LONG COVID: Workers comp sector struggles with new exposure - PAGE 4

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COVER STORY

The Sept. 11, 2001, terrorist attack on New York's World Trade Center was devastating to an industry built on responding to disasters. More than 500 people in the insurance sector lost their lives in the twin towers. Five of their colleagues who survived the attack remember the chaos of that day and its aftermath. **PAGE 18**

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SPECIAL REPORT: EXCESS & SURPLUS LINES

After several years of sharply escalating prices, excess and surplus lines insurance buyers are seeing some moderation in rate hikes. But some lines remain particularly hard hit, including property, cyber liability and climate-related coverages. **PAGE 24**

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The Occupational Safety and Health Administration issued guidance that vaccinated individuals should wear face masks in areas of high virus transmission. The agency also released its long-awaited COVID-19 Emergency Temporary Standard. **PAGE 37**

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COPING WITH 'LONG COVID'

Workers' long-term COVID-19-related health issues could impact the comp industry indefinitely. **PAGE 4**

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Resiliency is crucial to success in an unpredictable economy, writes John Doyle, president and CEO of Marsh LLC. **PAGE 43**

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VIEW FROM THE TOP

BRUCE EISLER

Bruce Eisler, CEO U.S. and chief underwriting officer at Aspen Insurance Holdings Ltd., has overseen a refocusing of the specialty insurer and reinsurer's book of business following its acquisition by Apollo Global Management LLC. Mr. Eisler discusses the state of the commercial insurance market as the economy emerges from pandemic lockdowns. **PAGE 17**

CORRECTION

Due to a submission error, the ranking of Hilb Group LLC in the *Business Insurance* ranking of the 100 Largest Brokers of U.S. Business in the July/August issue was incorrect. The brokerage reported $260,608,909 in 2020 brokerage revenue and ranked No. 23, rather than No. 30. An updated version of the chart is available in the PDF version of the issue.

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'Long COVID' presents comp conundrum

BY LOUISE ESOLA
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Long-term health issues following a COVID-19 diagnosis will likely affect workers compensation claims acceptance, management and disability indefinitely, experts say.

Under the catch-all phrase "long COVID," symptoms include fatigue, chest pain, shortness of breath, joint or muscle pain, and difficulty concentrating. At least one study (see box) found 55 possible long-term effects of COVID-19.

"Navigating a patient through long COVID or long-hauler syndrome really is uncharted territory," said Kathy Galia, senior vice president and general manager of clinical solutions for Paradigm, which provides managed care for injured workers, during a webinar in July.

While no official number is available, some organizations estimate that up to 80% of COVID-19 patients will experience one or more long-term, persistent symptoms.

"We're in the long haul," said Beth Burry-Jackson, Richmond, Virginia-based senior vice president of case management for Sedgwick Claims Management Services Inc., of the complicated scenario of managing COVID-19 claims with long-term symptoms.

Symptoms are diverse, require care from different kinds of practitioners and much coordination is needed among providers, she said.

"A vast number of medications have been thrown at the symptoms," Ms. Burry-Jackson said. "There is no protocol, because the symptoms are so vast (and) these are imprecise symptoms, not where you can prescribe something and be done. What we are looking at is developing some best practices along the way."

Data is limited on the costs associated with long-term COVID-19 care in the comp system, said Jeff Eddinger, senior division executive for the Boca Raton, Florida-based National Council on Compensation Insurance, which has been tracking COVID-19 claims costs since the start of the pandemic.

Most claims, he said, are indemnity only, which don't include medical costs and only support income while an affected worker is out recovering from the virus.

According to the latest figures from NCCI, workers hurt by COVID-19 accounted for more than 45,000 claims in 2020, with more than 95% costing less than $10,000. Most of the claims closed quickly, and only about 1% surpassed $100,000, Mr. Eddinger said.

"I'm not suggesting that we shouldn't keep an eye on long-term COVID claims," he said, adding that "the system is healthy in handling the COVID claims. It has not put a strain on the workers compensation industry" thus far.

Those managing cases should be wary that might change, however, especially as long COVID now falls under the guidance of disability management, experts say.

"We are just beginning to understand the long-term damage that the disease is causing for a significant portion of patients," wrote Phil Walls, Tampa, Florida-based chief clinical officer for myMatrixx, an Express Scripts company, in an email.

Mr. Walls said that "accepting compensability for a COVID claim may incur costs well beyond the potential hospitalization and initial phase of treatment."

"For those patients that develop more severe post-COVID symptoms … the treatment and its costs may continue for the life of the patient. Other symptoms may not incur the same treatment costs but will create other concerns, including disability," he said.

The Office for Civil Rights of the Department of Health and Human Services and the Civil Rights Division of the Department of Justice in July provided joint guidance on long COVID, which is now considered a disability — a threshold that typically comes with implications for the comp industry.

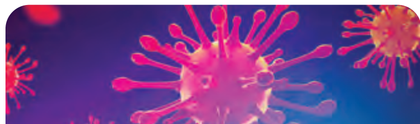
"We are just beginning to understand the long-term damage that the disease is causing for a significant portion of patients."

Phil Walls, myMatrixx

Diana Tsudik, an Anaheim, California-based partner with the Employer Defense Group LLP, said that employers are beginning to see long-hauler COVID-19 workers comp claims from individuals who never filed an initial comp claim at the time of infection, complicating the acceptance and investigation processes for claims handling.

"There's no correlation between the initial symptomology" and long COVID, she said.

"If somebody didn't file that (initial) claim, it is a lot harder for me to get information on the initial infection and how that came about. It puts insurance companies and employers behind the eight-ball. What do you do with all those claims that were not in the outbreak but now are in the outbreak? For a lack of better terms, it's a mess."



LONG-TERM EFFECTS OF COVID-19

- Prevalence of 55 long-term effects were estimated among **47,910 patients**, ages 17 to 87, studied from 14 to 110 days post-viral infection.
- **80% of the patients** that were infected with COVID-19 developed one or more long-term symptoms.
- The five most common symptoms were **fatigue** (58%), **headache** (44%), **attention disorder** (27%) **hair loss** (25%) and **dyspnea** (24%).

Source: Emory University/Houston Methodist Hospital

WORKPLACE VACCINE MANDATES GAIN TRACTION AS EMPLOYERS ACT ON GUIDANCE

More employers are requiring employees to get vaccinated for COVID-19, a trend legal experts say has been spurred by a rise in cases of the disease nationwide, the U.S. Food and Drug Administration's Aug. 23 full approval of the Pfizer-BioNTech COVID-19 vaccine, a slip opinion issued by the Justice Department that said the practice was legal, a well-publicized court ruling, and a directive from the U.S. Equal Employment Opportunity Commission.

Vaccination mandate opponents have cited safety concerns and the speedy timeline for the development of the vaccines, two of which late last month remained under emergency use authorization by the FDA. The agency's recent approval of one of vaccines is likely to create a wave of mandates, experts say.

Meanwhile, mandating the vaccine as a condition of employment has been among the top questions posed by employers, who are seeing more signs that they may have a clear road ahead to require vaccinations.

"It is by far the No. 1 question," said Adam Kemper, a Fort Lauderdale, Florida-based partner with Kelley Kronenberg LLP who practices labor and employment law and cautions his clients to not take a one-size-fits-all approach.

A directive from the EEOC issued in May stated that employers can mandate that their employees be vaccinated against COVID-19 provided they do not meet the bar for exceptions, which include religious beliefs and health concerns.

On June 12, a federal judge for the Southern District of Texas in Houston dismissed a lawsuit filed by 117 workers at Houston Methodist Hospital over its requirement that they be vaccinated against COVID-19 or lose their jobs. Since then, dozens of hospital systems have made COVID-19 vaccinations mandatory for their workers.

And the U.S. Department of Justice, in a July 6 slip opinion, stated that workplaces and other entities are not prohibited from requiring COVID-19 vaccinations for their workers.

Louise Esola

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Early COVID-19 rulings tilt to insurers

BY JUDY GREENWALD
jgreenwald@businessinsurance.com

While policyholders continue to lose most COVID-19-related business interruption coverage disputes, a clear picture on the issue will likely not emerge before state supreme and federal appellate courts issue more rulings on the issue.

Insurers so far have largely argued successfully that the coronavirus does not result in physical loss or damage to property — the critical issue in many COVID-19 cases — and therefore lost revenue is not covered under all-risks policies. Federal courts in particular have mainly ruled in favor of insurers, but policyholder attorneys say it is too soon to draw any conclusions on the overall eventual outcome.

Observers estimate that of the cases filed, 90% of federal court cases have been decided in the insurer's favor, compared with 75% of state court cases. Experts have a range of theories that explain the discrepancy, but there is no clear consensus as to why this has occurred.

Two recent cases reinforce this federal-state dichotomy. On Aug. 11, a federal court in Los Angeles dismissed a business interruption coverage lawsuit filed by the Los Angeles Lakers basketball team against a Chubb Ltd. unit. The next day, an Illinois state court said litigation filed by a pair of construction companies against a CNA Financial Corp. unit could proceed.

Policyholder attorney Micah E. Skidmore, a partner with Haynes & Boone LLP in Dallas, said policyholders have asked that several cases filed in federal appeals courts be referred to the relevant state supreme court. He said this "makes a lot of sense" because these cases ultimately involve contractual interpretation issues, which are matters of state law.

No state supreme courts have issued rulings on the issue yet, and only two federal appeals courts, the 8th U.S. Circuit Court of Appeals in St. Louis and the 3rd U.S. Circuit Court of Appeals in Philadelphia, have issued decisions, both of which favored insurers.

"The trend has been overwhelming in the federal courts, and almost as overwhelming in the state courts, that there's no coverage under traditional commercial policies for COVID-19 business interruption claims," said insurer attorney Lee Siegel, a member of Hurwitz & Fine PC in Melville, New York.

But policyholder attorneys say it is too soon to reach any conclusions. While federal rulings so far have been disappointing for policyholders, it is "by no means the end of the line" because state laws, policy language and facts differ, said Cary B. Lerman, a policyholder attorney with Munger, Tolles & Olson LLP in Los Angeles.

> "I don't think there's going to be a deluge one way or the other when it all shakes out."
>
> Cary B. Lerman, Munger, Tolles & Olson

Some policies have virus exclusions, for instance, while others do not, and some explicitly provide coverage for government-ordered shutdowns, he said.

Policyholder attorney Paul Walker-Bright, counsel with Neal, Gerber & Eisenberg LLP in Chicago, said many decisions so far were based on policies that have virus exclusions, so "the numbers look a little lopsided because of that."

If federal appellate decisions "follow the pattern that has been seen in the state trial court level," which has recently been in policyholders' favor, "we should start to see a shift here" because the federal courts "will not be able to ignore" the rulings, he said.

"I don't know how it's going to turn out," said policyholder attorney Scott D. Greenspan, senior counsel with Pillsbury Winthrop Shaw Pittman LLP in New York. "It's really going to be up to the state supreme courts."

"I don't think there's going to be a deluge one way or the other when it all shakes out," said Mr. Lerman of Munger, Tolles & Olson.

Policyholder attorney Marshall Gilinsky, a shareholder with Anderson Kill P.C. in New York, said, "When you mix and match the different permutations, as well as the different approaches used in different states, I think what we'll see is different outcomes," with policyholders winning some and losing others. "But it's all going to depend" on policy language, the facts of the case and the state law, he said.

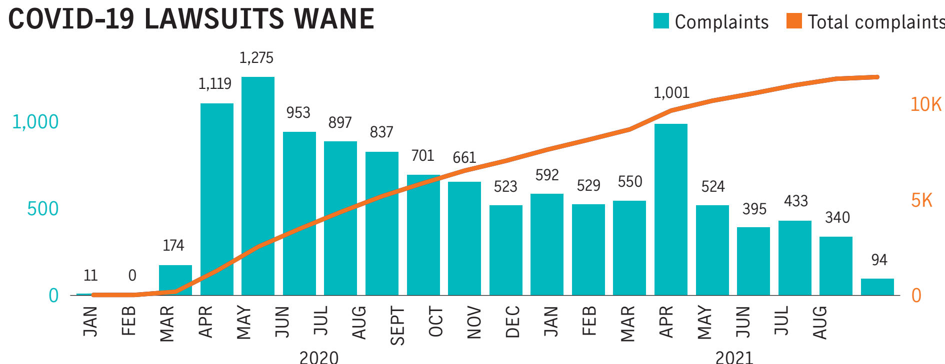
Tyrone R. Childress, insurance recovery practice leader with Jones Day LLP in Los Angeles, said, "There are new cases being filed daily, and trial courts are going to do whatever trial courts are going to do," but until federal circuit or state appeals courts provide more guidance, "everyone is still going to be wondering where the cases are going to go."

Insurer attorney Larry D. Mason, a partner with Goldberg Segalla LLP in Chicago, said insurers overall will prevail. "We're seeing more and more settled law emerging for which judges are more likely to find comfort in what is becoming the majority trend" of pro-insurer rulings, he said.

Pro-policyholder rulings will likely be overturned on appeal, Mr. Mason said.

However, policyholder attorney Scott Godes, a partner with Barnes & Thornburg LLP in Washington, said that in past decades, "hotly contested" asbestos and environmental litigation cases initially went insurers' way, in whole or in part, before the trend shifted toward policyholders.

COVID-19 LAWSUITS WANE



Source: Hunton Andrews Kurth LLP

RECENT CASES SHOW VARIETY OF COURT VIEWS ON COVERAGE

Recent COVID-19 business interruption rulings include:

Aug. 18: The 3rd U.S. Court of Appeals in Philadelphia, in a divided opinion, agrees with insurers that COVID-19 business interruption cases could be heard in federal district courts rather than state courts, according to the ruling in *Dianoia's Eatery LLC et. al. v. Motorists Commercial Mutual Insurance Co. et. al.*

Aug. 12: An Illinois state court refuses to dismiss litigation where construction companies had alleged physical loss or damage under their coverage in *JDS Construction Group, LLC and 9 Dekalb Fee Owner LLC v. Continental Casualty Co.*

Aug. 11: A federal district court in Los Angeles agrees to dismiss litigation filed by the Los Angeles Lakers basketball team against a Chubb Ltd. unit in *The Los Angeles Lakers, Inc. v. Federal Insurance Co.*

Aug. 4: A New York state court judge dismisses litigation filed by a restaurant chain, in *Consolidated Restaurant Operations Inc. v. Westport Insurance Corp.*

Aug. 4: A Pennsylvania state court refuses to dismiss a case filed by the New York Yankees' Triple-A baseball team, the Scranton/Wilkes-Barre RailRiders, in *SWB Yankees, LLC v. CNA Financial Corp. et. al.*

July 26: American International Group Inc. wins dismissal of a case filed in U.S. District Court in New York by a large hospital system, in *Northwell Health Inc. v. Lexington Insurance Co. and Interstate Fire & Casualty Co.*

July 13: A California state judge refuses to dismiss litigation filed by a national retailer, in *Ross Stores Inc. et. al. v. Zurich American Insurance Co. et. al.*

July 2: The St. Louis-based 8th U.S. Circuit Court of Appeals, in the first federal appeals court decision on the issue, rules against an oral surgeon's practice, in *Oral Surgeons, P.C. v. The Cincinnati Insurance Co.*

Judy Greenwald

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Driver shortage, rate hikes hit trucking market

BY MICHAEL BRADFORD

A tough insurance market for commercial trucking companies isn't likely to change direction soon as insurers continue to raise rates, shrink limits and restrict capacity for a risk that has a history of generating big claims.

"The market continues to harden," said Justin Joyce, Minneapolis-based president of National Truck Underwriting Managers Inc., a unit of Amwins Group Inc.

"It's been a heck of a ride over the last few years," said Craig Dancer, U.S. transportation industry practice leader at Marsh LLC in Washington. "It's been a tough time for commercial auto across the board" in a market that hasn't seen insurers record a combined ratio under 100% in more than a decade, he added.

Insurers began pulling out of the market about six years ago as losses rose dramatically, sources say, and since then, truckers have been paying ever-increasing rates for primary and excess liability coverage.

Rates have jumped for Lupus Superior LLC in Grand Prairie, Texas, rising around 40% for the 65-truck fleet over the past year, according to Tony Pagan, safety manager. Insurance costs per truck are about $480 per month, depending on the type of vehicle, he said.

Lupus Superior and other trucking companies are experiencing a chronic shortage of drivers, which experts attribute partly to the industry's lack of appeal to younger drivers. Insurers have expressed concerns that inexperienced drivers could create an increased risk for accidents if training is not thorough (see related story).

