their white colleagues.

DISCRIMINATION

	ALL	Male	Female	White	Nonwhite
Yes	39.4%	27.9%	59.3%	36.8%	48.8%
No	47.5%	60.4%	29.1%	53.6%	34.4%
Not sure	10.9%	10.5%	8.8%	8.3%	13.9%
Prefer not to answer	2.2%	1.1%	2.8%	1.4%	2.9%

Ultimately, it is the CEO who sets the tone for a company's diversity and inclusion efforts; 56.2% of total respondents said the CEO should be accountable for a company's diversity, and 15.1% said it should be the chief human resources officer.

The majority of respondents say that having women and minorities in leadership positions can help with a company's diversity and inclusion practices.

HAVING WOMEN IN LEADERSHIP POSITIONS

	ALL	Male	Female
Helps with a company's diversity and inclusion practices	66.5%	63.2%	81.8%
Undermines a company's diversity and inclusion practices	1.9%	3.3%	0.7%

HAVING MINORITIES IN LEADERSHIP POSITIONS

	ALL	White	Nonwhite
Helps with a company's diversity and inclusion practices	67.5%	69.4%	76.5%
Undermines a company's diversity and inclusion practices	1.9%	2.2%	2.6%

Unfortunately, there is dwindling optimism about the prospect of diversity-related changes. Optimism dropped from last year across almost all tracked demographics except for respondents working at the largest companies, those with 10,000 or more full-time employees.

DWINDLING OPTIMISM

	2020	2021
Optimistic, real change will follow	49.9%	44.1%
Pessimistic, no change in status quo	19.9%	25.8%
Don't know	30.2%	29.5%

OPTIMISTIC, REAL CHANGE WILL FOLLOW

	2020	2021
White	52.9%	47.0%
Nonwhite	43.2%	38.6%
Millennials	53.7%	48.1%
Gen-X	48.4%	40.0%
Baby boomers	48.9%	44.2%
Fewer than 100	42.0%	39.0%
100 to 999 employees	49.1%	38.2%
1,000 to 9,999 employees	54.1%	50.0%
10,000 or more employees	44.4%	53.7%

Insurance professionals at larger companies are also more likely to feel that diversity and inclusion is considered a priority in their organization. In fact, 80% of survey respondents from companies with 10,000 or more employees said their company made changes to improve its diversity and inclusion practices in the past year.

DIVERSITY PRIORITY

	Fewer than 100 employees	100 to 999 employees	1,000 to 9,999 employees	10,000 or more employees
Yes	45.5%	55.0%	70.6%	76.6%

EFFORT TO IMPROVE

	Fewer than 100 employees	100 to 999 employees	1,000 to 9,999 employees	10,000 or more employees
Yes	25.3%	47.7%	71.4%	80.0%

Respondents were asked to rank what they thought should be the top three priorities for diversity and inclusion in the industry.

TOP PRIORITIES SHOULD BE

Retention and development of diverse talents	48.0%
Demonstrating fairness in performance and compensation decisions	35.8%
Ensuring diversity at all levels of management	31.5%
Developing a robust pipeline of high-potential diverse talents	29.9%
Creating a more inclusive culture	25.5%
Ensuring diversity in the workplace in general	20.8%
Managing cross-generational issues	19.1%
More diverse recruitment and selection	17.9%
Developing accountability and measurement of diversity	13.1%
Leveraging diversity for business goals	10.3%
Better reflecting our customers	7.9%
None of the above	8.1%

Here are ways companies can help support their employees through their diversity and inclusion efforts:

WAYS TO IMPROVE

Provide me with professional development opportunities (e.g. mentorship, training, workshops, webinars, speakers)	50.2%
Provide me with networking opportunities (e.g. engage with professionals; build lasting relationships)	46.1%
Provide me with empowering opportunities (e.g. confidence-building; emotional support and hope; safe spaces for conversation)	41.4%
Provide me with something tangible (e.g. enhanced employee benefits; compensation-pay equity)	33.3%
Other	5.3%
None of the above	26.5%

SPECIAL REPORT

Losses strain market despite rate hikes

INSIDE

CAT BONDS SURGE

Issuance of catastrophe bonds are on a pace to top 2020's record. **PAGE 30**

IDA APPRAISAL

Losses of up to $30 billion due to Hurricane Ida are not expected to move the market. **PAGE 30**

REINSURANCE STATISTICS

Facts and stats on the largest reinsurers and brokers **PAGE 31**

BY GAVIN SOUTER

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Reinsurers recorded significant rate increases over the past two years, but large U.S. and European catastrophe losses this year and the prospect of higher liability losses as courts reopen after the COVID-19 pandemic may continue to drive rates higher.

New reinsurers entering the sector are not undercutting the market, but profit margins remain under pressure as losses mount, experts say.

While reinsurers are well-capitalized, some remain cautious as they deploy capacity, they say.

"The good news is that reinsurers generally performed pretty well in the first half of 2021, and capital has continued to build from what was already a pretty strong position; the bad news … is that nat cat loss activity has continued at a high level and that events early in the second half of the year are already threatening to derail full-year earnings," said Mike Van Slooten, head of business intelligence for Aon PLC's reinsurance solutions division in London.

Winter storm Uri, which hit Texas and other areas of the United States in February, caused more than $15 billion in losses and Hurricane Ida, which struck Louisiana in August and later led to flooding in the Northeastern U.S., caused more than $30 billion in losses, according to recent estimates.

The 22 reinsurers that Aon tracks had a 93.9% combined ratio in the first half of 2021, with natural catastrophe claims accounting for 5.1% of the total, the bulk of which related to the winter storm, Mr. Van Slooten said. He was speaking at a virtual Aon briefing that was held in lieu of Aon's usual presentation at the Rendez-Vous de Septembre reinsurance meeting in Monte Carlo, Monaco, which was canceled for the second year in a row due to the pandemic.

Global reinsurance capital increased by $10 billion in the first half of the year, to $660 billion at the end of June, Mr. Van Slooten said.

Property

The increased losses have led to capacity issues for some specialty property insurers in Florida and elsewhere along the Gulf Coast that are having problems securing reinsurance protection for layers of their programs with frequent claims, said Dan Miller, a partner at Minneapolis-based TigerRisk Partners LLC.

"They are starting to have real difficulties with the working layers of their programs, which have been hit multiple times over the last several years," he said.

In addition, Uri was an unanticipated loss for reinsurers, he said. "It's a secondary peril — it's not hurricane or earthquake — and it's not budgeted."

Other pressures on the market include the European flooding in July, which was a significant loss for reinsurers that write international business, and some alternative capital in the insurance-linked securities market may be "trapped" while catastrophe losses are tallied, Mr. Miller said.

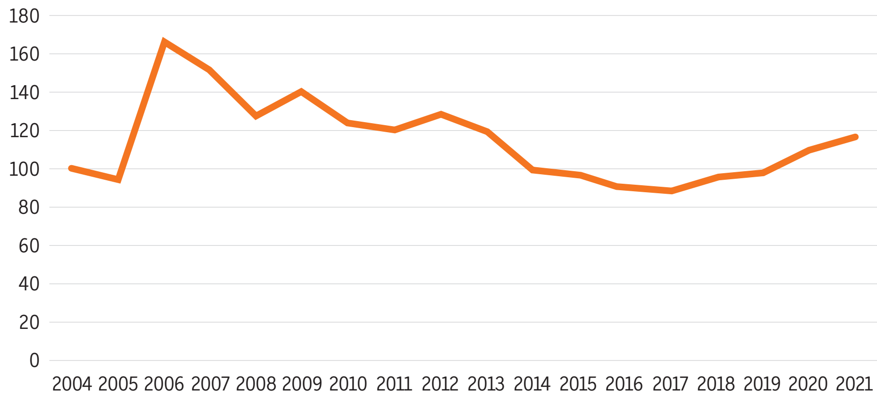
Insurance and reinsurance rates have increased in nearly all lines this year, said Keith Wolfe, president, U.S. P&C at Swiss Reinsurance Ltd. in New York.

However, the increased cost of labor and materials could push up loss costs for property reinsurers by 10%, which could lead to more pressure to increase rates, he said.

Reinsurers are focused on capturing the increase in the cost of materials in their rates, Mr. Miller said.

U.S. PROPERTY RATE-ON-LINE INDEX

To date, the U.S. ROL Index is up approximately 6%.



Source: Guy Carpenter & Company LLC

They are also closely looking at their exposures but may be more willing to deploy their available capacity, said Lara Mowery, Minneapolis-based global head of distribution for Guy Carpenter & Co. LLC.

According to Guy Carpenter research, the mid-year 2021 average rate on line for property reinsurance is 6% above the 2020 rate, and 2020 was 12% higher than 2019 (see chart).

Uncertainty around general financial market conditions in 2020 and the potential size of COVID-19 losses made reinsurers cautious, Ms. Mowery said.

But reported industry COVID-19 losses are a little under $45 billion — significantly lower than some original predictions of potentially a $100 billion loss, she said.

"You have a much greater level of engagement from reinsurers in terms of wanting to grow," Ms. Mowery said.

New entrants are also seeking to grow. Over the past year, several new reinsurers have launched.

Vantage Group Holdings Ltd., a Bermuda-based insurer and reinsurer that launched last year, is concentrating its reinsurance business on property catastrophe reinsurance and specialty sectors such as marine, energy, aviation and satellite coverage, said Christopher McKeown, CEO for reinsurance ILS and innovation.

With uncertainty still surrounding the COVID-19 pandemic, old accident years still developing and continued significant catastrophes, opportunities remain for new reinsurers, he said.

"As a relative newcomer, we feel well positioned to look at the opportunities that are in the marketplace still today," Mr. McKeown said.

On the property cat side, Vantage is interested in California wildfire risks, and is working with analytics experts to better understand the evolving risk, Mr. McKeown said.

"The market will decide what is the cost of goods for our business, but I do see a compelling reason to continue pressure on rates in some of the specialty lines. The losses in marine and aviation are continuing," he said.

"We have not seen any evidence, through the mid-year renewals, of any behavior on the part of new entrants that was pushing pricing down," said Ms. Mowery of Guy Carpenter.

Casualty

On the casualty side, large increases in primary rates are making the market more attractive for reinsurers, Ms. Mowery said.

Pricing is up but there are still concerns for reinsurance underwriters, said Wilton, Connecticut-based Christopher Buse, chief underwriting officer, reinsurance, North America, at Axa XL, a unit of Axa SA.

Social inflation, the term used in the insurance sector for increased court judgments and settlements, paused during the pandemic due to the closure of courts, he said.

"I don't see any reason why it won't come back when the courts reopen," Mr. Buse said. In addition, interest rates remain very low by historical standards, he said.

While Axa XL has significant capacity, the company is wary of writing business at a low margin, Mr. Buse said.

With courts reopening, the trend toward increased judgments and settlements will likely continue, said Mr. Wolfe of Swiss Re.

"The good news is that it's an identified issue that most of the industry has figured out, so reserves in aggregate are probably accurate at this point. However, you are just going to see a quicker shift from case reserves to paid claims as we go forward in the next 18 months," he said.

Casualty reinsurers are also under pressure to increase ceding commissions they pay to ceding insurers purchasing proportional reinsurance.

Ceding commissions are calculated as a percentage of premium and compensate the ceding insurer for business acquisition and operating costs.

> "I don't see any reason why [social inflation] won't come back when the courts reopen."
>
> Christopher Buse, Axa XL

Ceding commissions for U.S. casualty reinsurance are going up about 2 percentage points, often into the 30% to 32% range or higher, even though primary insurers are increasing rates for their own customers, Mr. Buse said.

In addition, ceding companies have the capacity to retain more risks, he said.

"They are saying, 'If I don't get pretty favorable economics, I'm going to keep it myself, and rates are up and I'm going to do fine,'" Mr. Buse said. "There's slightly less demand and a lot more supply."

Increased ceding commissions are likely not sustainable, Mr. Wolfe said.

"There are justifications for making it a little bit richer for the primary company when there are higher margins available for everybody, so that dynamic is not unusual. But it's been premature to see those adjustments being made when there's been such a rough run," particularly in general liability and professional liability, he said.

Cyberattacks increase interest in reinsurance coverage

The rise in ransomware attacks over the past 18 months has increased demand for cyber liability reinsurance from primary underwriters, but reinsurers are wary of the higher exposure.

Cyber liability is the most challenged sector of the market in 2021, said Lara Mowery, Minneapolis-based global head of distribution for Guy Carpenter & Co. LLC.

"Reinsurers will achieve some level of benefit from all the work that the insurers have been doing around pricing and refinement of the way they address the product themselves," she said.

In the second quarter of 2021, cyber liability pricing increased more than 50% compared with the same period last year, according to Marsh LLC's most recent pricing survey, and increases have continued in the third quarter, Ms. Mowery said.

While cyber rates have increased significantly, ransomware claims have been rising, too, said Wilton, Connecticut-based Christopher Buse, chief underwriting officer, reinsurance, North America, at Axa XL, a unit of Axa SA.

The catastrophic risk of cyber liability is huge and while some reinsurance treaties have caps for cyber losses, coverage wordings have not changed, he said.

Reinsurers have long participated in cyber liability coverage for large commercial risks, but cyber coverage for small commercial policyholders has often not been transferred to the reinsurance market, said Keith Wolfe, president, U.S. P&C, at Swiss Reinsurance Ltd. in New York.

As ransomware attacks have risen, however, there is more demand for reinsurance coverage for small commercial cyber risks, he said.

"We are happy to grow with the market, but it's not the case that we want to be overweight in that space," Mr. Wolfe said.

Gavin Souter

SPECIAL REPORT

Catastrophe bond issuance on record pace

BY MATTHEW LERNER
mlerner@businessinsurance.com

Catastrophe bond issuance soared to $8.5 billion in the first half of 2021 and appears poised to set a record for the year as investors continue to deploy capital, new and repeat sponsors participate in the market, and rates for traditional reinsurance coverage rise.

The market shows no signs of losing momentum, even in the face of Hurricane Ida's multibillion-dollar losses (see related story).

Based on the record first half and the continued flows of capital into the sector, last year's record issuance of $11.02 billion may be beaten in 2021, said Brad Adderley, a Hamilton, Bermuda-based corporate partner at law firm Appleby.

Financial managers of insurance-linked securities have raised more capital to deploy for catastrophe bond strategies over the past 18 months, said Paul Schultz, Chicago-based CEO of Aon Securities, a unit of Aon PLC.

Judy Klugman, New York-based co-head of ILS at Swiss Re Capital Markets, the broker-dealer subsidiary of Swiss Re Ltd., said about $2 billion of new capital entered the ILS market in the first half of this year, which on top of maturities returning capital to investors, leaves the sector "flush with capital" and a draw for both new and repeat sponsors.

"More capital has entered the ILS space since Q2 2020 so it has allowed sponsors to take advantage of additional ILS protection without cannibalizing existing capacity sources," said Cory Anger, managing director for GC Securities in New York.


Reuters

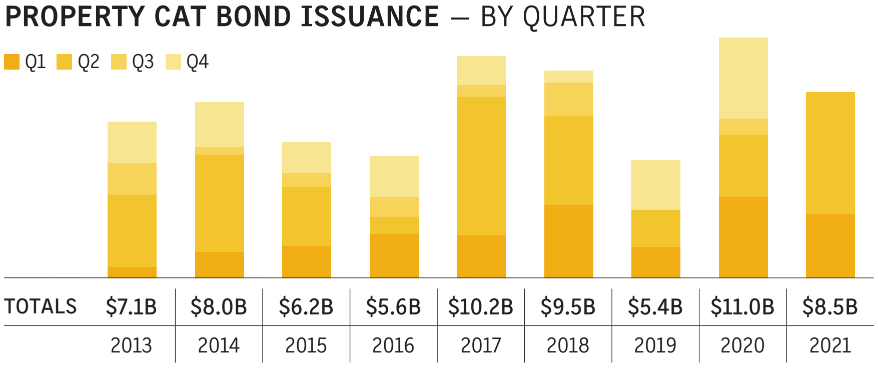
Wildfires such as California's Caldor fire, pictured in August, have added to catastrophe losses. Cat bonds are proving an attractive alternative to traditional reinsurance.

The average transaction size in the first half was $282.3 million over 30 different cat bond issuances, compared with $241.8 million over 27 transactions in the first half of 2020.

"We believe that momentum is likely to provide nice tailwinds into the second half of the year and really into 2022," Mr. Schultz said.

"We see a defined pipeline of diverse sponsors, including insurers, public sector, reinsurers and corporates, planning to access ILS capital for risk transfer capacity in Q4 as well as during first half of 2022," Ms. Anger said.

PROPERTY CAT BOND ISSUANCE — BY QUARTER



Source: Aon PLC

Six new sponsors participated in the first half, including Vermont Mutual Insurance Group, which used its Baldwin Re 2021-1 A to secure $150 million of cover for U.S. wind, earthquake, severe thunderstorm and wildfire on an indemnity trigger.

Established market participant San Antonio-based United Services Automobile Association issued four tranches of its Residential Re 2021-1, each securing $100 million in coverage for tropical cyclone; earthquake, including fire following; severe thunderstorm; winter storm; wildfire; volcanic eruption; meteorite impact; flood losses arising from automobile policies and renters policies; and other perils, on an indemnity trigger.

USAA is one of the top five sponsors in the history of the ILS market, according to Swiss Re, and has sponsored more than $8.5 billion of issuance since 1997.

The increased use of catastrophe bonds drives further usage as industry parties become more familiar with the coverage, making it a more established alternative to traditional reinsurance.

"The multiyear education regarding ILS continues to pay off for new sponsors. In each harder underwriting cycle, we see more sponsors interested in learning how to utilize ILS and ultimately implementing ILS protection," Ms. Anger said.

"If you were a broker, and you were advising on any form of meaningful catastrophe tower, if you weren't talking about Cat Bonds to a corporate, to an insurance company or reinsurance company, you wouldn't be doing your job," said Matt Fitzgerald, managing partner, London and U.S. property, casualty and specialty, for Gallagher Re, the reinsurance unit of Arthur J. Gallagher & Co.

In addition, reinsurance buyers sometimes are seeing cost savings by using nontraditional coverage, sources say.

Increased pricing for traditional coverage is "certainly a primary driver" of this year's record first-half issuance, Mr. Schulz said.