Rate increases are leveling off, though. "It's still going up, but not to the same extent," Mr. Dancer said.

Some policyholders saw rates rise as much as 75% a few years ago, but increases at renewals are likely to be far lower for those with clean records, he said. "If you're a top-performing fleet with extremely

good safety protocols, excellent investment in technology in terms of collision mitigation, telematics, that sort of thing, those guys are seeing on average anywhere from 10% to 20% increases," he said.

Exceptionally good risks may see even smaller increases, Mr. Joyce said. Companies with a strong safety culture, favorable loss experience and strict hiring standards may see increases under 5%, he said.

Rate increases continue partly because trucking accidents have become very expensive, experts say.

"Nuclear verdicts" are being awarded to plaintiffs in truck accidents in "any number of jurisdictions," and insurers are raising primary and excess rates as a result, said Matthew Payne, senior vice president, and transportation and energy team leader at Lockton Cos. LLC in Kansas City, Missouri.

National Truck Underwriting Managers considers anything over $10 million a nuclear verdict, Mr. Joyce said. "They've become much more prevalent," he said.

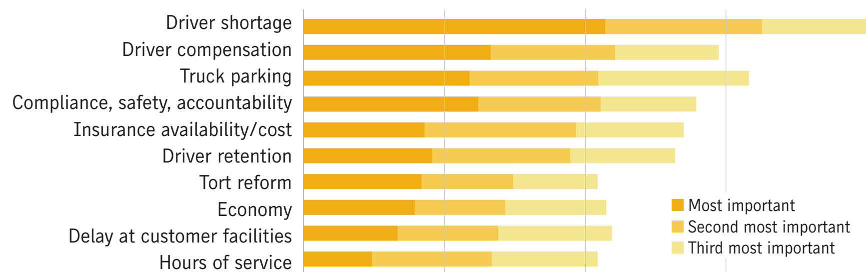
Ten years ago, insurers didn't worry much that an excess layer would be pierced but settlements today can reach into the tens of millions, even if they involve conscientious drivers and "close to zero contributing factors other than they happen to be on the road," he said.

Large-fleet companies that have been hit with huge settlements will see rates jump 25% to 75%, according to Mr. Dancer.

As large verdicts and other factors have pushed up rates, many trucking companies are buying less coverage, he said. "Some who bought $100 million three years ago are now down to $30 million. And that $30 million costs more than what they were paying for $100 million."

TOP 10 TRUCKING INDUSTRY ISSUES

A 2020 report by the American Transportation Research Institute shows the distribution of industry issue prioritization scores based on over 3,100 survey responses from trucking industry stakeholders throughout North America.



Trucking companies are required to carry at least $750,000 in liability limits and most prefer to carry at least $1 million, with large fleets purchasing upwards of $100 million in coverage, sources say.

"It takes quite a few insurance companies to build up to that limit," Mr. Payne said. Smaller limits are easier to find in the excess and surplus lines market, depending on the buyer's loss history, he added.

Many buyers are hard-pressed to get more than $1 million in primary coverage, said Gary Flaherty, vice president of E&S commercial auto with Nationwide Mutual Insurance Co. in Scottsdale, Arizona. Higher limits are available but for the risks that are "the best of the best," he said.

Excess insurers are reluctant to attach at lower limits, Mr. Joyce said. Those that offered $5 million in coverage above a $1 million primary layer in previous years are more likely to attach at $3 million or $4 million, he said. "And all the while, as you build that tower, the rates today as compared to five years ago continue to go up."

Excess capacity has shrunk to less than half of what was available several years ago, Mr. Dancer said. "That has corresponded in the excess market to increases in rates of 50% to 200%."

Some new capital, attracted by high rates, has entered the market, sources say, but it is not enough to soften conditions.

"New capital has come in, especially on the excess side," said Mr. Payne of Lockton. Domestic excess and surplus lines insurers have committed capital, as have insurers in London and the Bermuda market, he said. "We're still seeing rates increasing, so I wouldn't say the new capital has created a competitive environment."

In-truck cameras, telematics and loss-avoidance technology are important tools for risk managers, along with rigorous driver training, sources say. Apart from those, they note, partnering with an insurer that understands the business is an effective loss-control approach.

COMMERCIAL FLEET UNDERWRITERS TAKE HARD LOOK AT OPERATOR EXPERIENCE

Insurers are looking closely at trucking companies' training and hiring requirements when underwriting the risks during a worsening driver shortage.

"Training is a concern," said Mark Gallagher, vice president, national transportation, for Risk Placement Services Inc. Companies that have comprehensive training programs in place and clean safety records will find insurers are more comfortable writing coverage for a younger and less experienced team of drivers, he said.

New workers are hard to attract in an industry that requires extended time away from home and irregular schedules, which causes problems when experienced drivers are retiring or moving among competitors offering high wages in the tight employment market.

"I think modern-day drivers are not terribly interested in driving long-haul anymore," said Gary Flaherty, vice president of E&S commercial auto at Nationwide Mutual Insurance Co. in Scottsdale, Arizona. "Motor carriers have tried to change their models to more regional, getting drivers home at night. But it's tough."

If current trends hold, U.S. trucking companies could see the shortage of drivers top 160,000 by 2028, according to the "Truck Driver Shortage Analysis 2019" by trade group the American Trucking Associations.

"It's very hard to get drivers," said Tony Pagan, safety manager at Lupus Superior LLC, a Grand Prairie, Texas-based trucking company. Some large companies are offering high wages and incentives that make it extremely difficult — particularly for smaller operators — to find and retain drivers, he said.

Underwriters want to know what qualifications trucking companies require for drivers and "their thresholds for hiring," said Matthew Payne, senior vice president, and transportation and energy team leader at Lockton Cos. LLC in Kansas City, Missouri. New-hire training, ongoing instruction, monitoring and coaching of drivers are areas that concern insurers, he added.

Michael Bradford

Fleet owners step up efforts to spot drivers impaired by marijuana use

BY ANGELA CHILDERS
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As more states legalize or decriminalize the use of marijuana, commercial fleet operators around the country are ramping up their reasonable suspicion training to manage the risk of drivers operating vehicles under the influence of the drug, experts say.

Thirty-six states and Washington, D.C., have legalized marijuana in some form. However, it remains federally illegal and subject to U.S. Department of Transportation testing requirements for commercial driver's license holders.

Data from the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse — which began collecting data on CDL license holders' positive drug tests as of Jan. 6, 2020 — shows that of 80,000 failed alcohol and drug tests since then, more than half were due to positive results for marijuana metabolites.

"Right now, with the shortage of drivers … any time a driver tests positive for any substance, it's a big blow," said John Simms, Inverness, Illinois-based senior risk adviser at HNI Truck Group, an Acrisure LLC company.

The clearinghouse requires CDL drivers and their employers to report positive alcohol and drug tests and mandates that employers use the clearinghouse to identify whether drivers being considered for hire have had a drug or alcohol infraction in the past three years.

"It's the cognitive functioning of the driver that we're most concerned about," said Ryan Pietzsch, Mechanicsburg, Pennsylvania-based program technical consultant for driver safety at the National Safety Council. "When you're talking about commercial vehicles, CDL drivers, these vehicles are over 26,000 pounds. These are major destruction makers."

While the majority of failed drug tests for substance abuse are preemployment tests, most failed alcohol tests are random, followed by tests due to reasonable suspicion of intoxication, according to 2020 clearinghouse data.

There have also been "dramatic increases" in incidents in which a driver is under the influence of both marijuana and alcohol, said Clair Stroer, program manager in the impairment practice at NSC.

Many fleets are "really ramping up their reasonable suspicion training for supervisors," said Darren Beard, Kansas City, Missouri-based senior loss control consultant at Lockton Cos. LLC.

While CDL regulations require supervisors of fleets to receive 120 minutes of training on the symptoms of alcohol or controlled substance use, more companies are increasing efforts with the goal of enabling supervisors to identify potential signs of impairment both in person and over the phone, he said.

"It's really to manage the risk; it's not so much to find out if they were smoking marijuana three weeks ago," Mr. Beard said, adding companies are "focusing on the impairment side of that to protect not only their liability but the motoring public."

Shop supervisors can be key to identifying impairment. "When drivers aren't driving, that's the place they hang out," Mr. Simms said. Management should "have weekly conversations about the drug and alcohol environment that is out there" and "make it a point to go have one-on-one conversations (with drivers)."

Fleet employers are also increasing their education about marijuana and making sure drivers understand that CBD, which is unregulated, can contain THC that could result in a positive drug test, he said.

"CBD products are often the culprit (behind positive marijuana tests) because the majority of drivers think it is OK to take those medications," said Chris Eastly, Pittsburgh-based vice president and senior risk consultant at Hub International Ltd. He encourages companies to do more than just pass out the DOT mandatory drug and alcohol education information and hold "tailgate talks" to ensure drivers understand the policies.

And although some may assume that states with more liberal marijuana laws would see higher levels of drivers test positive for drugs, that isn't the case, according to the clearinghouse. Texas reports the highest number of CDL drivers with positive drug tests, followed by California, Florida, Georgia and Illinois.

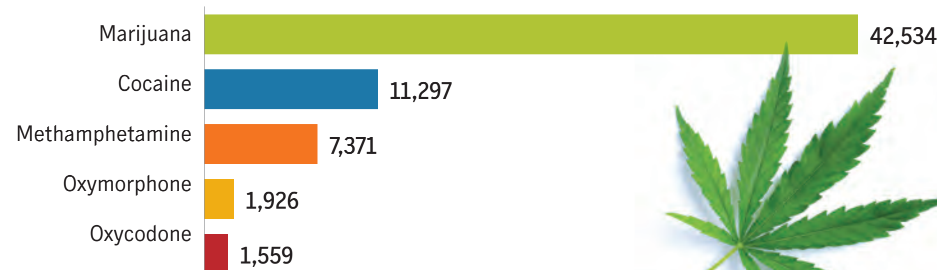
While Texas has a large population, it also has "probably one of the most restrictive marijuana programs," Mr. Beard said. "I don't necessarily think you can draw a conclusion from the data at this point, (but) when you look at the population of Colorado" which is 18th in positive drug tests and where recreational marijuana is legal "it's nowhere near the proportion."

The concern is different for fleets that don't require drivers to have a CDL and are therefore not subject to the drug testing regulations under federal law. Identifying marijuana use is even more important for such companies because of how widespread it is, Mr. Beard said.

"A lot of our non-regulated fleet employers are having to make hard decisions about either eliminating marijuana from their drug-free testing program or eliminating drug testing altogether just to get candidates through the door," he said.

SUBSTANCES IDENTIFIED IN DRUG TESTS

Instances of particular substances identified in drug tests of commercial driver's license holders between Jan. 6, 2020, and June 1, 2021.



Source: Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse

FAILED TEST MAY NOT LEAD TO DISMISSAL

Trucking fleet operators, faced with an especially tight labor market, are looking at ways to retain qualified drivers who may have failed a drug test, experts say.

"Finding qualified drivers is No. 1 — it has always been a struggle and continues to be today," said Darren Beard, Kansas City, Missouri-based senior loss control consultant at Lockton Cos. LLC. According to the American Trucking Association, the turnover rate for drivers at large carriers averaged 90% in 2020.

In an attempt to retain good drivers who may have failed a drug test, some fleets are creating self-admittance policies to allow drivers to own up to problems and seek help through proper channels without negative implications, Mr. Beard said.

"Not every employer necessarily had that in their program before, but at this point, with such a shortage of CDL drivers, folks are taking a look at it," he said.

Some companies are considering bolstering their employee assistance programs or providing access to substance abuse professionals to retain good drivers with positive test results, said Nina French, president of employer and law enforcement solutions at Oakland, California-based biotech company Hound Labs Inc., which has developed technology to detect marijuana impairment.

While most fleets typically "hand the driver some referral information" while terminating their employment if they test positive for drugs or alcohol, the scarcity of drivers may prompt them to consider alternatives, said Chris Eastly, Pittsburgh-based vice president and senior risk consultant at Hub International Ltd.

"Perhaps (the fleet company) would be better off to rehabilitate and keep someone on the payroll and behind the wheel," he said.

Angela Childers

Severe weather prompts policy revisions

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

Climate-driven events are prompting changes in commercial property insurance policy wordings and tighter terms and conditions as insurers try to manage the increasing frequency and severity of natural catastrophe losses, brokers say.

How policies define temperature change and how deductibles and limits are applied are some of the areas where policyholders are seeing an impact, they say.

Global insured natural catastrophe losses totaled $40 billion in the first half of 2021, driven by winter freeze, hailstorm, flood and wildfire losses, according to a report published last month by Swiss Re Institute, part of Swiss Re Ltd.

Winter storm Uri, which hit swaths of the United States in February, caused estimated insured losses of $15 billion, the highest ever recorded for this peril in the U.S., and accounted for about 38% of all estimated insured losses from natural catastrophes in the first half, Swiss Re said.

Weather-related events — not just one-off events — are becoming more frequent and severe, and there's a push by insurers to continue to clarify and enforce language, said Martha Bane, Glendale, California-based managing director of the North America property practice at Arthur J. Gallagher & Co.

For hail/convective storm losses, in the past two to three years insurers have pushed actual cash value on building roofs, Ms. Bane said. "That means a much lower claim payout for the insured," she said. Insurers have also introduced "very scientific ways" of detecting pre-existing damage, she said.

Deductibles in commercial property policies have changed significantly. It's almost standard in hail-prone areas for policies now to have a percent deductible for the exposure "whereas in the past the standard all other perils deductible applied," she said.

In the wake of winter storm Uri, which knocked out power for numerous people and companies in Texas, change in temperature language has also been added to policies to clarify what coverage insurers intend to provide, Ms. Bane said.

Change of temperature coverage, which covers loss of products or materials that are sensitive to changes in temperature is offered by some insurers.

Insurers are moving to refine and restrict coverage following the freeze event in February, said Brian Dove, USI Insurance Services LLC's national real estate practice leader, based in Dallas.

"There are going to be some changes in policy language as it relates to that type of event, because the application of some of the carrier forms is not what clients expected, so there were some shortfalls there," Mr. Dove said.

One of the questions is around the term "change in temperature," he said. "We haven't seen the final version of where we'll land but there will be changes in the policy language as it relates to that type of event," he said.

Deductibles for earthquake, flood, named storm and wind/hail have also changed, increasing retentions for policyholders, Mr. Dove said. And insurers have reduced capacity for wildfire risks, he said.

People lined up to enter a Texas grocery store in February following a rare severe winter storm. Since Uri, change in temperature language has been added to insurance policies.

Ricardo B. Brazziell/American-Statesman via USA TODAY NETWORK

> "Insurers want to make sure the cat models are accounting for climate change to the extent possible."
>
> Karen Clark, Karen Clark & Co.

FM Global is not planning any broad, wholesale changes to its policies when it comes to weather-related risks or climate change, said Amy Brown, staff vice president, manager for natural hazard underwriting, at the Johnston, Rhode Island-based insurer.

"There is nothing specific in our policy that addresses climate change," and no temperature wording for freeze, Ms. Brown said.

However, policies are tailored to the individual risk profile of policyholders, and as the nature of their risk profile changes, "we have updated the policy to keep pace with that," she said.

Five years ago, FM Global talked to policyholders about moving toward percentage deductibles for hail. "That was to help manage that balance between cost of insurance and the coverage they are looking for," she said.

Joseph Jonas, product manager, commercial lines, at the American Association of Insurance Services, an insurance statistics and advisory organization in Lisle, Illinois, said there is not necessarily a shift by insurers to standardize language as it relates to extreme weather events and climate change.

But recent events have led to a shift in how the industry approaches extreme weather events, whether that's insurers developing new coverages, the way insurance departments look at new filings, catastrophe modeling or adjudication of claims, he said.

Superstorm Sandy in 2012 brought to light inadequacies in policy language and/or policy offerings, for example, Mr. Jonas said.

Insurers are requesting much more information from catastrophe modelers with respect to climate change, in part because external stakeholders, such as regulators and rating agencies, are seeking more information from insurers, said Karen Clark, president and CEO of Karen Clark & Co.

"Insurers want to make sure the cat models are accounting for climate change to the extent possible," she said.

Wildfire is the modeled peril that has the highest percentage impact from climate change, followed by floods and hurricanes, and then severe convective storms, Ms. Clark said.

Scientific evidence suggests that climate change is a driver for many perils and the aggregate catastrophe data and first-half statistics confirm that, said Thomas Holzheu, chief economist for the Americas at Swiss Re Institute.