Catastrophe bonds have been competitive, said Philipp Kusche, New York-based global head of ILS and capital solutions for TigerRisk Partners Inc.

"They are in fact two separate markets, and sometimes one or the other will be more or less expensive," Ms. Klugman said.

Catastrophe bonds "bring a better cost of capital to you at a certain point on the curve than traditional markets can offer," Mr. Fitzgerald said.

While cedents and sponsors are important to the market, investors drive growth as well. "They are the ones putting money into the marketplace," Mr. Adderley said. For the market to grow, "the investors have to be happy," he said.

In a low interest rate environment, catastrophe bonds are attractive to investors because they provide returns as insurance pricing rises and are uncorrelated to other assets, Mr. Fitzgerald said.

Both 2019 and 2020 saw reduced catastrophe losses compared with 2017 and 2018, when the U.S was hit with multiple eight-figure losses, such as hurricanes Harvey, Irma and Maria in 2017.

"You tend to see investors allocating more capital after positive return years, which sets up even more foundation for an active 2022," Mr. Schultz said.

HURRICANE IDA NOT EXPECTED TO JAR INSURANCE-LINKED SECURITIES MARKET

Losses from Hurricane Ida, which could top $30 billion, are not expected to hit the catastrophe bond market hard and have not dented investor enthusiasm, sources say.

"We do not believe this event has changed investor sentiment," said Judy Klugman, New York-based co-head of ILS at Swiss Re Capital Markets, the broker-dealer subsidiary of Swiss Re Ltd.

Many investors do not feel that Ida will be a market-moving event, and capacity and pricing for catastrophe bonds are likely to be unaffected in the long term given the expected limited impact of the storm on the market, said Paul Schultz, Chicago-based CEO of Aon Securities, a unit of Aon PLC.

Short-term price changes have occurred where underlying exposures were either concentrated in the covered area or with lower layer aggregate triggers, where Ida losses may exceed deductibles, he said.

"Overall, the market has remained calm and orderly following landfall and trading has been extremely light," Mr. Schultz said.

The catastrophe bond market's exposure to Ida is limited, with a "handful" of per occurrence cat bonds facing potential material principal losses, Ms. Klugman said. In addition, some aggregate catastrophe bonds may be affected "with anticipated erosion due to Ida and other recent events," she said.

Matthew Lerner

WORLD'S LARGEST REINSURERS

Ranked by unaffiliated gross premium written in 2020, in millions of dollars[1]

Rank	Company	REINSURANCE PREMIUMS WRITTEN: LIFE AND PROPERTY/CASUALTY Gross	LIFE AND PROPERTY/CASUALTY Net	PROPERTY/CASUALTY ONLY Gross	PROPERTY/CASUALTY ONLY Net	RATIOS[2]: Loss	Expense	Combined
1	Munich Reinsurance Co.	$45,846	$43,096	$30,237	$29,011	74.7%	30.9%	105.6%
2	Swiss Re Ltd.	$36,579	$34,293	$21,512	$20,636	78.7%	30.3%	109.0%
3	Hannover Rück SE[3]	$30,421	$26,232	$20,568	$17,449	72.8%	29.1%	101.9%
4	SCOR SE	$20,106	$17,910	$8,795	$7,695	70.2%	30.1%	100.2%
5	Berkshire Hathaway Inc.	$19,195	$19,195	$13,333	$13,333	80.8%	25.4%	106.2%
6	China Reinsurance (Group) Corp.	$16,665	$15,453	$6,422	$6,020	68.0%	33.8%	101.8%
7	Lloyd's of London[4]	$16,511	$12,213	$16,511	$12,213	73.7%	33.9%	107.6%
8	Canada Life Reinsurance	$14,552	$14,497	N/A	N/A	N/A	N/A	N/A
9	Reinsurance Group of America Inc.	$12,583	$11,694	N/A	N/A	N/A	N/A	N/A
10	Korean Reinsurance Co.	$7,777	$5,432	$6,427	$4,229	84.6%	14.9%	99.6%

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

TOP 10 GLOBAL PROPERTY/CASUALTY REINSURANCE GROUPS

Ranked by unaffiliated gross premium written in 2020, in millions of dollars[1]

Rank	Company	REINSURANCE PREMIUMS WRITTEN: PROPERTY/CASUALTY ONLY Gross	PROPERTY/CASUALTY ONLY Net	RATIOS: Loss	Expense	Combined
1	Munich Reinsurance Co.	$30,237	$29,011	74.7%	30.9%	105.6%
2	Swiss Re Ltd.	$21,512	$20,636	78.7%	30.3%	109.0%
3	Hannover Rück SE[2]	$20,568	$17,449	72.8%	29.1%	101.9%
4	Lloyd's of London[3]	$16,511	$12,213	73.7%	33.9%	107.6%
5	Berkshire Hathaway Inc.	$13,333	$13,333	80.8%	25.4%	106.2%
6	SCOR SE	$8,795	$7,695	70.2%	30.1%	100.2%
7	Everest Re Group Ltd.	$7,282	$6,768	76.3%	26.7%	103.0%
8	Korean Reinsurance Co.	$6,427	$4,229	84.6%	14.9%	99.6%
9	China Reinsurance (Group) Corp.	$6,422	$6,020	68.0%	33.8%	101.8%
10	General Insurance Corp. of India[4]	$6,310	$5,608	91.7%	21.4%	113.1%

[1]All non-USD currencies converted to USD, using foreign exchange rate at company's fiscal year-end. [2]Net premium written data not reported, net premium earned substituted.
[3]Lloyd's premiums are reinsurance only. Premiums for certain groups within the rankings also may include Lloyd's Syndicate premiums when applicable. [4]Fiscal year ended March 31, 2021.
Source: A.M. Best Co. Ltd.

WORLD'S LARGEST REINSURANCE BROKERS

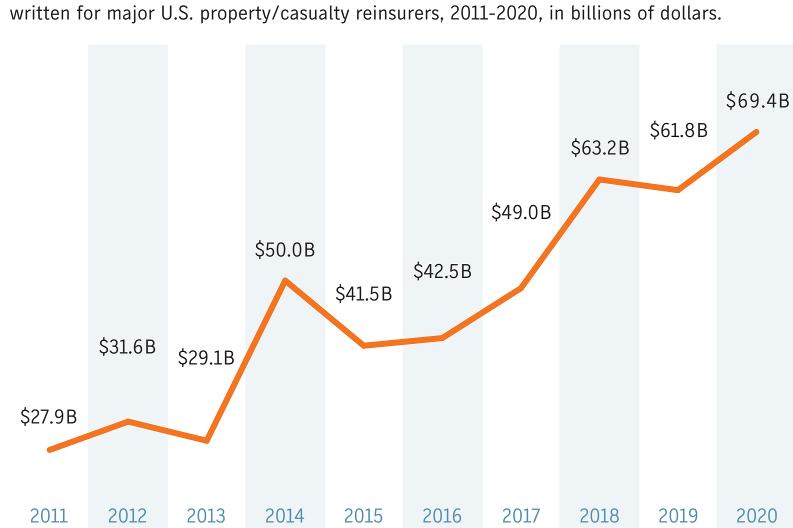
Ranked by gross revenue from reinsurance brokerage and related activities*

Rank	Company	2020 gross revenue	2019 gross revenue	% increase (decrease)	2020 employees	Officers
1	Aon's Reinsurance Solutions	$1,816,000,000	$1,665,000,000	9.1%	2,867	Andy Marcell, CEO
2	Guy Carpenter & Co. LLC	$1,696,000,000	$1,598,000,000[1]	6.1%	2,783	Peter Hearn, CEO
3	Willis Re	$1,050,028,000	$1,021,803,000	2.8%	2,158	James Kent, CEO
4	TigerRisk Partners LLC	$145,000,000	$125,000,000	16.0%	220	Rod Fox, managing partner-CEO
5	Gallagher Re[2]	$130,000,000[3]	$100,000,000	30.0%	220	Tom Wakefield, CEO

*Includes all reinsurance revenue reported through holding and/or subsidiary companies. [1]Restated. [2]Parent company, Arthur J. Gallagher & Co., announced Aug. 13, 2021, that it had agreed to buy Willis Towers Watson PLC's Willis Re. [3]*BI* estimate.
Source: *BI* survey

10-YEAR TREND OF U.S. REINSURANCE

Net premiums written for U.S. reinsurers increased 12% in 2020 from 2019. Net premiums written for major U.S. property/casualty reinsurers, 2011-2020, in billions of dollars.



Source: Reinsurance Association of America

M&As continue to change broker landscape

While the proposed acquisition of Willis Towers Watson PLC by rival Aon PLC was eventually scrapped, 2020 was a significant year of change in the brokerage landscape, with the most mergers and acquisitions activity in the past five years. In fact, nine out of our 20 brokers to watch from last year moved into the Top 100. As a result, we have an open call inviting new participants to our annual broker survey.

If you are a broker with $10 million or more in year-end 2020 revenue and growing, email Andy Toh at atoh@businessinsurance.com to be added to our invite list to participate in the 2022 survey.

The following pages present the second set of results from *Business Insurance*'s annual survey of agents and brokers; the first was published in July. Additional 2021 rankings include the top 25 benefits brokers by growth, most productive agents and brokers, brokers to watch, top brokers of wholesale business, fastest-growing brokers and largest commercial retail brokers.

TOP 25 BENEFITS BROKERS BY GROWTH

Ranked by rate of growth in 2020 employee benefits revenue*

Rank	Company	2020 employee benefits revenue	% increase	% of total revenue
1	PCF Insurance Services	$36,000,000	300.0%	15.3%
2	Baldwin Risk Partners LLC	$114,861,148	257.9%	26.9%
3	The Liberty Co. Insurance Brokers Inc.	$4,308,234	94.6%	10.6%
4	World Insurance Associates LLC	$11,390,800	86.3%	14.5%
5	IMA Financial Group Inc.	$64,666,914	86.1%	21.5%
6	Swingle Collins & Associates	$1,317,248	72.7%	4.7%
7	Sunstar Insurance Group LLC	$7,900,000	60.1%	11.0%
8	The Hilb Group LLC	$88,607,029	43.0%	34.0%
9	Patriot Growth Insurance Services LLC	$75,350,000	39.5%	60.6%
10	RSC Insurance Brokerage Inc., dba Risk Strategies Co.	$135,600,000	35.3%	20.6%
11	CCIG	$1,315,966	32.0%	7.2%
12	BroadStreet Partners Inc.	$158,840,000	27.3%	18.5%
13	Higginbotham	$100,240,000	20.0%	31.7%
14	Digital Insurance Inc., dba OneDigital Health and Benefits	$478,307,114	18.7%[1]	90.2%
15	Hub International Ltd.	$779,460,753	17.6%	28.9%
16	Oakbridge Insurance Agency LLC	$3,172,000	17.3%	10.4%
17	Alera Group Inc.	$346,000,000	16.5%	62.5%
18	Ross & Yerger Insurance Inc.	$12,501,932	16.2%	42.8%
19	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$210,749,723	16.1%[1]	26.3%
20 (tie)	MJ Insurance Inc.	$19,946,320	15.5%	49.7%
20 (tie)	EHD Insurance	$6,650,145	15.5%	27.4%
22	Marshall & Sterling Enterprises Inc.	$14,309,707	13.7%	17.3%
23	Alliant Insurance Services Inc.	$464,456,513	13.3%	26.1%
24	The Graham Co.	$7,908,031	12.9%	12.5%
25	Tricor Inc.	$4,144,050	12.6%	12.8%

*To be ranked brokers must have generated $500,000 or more in employee benefits revenue in 2020. Companies deriving more than 49% of their gross revenue in personal lines are not ranked. [1]Restated.

Source: *BI* survey

BENEFITS SPECIALISTS

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

Company	2020 employee benefits revenue	% increase (decrease)	% total
Digital Insurance Inc., dba OneDigital Health and Benefits	$478,307,114	18.7%[1]	90.2%
LHD Benefit Advisors LLC	$8,200,000	0.7%	67.5%
Alera Group Inc.	$346,000,000	16.5%	62.5%
CBIZ Benefits & Insurance Services Inc.	$150,400,000	3.0%	61.1%
Patriot Growth Insurance Services LLC	$75,350,000	39.5%	60.6%
PSA Insurance & Financial Partners	$19,501,000	0%	60.6%
Willis Towers Watson PLC	$4,815,000,000	5.6%	51.9%

*Companies with 51% or more of brokerage revenue from employee benefits. [1]Restated.

Source: *BI* survey

MOST PRODUCTIVE AGENTS AND BROKERS

Intermediaries ranked by 2020 brokerage revenue per employee*

		Brokerage revenue per employee			Brokerage revenue			Employees		
Rank	Company	2020	2019	% increase (decrease)	2020	2019	% increase (decrease)	2020	2019	% increase (decrease)
1	York International Agency LLC	$414,669	$384,057	8.0%	$23,636,158	$21,891,225	8.0%	57	57	0%
2	Heffernan Group	$405,737	$412,426	(1.6%)	$185,421,949	$171,981,679	7.8%	457	417	9.6%
3	Alliant Insurance Services Inc.	$399,638	$396,476	0.8%	$1,781,184,712	$1,576,387,172	13.0%	4,457	3,976	12.1%
4	The Graham Co.	$377,509	$334,915	12.7%	$63,043,937	$61,959,264	1.8%	167	185	(9.7%)
5	Cobbs Allen/CAC Specialty[1]	$371,652	$276,544	34.4%	$89,568,050	$37,886,504	136.4%	241	137	75.9%
6	Woodruff Sawyer & Co.	$340,214	$313,780	8.4%	$191,200,000	$159,400,000	19.9%	562	508	10.6%
7	HMS Insurance Associates Inc.	$326,838	$310,966	5.1%	$45,430,468	$43,535,198	4.4%	139	140	(0.7%)
8	Foa & Son Corp.	$326,389	$305,556	6.8%	$29,375,000	$27,500,000	6.8%	90	90	0.0%
9	Truist Insurance Holdings Inc.	$319,239	$306,370	4.2%	$2,433,560,000	$2,270,817,000	7.2%	7,623	7,412	2.8%
10	ABD Insurance & Financial Services Inc.	$304,897	$266,512	14.4%	$112,507,000	$93,279,300	20.6%	369	350	5.4%
11	Baldwin Risk Partners LLC	$304,464	$229,734	32.5%	$426,249,000	$137,840,695	209.2%	1,400	600	133.3%
12	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$297,257	$286,311	3.8%	$802,594,990	$744,408,209	7.8%	2,700	2,600	3.8%
13	RSC Insurance Brokerage Inc., dba Risk Strategies Co.	$296,550	$269,630	10.0%	$657,749,000	$516,880,000	27.3%	2,218	1,917	15.7%
14	Parker, Smith & Feek Inc.	$273,973	$260,697	5.1%	$82,466,000	$68,042,000	21.2%	301	261	15.3%
15	M&O Agencies Inc., dba The Mahoney Group	$268,111	$274,773	(2.4%)	$44,238,376	$46,161,860	(4.2%)	165	168	(1.8%)
16	NFP Corp.	$266,941	$256,715	4.0%	$1,599,777,301	$1,460,966,000	9.5%	5,993	5,691	5.3%
17	Sterling & Sterling LLC, dba SterlingRisk	$265,769	$239,093	11.2%	$61,924,084	$55,708,663	11.2%	233	233	0.0%
18	M3 Insurance Solutions Inc.	$265,181	$261,333	1.5%	$81,675,781	$72,389,128	12.8%	308	277	11.2%
19	Bowen, Miclette & Britt Insurance Agency LLC	$264,816	$247,408	7.0%	$56,141,004	$53,934,945	4.1%	212	218	(2.8%)
20	Lockton Cos. LLC	$261,024	$233,447	11.8%	$2,145,619,000	$1,867,579,000	14.9%	8,220	8,000	2.8%
21	M&T Insurance Agency Inc.	$256,250	$230,975	10.9%	$36,900,000	$37,187,000	(0.8%)	144	161	(10.6%)
22	Paychex Insurance Agency Inc.	$254,496	$249,356	2.1%	$232,100,000	$232,400,000	(0.1%)	912	932	(2.1%)
23	Starkweather & Shepley Insurance Brokerage Inc.	$253,746	$242,323	4.7%	$66,227,625	$60,095,993	10.2%	261	248	5.2%
24	Holmes Murphy & Associates Inc.	$252,548	$228,005	10.8%	$246,487,000	$223,445,000	10.3%	976	980	(0.4%)
25	Alera Group	$251,818	$237,222[2]	6.2%	$554,000,000	$427,000,000[2]	29.7%	2,200	1,800	22.2%

*Companies with more than 50 employees assigned to brokerage. Brokerages that derive more than 49% of their revenue from personal lines are not ranked. [1]Merged with CAC Specialty, Aug. 15, 2019. [2]Restated.

Source: *BI* survey

BEYOND THE TOP 100 BROKERS

BROKERS TO WATCH

Ranked by 2020 brokerage revenue generated by U.S.-based clients

Rank	Company	2020 brokerage revenue	% increase (decrease)
NR	The Plexus Groupe LLC	$25,824,401	3.0%
NR	Unico Group Inc.	$23,318,000	5.7%
101	Reliance Partners Inc.	$20,899,000	54.8%
102	Wallace Welch & Willingham Inc.	$20,637,693	7.5%
103	CCIG	$18,367,906	9.7%
104	Ames & Gough Insurance/ Risk Management Inc.	$13,500,000	7.4%
105	LHD Benefit Advisors LLC	$12,150,000	1.3%
NR	Harmon Dennis Bradshaw Inc.	$11,204,543	1.6%
106	LaPorte & Associates Inc.	$11,000,000	3.8%
107	BKCW LP. dba BKCW Benefits, Insurance, Relationships	$10,620,025	(0.2%)

NR = not ranked

TARGET INDUSTRIES

Industries targeted by brokers to watch

Industry	No. of brokers	Percent
Construction	8	80%
Higher education	5	50%
Marine	5	50%
Public sector/ government	5	50%
Energy	4	40%
Agribusiness	4	40%
Aviation	4	40%
Financial services	3	30%
Food and beverage	3	30%
Real estate	3	30%

TARGET CLIENTS

Target clients by revenue among the brokers to watch

Revenue	No. of brokers	Percent
Up to $10 million revenue	8	80%
More than $10 million up to $50 million	9	90%
More than $50 million up to $100 million	6	60%
More than $100 million up to $500 million	1	10%