GLOBAL WARMING

The Intergovernmental Panel on Climate Change's Sixth Assessment Report, published Aug. 9, concluded that:

- It is unequivocal that **human influence** has warmed the atmosphere, ocean and land.
- Global temperatures are likely to rise by more than **1.5 degrees Celsius** over the **next 20 years**, bringing widespread extreme weather.
- Unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming to close to **1.5 degrees Celsius** or even **2 degrees Celsius** will be beyond reach.

MITIGATION STRATEGIES VITAL IN MANAGING CLIMATE-RELATED LOSSES

Mitigation has a critical role to play as insurers and policyholders look to better manage climate-driven losses, experts say.

Businesses can take steps at individual locations to mitigate their exposures to perils, said Brian Dove, USI Insurance Services LLC's national real estate practice leader, based in Dallas. "It doesn't guarantee they won't be impacted by the event, but it definitely helps to mitigate the impact," he said.

For more traditional primary perils such as flood, wind and earthquake, there's extensive scientific data that "helps us understand the nature of the event," what factors might make a client high risk, and "a wealth of ways to mitigate that," said Amy Brown, staff vice president, manager for natural hazard underwriting, at FM Global, the Johnston, Rhode Island-based insurer.

"When we look at some of the emerging perils, like hail and wildfire, we're in the beginning of that journey," she said.

Catastrophe models can be used to determine the value of mitigation strategies, said Karen Clark, president and CEO of Karen Clark & Co. in Boston. "When commercial property owners do things to mitigate the risk, the models can quantify how much the rates can change due to that," she said.

Insurance regulators also want to be sure mitigation steps taken by property owners and communities, such as pruning and clearing brush, are incorporated into the models and reflected in the rates charged, she said.

Claire Wilkinson

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PROFILE: CAPE VERDE

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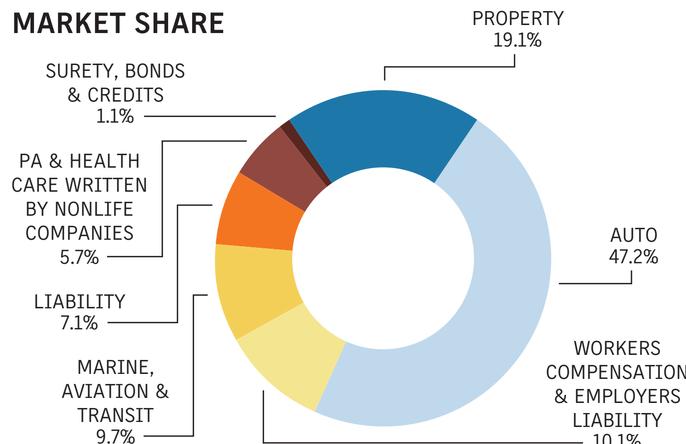
GLOBAL P/C MARKET RANKING

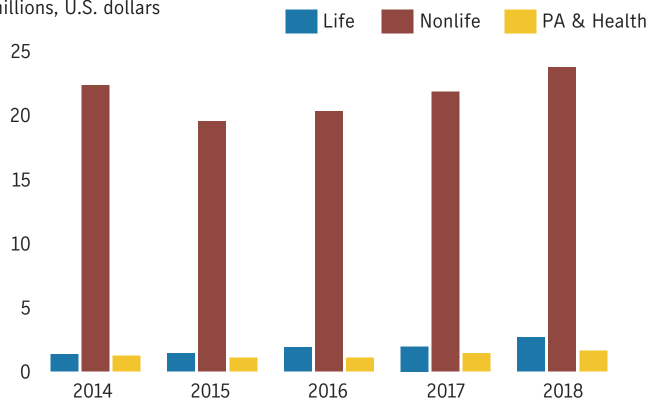
The insurance market in Cape Verde is small and stable, with only two insurers: Garantia and IMPAR. The nonlife insurance market continues to grow, increasing by 4.39% in 2018 to CVE 2.35 billion ($25.1 million), including personal accident and health care premiums. That represented an increase of 21.35% from 2014. The regulatory environment is considered stable but in need of improvement; proposed legislative revisions for employers liability have stalled, and the COVID-19 pandemic has exacerbated the delay. With only two insurers, the regulatory regime is somewhat collegial with the industry working with the government in a consultative manner. The market experiences few surprises in terms of new products, services or channels of distribution, and insurers typically make changes on a reactive or opportunistic basis when a new compliance requirement is implemented or when a competitor does something new.

MARKET SHARE

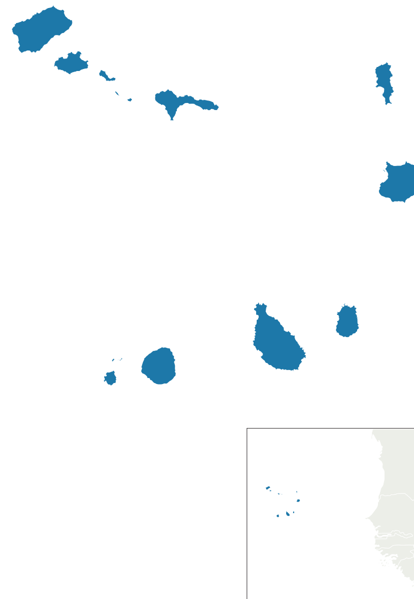


MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA

1,557
square miles

POPULATION

589,451

MARKET CONCENTRATION

100%
market share of top two insurers

2021 GDP CHANGE (PROJECTED)

(5.8%)

MARKET DEVELOPMENTS

Updated July 2021

- Cape Verde has become more politically stable in recent years and prior to COVID-19 was experiencing a boom in tourism with a strong component of all-inclusive resorts, many with casinos. With the onset of the pandemic, a state of emergency was declared and almost all international travel was suspended, stopping tourist activity almost completely. Available market statistics beyond 2018 are not yet available, and it remains to be seen how the almost certain contraction in the economy has affected the insurance sector.
- There are only two insurance companies, Garantia and IMPAR, both limited liability composite insurers, operating in the market. After a spell of market share being nearly an equal split, Garantia appears to be pulling ahead, with a 57.5% share in 2018. Garantia took over the insurance portfolio of the former state-run insurance and social security monopoly and has state bodies as minority shareholders.
- Apart from some temporary measures to stabilize the financial sector, including the insurance industry, there have been no recent changes in legislation affecting the general conduct of nonlife insurance business.
- Insurance may be written by duly authorized private limited liability companies, state enterprises or branches of foreign insurers. There are no restrictions on domestic ownership and banks can and do own shares in insurers.
- Approved insurers are supposed to be dedicated solely to insurance business but are allowed to carry on activities ancillary to insurance such as car repairs.
- Foreign companies may participate in the market by means of a share of up to 100% in a duly authorized private limited liability company or through a branch operation.
- There have been no recent bilateral or multilateral trade agreements with implications for foreign company market access.

COMPULSORY INSURANCE

- Third-party auto liability
- Workers compensation
- Professional indemnity insurance for corporate insurance intermediaries
- Professional indemnity insurance for legal companies that have limited liability
- Professional liability for individuals and companies engaged in technical studies and engineering projects
- Professional liability for real estate developers
- Aviation liability
- Shipowners liability against marine oil pollution (financial guarantee or insurance)

NONADMITTED

Insurers must be locally licensed to carry on insurance business in Cape Verde. At the same time there is nothing in the law to indicate that insurance must be purchased from locally authorized insurers. This is generally interpreted to mean that insurers can issue policies from abroad, with exceptions, if approached by a buyer and/or an intermediary, but unauthorized insurers may not solicit business.

INTERMEDIARIES

Brokers and agents are required to be locally licensed to do insurance business. The law does not specify whether intermediaries are allowed to place business with nonadmitted insurers.

MARKET PRACTICE

Market rules regarding nonadmitted insurance are followed scrupulously. Buyers and their intermediaries place their insurance with the two locally authorized insurers, which offer a full range of coverages.

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- GENERAL LIABILITY & PACKAGE
- PERSONAL UMBRELLA
- SPECIALTY LIABILITY
- CROP
- SURETY

'Morning Show' producer sues Chubb

The company that produces the cable TV show "The Morning Show" filed a COVID-19-related business interruption lawsuit against a Chubb Ltd. unit, charging breach of contract and bad faith.

Always Smiling Productions LLC, which produces the show that debuted on Apple TV+ in November 2019, charges in the suit filed in U.S. District Court in Los Angeles that Chubb National Insurance Co. refused to pay its business interruption claim in connection with the production's COVID-19-related shutdown in March 2020 because it had not suffered "direct or physical loss or damage," according to the lawsuit, *Always Smiling Productions LLC v. Chubb National Insurance Co.*

Culver City, California-based Always Smiling said in the lawsuit that its policy, which did not have a virus exclusion, provided $125 million in cast coverage and $1 million each for imminent peril, civil or military authority, and ingress and egress coverages.

Under ingress and egress coverage, Chubb agreed to pay for the actual production loss incurred during impairment of an insured production when access from a location is prevented because of direct physical loss or damage to property at a premises, according to the lawsuit.

The lawsuit said Chubb paid Always Smiling $1 million under its civil authority coverage in June, although its loss exceeded $44 million. It also said the insurer refused to renew the policy past November 2020.

FM Global prevails in Sandy dispute

A federal appeals court affirmed a lower court ruling in an FM Global unit's favor in litigation over $1.47 billion in property and business interruption losses New York University claimed it was due as a result of 2012's Superstorm Sandy.

The ruling by a unanimous three-judge panel of the 2nd U.S. Circuit Court of Appeals in *New York University v. Factory Mutual Insurance Co.* affirmed a March 2019 decision by the U.S. District Court in New York.

In the lower court ruling, the judge had said that NYU's argument in favor of coverage "is easily dispensed with."

Among the issues discussed in the appellate court decision was NYU's contention that the district court had erred in concluding the 2011 policy's additional coverages were unambiguously subject to the limit of liability for flood.

"We do not agree," the appellate panel said. The policy's language "makes plain that any costs incurred from flood that would qualify as additional coverages are part of, not in addition to, the $250 million limit of liability for loss or damage from flood," it said in affirming the lower court's decision.

Jury rules against Walmart in ADA suit

A Green Bay, Wisconsin, jury returned a $125.2 million verdict against Walmart Inc. in a disability discrimination case filed by the U.S. Equal Employment Opportunity Commission.

Walmart said in a statement afterward that the verdict would be reduced to $300,000, which it said was the maximum permitted under federal law.

The jury found that Walmart violated the Americans with Disabilities Act by failing to accommodate Marlo Spaeth, a 16-year employee with Down syndrome, and then fired her in July 2015 because of her disability, the EEOC said in a statement.

The EEOC said it presented evidence that a change Walmart made to Ms. Spaeth's longstanding work schedule caused her significant difficulty.

When she requested her start and end times be returned to her prior schedule, Walmart did not act on her request and fired her instead, the agency said.

The jury also found Walmart turned down Ms. Spaeth's later request to be rehired because of her disability or because of its need to accommodate her disability.

The EEOC said Ms. Spaeth had consistently received positive performance evaluations from her managers.

The jury awarded Ms. Spaeth $150,000 in compensatory damages and $125 million in punitive damages after deliberating for three hours following the four-day trial.

EEOC Chair Charlotte A. Burrows said in the statement, "The substantial jury verdict in this case sends a strong message to employers that disability discrimination is unacceptable in our nation's workplaces."

Walmart said in a statement it was exploring its options.

"We do not tolerate discrimination of any kind, and we routinely accommodate thousands of associates every year," the company said. "We often adjust associate schedules to meet our customers' expectations, and while Ms. Spaeth's schedule was adjusted, it remained within the times she indicated she was available.

"We're sensitive to this situation and believe we could have resolved this issue with Ms. Spaeth; however, the EEOC's demands were unreasonable."

Guilty plea in fatal railcar explosion case

The owners of a railcar cleaning service pleaded guilty in federal court in Omaha, Nebraska, to charges stemming from an investigation into a 2015 railcar explosion that killed two workers, according to a statement from the U.S. Department of Justice.

Nebraska Railcar Cleaning Services LLC; its president and co-owner, Steven Michael Braithwaite; and its vice president and co-owner, Adam Thomas Braithwaite, were charged with conspiracy, violating worker safety standards resulting in worker deaths, violating the Resource Conservation and Recovery Act, and submitting false documents to the Occupational Safety and Health Administration.

Omaha-based NRCS cleans rail tanker cars, a task that involves sending workers inside the cars to scrape and remove various commodities, including gasoline, ethanol, petroleum by-products, pesticides, herbicides and food-grade products.

According to court documents, NRCS failed to implement worker safety standards and then tried to cover that up during an inspection by OSHA.

The 2015 event that prompted the investigation occurred when NRCS employees were sent into a tanker car containing highly flammable residue that exploded, killing two workers and injuring a third.

The DOJ said that on "various occasions prior to the explosion OSHA officials conducted regulatory inspections during which they notified the principals of NRCS that NRCS was in violation of OSHA safety regulations concerning confined space entries."

The defendants are scheduled to be sentenced on Oct. 25.

DOCKET

DOCTOR PLEADS GUILTY IN KICKBACK SCHEME

A Lake Charles, Louisiana, physician pleaded guilty to federal fraud charges stemming from a profit-splitting arrangement with a company selling topical creams and patches to injured workers. Dr. Robert Dale Bernauer's involvement in the six-year scheme to defraud the U.S. government and private insurance companies by over-billing for unnecessary medications netted him more than $1 million in profits, the U.S. Department of Justice said. Individuals associated with the unnamed drug company recruited Dr. Bernauer to dispense pain creams and patches to his workers compensation patients by offering him a 50% split of the profits collected from insurers, according to court documents.

EMPLOYEE ENTITLED TO MILITARY LEAVE PAY

The 3rd U.S. Circuit Court of Appeals in Philadelphia overturned a lower court and ruled a Federal Express Corp. worker is entitled to be paid for his military reserve leave. Gerard Travers, who fulfilled his Naval Reserve duties during leaves from work, had not received compensation from FedEx for those absences because the company's policy was to not pay employees for military leave, while paying workers who missed work for other reasons, such as jury duty, illness and bereavement, according to the ruling.

JAIL TIME IN FATAL TRENCH ACCIDENT

The owner of a Colorado construction company was sentenced to 10 months in jail for reckless endangerment and assault related to an employee's death in a trench accident. Bryan Johnson, owner of Avon, Colorado-based ContractOne Inc., was sentenced by the state's Grand County Court after pleading guilty to the charges. Rosario Martinez was fatally injured in the trench collapse in June 2018 at a worksite in Granby, Colorado. In addition to jail time, Mr. Johnson will serve three years of probation and pay Mr. Martinez's family restitution up to $25,000.

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Bruce Eisler

ASPEN INSURANCE

Bruce Eisler was appointed CEO U.S. and chief underwriting officer at Aspen Insurance Holdings Ltd. in June 2020. He has overseen a refocusing of Aspen's book of business that took place after the specialty insurer and reinsurer was bought by Apollo Global Management LLC in February 2019 for $2.6 billion. Mr. Eisler recently spoke with *Business Insurance* reporter Matthew Lerner about commercial insurance market conditions, emerging from pandemic lockdowns, technology and other issues facing the insurance industry. Edited excerpts follow.

Q How has the hardening market affected Aspen, and what is the near-term commercial rate forecast?

A For many of our property/casualty lines, we continue to see favorable market conditions. Some lines of business — excess casualty, for instance — have had rate increases for three years. We've seen rate on rate on rate, and it's continuing, but at a more modest pace than prior years.

We are largely in a favorable market environment, and I think it will be sustained for another couple of years, maybe not as dramatically as we've seen in the last couple of years, but I still think it will remain quite firm.

The insurance industry has some ground to make up because of extended periods of losses and underpricing. We're doing a reasonably good job of that right now, but we really need these rate increases and changes in terms and conditions, which I think will be with us for a while longer.

Inflation could become an issue for our insureds and for us, and it needs to be contemplated in our pricing.

Q How has Aspen changed and adapted over the recent past?

A We had a reorganization and restructuring that effectively started when Apollo Global Management LLC closed its transaction to buy Aspen for $2.6 billion in February 2019. The deal was first announced in late August 2018. Aspen really focused on reducing the complexity of the organization. We consider ourselves a specialty insurer and reinsurer. In order to remain that, we narrowed down our product set to a more limited offering. We de-emphasized certain businesses and emphasized the businesses where we are an established and relevant market.