Source: *BI* Survey

TOP BROKERS OF WHOLESALE BUSINESS*

Ranked by 2020 wholesale revenue, including property/casualty

Rank	Company	2020 wholesale revenue	2019 wholesale revenue	% increase (decrease)
1	Truist Insurance Holdings Inc.	$1,185,903,000	$1,083,901,000	9.4%
2	Brown & Brown Inc.	$918,400,177	$784,008,788	17.1%
3	Arthur J. Gallagher & Co.	$805,791,000	$695,433,000[1]	15.9%
4	Willis Towers Watson PLC	$240,000,000	$239,000,000[1]	0.4%
5	Alliant Insurance Services Inc.	$214,811,880	$178,364,185[1]	20.4%
6	Hub International Ltd.	$192,956,487	$155,989,241	23.7%
7	RSC Insurance Brokerage Inc., dba One80 Intermediaries Inc.	$135,200,000	$45,950,600	194.2%
8	Lockton Cos. LLC	$124,448,000	$97,792,000	27.3%
9	USI Insurance Services LLC	$112,550,234	$73,911,832	52.3%
10	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$61,389,827	$40,280,965	52.4%

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

FASTEST GROWING BROKERS

Ranked by rate of growth in 2020 U.S. brokerage revenue*

Rank	Company	2020 revenue	% increase
1	PCF Insurance Services	$235,000,000	298.3%
2	Baldwin Risk Partners LLC	$426,249,000	209.2%
3	Cobbs Allen/CAC Specialty[1]	$89,568,050	136.4%
4	High Street Insurance Partners Inc.	$67,658,028	127.6%
5	Patriot Growth Insurance Services LLC	$124,350,000	87.3%
6	IMA Financial Group Inc.	$301,471,243	71.4%
7	Reliance Partners Inc.	$20,899,000	54.8%
8	The Liberty Co. Insurance Brokers Inc.	$40,509,309	53.9%
9	World Insurance Associates LLC	$77,920,417	46.1%
10	Sunstar Insurance Group LLC	$72,000,000	45.9%
11 (tie)	The Hilb Group LLC	$260,608,909	31.6%
11 (tie)	Digital Insurance Inc., dba OneDigital Health and Benefits	$530,093,000	31.6%
13	Alera Group	$554,000,000	29.7%[2]
14	Higginbotham	$316,096,000	29.5%
15	RSC Insurance Brokerage Inc., dba Risk Strategies Co.	$651,171,510	26.0%
16	Boston Insurance Brokerage LLC	$4,300,000	25.0%
17	Parker, Smith & Feek Inc.	$82,466,000	21.2%
18	ABD Insurance & Financial Services Inc.	$112,507,000	20.6%
19	Woodruff Sawyer & Co.	$191,200,000	19.9%
20	The Partners Group Ltd.	$43,694,905	19.0%
21	AssuredPartners Inc.	$1,687,411,134	18.0%
22	Oakbridge Insurance Agency LLC	$30,500,000	17.3%
23	Robertson Ryan & Associates Inc.	$53,709,374	17.2%
24	Propel Insurance	$107,602,000	16.7%
25	BroadStreet Partners Inc.	$860,500,000	15.8%
26	Cross Financial Corp., dba Cross Insurance	$214,960,000	15.4%
27	Marshall & Sterling Enterprises Inc.	$82,773,396	13.2%
28	Alliant Insurance Services Inc.	$1,777,622,343	12.9%[2]
29 (tie)	M3 Insurance Solutions Inc.	$81,675,781	12.8%
29 (tie)	Hub International Ltd.	$2,077,453,378	12.8%

*Companies with less than $1 million in brokerage revenue and/or deriving more than 49% of their brokerage revenue in personal lines are not ranked. [1]Merged with CAC Specialty, Aug 15, 2019. [2]Restated 2019 revenue.
Source: *BI* survey

LARGEST U.S. COMMERCIAL RETAIL BROKERS

Ranked by 2020 commercial retail brokerage revenue from U.S. offices

Rank	Company	2020 commercial retail revenue*	% increase (decrease)	% of U.S. brokerage revenue
1	Marsh McLennan	$4,537,000,000	10.1%	55.9%
2	Aon PLC	$2,133,000,000	0.2%	42.5%
3	Arthur J. Gallagher & Co.	$1,652,463,000	9.0%	40.0%
4	Alliant Insurance Services Inc.	$1,259,023,612	12.8%[1]	70.8%
5	Willis Towers Watson PLC	$1,157,000,000	5.6%[1]	24.9%
6	Hub International Ltd.	$1,005,820,200	10.3%	48.4%
7	Acrisure LLC	$999,494,895	2.7%	53.4%
8	USI Insurance Services LLC	$939,096,412	0.6%	48.7%
9	Lockton Cos. LLC	$931,676,000	12.6%	58.8%
10	AssuredPartners Inc.	$880,578,570	26.8%	52.2%
11	Brown & Brown, Inc.	$852,317,420	5.7%	32.9%
12	Truist Insurance Holdings Inc.	$709,026,000	2.5%	29.1%
13	BroadStreet Partners Inc.	$582,530,000	13.1%	67.7%
14	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	$491,138,992	0.1%[1]	61.2%
15	Digital Insurance Inc., dba OneDigital Health and Benefits	$436,003,990	11.1%	82.3%
16	RSC Insurance Brokerage Inc., dba Risk Strategies Co.	$292,750,000	0.6%	45.0%
17	Alera Group	$209,000,000	60.8%	37.7%
18	Higginbotham	$177,267,000	38.4%	56.1%
19	IMA Financial Group Inc.	$171,835,738	62.7%	57.0%
20	Leavitt Group	$165,810,000	5.4%	57.0%
21	Insurance Office of America Inc.	$164,095,099	7.2%	69.9%
22	Woodruff Sawyer & Co.	$156,957,000	23.4%	82.1%
23	PCF Insurance Services	$141,000,000	327.3%	60.0%
24	Baldwin Risk Partners LLC	$136,255,522	392.6%	32.0%
25	The Hilb Group LLC	$130,304,455	43.0%	50.0%
26	Holmes Murphy & Associates Inc.	$117,094,000	10.0%	48.5%
27	Cross Financial Corp., dba Cross Insurance	$116,023,000	50.7%	54.0%
28	Cottingham & Butler Inc.	$92,171,000	7.0%	38.3%
29	Hylant Group Inc.	$90,045,587	4.1%	61.6%
30	BXS Insurance	$89,169,974	4.4%[1]	71.2%
31	Insurica Inc.	$88,579,690	4.9%	72.2%
32	Propel Insurance	$88,243,000	41.6%	82.0%
33	AmeriTrust Group Inc.	$79,658,512	3.4%	61.4%
34	Heffernan Group	$75,813,097	15.7%	41.3%
35	Paychex Insurance Agency Inc.	$75,800,000	(11.3%)	32.7%
36	Insurors Group LLC	$75,155,750	(5.7%)	78.3%
37	Cobbs Allen/CAC Specialty[2]	$74,779,970	169.6%	83.5%
38	Unison Risk Advisors[3]	$69,516,607	7.4%	47.5%
39	Parker, Smith & Feek Inc.	$62,137,000	25.7%	75.3%
40	TrueNorth Companies LLC	$55,959,000	6.5%	59.9%
41	ABD Insurance & Financial Services Inc.	$54,309,000	31.4%	48.3%
42	Relation Insurance Inc.	$52,869,000	19.2%	45.7%
43	Sunstar Insurance Group LLC	$51,100,000	43.8%	71.0%
44	Sterling & Sterling LLC, dba SterlingRisk	$51,061,148	17.3%	82.5%
45	The Graham Co.	$50,059,438	1.1%	79.4%
46	CBIZ Benefits & Insurance Services Inc.	$49,400,000	(2.4%)	20.1%
47	Houchens Insurance Group Inc.	$49,328,305	6.0%	68.4%
48	Marshall & Sterling Enterprises Inc.	$47,471,551	7.0%	57.4%
49	James A. Scott & Son Inc. dba Scott Insurance	$46,243,875	10.6%	64.2%
50	Sterling Seacrest Pritchard Inc.[4]	$46,053,852	(0.3%)[1]	66.5%

*Excluding revenue from placement of employee benefits. [1]Restated. [2]Merged with CAC Specialty, Aug. 15, 2019. [3]Renamed Unison Risk Advisors with the merger of Oswald Cos. and Riggs, Counselman, Michaels & Downes Inc. [4]Formerly Sterling Seacrest Partners Inc.
Source: *BI* survey

TARGETS OF THE TOP 15

TARGET INDUSTRIES

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

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

TARGET CLIENTS

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

Revenue	Number of brokers	Percent
Up to $10 million revenue	6	40%
More than $10 million up to $50 million	8	53%
More than $50 million up to $100 million	12	80%
More than $100 million up to $500 million	9	60%
More than $500 million up to $1 billion	8	53%
More than $1 billion up to $3 billion	6	40%
More than $3 billion up to $5 billion	3	20%
More than $5 billion up to $10 billion	2	13%
More than $10 billion up to $25 billion	3	20%
More than $25 billion	2	13%

Source: *BI* Survey

MARKET PULSE

PRODUCTS & SERVICES

Corvus, SiriusPoint team on cyber cover

■ Corvus Insurance Holdings Inc. and Bermuda-based insurer and reinsurer SiriusPoint Ltd. said they have partnered to offer a cyber insurance program with up to $5 million in limits.