Now, we're in the lines of business in which we've historically done well, and have the alignment of the stars that we have more favorable market conditions in those lines of business. Areas to which Aspen is committing additional resources include the financial and professional lines, such as management liability, professional liability and transactional liability. Cyber and casualty lines have also seen growth, not only in primary and excess casualty but environmental and railroad as well.

We took steps to narrow our focus, so the lines we are focused on are all growing, are all specialty and are all lines where we anticipate growth going forward. Accident and health was one of the areas which was de-emphasized.

Q What types of plans is Aspen making as far as emerging from the pandemic, and has the recent resurgence of the virus become a complication?

A When we look at offices here and in the U.K., we are beginning to plan for the future. We're planning for what will eventually be a new normal — new working patterns largely around a hybrid model that, in most offices, will be two or three days in the office situation. This will vary by role and could also turn on other variables, such as the seasonality of a given business. There will be more modern, flexible workspaces with dedicated areas for collaboration. The novelty of working from home can turn very quickly into living at work and we need to be mindful of that and take steps to ensure it won't happen.

Our planning for this contemplated this precise possibility that we're looking at now, the potential for "extra innings." We contemplated the likelihood for that and other issues and tried to take a very considered approach to this.

Q How does Aspen see technology fitting into its business?

A Technology has several components. Every company, Aspen included, is looking to improve its financial metrics through technology, and technology is definitely one of those levers that should enable us to improve our financial metrics.

Your technology also really needs to enable you as an insurance company to efficiently and effectively address reporting and regulatory requirements. Those things are necessary, they should not be difficult, and technology handles that more efficiently than any other fashion.

A very necessary component for any information technology manager and budget is certainly to focus on cybersecurity and resilience.

Q Will the insurance industry continue to consolidate?

A If you look at what's been going on with the broker side of things — such as Ryan Specialty going public and doing very well — I would think that's indicative of a favorable view of that space. There is a lot of activity, and I wouldn't be surprised to see more in that particular arena.

From a larger perspective, Aspen is a large writer of transactional liability. Mergers and acquisitions, which declined during the COVID-19 outbreak, have now come back to levels as strong if not stronger than prior to the pandemic. There's a great deal of merger and acquisition activity taking place and that has been the case for a substantial portion of 2021, and we are seeing opportunities in representations and warranties insurance.

Q How do you see overall economic conditions bearing upon the insurance industry?

A Economic conditions are favorable, which is favorable for insurers. Many of our clients are seeing strong revenue growth themselves. They're benefiting from the favorable economic conditions and right now are in a pretty good position. Insureds have a very robust pipeline of business and opportunity, and revenues are increasing year over year.

The issue of inflation is probably the one we want to keep our eye on the most.

Inflation could become an issue for both our insureds and us. Inflation is meaningful, and it is incumbent on us to act on that now.

The novelty of working from home can turn very quickly into living at work and we need to be mindful of that and take steps to ensure it won't happen.

9/11 ATTACKS: INDUSTRY REMEMBERS 20 YEARS ON

Scenes of chaos, tragedy, humanity and strength still resonate

BY LOUISE ESOLA
lesola@businessinsurance.com

The insurance industry had a large presence in the World Trade Center, and Tuesday, Sept. 11, 2001, began like any other morning in lower Manhattan. People had gotten their coffee on the way from the trains. They took the elevators up. They chatted with colleagues and made plans for lunch. Meetings were in session or about to begin.

But some were running late. They had doctor or dentist appointments, or they missed the train. Had gotten called to a meeting in another city. A child was sick. Or they were stuck in New York's infamous morning commute.

Chance and circumstance determined the fate of so many people in the industry when, a short while later, lives ended and many more were changed when al-Qaida terrorists flew hijacked planes into the iconic Twin Towers.

To commemorate the 20th anniversary of 9/11, *Business Insurance* interviewed industry professionals who survived the attacks, who could have been there, who should have been there, and who can't forget. These are the colleagues of the more than 500 insurance industry executives who lost their lives.

For an industry that knows disaster and aftermath well, the event shattered companies, broke the hearts of many, and eventually forced them to move forward to become whole. It wasn't easy, and, as some have said, it still isn't. For some, time only passes as much as memory will allow.

These are just five survivor stories but, as we heard over and over, they could be the voices of hundreds.

John Trace: in an early morning meeting on the 52nd floor of the south tower.

John Trace was meeting with a small group on the 52nd floor of the World Trade Center's south tower, the headquarters for Guy Carpenter & Co. LLC., when a loud boom had everybody rush to the wide windows to look down: People in the plaza were running in different directions.

"We assumed it was something below," said Mr. Trace, who then worked as a facultative broker and is now CEO North America for the reinsurance broker. "And it was pretty big. There was debris in the air. … I ran down the hall and everybody was standing around. Nobody knew what was going on. We just knew we needed to get out of the building."

From there groups of colleagues poured into a stairwell, moving calmly, as more and more entered from other floors. At about the 30th floor landing, another large, and more proximate-sounding boom knocked people off their footing. "That's when tensions became heightened. But people were terrific, helping people up," Mr. Trace said.

SEPTEMBER 17, 2001

Business Insurance

After shock

Terrorism strikes at industry's heart

Tragedy touches entire market

Disaster may be largest loss ever page 3

Europe tightens security page 17

"Ultimately, we got down to what was the mezzanine and there were all these shoes and stuff on the floor; people were running as fast as they could and left their shoes," he said. From there, Mr. Trace saw a firefighter directing people to the lower level, where it was dark but where they could access the street.

"It was the most harrowing scene; at that point we started seeing people who jumped out of the building," Mr. Trace said.

> "It was the most harrowing scene; at that point we started seeing people who jumped out of the building."
>
> John Trace

It didn't occur to Mr. Trace and his colleagues — as they made their way together through lower Manhattan, scrambling and confused — that it had been an event of an unfathomable nature for people in the insurance industry, whose job is to predict and prepare for the worst: Passenger airliners had been flown into a famous pair of skyscrapers that dominated the New York skyline for nearly three decades.

"We realized it was a terrorist attack, people on the street were talking," he said. "Then we heard this incredible noise. The building I had just been in just started pancaking. You just couldn't believe what you were seeing. We were left with that horrific thought of what was happening, watching the building come down."

The image of chaos is still fresh from what Mr. Trace recalls had been a "beautiful, beautiful day" before the mayhem. But so is the scene of what came next: strangers helping strangers. "There's a moment in time, I will never forget, that as horrific as it was, you saw the best in humanity — people coming together."

For the Guy Carpenter workers who survived — several hundred people worked at the company headquarters in the World Trade Center and 23 were killed — the day was "a seminal date that divides your life," Mr. Trace said. The company holds an annual breakfast to remember those who were lost.

Although he is a senior executive in the industry, Mr. Trace said he feels tasked with something beyond that.

"We want to make sure future generations never forget — not only the atrocity but the moments, the period after, when we all came together," he said.

Jennifer Fahey: in her office on a top floor in the south tower, facing a blue sky to the north.

Moments after the first plane hit the north tower of the World Trade Center at 8:46 a.m., people in the top floors of the south tower had front row seats to the horror of the day.

So recalled Jennifer Fahey, an early riser who worked on the 100th floor as a senior leader in financial lines for Aon PLC and was among the first to know what had happened. She was in her office, large windows facing a crisp blue sky, when she saw a large plane zoom past and hit the neighboring tower. A plume of smoke and fire ignited a sense of urgency. Run.

Unaware it was a terrorist attack, Ms. Fahey's first concern was that the billowing smoke would affect the building she was in, so she urged colleagues on her floor, rounding up as many as she could in a sweep of the office, to begin evacuating down a stairwell, where they found a stream of others intent on evacuating.

The escape route led to another floor to cross in search of another stairwell or elevator. Immediacy and confusion, and the instinct to run came to a halt — everybody froze — when the large windows facing north gave a panoramic view of something that would revisit them in nightmares.

A massive gash in the steel and glass of the other tower, smoke and fire, and people leaping intentionally or falling to their deaths. "People were paralyzed watching. They were literally paralyzed by the horror," she said.

Ms. Fahey and others continued on, crowding into elevators in minutes, moments many would later discover meant the difference between life and death. By the time they reached the ground floor there was metal falling. Water was pouring out of somewhere.

"At that point there were a lot of people running," Ms. Fahey said. Outside, "it was like a war zone."

> "When we heard later that people went back upstairs, that they were told to go back — thinking about things like that is horrible."
>
> Jennifer Fahey

From there police were directing them to "don't look up, don't look around, just leave," she said. She and her colleagues were about a block away when the second tower — theirs — was hit.

"There's always sadness," she said. Aon lost 176 employees in the attack.

There's "constantly wondering if we did everything we could to get everybody out … when we couldn't get people to leave. When we heard later that people went back upstairs, that they were told to go back — thinking about things like that is horrible."

Ms. Fahey, who still works in Manhattan but now as a managing director for Marsh LLC, hasn't been back to the scene. She tries not to work on the anniversary of that day, and she watches memorials on television. "This year I would love to be brave and go down there. Remembering that day and the people we lost is so important."

Al Tobin: in a car heading for Manhattan, the skyline in view moments before impact.

Al Tobin was in a car service vehicle in heavy morning traffic on the Brooklyn-Queens Expressway heading into Manhattan from the airport, watching the distant skyline grow larger and larger, when he saw an airplane smack into the north tower of the World Trade Center. His destination was the south tower, where he had been working for Aon PLC since 1995. That tower was hit 17 minutes later.

Seeing the two smoldering buildings "instantaneously I knew we were under attack," he said, calling the scene "surreal."

Mr. Tobin, who now works for Alliant Insurance Services Inc. in New York, had been a guest speaker at a Risk and Insurance Management Society Inc. Cleveland chapter meeting the night prior and was all set to take an earlier flight home to New York but was invited to watch Monday Night Football at a bar instead. The New York Giants were playing.

Otherwise, he would have been in his office on the 102nd floor, where he had just moved from the 100th floor after a promotion. Outgoing, he knew many on those top floors at Aon and lost several colleagues who had worked with him over the years. An assistant. People he had gone to lunch with a lot. If he didn't know names, he knew faces. A lot of familiar ones made the list of those lost.

> "It was just a terrible time. It was a plethora of funerals and memorials — just the saddest time of your life."
>
> Al Tobin

"All I could think about were my colleagues and their families," he said. "It was just a terrible time," he said of the aftermath. "It was a plethora of funerals and memorials — just the saddest time of your life."

It was also a time of learning more about the people who were gone, he said. Looking back, he regrets not getting to know some of them better. "You know them nine-to-five and they are doing a great job and you are happy for them, but you never really get to know them until tragedy hits. … It's a terrible way to find out how great people were," he said.

Following the attacks, surviving Aon colleagues worked from scratch, he said. Everything was gone: computers, phone numbers, client files. They had to regroup.

"So many people helped — from the little things, bringing food to families, to the big things, helping counsel employees," he said. "Tragedy brings people together, and I saw that. I saw people absolutely overwhelmed, losing

See **9/11** on next page

9/11

Continued from page 19

colleagues they'd known for such a long time. I always looked at it as, we had to put the company back together again for the people we lost, for their families."

Mr. Tobin hasn't yet been to the Sept. 11 memorial but said the 20th anniversary, to him, means "it's time."

"I have been close to it. I have driven past it. But to see and read the names, it is going to be difficult," he said.

John Zeni: eating breakfast, chatting with colleagues on the 48th floor of the south tower.

A computer programmer for Fireman's Fund Insurance Co., John Zeni was making his normal rounds, breakfast sandwich and coffee in hand, chatting with colleagues on the 48th floor of the south tower of the World Trade Center when a flicker and a shake proved ominous. Then came the smell of burnt rubber, and the sound of debris hitting the windows of the building.

Having been in the same building in 1993 when terrorists detonated a bomb in the parking garage, he chose to evacuate with colleagues down a stairwell. Learning that it was an incident isolated to the other tower and hearing a loudspeaker message telling workers to return to their offices, he had by then paired up with a pregnant colleague whose instinct to leave the building trumped any advice that they would be safer in their office. They continued to trek down, dozens of floors.

A loud blast that shook the stairwell confirmed that leaving was the right thing to do. Mr. Zeni said this was when their tower was hit by a second plane.

"As we were going down you could hear people from the top, rushing down," he said. "We didn't know what happened. … To me it felt as though the building were crumbling down."

Outside the building there was soot, smoke and falling debris. A New York native who's never lived outside of a five-mile radius of the city, he led a group away from the scene.

"It was total chaos," he said. "Nobody knew what it was. No one knew what to do. People were just screaming and running."

Mr. Zeni and his pregnant colleague traversed through the crowds, sirens screeching, and made it several blocks north to Chinatown before a deafening noise had them look back and up. One of the towers was buckling, and then, surreally, the skyscraper collapsed. Their building.

In time, they would learn that everyone on their floor survived. The next floor up was not so lucky, he said. Two of his relatives who also worked in the towers were killed. A member of an insurance bowling league at the time, he also lost friends who worked for other companies in the towers.

> "It was total chaos. Nobody knew what it was. No one knew what to do. People were just screaming and running."
>
> John Zeni

"I have become so emotional since that day," he said. "I don't know if it was everything I had seen. The thought of what if I didn't get out. Of who didn't. Seeing all of that really affected me. I still get emotional, but it is getting easier."

Dan McGarvey: last-minute trip to San Antonio for a client meeting.

As United States Naval Academy midshipmen and fighting men in training, Dan McGarvey and his classmate Michael McGinty had a notion that either of them could be lost in some mire of war. They teach that in the services.

After graduating together in 1981 and joining the fleet as naval officers — eventually serving as best man in each other's weddings along the way — they found themselves in their post-naval careers on the same team in Marsh LLC's power practice. A terrorist attack minutes before a regular team meeting in the north tower of the World Trade Center on what was just a normal Tuesday in business attire wasn't expected.

But that's what Mr. McGarvey, who now serves as a managing director for Marsh's power and renewable energy practice out of Asheville, North Carolina, was watching on a television set in a hotel lobby in San Antonio, having missed the New York meeting for a board presentation with a client. A closer look at the smoldering building on the screen brought the jarring realization: The first airliner hit at just the place where Marsh meetings were held, on the 96th floor of the north tower.

Dan McGarvey (seated) and Mike McGinty (standing with maid of honor).

"I convinced myself that my colleagues would have been late," he said, adding that it was unlikely that would be the case. The team, many former military professionals like himself, were never late.

"I feared the worst and hoped for the best," he said.

> "I convinced myself that my colleagues would have been late. I feared the worst and hoped for the best."
>
> Dan McGarvey

He went to his client meeting and by the time it was finished, news that the tower had collapsed confirmed a growing fear. "I knew then at least some of them didn't make it out," he said. Later, after frantic calls and confirmations, he knew the toll — four team colleagues killed on impact, his classmate and best man among them.

With 295 Marsh professionals gone, including losses at Guy Carpenter, the company scrambled to assist families, to make sense of what happened, and to eventually, somehow, get back to work.

Mr. McGarvey spoke of the notion of battlefield promotions, a war term for personnel immediately filling the role of another who is killed. In the aftermath of 9/11, as it would happen, he took over for his colleague and friend Mike.

"Like anybody at Marsh, I lost 30 friends that day and every one was a tragedy, but this one hit close to home," he said. The anniversary is "never easy," he added. "It will show up as the news of the day and it's like it is happening again."

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Terrorism coverage expands as risks evolve in decades following shock of 9/11 attacks

BY MATTHEW LERNER
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REUTERS

Strike, riot and civil commotion coverage presents new tests for the insurance market after recent incidents of social unrest, such as protests in downtown Portland, Oregon, on Dec. 31, 2020.

The Sept. 11, 2001, terrorist attacks in the United States caused huge losses and disruptions in property insurance markets.

While insurance claims from the attacks led to years of litigation, with insurers ultimately paying about $4.55 billion under various policies for the World Trade Center and about $30 billion in total losses, insurance coverage for terrorism risks going forward evaporated.

Prior to the attacks, terrorism coverage was usually included in most property coverages, but after 9/11 insurers inserted exclusions barring terror cover and the U.S. government had to create the so-called TRIA backstop to stabilize the market (see story page 23).

In the years that followed, insurers became more comfortable with the exposure and capacity for stand-alone terrorism coverage grew. But the perceived threats have changed.

More recently, the coverage has expanded to encompass active assailant risks. In addition, coverage for civil unrest is seeing renewed interest in the wake of the social tumult in the U.S. during 2020.