The program is fronted by Accredited Surety and Casualty Co. Inc., a unit of Randall & Quilter Investment Holdings Ltd.

Under the program, Boston-based Corvus will take on primary and excess cyber liability risks for businesses earning up to $1 billion in gross annual revenue, the companies said in a joint statement.

All incoming claims will be managed by Corvus' in-house claims team, and its current and previous Smart Cyber Insurance programs remain intact and separate from the program, the companies said.

The cyber program is part of a multiyear underwriting capacity partnership in which SiriusPoint has invested in Corvus to support existing and future commercial insurance coverages, according to the statement.

Cowbell Cyber introduces online marketplace

■ Cowbell Cyber Inc. has launched Cowbell Rx, an online marketplace for services related to cyber insurance.

The Pleasanton, California-based cyber insurance provider for small to medium enterprises said Cowbell Rx offers access to security services and vendors including deployment of multifactor authentication and identity management, endpoint protection, security monitoring for threat detection and prevention, backup and disaster recovery, and compliance consulting and services.

Cybersecurity and cyber insurance must work together to build an organization's cyber resilience, according to Isabelle Dumont, vice president of market engagement at Cowbell Cyber.

Origami Risk offering COVID-19 product

■ Origami Risk LLC, a Chicago-based safety and insurance technology company, has expanded its online tools to address exposures related to COVID-19, adding a new functionality to track employee vaccinations, boosters, post-vaccination protection waiting periods and weekly testing for employees who waive taking the vaccine.

The tools help track individual employee vaccinations, including initial inoculation, scheduling and confirmation of second shots, as needed based on vaccine manufacturer, boosters and full protection waiting period. Origami's tools also help track weekly testing of employees who waive vaccinations, test results, quarantine requirements for positive test results, follow-up testing and return-to-work protocols.

Cover Whale partnering on trucking program

■ Insurtech company Cover Whale Insurance Solutions Inc., which focuses on commercial auto, said it is partnering with insurtech Everspan Indemnity Insurance Co. on a trucking program.

Cover Whale, based in Rancho Santa Margarita, California, said in its statement the commercial trucking program will be written by New York-based Everspan and target professional owners of small trucking operations, including common and contract carrier operations such as commercial truckers, common carriers, contract carriers, freight haulers and intermodal carriers.

Everspan Indemnity is a member of the Everspan Group, a fronting insurance group that is a unit of Ambac Financial Group Inc.

A Cover Whale spokeswoman said in an email the coverage has a $1 million single limit for auto liability. Through other parties, Cover Whale can also offer the motor truck cargo, physical damage, non-trucker's liability and truckers general liability coverages, she said.

Gallagher Re unveils analytics platform

■ Gallagher Re Ltd., the reinsurance business of brokerage Arthur J. Gallagher & Co., said it has launched Gallagher Automated Insurance Analytics, a unified, cloud-based analytics platform for clients.

The platform will feature analytics like pre-modeling, including data collection, enrichment, augmentation and intelligence; modeling, including automated, integrated workflows through multi-model application programming interfaces and machine learning; and post-modeling, including pricing, portfolio optimization, e-placement and market insights.

Scalable cloud-based technology will allow the system to adapt to future expansion across geographies, lines of business and multiple business units, Gallagher Re said. It will utilize artificial intelligence, machine learning and enriched data, according to the statement.

Next Insurance adds liquor liability cover

■ Next Insurance Inc. said it is offering liquor liability coverage for restaurants as part of a general liability policy.

The policy covers losses resulting from the intoxication of customers and is designed for small businesses such as cafés, diners, pop-up restaurants, and fine-dining establishments, the Palo Alto, California-based insurer said.

The liquor liability insurance is bundled with general liability insurance starting at an additional $150 per month.

Next offers three packages for general liability, with limits of $500,000, $1 million and $2 million available. Liquor liability is subject to those limits with no deductible or sublimit. The limits depend on the package selected, a Next spokeswoman said in an email.

Marsh McLennan unveils flood index

■ Marsh & McLennan Cos. Inc. launched its Flood Risk Index to help assess exposure and vulnerability to more frequent and severe flooding.

The index outlines the potential impact of flooding on populations and economic assets in 188 countries.

Risk is analyzed on a country-by-country basis; by the type of hazard, such as river or coastal flooding; by exposure to flood risk, meaning the total people and assets in harm's way; and by vulnerability to flood damage, the susceptibility of people and assets to harm for each nation.

The index allows users to compare scores for hazard, exposure and vulnerability between two countries, or between one country and the global average. Users also have access to geospatial data sets from research institutions and international organizations.

DEALS & MOVES

BRP to purchase habitational risk broker

BRP Group Inc. has agreed to acquire Holmdel, New Jersey-based specialty broker and managing general agent Jacobson, Goldfarb & Scott Inc.

JGS has annual revenue of around $43.3 million, making it BRP's largest deal so far in 2021, BRP said in a statement.

The deal will add around 130 employees, the Tampa, Florida-based broker said.

JGS provides commercial coverage to middle-market businesses across the United States and has expertise in the habitational real estate, construction and manufacturing and distribution industries.

Terms of the transaction, which was due to close around Oct. 1, were not disclosed.

Alera, Propel Insurance to merge

Alera Group Inc. said it will merge with privately held Tacoma, Washington-based Propel Insurance, as the core investors in the two companies made commitments to inject new capital.

Terms of the transaction, which is expected to close this year, were not disclosed. Deerfield, Illinois-based Alera said in a statement that the deal will bolster its presence in the Northwest and Southeast regions.

Claims firm Davies acquires Lloyd's MGA

London-based claims management company Davies Group Ltd. said it has acquired Asta Capital Ltd., a third-party Lloyd's of London managing general agent.

Terms of the transaction were not disclosed.

As part of the deal, Asta CEO Julian Tighe and Asta Chief Underwriting Officer Simon Norton will retain their current responsibilities and help grow Davies' insurance services practice, Davies said in a statement.

USI purchases fishing industry specialist

USI Insurance Services LLC said it has bought offshore fishing insurance brokerage Insurance and Capital Management LLC.

Terms of the transaction were not disclosed.

The Mill Creek, Washington-based brokerage's four staff, including principals Mike Amiss and Nick Munday, will join USI.

COMMENTARY

Venturing beyond the office door

Like many people, I've gradually started to venture outside my home office over the past few months. In June, before the delta variant took hold in the United States, I attended an industry dinner, and I had a couple of meetings with small groups, but last month was the first time in more than 18 months that I attended an out-and-out insurance industry conference.

The Chicagoland Risk Forum attracted a couple of hundred insurance and risk management professionals to the recently restored Old Post Office in downtown Chicago — a great new venue, by the way.

Put on by the Chicago chapter of the Risk & Insurance Management Society Inc., the one-day event attracted many well-known people in the local market and finished with a rooftop cocktail hour. Other than the prevalence of face masks, boxed meals and a degree of hesitancy to make too much physical contact, it was as if the old times had returned.

Gavin Souter
EDITOR

And like conferences held before 2020, it was a valuable event to attend. The sessions had a lot of good information, but, like all good conferences, what you heard outside of the formal meetings in conversations with other attendees was just as valuable.

It's those unexpected, off-the-cuff discussions that we've all missed since COVID-19 scuttled the numerous conferences that were fixtures of the industry calendar, whether local gatherings after work or something to fly out of town to for a few days. Zoom and Teams are great, but they can't replace chatting in person.

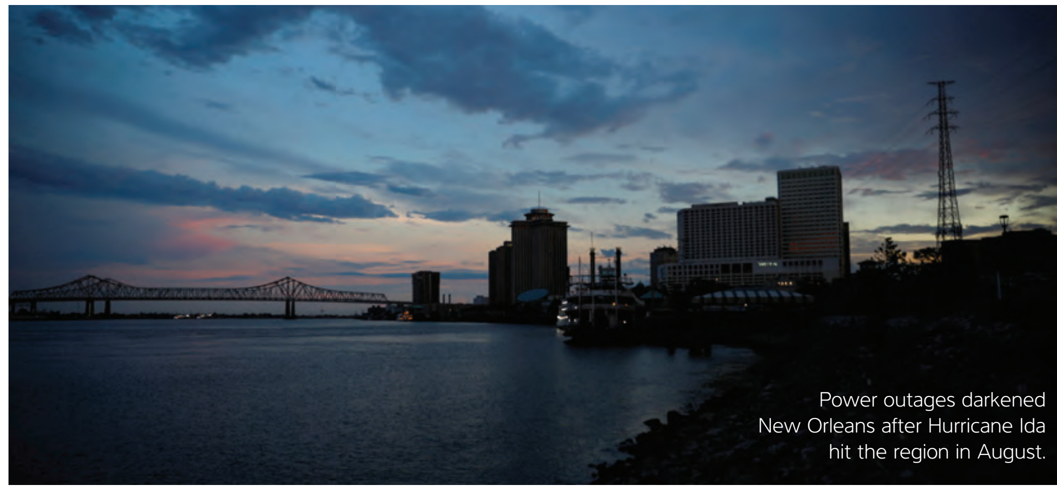
So, it's good to see more and more industry events coming back, as it were, offline as we head into what used to be one of the busiest periods of the year for insurance conferences.