Pricing for such coverage has seen the greatest upward pressure, while stand-alone coverage for acts of terrorism has experienced only modest increases.

Demand is definitely increasing, said John Minor, Chicago-based director of crisis management for Aon Risk Solutions, part of Aon PLC. "The number of new clients binding stand-alone terrorism programs increased by nearly 50% last year, and this trend continues into 2021."

Much of the demand is for political violence coverage in response to an increase in protests and civil unrest occurring in many parts of the world, he said.

Sources agreed that the situation in Afghanistan has yet to affect the market for stand-alone terrorism insurance as the focus remains on domestic exposures and the civil unrest losses of 2020.

In the U.S, civil unrest and protest activity has risen in profile recently.

"The extremists on both sides, whether far left or far right, they are the new terrorists. There is heightened awareness of their activity," said Wendy Peters, executive vice president of financial solutions-terrorism and political violence for Willis Towers Watson PLC in New York.

Insurers view the U.S as a bit more of a higher risk than five or 10 years ago, said Tarique Nageer, terrorism placement and advisory practice leader for Marsh USA Inc. in New York. "The threat going forward, from an insurer's perspective, has changed. Domestic threats are high on the insurer's radar screen. Now the threat is from within, and it's a different kind of threat."

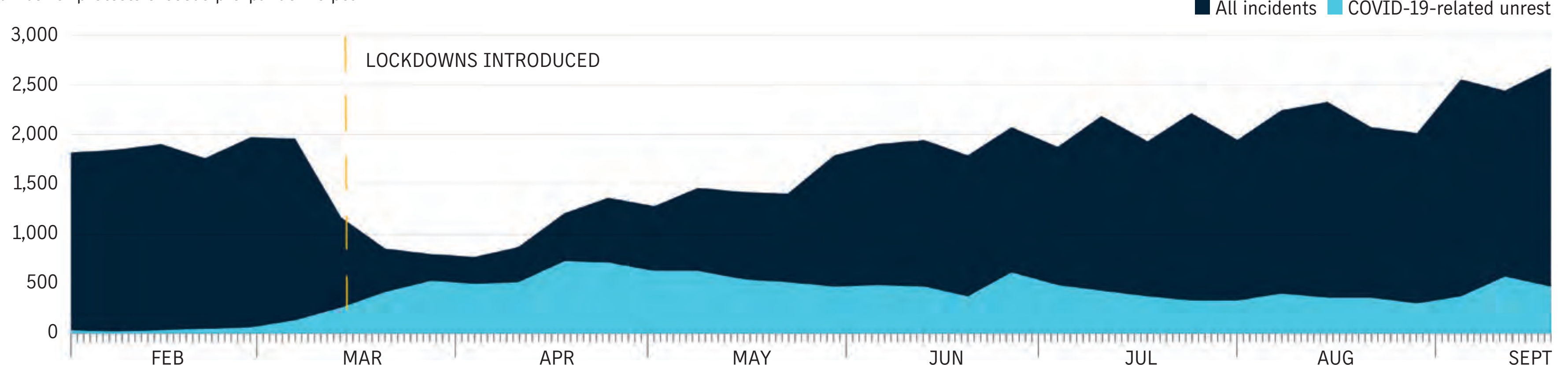
Social unrest in 2020 "definitely drove a lot of inquiries into the stand-alone terrorism market from clients asking to help them understand where the line is, what would be picked up in an all risk policy versus a stand-alone terrorism policy," said Jennifer Rubin, New York-based head of terrorism for Liberty Specialty Markets, a unit of Liberty Mutual Insurance Co.

Strike, riot and civil commotion coverage can cover damages of the type that might occur in the wake of a social protest or a mass looting event, such as those that occurred in New York and other U.S cities in mid-2020.

The stand-alone terrorism market is

CIVIL UNREST INCIDENTS IN 2020

Number of protests exceeds pre-pandemic peak



Source: Verisk Maplecroft

seeing more and more requests for strike, riot and civil commotion coverage, Mr. Nageer said.

Such risks had historically been covered under property all risk policies but as a result of the events of 2020, "some insurers are electing to exclude SRCC from all risk property forms, which drove clients elsewhere for cover," he said. "For the first time in the U.S., people began to realize this is a risk and they need to look carefully at how they are buying it."

The market for strike, riot and civil commotion coverage is the only one in the stand-alone terrorism sector to see capacity reductions, and it also saw the largest price increases, said Morgan Shrubb, New York-based head of terrorism for Axa XL, a unit of Axa SA.

The various incidents of unrest in the U.S. in 2020 "played a role for certain clients, specifically in the retail and hospitality industries, facing some price increases and challenges, depending on the type of insurance they bought."

"Domestic threats are high on the insurer's radar screen. Now the threat is from within, and it's a different kind of threat."

Tarique Nageer, Marsh USA Inc.

Pricing for stand-alone terrorism policies, as distinct from active assailant and strike, riot and civil commotion, rose in the single digit range for most policyholders, experts say.

Ms. Shrubb noted that she is seeing increased submissions from entities that had stopped or cut back limits for stand-alone terrorism coverage as exposures plummeted during the pandemic lockdown — such as hotels, event venues and malls — and are now coming back to the market as exposures return to pre-pandemic norms.

In addition, some policyholders are interested in the crisis management and other services offered through the stand-alone terrorism active assailant markets. "They want the coverage extensions which the active assailant market offers," such as security and public relations consulting and crisis management response services, Ms. Shrubb said.

"Some markets are offering a more robust consulting service from their third-party risk partners, allocating a portion of the premium to cover the costs of a wider array of consulting services," Mr. Minor said.

Terror risk program acts as backstop, but insurers' share of exposure rises

Prior to Sept. 11, 2001, terrorism existed as a "silent" peril in all risk property coverages, under which terrorism was not specifically excluded.

"Policies didn't identify it as a peril, so if you had an all risk policy it was covered because it wasn't excluded," said Wendy Peters, executive vice president of financial solutions-terrorism and political violence for Willis Towers Watson PLC in New York.

The specialty terrorism insurance market in the United States was practically "nonexistent" prior to the attacks, said Tarique Nageer, terrorism placement and advisory practice leader for Marsh USA Inc. in New York.

Before 9/11, terrorism insurance coverage was largely written in the London market and addressed risks in regions such as Northern Ireland and Colombia, where terrorists were more active.

That changed after the attacks in the United States when the government had to step in to support the private market. The Terrorism Risk Insurance Act, which was signed into law in 2002, created a backstop for commercial insurers to cover terrorism risks.

Under the original law, the government backstop was triggered after the insurance industry lost $10 billion. That amount rose for 2003 and 2004 and as the program was extended or reauthorized in 2005, 2007, 2015 and 2019.

Under the current iteration of the program — the Terrorism Risk Insurance Program Reauthorization Act of 2019 — for 2020 the program trigger was $200 million in losses, which has been increasing in $20 million annual increments since 2015. The insurance industry retention has been rising in $2 billion increments, from $29.5 billion in 2015 to $37.5 billion in 2019 and rises to the average of insurers' deductibles over the previous three years. The program's cap on liability is $100 billion.

Matthew Lerner

WHITE HOUSE PHOTO BY PAUL MORSE

The Terrorism Risk Insurance Act, signed into law by President George W. Bush in 2002, established a backstop to address financial and economic losses in the event of a future catastrophic attack, stabilizing insurance markets and requiring insurers to offer terrorism coverage to commercial property owners.

RISK CONCENTRATION, PRESUMPTION LAWS IN FOCUS FOR COMP

Underwriting workers compensation for a seemingly low-level risk such as office work changed drastically after 9/11, when location — whether a business's operations are located in a potential terrorist target area — became a larger factor in assessing risk, experts say.

"It brought a different level of risk concentration understanding (in workers comp) that most firms hadn't thought about," said Mark Moitoso, Atlanta-based head of risk practices for Lockton Cos. LLC. Prior to 9/11, the types of risk aggregators that were considered in workers compensation were in industries such as manufacturing, offices located in earthquake zones and airplanes, he said.

"Nobody thought about terrorism and the concentration of risk that could bring," Mr. Moitoso said. "Workers compensation is now a (catastrophe) model event for underwriting companies — simulating bombs that go off in downtown centers and understanding how much their capital could be at risk."

"Carriers often have had to walk away from what on paper could seem to me an otherwise profitable risk," said Harry Merker, Miami-based managing director, east region, for middle market at Aon PLC. "For the tech company that has 700 employees in the Empire State Building — because that is considered a fairly desired target from a terrorism standpoint — the cost to insure the terrorism component of that workers compensation program is such that it can become cost prohibitive for an insurer to pick up the burden."

And based on workers comp ratings in various jurisdictions, "carriers don't have the ability to pass that along," he said.

Another impact of 9/11 is the continued trend of establishing rebuttable presumptions for injuries suffered by first responders. The long-term health impact on police and firefighters of their recovery work at the World Trade Center site was one of the "catalysts in the evolution of those particular laws," Mr. Merker said.

"As those laws have evolved, so too has carrier appetite as it relates to writing insurance for insureds that have exposure in those specific class codes," he said. "Because workers compensation is such a long-tailed line of insurance, it can create issues with long-term profitability for carriers writing those particular risks."

Angela Childers

SPECIAL REPORT

EXCESS & SURPLUS LINES

E&S rate increases taper as premiums surge

INSIDE

BI RANKINGS

Top 10 U.S.-based surplus lines insurers, wholesalers and MGAs, state premium trends and more. **PAGE 26**

CYBER COSTS INCREASE

The prevalence of ransomware has caused turmoil in the cyber liability market. **PAGE 25**

BUOYANT E&S SECTOR

Capital inflows strong, but measured approach underpins fresh capacity. **PAGE 36**

BY JUDY GREENWALD
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Excess and surplus lines insurance buyers are still contending with rate hikes after several years of sharply rising prices, but the pace of increases has slowed, even while more business flows into the sector.

Among lines particularly hard hit are property insurance, including Florida condominiums; cyber liability; and climate-related coverages. The ultimate effect of the COVID-19 pandemic, though, remains unknown (see story page 25).

Meanwhile, mergers and acquisitions activity and capital investments in the sector continue (see story page 36).

Surplus lines premium reported to U.S. surplus lines stamping and services offices totaled $24.04 billion in the first half of 2021, up 21.9% from the year-earlier period, the Kansas City, Missouri-based Wholesale & Specialty Insurance Association said in July.

Generally, percentage rate increases are in the high-single to mid-teen digits, said Eric Blecker, Hartford, Connecticut-based president of Northfield Excess & Surplus Lines, a Travelers Cos. Inc. unit.

David Bresnahan, executive vice president of Berkshire Hathaway Specialty Insurance Co. in Boston, said that while the excess and surplus lines market "has settled down a bit, and

rate of change has decelerated, it's still bumpy and at times a challenging market."

The surplus lines market will likely see double-digit premium growth into next year, he said.

"Right now, I'd say the market is relatively stable, coming off of two-and-a-half to three years of firming," reductions in capacity and remediation of portfolios across the industry, said Cliff Hope, Atlanta-based head of property for Lexington Insurance Co., a unit of American International Group Inc.

Lexington, the long-time largest surplus lines insurer, is ranked fifth-largest this year (see ranking page 32). Lou Levinson, Lexington's president and CEO, said in a statement in part that the insurer has "refocused the portfolio to wholesale produced middle market business in strategic pursuit of profit ahead of premium, and reducing volatility while improving margins."

"The market is hard, and it continues to harden as we kind of muddle through this year," with the challenges created by the pandemic and other extenuating circumstances, said Duffy Koller, Chicago-based head of AmTrust Financial Services Inc.'s excess and surplus lines business.

Rate hikes are moderating, though. "Rates are still going up, but not as substantially," except for cyber, said Christopher J. Cavallaro, executive chairman of Jericho, New York-based wholesaler ARC Excess & Surplus LLC.

Mr. Hope said that in some cases, policyholders are increasing retentions to offset the increased pricing.

See **SURPLUS** page 36

CYBER, OTHER TOUGH RISKS PROVE DIFFICULT TO PLACE

Cyber risks, climate-related losses such as wildfires and freezing temperatures, transportation risks and property exposures, including Florida condominiums, present underwriting challenges to the excess and surplus lines market, in addition to pressures created by the COVID-19 pandemic.

The market "will continue being difficult for a while longer, but I think there are certain classes that will remain difficult even when other classes are softening," including cyber liability, said James Drinkwater, New York-based president of Amwins Group Inc.'s brokerage division.

The frequency of ransomware claims and their cost have increased exponentially. "The numbers are staggering," said Scott Meyer, senior vice president of Chubb Group and president of Westchester Surplus Lines Insurance Co., its excess and surplus lines unit.

"Cyber is just a mess," said Joel Cavaness, president of Rolling Meadows, Illinois-based Risk Placement Services Inc., a unit of Arthur J. Gallagher & Co.

"Some of the largest losses have been for event cancellation over the past year," much of which is probably in the excess and surplus lines market, said Bruce Ballentine, vice president and senior credit officer at Moody's Investors Service Inc. in New York.

Event cancellation coverage of any kind "is very hard to get," and pandemic-related coverage "is just not available," said Dave Obenauer, CEO of CRC Group, a unit of CRC Insurance Services Inc., in Mendham, New Jersey.

Property "continues to be a difficult (line), particularly coastal property in Florida," said Alex Bargmann, CEO and co-founder of Pathpoint Inc., a San Francisco-based digital excess and surplus brokerage.

The Surfside, Florida, condominium collapse in June led to underwriters taking a closer look at overall rules and guidelines and what is acceptable in terms of engineering and up to code, said Kyle Burnett, New York-based head of E&S property at Axa XL, a unit of Axa SA.

Florida "has turned into its own unique animal" since the building collapse, with capacity pulling back and underwriters taking a long time to consider the risk and the limits they will offer, said T.J. Krzmarzick, Chicago-based deputy head of U.S. excess casualty at Aspen Insurance Holdings Ltd.

David Bresnahan, executive vice president of Berkshire Hathaway Specialty Insurance Co. in Boston, said, "Anything where there's a significant amount of auto exposure for transportation risks is still a very difficult risk," with few insurers writing the business.

New York City construction business also continues to be a very difficult risk because of New York labor law, he said.

Meanwhile, the pandemic's course remains unknown. "If you're writing business affected by the pandemic, all bets are up in the air," said Alan Jay Kaufman, chairman, president and CEO of H.W. Kaufman Financial Group Inc. in Farmington Hills, Michigan.

Mr. Bresnahan said he is concerned about reports that jury awards are even higher than they were before the pandemic began, now that the courts are reopening.

The pandemic "gave liability underwriters a bit of a breather" but may also have "resulted in a bit of a false sense of security," he said.

There are also continuing concerns about catastrophes, including named windstorms and earthquakes, and rising inflation is top of mind, said Cliff Hope, Atlanta-based head of property for Lexington Insurance Co., a unit of American International Group Inc.

Judy Greenwald

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1	**Amwins Group Inc.**[1] Charlotte, North Carolina www.amwins.com Scott M. Purviance, CEO	$26,425,701,068	20.1%	$19,239,886,171	31.2%	72.8%	27.2%	0%	73.1%	25.0%	1.9%	6,233
2	**CRC Insurance Services Inc.** Charlotte, North Carolina www.crcgroup.com Dave Obenauer, CEO	$20,561,009,566	5.6%	$11,044,120,767	13.5%	53.7%	46.3%	1.0%	80.0%	10.0%	9.0%	3,726
3	**Ryan Specialty Group LLC**[2] Chicago www.ryansg.com Patrick G. Ryan, chairman-CEO	$13,200,000,000	48.3%	$13,200,000,000	48.3%	100%	0%	0%	64.4%	28.8%	6.8%	3,313
4	**Risk Placement Services Inc.** Rolling Meadows, Illinois www.rpsins.com Joel Cavaness, president	$4,500,000,000	7.1%	$4,500,000,000	7.1%	100%	0%	15.0%	30.0%	45.0%	10.0%	3,000
5	**Victor Insurance Holdings** New York www.victorinsurance.com Brian Hanuschak, CEO	$2,600,000,000	62.5%	$2,600,000,000	62.5%	100%	0%	62.0%	0%	38.0%	0%	N/A
6	**Burns & Wilcox Ltd.** Farmington Hills, Michigan www.burnsandwilcox.com Alan Jay Kaufman, chairman-president-CEO	$2,000,000,000	4.4%	$2,000,000,000	4.4%	100%	0%	7.5%	40.0%	46.0%	6.50%	1,453
7	**AmRisc LLC** Houston www.amrisc.com Brian Reid, CEO	$1,727,103,947	31.6%	$1,727,103,947	31.6%	100%	0%	15.0%	0%	62.0%	23.00%	370
8	**JenCap Group LLC** New York www.jencapgroup.com John Jennings, CEO	$1,620,000,000	44.3%	$1,620,000,000	44.3%	100%	0%	0%	51.0%	44.0%	5.00%	600
9	**Brown & Riding Insurance Services Inc.** Los Angeles www.brownandriding.com Chris A. Brown, chairman; Jeffrey J. Rodriguez, president-CEO	$1,249,599,645	20.4%	$1,249,599,645	20.4%	100%	0%	0%	98.4%	1.5%	0.10%	239
10	**Specialty Program Group LLC** Summit, New Jersey www.specialtyprogramgroup.com Chris Treanor, president-CEO	$1,056,268,640	60.9%	$889,074,071	53.9%	84.2%	15.8%	30.0%	7.0%	53.0%	10.00%	309

*Companies listed in *BI* directory. N/A = not available. [1]Acquired Worldwide Facilities LLC, March 5, 2021. [2]Acquired All Risks Ltd., Sept. 1, 2020.

Source: *BI* survey

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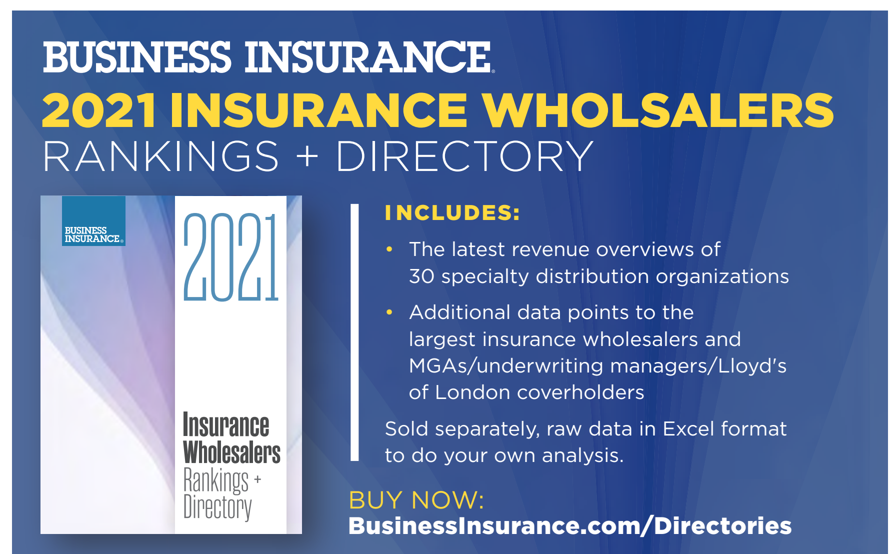

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LARGEST PROPERTY/CASUALTY WHOLESALERS

Ranked by 2020 wholesale premium volume from property/casualty placements*

Rank	Company/Principal officer	2020 premium volume	Percent change	2020 gross revenue	Percent change	Percent surplus lines	PERCENTAGE OF TOTAL BUSINESS: Underwriting manager	Wholesale broker	MGA	Lloyd's of London coverholder	Wholesale employees
1	**Amwins Group Inc.**[1] Charlotte, North Carolina www.amwins.com Scott M. Purviance, CEO	$19,239,886,171	31.2%	$1,673,216,406	22.4%	67.8%	0%	73.1%	25.0%	1.9%	6,233
2	**Ryan Specialty Group LLC**[2] Chicago www.ryansg.com Patrick G. Ryan, chairman-CEO	$13,200,000,000	48.3%	$1,018,300,000	29.1%	70.6%	0%	64.4%	28.8%	6.8%	3,313
3	**CRC Insurance Services Inc.** Charlotte, North Carolina www.crcgroup.com Dave Obenauer, CEO	$11,044,120,767	13.5%	$1,283,485,418	17.2%	36.0%	1.0%	80.0%	10.0%	9.0%	3,726
4	**JenCap Group LLC** New York www.jencapgroup.com John Jennings, CEO	$1,620,000,000	44.3%	$160,000,000	60.0%	70.0%	0%	51.0%	44.0%	5.0%	600
5	**Brown & Riding Insurance Services Inc.** Los Angeles www.brownandriding.com Chris A. Brown, chairman; Jeffrey J. Rodriguez, president-CEO	$1,249,599,645	20.4%	$95,260,620	15.3%	79.0%	0%	98.4%	1.5%	0.1%	239
6	**U.S. Risk Insurance Group LLC** Dallas www.usrisk.com Randall Goss, CEO	$1,020,000,000	3.8%	$78,080,000	(5.1%)	70.0%	20.0%	63.0%	10.0%	7.0%	—
7	**ARC Excess & Surplus LLC** Jericho, New York www.arcbrokers.com Christopher Cavallaro, executive chairman; Michael Cavallaro, president-CEO	$835,000,000	16.0%	$82,000,000	17.1%	40.0%	7.0%	86.0%	7.0%	0%	198
8	**Program Brokerage Corp.** New York www.programbrokerage.com Paul Collins, president-CEO	$507,150,000	10.1%	$39,000,000	8.3%	20.0%	0%	56.0%	33.0%	11.0%	98
9	**Maximum Independent Brokerage** Chicago www.maxib.com Joe Messina, president-CEO	$323,731,768	21.9%	$22,293,581	20.6%	60.0%	0%	80.0%	15.0%	5.0%	80
10	**Socius Insurance Services Inc.** Walnut Creek, California www.sociusinsurance.com Patrick E. Hanley Sr., president	$300,500,000	8.9%	$28,127,000	6.8%	60.0%	0%	100.0%	0%	0%	90

*Companies deriving more than 50% of their premium from wholesale brokerages. N/A = not available. [1]Acquired Worldwide Facilities LLC, March 5, 2021. [2]Acquired All Risks Ltd., Sept. 1, 2020.

Source: *BI* survey

LARGEST MULTILINE WHOLESALERS*

Ranked by 2020 total premium volume including property/casualty and employee benefits

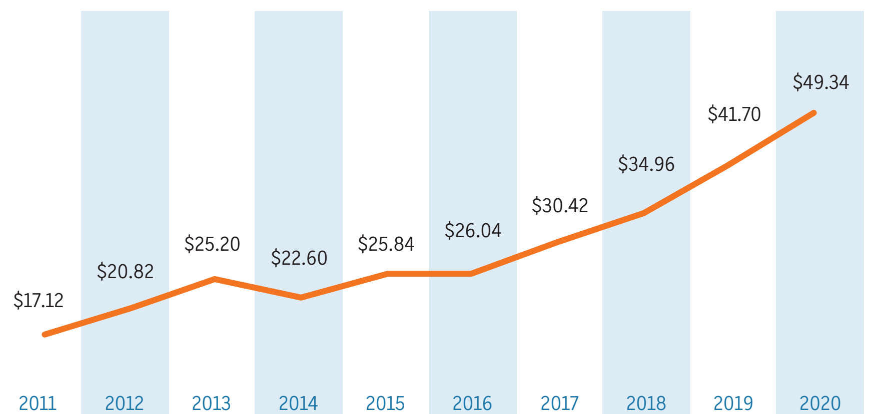
Rank	Company	2020 premium volume	% increase (decrease)
1	Amwins Group Inc.	$26,425,701,068	20.1%
2	CRC Insurance Services Inc.	$20,561,009,566	5.6%
3	Ryan Specialty Group LLC	$13,200,000,000	48.3%
4	JenCap Group LLC	$1,620,000,000	44.3%
5	Brown & Riding Insurance Services Inc.	$1,249,599,645	20.4%
6	U.S. Risk Insurance Group LLC	$1,020,000,000	3.8%
7	ARC Excess & Surplus LLC	$835,000,000	15.2%
8	Program Brokerage Corp.	$507,150,000	10.1%
9	Maximum Independent Brokerage	$323,731,768	21.9%
10	Socius Insurance Services Inc.	$300,500,000	8.9%

*Companies deriving more than 50% of their premium from wholesale brokerages.

Source: *BI* survey

PREMIUM TRENDS

Written premiums of the top 10 property/casualty wholesalers, in billions of dollars



Source: *BI* survey

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LARGEST MGAs/UNDERWRITING MANAGERS/LLOYD'S COVERHOLDERS

Ranked by 2020 wholesale premium volume from property/casualty placements*

Rank	Company/Principal officer	2020 premium volume	Percent change	2020 gross revenue	Percent change	Percent surplus lines	PERCENTAGE OF TOTAL BUSINESS: Underwriting manager	Wholesale broker	MGA	Lloyd's of London coverholder	Wholesale employees
1	**Risk Placement Services Inc.** Rolling Meadows, Illinois www.rpsins.com Joel Cavaness, president	$4,500,000,000	7.1%	$430,000,000	2.4%	65.0%	15.0%	30.0%	45.0%	10.0%	3,000
2	**Victor Insurance Holdings** New York www.victorinsurance.com Brian Hanuschak, CEO	$2,600,000,000	62.5%	N/A	N/A	25.0%	62.0%	0%	38.0%	0%	N/A
3	**Burns & Wilcox Ltd.** Farmington Hills, Michigan www.burnsandwilcox.com Alan Jay Kaufman, chairman-president-CEO	$2,000,000,000	4.4%	$480,000,000	3.2%	80.0%	7.5%	40.0%	46.0%	6.5%	1,453
4	**AmRisc LLC** Houston www.amrisc.com Brian Reid, CEO	$1,727,103,947	31.6%	$248,302,269	60.9%	70.0%	15.0%	0%	62.0%	23.0%	370
5	**Specialty Program Group LLC** Summit, New Jersey www.specialtyprogramgroup.com Chris Treanor, president-CEO	$889,074,071	53.9%	$158,009,089	107.9%	69.0%	30.0%	7.0%	53.0%	10.0%	309
6	**Johnson & Johnson Inc.** Mount Pleasant, South Carolina www.jjins.com Francis Johnson, CEO	$696,019,240	14.3%	$139,677,136	12.0%	87.0%	30.0%	15.0%	30.0%	25.0%	423
7	**SageSure Insurance Managers LLC** Jersey City, New Jersey www.sagesure.com Terrence McLean, CEO	$610,683,000	32.1%	$177,300,000	38.2%	3.6%	100.0%	0%	0%	0%	350
8	**Appalachian Underwriters Inc.** Oak Ridge, Tennessee www.appund.com Bob Arowood, president	$502,000,000	3.0%	$47,100,000	(2.0%)	37.0%	12.0%	13.0%	70.0%	5.0%	358
9	**K&K Insurance Group Inc.** Fort Wayne, Indiana www.kandkinsurance.com Todd Bixler, president-CEO	$351,000,000	(20.4%)[1]	$103,000,000	(4.6%)	5.0%	49.0%	3.0%	48.0%	0%	285
10	**WNC Insurance Services Inc.** Chicago www.wncinsuranceservices.com Pat Blandford, CEO	$332,000,000	3.1%	$98,000,000	6.5%	84.0%	0%	0%	36.0%	64.0%	229

*Companies that derive more than 50% of their wholesale premium from acting as a managing general agent, underwriting agent or Lloyd's of London coverholder. N/A = not available. [1]Restated.

Source: *BI* survey

MANAGING GENERAL AGENTS

Ranked by percentage of MGA business

Rank	Company	Percent
1	Appalachian Underwriters Inc.	70%
2	XS Brokers Insurance Agency Inc.	65%
3	AmRisc LLC	62%
4	Specialty Program Group LLC	53%
5	K&K Insurance Group Inc.	48%

Source: *BI* survey

UNDERWRITING MANAGERS

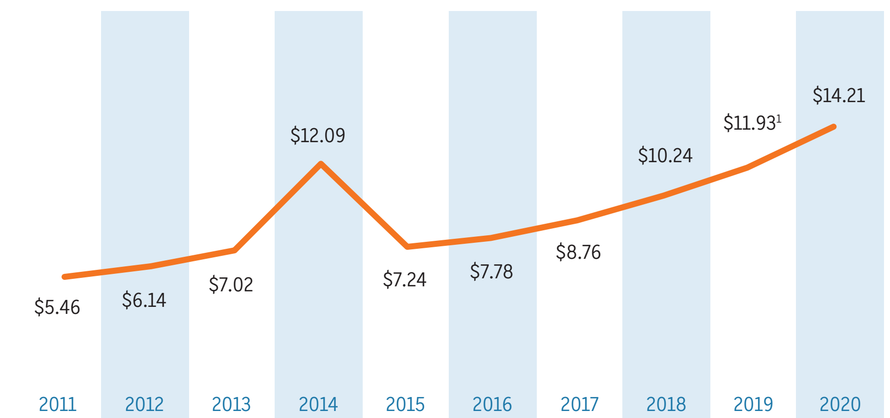
Ranked by percentage of underwriting business

Rank	Company	Percent
1	SageSure Insurance Managers LLC	100%
2	Victor Insurance Holdings	62%
3	K&K Insurance Group Inc.	49%
4	ExecutivePerils Inc.	35%
5	Specialty Program Group LLC	31%

Source: *BI* survey

PREMIUM TRENDS

Written premium of the top 10 MGAs/underwriting managers, in billions of dollars



Source: *BI* survey

[1]Restated.

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SPECIAL REPORT

LARGEST U.S.-BASED SURPLUS LINES INSURERS

Ranked by 2020 nonadmitted direct written premiums

Rank	Company/Principal officer	2020 nonadmitted direct premiums	2019 nonadmitted direct premiums	Percent change	2020 gross premiums	2019 gross premiums	Percent change	2020 net income	2019 net income	Percent change
1	**National Fire & Marine Insurance Co.** Omaha, Nebraska www.nationalindemnity.com Donald F. Wurster, president	$2,898,724,442	$1,798,192,110	61.2%	$3,088,555,467	$1,880,439,590	64.2%	($51,382,770)	$290,406,248	(117.7%)
2	**W. R. Berkley Corp.**[1] Greenwich, Connecticut www.wrberkley.com William R. Berkley, executive chairman; W. Robert Berkley Jr., president-CEO	$2,255,698,796[2]	$2,044,871,743[2]	10.3%	$2,282,233,303[2]	$2,077,295,001[2]	9.9%	$14,672,837[2]	$24,551,365[2]	(40.2%)
3	**Nationwide Excess and Surplus**[3] Scottsdale, Arizona www.nationwideexcessandsurplus.com Thomas Clark, president	$2,227,135,434[2]	$2,006,226,605[2,4]	11.0%	$5,950,470,436[2]	$6,130,254,354[2,4]	(2.9%)	$90,140,667[2]	$26,254,385[2,4]	243.3%
4	**AEGIS** **(Associated Electric & Gas Insurance Services Inc.)** East Rutherford, New Jersey www.aegislink.com William P. Cullen, president-CEO	$2,092,383,000[5]	$1,815,733,000[5]	15.2%	$2,092,383,000[5]	$1,815,733,000[5]	15.2%	$112,267,000[5]	$117,935,000[5]	(4.8%)
5	**Lexington Insurance Co.** Boston www.lexingtoninsurance.com Louis Levinson, president-CEO	$2,078,951,079	$2,195,861,019	(5.3%)	$8,737,834,587	$9,306,332,989	(6.1%)	$112,986,953	$384,007,043	(70.6%)
6	**Chubb Ltd.**[6] Philadelphia www.chubb.com John J. Lupica, chairman-president	$1,884,490,000	$1,611,445,995[4]	16.9%	$1,947,106,227	$1,656,265,624	17.6%	$12,188,307	$13,806,490	(11.7%)
7	**Liberty Mutual Holding Co. Inc.**[7] Boston www.libertymutualgroup.com Randall Kneeland, North America specialty financial officer	$1,771,105,246	$1,565,421,000[4]	13.1%	$1,771,105,246	$1,565,421,000	13.1%	$12,862,249	$15,850,183	(18.9%)
8	**Markel Corp.** Glen Allen, Virginia www.markelcorp.com Thomas S. Gayner, co-CEO; Richard R. Whitt III, co-CEO	$1,687,908,485	$1,480,458,536	14.0%	$2,244,358,285	$1,983,416,216	13.2%	$390,890,720	$311,887,250	25.3%
9	**Indian Harbor Insurance Co.** Stamford, Connecticut www.axaxl.com Joseph Tocco, president-CEO	$1,665,848,063	$1,594,116,693	4.5%	$1,764,148,858	$1,640,510,644	7.5%	($12,947,161)	($3,764,349)	243.9%
10	**Steadfast Insurance Co.** Schaumburg, Illinois www.zurichna.com Kristof Terryn, president	$1,089,930,016	$688,473,917	58.3%	$1,205,735,383	$822,437,101	46.6%	$29,193,644	$32,227,996	(9.4%)

[1] Includes Admiral Insurance Co., Berkley Assurance Co., Berkley Specialty Insurance Co., Gemini Insurance Co., Nautilus Insurance Co. [2]From annual statements. [3]Includes Freedom Specialty Insurance Co., National Casualty Co., Scottsdale Indemnity Co., Scottsdale Insurance Co., Scottsdale Surplus Lines Insurance Co. [4]Restated. [5]From company's 2020 annual review and financial statements. [6]Includes Chubb Custom Insurance Co., Executive Risk Specialty Insurance Co., Illinois Union Insurance Co., Westchester Surplus Lines Insurance Co. [7]Includes Ironshore Specialty Insurance Co., Liberty Surplus Insurance Corp.