And the big one for many people in the sector — the annual RIMS conference — is slated to be held in San Francisco next year, after the Denver conference was canceled in 2020 and the would-be Chicago conference moved to a virtual format this year.

Many of the events will require proof of vaccination, which will add a few wrinkles, such as whether religious and medical exemptions will be granted and, especially as international travel returns, what types of vaccines will be recognized — only those approved by the U.S. Food and Drug Administration or will those approved in other jurisdictions, such as the AstraZeneca and Sinovac shots, also be recognized?

In addition, it remains to be seen how many of the conferences will return. Insurers and brokers saved a lot of money on travel and entertainment since the beginning of the pandemic and it shouldn't come as a surprise if they want to retain some of those savings.

Whatever happens, it was good to be out and about again, and I for one hope to escape more often in the coming months.



Reuters

Power outages darkened New Orleans after Hurricane Ida hit the region in August.

VIEWPOINT

Riding out Hurricane Ida in New Orleans

When the levees failed in New Orleans following Hurricane Katrina's landfall in 2005, my husband and I, newly married and living in San Diego, watched the national news replete with personal tragedy, political nonfeasance and geographic nuance in a permanent state of gasp.

With 80% of the city underwater in what was to be somewhat of an expected event, we wondered: Why would anybody ever live there?

Fast forward 16 years — fate, serendipity — and here we are.

Into our fifth year in this 300-year-old, bowl-shaped, below-sea-level metropolis, we can say that we live here because we love it for reasons that could be a book: culture, the friendliness, the ad hoc second-line brass instrument parades that seem to come out of nowhere, the make-the-best-of-it attitudes, the food, the local lore and so on.

After living in several major U.S. cities, we know all places have their problems. In New Orleans it's the uncertainty of hurricane season. Despite our experiences with near misses, when that swirling mass of red on the Weather Channel shifts east or west of us and all we lost is sleep, and the ones that bring us wind and torrential rain, flooded roads and power outages, we haven't been swayed.

The latest major hurricane made its way from the islands into the warm waters of the Gulf of Mexico in late August: Hurricane Ida started off as a category 2, developed into a category 4 overnight and was predicted to hit the New Orleans region on an ominous day: the 16th anniversary of Hurricane Katrina.

We stared at the television screen as we entered what the locals like to call the "cone of uncertainty." Do we evacuate? Or do we stay? As we learned, the decision to evacuate comes with its headaches. Where would we go? What if we go to Florida and it shifts east? (And they always shift.) Ditto, Texas. Will the traffic be horrendous? (Record scratch.)

"Hold that thought, honey," I said, "I need to use the restroom." Yes, again. We had our answer.

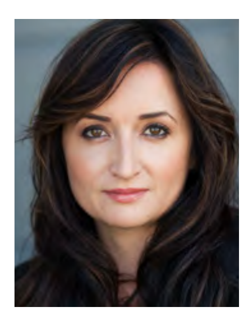
At the time, I was entering my own cone of uncertainty: very, very pregnant, at risk and in the middle of a surge in infections during a pandemic in which the medical advice was to avoid public places. Because I was not a good candidate for a 10-hour car trip that is usually only four hours, plus bathroom breaks, we were going to "ride it out," as we locals say.

My husband did his best to keep our teenage boys and me calm and reminded me that "we got this." This — I was fast learning — translated into enough survival gear to perhaps weather an apocalypse.

I won't go down the list but my husband — a former Marine and closet doomsday prepper — had apparently been waiting for this moment to shine (with his industrial, war-ready, battery-operated lighting fixture). In addition to a generator, portable air-conditioner and other must-haves for living (for days) in powerless luxury in a gulf state, his treasure trove of duct tape, radios, tarps, batteries, freeze-dried food, water purifying systems and other olive-drab survival gear (that included — how sweet! — some kind of toilet contraption in case we lost water and sewage) made its way from the nooks and crannies of our shed and attic to our dining room.

We looked like we were either ready for a hurricane or kitted out to storm a government building. This, it seems, is how you live here: prepared.

In the end we made out OK. Hurricane Ida's eyewall hit southwest of us and brushed along the outskirts of the city. The howling wind and tornado warnings were scary, as were the tree branches that went airborne. The looming threat of the massive live oak just outside our front door did little to calm frayed nerves. In the middle of it we lost power, which stayed off for 102 hours. In the aftermath we were clustered in one bedroom, cool and well-fed thanks to an outdoor grill, a generator-powered freezer and a pantry full of food.



Louise Esola
ASSISTANT EDITOR

From the news, many know it wasn't the same for a lot of folks, and we are grateful for our luck while feeling terrible about the misfortune of others. We also learned more and more about the resilience of the people, and that despite the challenges few ever leave New Orleans and those who do miss it so much that they often come swirling back. We also know that when the cleanup is finished, and the storm becomes another chapter in the city's checkered history, locals will come together and make the best of things. Some drum will begin beating the pulse of the city like a heartbeat back to life and some trumpet will blare as if to say, "laissez les bons temps rouler."

In parametric, it's essential to define whether a contract is insurance or a swap

Tom Dawson is a partner in McDermott Will & Emery LLP's insurance transactional and regulatory group based in New York. He is also a member of the firm's ESG working group. He can be reached at tmdawson@mwe.com.

These days parametric insurance is, excuse the expression, a hot topic among those considering the impact of climate change. From homeowners to businesses to state and local government units to nation states, the notion of risk transfer contracts that settle and pay losses far more quickly than losses covered under customary property insurance contracts is alluring. And the positive impact on resiliency is undeniable as loss payments in parametric transactions are devised to be made soon after events have occurred, which is precisely when everyone impacted by an event needs cash to fund repairs, pay for losses not covered by standard property insurance and speed up recovery efforts.

For some U.S. purchasers of parametric insurance, however, the promise that usual loss adjustment activity can be substantially reduced or avoided altogether should be considered in conjunction with federal securities law and tax issues. The challenge starts with calling all such risk transfer products "parametric insurance." When such products are indeed insurance, the good news is that federal securities and commodities laws should not apply, sparing issuers from regulation as swap dealers.

For commercial purchasers, the cost of such insurance protection would typically be deductible as an ordinary and necessary business expense and casualty loss payments generally would not be included in taxable income. For individuals, of course, insurance premiums are not generally deductible but whether parametric insurance loss payments must be included in taxable income — either as short- or long-term capital gains — definitely does matter.

Insurance or swap?

Following passage of the landmark Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, the U.S. Securities and Exchange Commission and the Commodity Futures Trading Commission conducted a joint rule-making exercise concerning swaps that concluded in late 2012 with publication of 600 pages of updated rules comprehensively regulating a corner of the financial markets that up until 2010 had been largely unregulated.

What is a swap? The Commodity Exchange Act defines swap to include, in part, any agreement, contract or transaction "that provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." Sounds a little like an insurance contract, doesn't it?

The commissions recognized the possibility of confusion and uncertainty and at the very beginning of the joint rule noted that they did "not interpret this clause to mean that products historically treated as insurance products should be included within the swap or security-based swap definitions. The commissions are aware of nothing in Title VII [in Dodd-Frank] to suggest that Congress intended for traditional insurance products to be regulated as swaps or security-based swaps."

> Is the parametric insurance product being offered in fact insurance, in which case insurance-related tax rules apply; or is it a swap, which is a regulated investment product?

How do state insurance laws define insurance contracts? New York defines an insurance contract as "any agreement or other transaction whereby one party … is obligated to confer a benefit of pecuniary value upon another party … dependent upon the happening of a fortuitous event in which the insured … has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event." Not surprisingly, state insurance law definitions of insurance do vary. California's definition, for example, is arguably narrower, being a "contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event."

In the joint rules, the commissions explained at length how they distinguished between state-regulated insurance products underwritten by traditional insurers and swap transactions to be regulated by the commissions. The commissions' four-part analysis tests the products themselves and the providers of the products, considers "traditional insurance products" and includes a grandfather provision.

In short, the insurance product test under the joint rules excludes from the definition of swap any contracts that do not:

"Require … the beneficiary of the agreement, contract, or transaction to have an insurable interest that is the subject of the agreement, contract, or transaction and thereby carry the risk of loss with respect to that interest continuously throughout the duration of the agreement, contract, or transaction; and require … that loss to occur and be proved, and that any payment or indemnification therefore be limited to the value of the insurable interest."

The provider test has four prongs, requiring the obligor/insurer essentially to be either a regulated insurer underwriting a regulated product, a government entity, a reinsurer — subject to certain limitations — or a nonadmitted insurer listed by the NAIC's International Insurers Department.

The enumerated products test lists out many traditional insurance products, including property/casualty insurance and reinsurance. The commissions warned that in relation to reinsurance that an "agreement, contract, or transaction that is labeled as 'reinsurance' or 'retrocession', but is executed as a swap or security-based swap or otherwise is structured to evade Title VII of (Dodd-Frank), would not satisfy the Insurance Safe Harbor, and would be a swap or security-based swap."