Source: *BI* survey

NET INCOME

Top surplus lines insurers, ranked by 2020 net income

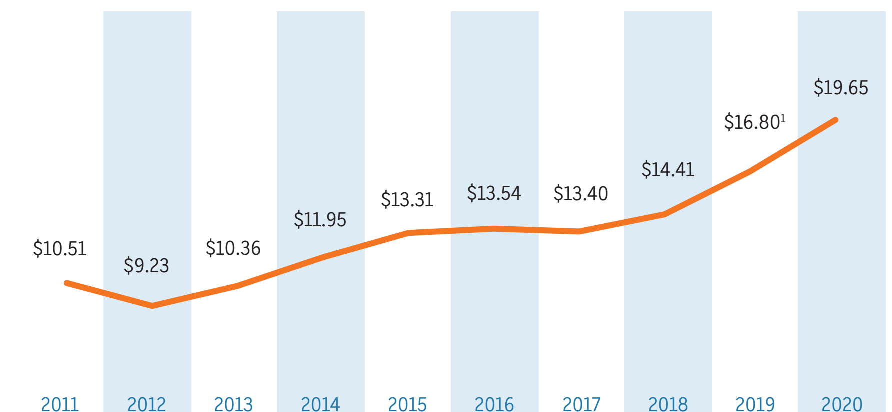
Rank	Company	2020 net income
1	Markel Corp.	$390,890,720
2	Western World Insurance Co.	$200,254,224
3	RSUI Indemnity Co.	$165,590,913
4	Lexington Insurance Co.	$112,986,953
5	AEGIS (Associated Electric & Gas Insurance Services Inc.)	$112,267,000[1]
6	Nationwide Excess and Surplus[2]	$90,140,667[1]
7	IAT Insurance Group	$50,845,543
8	Penn-Patriot Insurance Co.	$45,625,995
9	Prime Insurance Co.	$42,914,910
10	The Cincinnati Specialty Underwriters Insurance Co.	$42,418,695

[1]From annual reports and annual statements. [2]Includes Freedom Specialty Insurance Co., National Casualty Co., Scottsdale Indemnity Co., Scottsdale Insurance Co., Scottsdale Surplus Lines Insurance Co.

Source: *BI* survey

PREMIUMS TRENDS

Nonadmitted direct premiums of the top 10 U.S.-based surplus lines insurers, in billions of dollars



Source: *BI* survey

[1]Restated

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SURPLUS LINES PREMIUMS AND TAXES BY STATE

	GROSS SURPLUS LINES PREMIUMS WRITTEN				SURPLUS LINES TAXES COLLECTED			
State	2020	2019	2018	Percent change 2019-2020	2020	2019	2018	Percent change 2019-2020
Alabama	$661,266,230	$553,216,558	$603,597,716	19.5%	$46,315,099	$43,312,868	$36,215,863	6.9%
Alaska	$169,278,241	$146,346,406	$132,683,758	15.7%	$3,663,724	$3,121,204	$2,998,266	17.4%
Arizona	$762,416,961	$717,999,613	$598,800,481	6.2%	$22,473,019	$20,427,757	$17,088,384	10.0%
Arkansas	$322,134,345	$283,958,230	$263,187,257	13.4%	$12,355,608	$10,990,642	$10,824,707	12.4%
California	$12,501,621,286	$10,643,004,370	$9,143,821,558	17.5%	$347,698,605	$290,958,726	$245,679,400	19.5%
Colorado	$1,182,383,332	$1,083,348,454	$916,972,789	9.1%	$36,217,453	$33,347,884	$27,549,989	8.6%
Connecticut	$504,725,005	$445,000,000	$598,052,117	13.4%	N/A	$22,983,755	$21,578,353	N/A
Delaware	$189,821,410	$185,828,516	$174,435,330	2.1%	$5,276,864	$5,359,920	$5,175,809	(1.5%)
District of Columbia	$369,426,850	$358,087,650	$318,358,500	3.2%	$7,388,537	$7,161,753	$6,367,170	3.2%
Florida	$7,562,394,241	$6,668,194,699	$5,822,465,730	13.4%	$336,707,168	$296,834,629	$259,034,821	13.4%
Georgia	$1,645,677,101	$1,473,700,185	$1,333,623,214	11.7%	$65,827,084	$58,948,007	$53,344,929	11.7%
Hawaii	$295,925,218	$281,618,611	$272,227,301	5.1%	$14,375,736	$13,164,029	$12,718,868	9.2%
Idaho	$211,420,085	$155,652,523	$116,529,926	35.8%	$3,171,761	$2,335,381	$1,747,988	35.8%
Illinois	$2,108,551,065	$1,913,459,079	$1,585,368,304	10.2%	$73,803,436	$66,975,167	$55,491,686	10.2%
Indiana	$784,068,523	$718,696,495	$736,125,336	9.1%	$19,601,713	$17,967,412	$18,403,133[1]	9.1%
Iowa	$406,387,108	$244,134,312	$214,632,826	66.5%	$4,068,433	$3,635,759	$3,318,390	11.9%
Kansas	$369,724,742	$290,541,737	$245,911,971	27.3%	$18,057,634	$17,432,504	$14,754,718	3.6%
Kentucky	$307,141,693	$263,978,643	$245,384,157	16.4%	$9,214,252	$7,919,359	$7,358,740	16.4%
Louisiana	$1,825,832,509	$1,709,004,530	$1,507,560,380	6.8%	$88,552,828	$82,886,696	$73,110,796	6.8%
Maine	$123,297,317	$142,836,684[1]	$111,336,008[1]	(13.7%)	$3,468,939	$3,734,222[1]	$3,136,891[1]	(7.1%)
Maryland	$632,765,160	$631,825,987[1]	$581,974,716	0.1%	$18,913,790	$18,954,780	$17,155,384	(0.2%)
Massachusetts	$1,390,676,725	$1,340,461,104	$1,155,138,502	3.7%	$55,627,069	$53,618,444	$44,563,996	3.7%
Michigan	N/A	N/A	N/A	N/A	$23,007,217	$19,406,810	$18,449,549	18.6%
Minnesota	$436,267,909	$628,968,723	$556,644,578	(30.6%)	$13,088,037	$18,869,062	$16,699,337	(30.6%)
Mississippi	$568,865,095	$469,003,426	$421,968,916	21.3%	$22,756,348	$18,760,410	$16,878,264	21.3%
Missouri	$740,994,000	$775,833,892	$679,906,051	(4.5%)	$36,565,258	$36,339,632	$33,495,632	0.6%
Montana	$174,631,053	$95,760,738[2]	$111,290,554	N/A	$4,738,655	$2,902,549[2]	$2,995,898	N/A
Nebraska	$257,302,849	$202,699,534	$177,712,936	26.9%	$7,451,289	$6,080,986	$5,331,388	22.5%
Nevada	$440,622,911	$413,506,324[1]	$381,158,652	6.6%	$15,421,850	$14,472,301[1]	$13,340,598	6.6%
New Hampshire	$126,805,410	$113,209,684	$106,467,292	12.0%	$3,804,162	$3,396,290	$3,267,401	12.0%
New Jersey	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
New Mexico	N/A	N/A	$130,939,068	N/A	N/A	N/A	$4,256,926	N/A
New York	$5,118,021,821	$4,879,351,152	$4,468,235,587	4.9%	$180,227,952	$172,302,334	$157,627,560	4.6%
North Carolina	$1,009,020,889	$928,596,053	$770,016,151	8.7%	$49,872,671	$45,939,124	$38,369,172	8.6%
North Dakota	$134,871,667	$129,066,783	$119,204,635	4.5%	$2,360,273	$2,258,620	$2,086,069	4.5%
Ohio	$1,217,305,888	$980,862,630	$892,547,908	24.1%	$60,364,791	$48,497,081	$44,031,194	24.5%
Oklahoma	$733,836,638	$657,828,818	$577,504,409	11.6%	$44,030,198	$39,469,729	$34,650,265	11.6%
Oregon	$589,263,333	$477,673,455	$403,810,581	23.4%	$13,553,043	$10,986,564	$9,288,252	23.4%
Pennsylvania	$1,750,528,348	$1,575,227,438	$1,286,726,882	11.1%	$51,451,413	$46,309,157	$37,784,337	11.1%
Rhode Island	$100,069,008	$134,429,937	$176,841,445	(25.6%)	$3,876,099	$5,131,854	$6,549,868	(24.5%)
South Carolina	$1,007,847,583	$807,817,183	$727,565,837	24.8%	$60,470,855	$48,469,031	$42,264,425	24.8%
South Dakota	$87,501,134	$80,785,201	$75,241,929	8.3%	$2,205,496	$2,038,044	$1,865,138	8.2%
Tennessee	$954,700,935	$705,653,752	$623,795,504	35.3%	$46,376,202	$34,440,019	$32,765,810	34.7%
Texas	$8,004,173,121	$7,053,466,457	$6,196,707,239	13.5%	$383,676,539	$336,600,126	$294,471,302	14.0%
Utah	$480,231,389	$350,530,703	$307,846,094	37.0%	$20,409,834	$14,323,624	$12,627,101	42.5%
Vermont	$78,750,684	$61,574,358	$60,940,845	27.9%	$2,362,521	$1,847,231	$1,828,225	27.9%
Virginia	$1,073,164,704	$876,067,000	$771,377,362	22.5%	$24,922,529	$21,180,000	$18,574,020	17.7%
Washington	$1,355,156,054	$1,228,552,854	$1,037,652,739	10.3%	$27,103,886	$24,651,849	$20,753,882	9.9%
West Virginia	$149,710,948	$149,957,001[1]	$139,726,011[1]	(0.2%)	$6,573,092	$6,587,556[1]	$6,206,348[1]	(0.3%)
Wisconsin	$527,656,471	$410,363,170	$388,113,188	28.6%	$15,829,694	$12,310,895	$11,643,396	28.6%
Wyoming	$78,907,447	$78,018,671	$67,029,791	1.1%	$2,475,004	$2,339,730	$2,121,479	5.8%

[1]Restated. [2]Exclude alien surplus lines insurers. N/A = Not available.

Source: *BI* survey

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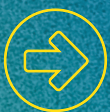

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SURPLUS

Continued from page 25

Observers say, however, that with capacity already reduced, even with a slower rate of price hikes policyholders may be paying more for their coverage.

As is typically the case, as rates in the admitted markets tighten, more business flows into the excess and surplus market, which has freedom of rate and form, observers say.

The changing risk appetites of admitted insurers is the predominant driver of increased surplus lines premium, said David Nelson, Scottsdale, Arizona-based senior vice president of contract and program underwriting at Nationwide Excess and Surplus.

AIG has gone through a process of moving business into Lexington in cases “where we feel it belongs,” Mr. Hope said.

“Like most of our competitors, growth has been almost unprecedented and we’re very popular right now,” said Joel Cavaness, president of Rolling Meadows, Illinois-based Risk Placement Services Inc., a unit of Arthur J. Gallagher & Co.

“There’s been a pullback by the admitted and standard markets that’s enabled E&S to fill that void,” he said.

The excess and surplus lines market is being driven by both a shrinkage of supply and an increase in demand, said Dave Obenauer, CEO of wholesaler CRC Group in Mendham, New Jersey.

He said the supply shrinkage is driven by losses from factors such as catastrophes, low interest rates, the pandemic and so-called social inflation resulting from higher court awards and settlements. This has led insurers to pull back capacity and to an increase in demand for excess and surplus lines coverage.

Alex Bargmann, CEO and co-founder of Pathpoint Inc., a San Francisco-based digital excess and surplus brokerage that focuses on small account business, said, “We continue to hear from agents that say they need to go the E&S route for business they’re trying to place that they might have been able to place in the admitted market in years past.”

Meanwhile, excess and surplus lines insurers are introducing pandemic-related exclusions and sublimits.

“Everybody’s a little bit more cautious in their wordings and being more restrictive on exclusions to protect themselves,” Mr. Cavaness said.

INFLUX OF FRESH CAPITAL DRIVES BRISK PACE OF M&A ACTIVITY

Mergers and acquisitions activity continues in the excess and surplus lines sector, while new capital continues to enter the market.

Among recent deals, Cincinnati-based Core Specialty Insurance Holdings Inc. said in April it was merging with Long Beach, New York-based Lancer Financial Group Inc. in a stock and cash transaction, resulting in a post-merger Core Specialty with more than $1 billion in equity capital.

In July, New York-based Amynta Group said it had acquired Scion Underwriting Services, a managing general agency that provides specialty casualty insurance to the E&S market, from London-based Brit Ltd.

In August, Dual Group, the underwriting arm of London-based brokerage Howden Group Holdings Ltd., agreed to acquire Align Financial Holdings, a San Diego-based general agency and underwriting management group, for $800 million.

“There continues to be a fair amount of M&A activity on the wholesale broker side, and there are certainly markets that are looking to continue to acquire on the agency side. I don’t see any real end in sight for that,” said Eric Blecker, Hartford, Connecticut-based president of Northfield Excess & Surplus Lines, a Travelers Cos. Inc. unit

In November, Core Specialty said it had recapitalized StarStone U.S. Holdings Inc. with $610 million in new equity capital provided by investors. It operates through StarStone Specialty Insurance Co., a U.S. excess and surplus lines insurer, and StarStone National Insurance Co., an admitted insurer.

“We thought that the (E&S) market really demanded additional capacity,” on the “heels of a couple of years of market disruption,” said Jeff Consolino, Core Specialty’s president and CEO.

Among other capital infusions, Convex Group Ltd., a London and Bermuda-based specialty insurer and reinsurer formed in 2019, raised an additional $500 million in capital in January from an investment firm.

Dallas-based Upland Capital Group Inc. was launched early this year and said that with $200 million in funding it would offer a portfolio of excess and surplus lines casualty, property and specialty insurance products, with an initial focus on excess casualty products distributed through wholesale brokers.

In June, San Francisco-based Pathpoint, a digital excess and surplus brokerage, said it had raised $30 million in funding, its third round of financing since it was founded in 2020.

The new business coming into the sector is “not coming in massive chunks,” but slowly, and “with a more intelligent thought process” than in the past, said Cliff Hope, Atlanta-based head of property for Lexington Insurance Co., a unit of American International Group Inc.

David Bresnahan, executive vice president of Berkshire Hathaway Specialty Insurance Co. in Boston, said, however, that while “there are definitely new companies and carriers popping up,” they tend to focus on certain market segments and are unlikely to have broad risk appetites that impact the overall sector.

Judy Greenwald

SPECIAL REPORT

WORKERS COMPENSATION UPDATE

Guidance on masks, virus testing toughens

INSIDE

HEALTH CARE SAFETY STANDARD

OSHA released details of its long-awaited Emergency Temporary Standard. **PAGE 38**

COMP LEGAL ROUNDUP

Supreme courts in Vermont, Pennsylvania and Oregon issue workers comp rulings. **PAGE 39**

PERSPECTIVES

COVID-19 will have long-lasting effects on the makeup of the workforce and workers compensation. **PAGE 41**

BY LOUISE ESOLA
lesola@businessinsurance.com

Seventeen days after the U.S. Centers for Disease Control and Prevention issued guidance that vaccinated individuals need to wear face masks in areas of high virus transmission, the Occupational Safety and Health Administration followed suit with new recommendations echoing those of the CDC.

Experts were not surprised but the move, which came less than two months after OSHA told employers they could relax masking requirements for vaccinated workers, and said employers should be prepared for more change as they manage workplace safety amid the pandemic.