So, what factors should both providers and purchasers consider in determining whether a particular product is a swap or insurance? First, that the contract is in fact an insurance product — among other things, that the purchaser has an insurable interest in a property to be protected and that the purchaser must "prove" the loss and the amount of the loss, the payment of which may not exceed the value of the insurable interest. Second, that an insurer be the counterparty bearing the risk in the transaction. Third, that the product fits into one of the enumerated types of insurance contracts in the joint rules — including property/casualty insurance.

Tax considerations

Obviously for those that do not pay federal income tax, such as state or local government entities or tax-exempt organizations, neither the deductibility of the cost of parametric insurance nor including parametric insurance loss payments in taxable income should matter. But taxpaying businesses and some individuals, for example, owners of wind/flood-exposed coastal homes looking for an alternative or a supplement to increasingly expensive excess insurance, should carefully consider the facts and circumstances of a proposed transaction. Is the parametric insurance product being offered in fact insurance, in which case traditional insurance-related tax rules apply; or is it a swap — which is a regulated investment product — in which case the "premium" would not be deductible as an ordinary and necessary business expense and loss payments might not be excludable from income as casualty insurance loss payments would be.

PEOPLE

> "In some ways, the challenges present great opportunities for brokers and insurers to partner to problem-solve and come up with creative ways to ensure their joint clients truly have the right coverages they need for their unique businesses."

UP CLOSE

Carrie Brodzinski

NEW JOB TITLE: Hartford, Connecticut-based chief underwriting officer, global specialty, at Hartford Financial Services Group Inc.

PREVIOUS POSITION: Hartford, Connecticut-based head of global underwriting management at Axa XL, a division of Axa SA.

OUTLOOK FOR THE INDUSTRY: The outlook for the insurance industry is extremely positive. We are in a time of unprecedented change that has challenged the way we work. For insurers, there's been a constant need to understand the unique new challenges faced by each industry and business during this time. As businesses continue to ramp up and reopen, the opportunity to help them thrive again by providing coverage specific to their needs — in some cases new and evolving needs — continues to grow.

GOALS FOR YOUR NEW POSITION: This is one of the most positive and collegial atmospheres I have worked in. It is an exciting time to be joining and my goal is to empower, enable and help bring new ideas forward as we continue providing creative solutions for specialty brokers and clients.

CHALLENGES FACING THE INDUSTRY: The specialty marketplace is constantly evolving. Technological advancements and the incredible opportunities with data and analytics are exciting in many ways but also present challenges in changing the types of exposures businesses now face. In some ways, the challenges present great opportunities for brokers and insurers to partner to problem-solve and come up with creative ways to ensure their joint clients truly have the right coverages they need for their unique businesses.

FIRST EXPERIENCE: I started my career as an attorney practicing in creditors' rights and bankruptcy, so naturally my first experience in insurance was underwriting lawyers professional liability.

ADVICE FOR A NEWCOMER: Ask questions and never stop learning. There is tremendous opportunity in the insurance industry, and innovation is often born in the moment where someone stops to ask "why." This is an industry where people can easily move among products and functions and have a truly rewarding career.

DREAM JOB: I would love to be able to bring my experience to a board of directors in another industry. That is a very different role from the ones I have had, and it would be fascinating to have that perspective.

LOOKING FORWARD TO: There is tremendous opportunity in the specialty market right now, and this team has a long tenure in developing creative solutions. I can't wait to see what else we can do.

COLLEGE MAJOR: Marketing.

FAVORITE MEAL: Probably steak frites (with an emphasis on the frites) followed by decadent chocolate dessert.

FAVORITE BOOK: I love any book that makes me think. I take recommendations from a diverse group of friends and colleagues, and I enjoy reading something that I would not necessarily have chosen and maybe even takes me outside my comfort zone.

HOBBIES: I am a golfer, and although I love the game, I think my handicap may be my swing. I also spend a lot of time with my two children paddle boarding, kayaking and cooking.

FAVORITE TV SHOW: "The Sopranos" must be one of the best TV shows ever made.

ON A SATURDAY AFTERNOON: If I am not golfing, I love to spend the afternoon at the pool with my family or with a good book.

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

ON THE MOVE

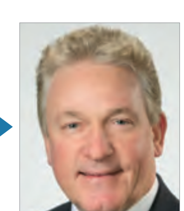
Ryan Specialty Group Inc. named **Miles Wuller** CEO of its RSG Underwriting Managers unit, replacing Tom Clark, who left the Chicago-based specialty intermediary. Mr. Wuller will remain president of the underwriting management unit.

Price Forbes & Partners (Bermuda) Ltd. announced the launch of a captive management unit in Bermuda and named **William Wood** senior vice president of the operation. Mr. Wood had been director of captives and commercial insurers at Artex Risk Solutions Inc.

American International Group Inc. hired former Allianz SE executive **Ciara Brady** as chief underwriting officer, international casualty. Ms. Brady succeeds Patrick Mailloux, who retired from the company. Based in Zurich, Ms. Brady was previously global head of liability at Allianz Global Corporate & Specialty SE, a unit of Allianz SE.

Acrisure LLC named **Lowell Singer**, former head of investor relations at The Walt Disney Co., as its chief financial officer. Mr. Singer replaces Matt Schweinzger, who stepped down earlier this year from the Grand Rapids, Michigan-based brokerage.

Zurich Insurance Group Ltd. appointed London-based **Caroline Dunn** U.K. chief underwriting officer, effective in November, replacing Hayley Robinson, who was named chief group underwriting officer. Previously, Ms. Dunn led the Lloyd's of London Global Network, markets division.



Marsh LLC named former Willis Towers Watson PLC executive **Duncan Ashurst** to the new position of risk management leader in its Chicago office. Mr. Ashurst had been managing director of the risk solutions practice in Chicago at Willis.

FTC investigating ice cream McIssues

The federal agency that takes on companies big and small for fraud, false advertising and more is aiming to come to the aid of those who desperately crave a McFlurry or soft-serve sundae from their local McDonald's franchise.

That's right: McDonald's is being investigated by the Federal Trade Commission as to why the burger giant's ice-cream machines are always out of order, an issue that has sparked late-night talk-show jokes and gripes on social media.

According to the Wall Street Journal, which gained access to a letter sent to McDonald's, the FTC contacted franchise owners this summer seeking information on ice-cream machine issues.

As reported in the Journal, the machines must undergo a nightly, four-hour automated heat-cleaning cycle, which has been known to fail and makes the machines unusable until a repair technician can fix them.

Driving home this point: It´s just a car

Zachary Finn, director of commercial risk management at Henriott Group Inc., ignited hearts on LinkedIn in early September.

In a heartwarming post, Indianapolis-based Mr. Finn wrote "(a) young person rear ended my brand new car yesterday. They were crying, I could tell they had other things they were dealing with. I wiped the bumper, it looked good enough and I found myself saying 'whatever happened to you before now is in the past, this is the moment it all turns around. You'll be alright, bring it in for a hug & get the heck out of here.'"

"As I always say, insurance is a great solution but it isn't always the best tool for the problem. My back hurts a little today but the heart feels good."

NURSE ILLUMINATES PROGRESS OF VACCINE DRIVE

Facebook / Boulder County Public Health

Shining light on how the COVID-19 vaccine has brightened the outlook for the pandemic, a nurse in Boulder, Colorado, has created a 4-foot-tall chandelier made with hundreds of vaccine vials that she calls the Light of Appreciation, NPR reports.

Laura Weiss and her colleagues have inoculated hundreds of thousands of people, according to the broadcast, and so she used hundreds of empty vials of the Moderna vaccine to string together something to commemorate the advances in medicine.

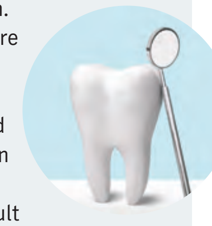
"I knew I had wanted to do something with light because I felt like it's just been such a dark year and a half that I wanted to bring light to whatever it was I was doing," Ms. Weiss told NPR.

"I love that from far away it just looks like a beautiful chandelier, and then you get closer and you realize it's all vaccine vials," she said.

The Light of Appreciation is on display in Ms. Weiss' living room as she looks for a permanent home.

Switching dentists no reason to smile

Chipping away at the reason why people tend to switch dentists, a survey by dentalinsurance.com finds that for some it's a matter of being sensitive about what a dentist says about their teeth.



And women are more prone to the touchy subject, according to the results that found twice as many women are likely to leave their dentist as a result of "criticism of their teeth and oral health," according to the recent survey results. Overall, 10.9% of the 2,000 adults surveyed in the United States said this was the reason they switch.

All feelings aside, the main drivers for changing dentists are costs and being out of network with their insurance company, as 30.5% reported this as the reason for switching.

Insurance to rescue on fall travel plans

As the delta variant circled the country and globe throughout the summer, travel enthusiasts weren't getting on board with canceling upcoming fall trips.

They were looking for insurance and in record numbers, reports travel insurance comparison site InsureMyTrip, which told Travel Weekly that the number of online queries for the term "travel insurance" in August hit their highest levels since March 2020, when cancellations skyrocketed.

"With the delta variant being more prevalent and there being concerns around cancellations due to either COVID or potential border closures, insurance has definitely been top of mind for travelers," said Meghan Walch, product manager for InsureMyTrip.

Meanwhile, travel insurance providers have ramped up their COVID-19-focused protections on several fronts, with many now providing far more comprehensive trip coverage around cancellations caused by a COVID-19 diagnosis, quarantine and more, according to the online publication.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