"Everybody is struggling right now with masks and mandates, and what to do," said Sean Scullen, Milwaukee-based partner and national chair of the labor and employment group at Quarles & Brady LLP, adding that OSHA's shifting rules have been problematic. "But to be fair to OSHA, the CDC is all over the place."

OSHA's new guidance, issued Aug. 13, said new evidence led CDC on July 27 to update its recommendations for fully vaccinated people to reduce their risk of becoming infected with the Delta variant and potentially spreading it to others. In addition to masks for all

See **COVID-19** page 38

COVID-19

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in localities with high rates of transmission of COVID-19, OSHA as of August called for all individuals regardless of vaccination status to get tested following a known exposure to someone with suspected or confirmed COVID-19, among other revised guidance.

The guidance falls short of what legal experts and employers had originally been expecting: an emergency temporary standard to cover all workplaces, which President Joe Biden had called on OSHA to establish if determined necessary. Instead, OSHA created an ETS that applied to health care settings only (see related story.)

While OSHA said its latest recommendations for all industries are "advisory in nature" and "intended to assist employers in providing a safe and healthful workplace free from recognized hazards that are causing or likely to cause death or serious physical harm," legal experts say workplaces need to maintain their safety measures or face steep OSHA fines under the agency's general duty clause, a catch-all mandate that requires employers to provide safe workplaces.

"OSHA continues to cite employers under the general duty clause," said Andrew Brought, an attorney in the OSHA practice at Spencer Fane LLP in Kansas City, Missouri.

As of Jan. 14 — the last time OSHA provided data on COVID-19-related inspections — the agency had issued $4 million in penalties. While most citations have been issued to medical facilities for violations of specific standards such as respiratory protection — failing to provide adequate masks for health care workers, for example — the general duty clause has also been the basis for fines issued to businesses since the start of the pandemic.

"Everybody knows about the general duty clause, or at least they have learned about it because of COVID," said Adam Kemper, Fort Lauderdale, Florida-based partner with Kelley Kronenberg LLP. "And that has triggered most of the inspections."

The general duty clause is "a reasonable person test — did you have reason to believe that safety measures were recognized and feasible?" said Eric Conn, Washington-based founding partner of Conn Maciel Carey LLP. "And that is tracking and following the CDC. … In my view as the CDC goes, so goes OSHA."

The situation for employers is "constantly evolving," said Mini Kapoor, a Houston-based associate and OSHA litigator with Haynes Boone LLP. "It's a very tough time for employers" who also have to comply with local guidance.

REUTERS

Nurses in Akron, Ohio, last month protested against vaccine mandates. Policy and guidance on COVID-19 workplace safety protocols have changed over the course of the pandemic and more changes are expected.

"There is not one message except that it is always good to err on the cautious side," she said. "The clients who have taken the cautious approach are in a better state."

> "There is not one message except that it is always good to err on the cautious side. The clients who have taken the cautious approach are in a better state."
>
> Mini Kapoor, Haynes Boone LLP

"As long as an employer has some viable plan for safety in the workplace regarding COVID — contact tracing, isolation for workers who test positive … that is going to go a long way in satisfying OSHA as it relates to COVID," Mr. Scullen said.

And while a COVID-19 standard that would affect all workplaces is off the table — for now at least, as some legal experts say the summer surge in Delta variant cases could prompt OSHA to consider another ETS — signs point to 2022 as the year the agency reignites its work on a stalled infectious disease standard.

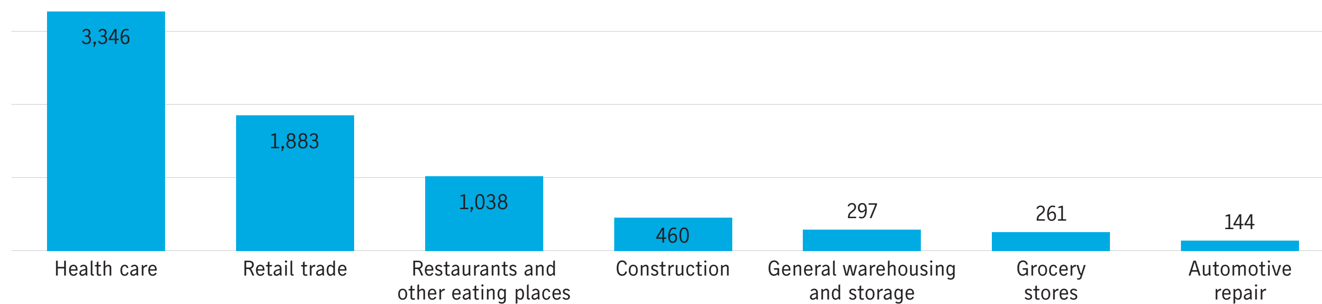
OSHA's proposed budget for 2022 calls for a 50% increase for rulemaking processes.

The process of creating an infectious disease standard began in 2010 and stalled in 2014.

John Ho, Norwalk, Connecticut-based labor and employment attorney and chair of the OSHA practice at Cozen O'Connor, said the normal rulemaking process for creating a standard is the way to go, instead of the ETS process, as it requires public hearings to implement.

"It's not rushed and you give stakeholders an opportunity to comment. That's the way it should normally go," he said.

COVID-19-RELATED SAFETY COMPLAINTS BY INDUSTRY SINCE APRIL 2020



Source: OSHA, as of Aug. 15, 2021

SAFETY STANDARD ADDRESSES HEALTH CARE SECTOR RISKS

The Occupational Safety and Health Administration in June released the details of its long-awaited Emergency Temporary Standard, which it says will only apply to workers in a health care setting.

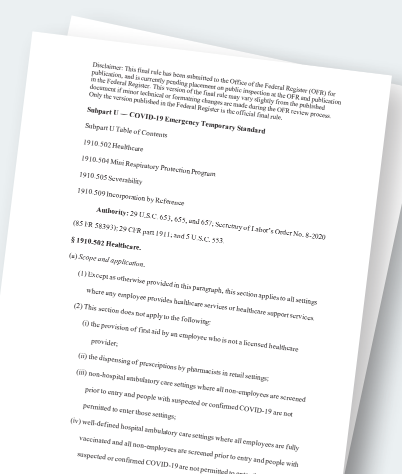
The ETS includes such requirements as sanitation, time off for illness or vaccinations, antiretaliation measures and personal protective equipment while working with COVID-19 patients and closely resembles rules set in place by the U.S. Centers for Disease Control and Prevention.

While worker advocates were expecting an ETS to apply to all industries, OSHA said its scaled-down

version was in line with science, with Secretary of Labor Marty Walsh stating during a media briefing on June 10 that "the science tells us that health care workers, particularly those who come in regular contact with the virus, are most at risk in the pandemic."

The 44-page standard provides details on mask-wearing and other PPE, notification and tracking requirements for workers who have been exposed to COVID-19, precautions for unvaccinated workers, and requirements that health care settings have in place a drafted COVID-19 safety plan. The standard also calls for employers in health care settings to encourage staff vaccinations.

Louise Esola



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Subpart U — COVID-19 Emergency Temporary Standard

Subpart U Table of Contents

1910.502 Healthcare

1910.504 Mini Respiratory Protection Program

1910.505 Severability

1910.509 Incorporation by Reference

Authority: 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 8-2020 (85 FR 58393); 29 CFR part 1911; and 5 U.S.C. 553.

§ 1910.502 Healthcare.

(a) *Scope and application.*

(1) Except as otherwise provided in this paragraph, this section applies to all settings where any employee provides healthcare services or healthcare support services.

(2) This section does not apply to the following:

(i) the provision of first aid by an employee who is not a licensed healthcare provider;

(ii) the dispensing of prescriptions by pharmacists in retail settings;

(iii) non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;

(iv) well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;

High courts clarify how after-the-fact events affect workers comp coverage decisions

BY SHERRI OKAMOTO

Hindsight is said to be 20/20, but sometimes the changes that come with the passage of time bring complications instead of clarity. Supreme courts in three states recently weighed in on cases where after-the-fact events affected a worker's claim. Vermont's highest court addressed how to handle a change in law that happened after a worker filed his claim. The Pennsylvania Supreme Court clarified the statute of limitations for a firefighter stricken by cancer after his retirement, while Oregon's top court explained an employer's obligation to reopen a claim after its denial has been set aside.

Vermont

In June, the Vermont Supreme Court decided the retroactive application of a change in the statutory definition of permanent total disability in *West v. North Branch Fire District No. 1*, which documents firefighter John West's fall in 2013. After a doctor opined the accident had resulted in a "severe traumatic brain injury causing permanent and severe cognitive, physical or psychiatric disabilities," Mr. West filed a claim seeking permanent total disability benefits.

His employer challenged the claim, arguing that Mr. West's condition did not satisfy Vermont's legal definition of PTD that was in effect at the time of his injury. That version of the law provided PTD benefits for "an injury to the skull resulting in incurable imbecility or insanity."

In 2014, the Vermont Legislature amended the law to provide PTD for "an injury to the skull resulting in severe traumatic brain injury causing permanent and severe cognitive, physical or psychiatric disabilities."

The court ruled that the 2014 amendment had not changed the standard for PTD benefits but simply made the language more respectful toward persons with disabilities. The court also said the amendment was entirely consistent with the functional definitions of imbecility and insanity that have been used in the workers compensation context, which focus on how injuries to the brain affect cognitive, physical and psychiatric functioning.

Wesley Lawrence, a Montpelier, Vermont-based defense attorney with Theriault & Joslin P.C. who reviewed the decision, said it established the 2014 amendments were a legislative action to "eradicate verbiage that at the time might not have been offensive, but through the lens of time now is."

The argument was whether changing the words of the statute changed what the statute meant, and the court ruled there was no change in the substance of the law, Mr. Lawrence said.

Mr. West's attorney, Robert Mabey, of Kalter, Kalter & Mabey PLC in Rutland, Vermont, said the decision "gives meaning to a statutory provision that was not being utilized because it was ambiguous and, more importantly, offensive," and it will provide guidance for other workers pursuing PTD claims for head injuries.

Pennsylvania

The Pennsylvania Supreme Court also addressed a claim involving a firefighter with its July decision in *City of Johnstown v. WCAB (Sevanick)* on the filing period for a cancer claim.

Michael Sevanick retired from his position with the city of Johnstown in 2006. He was diagnosed with kidney cancer in 2015, which he blamed on his exposure to carcinogens as a firefighter.

Pennsylvania law recognizes cancer in firefighters as an occupational disease and requires that a disability claim for an occupational disease be filed within 300 weeks of the claimant's last date of employment.

The case went into the nitty-gritty of the statute, with the city arguing that Mr. Sevanick's cancer claim was time-barred by the law's Section 301(c)(2). But another section — Section 301(f), which specifically applies to firefighters and provides a presumption of occupational causation for certain cancers — says that "notwithstanding the 300-week requirement in Section 301(c)(2)," firefighter cancer claims made pursuant to Section 108(r) may be made within 600 weeks after the last date of employment.

The court said the General Assembly's use of "notwithstanding" in Section 301(f) was an unambiguous indication of its intent to separate Section 108(r) claims from Section 301(c)(2)'s operation. Thus, the court said, firefighter cancer claims under Section 108(r) may be filed up to 600 weeks after the last date of employment.

Mr. Sevanick's attorney, Michael Dryden, of Willig, Williams & Davidson in Philadelphia, said the court's decision was "very significant" for firefighters, in that it "protected what the legislature provided in Sections 108(r) and 301(f)," and "the extra 300 weeks available to firefighters to make claims."

Had the court agreed with the city's argument, Mr. Dryden said, "they would have put an additional statute of repose on firefighters, and that would have thrown many of them out of the coverage of the cancer presumption."

Mr. Dryden said the impact of the decision is likely limited to firefighters, but it is a "good example of a court honoring the language used by the legislature" in conducting a plain-meaning statutory analysis.

Kristopher Kachline of the Law Office of Nathaniel M. Holmes in Royersford, Pennsylvania, represented Johnstown. He opined that the court's application of Section 301(f) to Mr. Sevanick was "inconsistent" with the court's 2013 decision in *Tooey v. AK Steel Corp.*

In Tooey, he said, the high court held that the Workers' Compensation Act does not apply to claims by workers who developed occupational diseases more than 300 weeks after leaving employment. Since Mr. Sevanick's cancer was not diagnosed until over 300 weeks after his retirement, Mr. Kachline contended that the rule from Tooey should have brought Mr. Sevanick outside the scope of coverage from the act, and the court's application of the Section 108(r) to Mr. Sevanick therefore caused him to question whether a firefighter could ever assert the kind of tort claim recognized by the court in *Tooey*.

Oregon

Legislative intent was also the focus of the Oregon Supreme Court's July decision in *In the Matter of the Compensation of Simi v. LTI Inc.*

Randy Simi injured his right shoulder in 2010, and his employer accepted liability for a rotator cuff tear. Mr. Simi underwent surgery to repair a tear in the supraspinatus tendon, and his workers compensation claim was closed in 2011.

Years later, a doctor found a recurrent tear of the supraspinatus tendon as well as tears in the infraspinatus tendon. Mr. Simi's doctor opined that the tears were work-related, and Mr. Simi requested that his employer accept liability for them.

The employer refused, but it later acknowledged that the supraspinatus and infraspinatus tears did not need to be accepted as new or omitted conditions because they were "encompassed within" the already-accepted rotator cuff tear.

An administrative law judge set aside the employer's denial of compensability, finding the employer's concession that the conditions were encompassed within the acceptance of the rotator cuff injury was inconsistent with the denial of compensability. This decision was upheld on appeal.

Meanwhile, Mr. Simi requested that his claim be reopened, contending that Oregon laws required his employer to reopen his claim, with the law providing that if a condition is "found compensable after claim closure," the claim shall be reopened for processing.

The Workers' Compensation Board and the Court of Appeals found that the law did not apply because the tendon tears were not found compensable after claim closure, but the Supreme Court said it did. The Supreme Court ruled the date of the ALJ's post-closure order was the relevant date on which the tears were "found compensable" and so Mr. Simi's claim had to be reopened.

Brad Garber, a defense attorney with Tolleson, Conratt, Nielsen, Maher & Replogle LLP in Lake Oswego, Oregon, who publishes periodic caselaw updates and reviewed the Simi case, said the lesson from the case seemed to be "don't deny and concede liability in the same claim."

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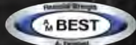
888.884.5822 • Rated A- Excellent by 

PERSPECTIVES

Pandemic reshapes workers comp line

Matt Zender is senior vice president, workers compensation strategy, at insurer AmTrust Financial Services Inc. He currently serves as chairman of the board of the California Workers' Compensation Institute. He can be reached at matthew.zender@amtrustgroup.com.

The aftershocks of the COVID-19 pandemic will be felt for years to come in the workers compensation industry, as its impact on jobs, wages and workers will continue to shape the evolution of the line.

Since the start of the pandemic, the workers compensation system has dealt with myriad changes. Some have ultimately been positive, some have placed — or will continue to place — stress on the system. Without question, however, the system that is emerging will remain indelibly marked by COVID-19.

Jobs have returned strongly in the construction and manufacturing industries, and most clerical jobs, such as those in financial services, were unaffected by the pandemic. But in March 2020, the unemployment rate rose to 14.7% from 4.1% the prior month, which is what the federal government considers to be roughly the level of "full employment."

That rate was 5.4% as of July of this year. While job creation appeared to stall in April 2021 after promising reports in January and February, it picked up again in the summer but still lags in the leisure and hospitality space, where despite recent growth employment is still down 10.3% from February 2020. But, overall, the return of jobs and workers also means an influx of workers compensation premiums.

According to the National Council on Compensation Insurance, unadjusted wages rose 7% in 2020. While this sounds positive, most of the increase was due to changes in class mix. After adjusting the wages for class mix, the figures rose just 3% among those who remained employed. The average hourly wage was $30.17 in April 2021, up 5.8% from February 2020. These factors contributed, again based on NCCI data, to a 7% drop in claim frequency in 2020.

> With fewer workers, employees are working longer hours, with the average number of hours worked per week hitting 35 in 2020 — the highest total in the last 15 years.

Due to the higher overall wages and the fact that those employees who were left working were generally in less hazardous positions, you see fewer claims. But many business owners are having to balance both their top line and bottom line with these changes, and many are having to evaluate which shifts — or even which days — they are able to remain open.

This has been exacerbated because employers are struggling to encourage workers to return to work. This is especially noticeable in restaurants. I was chatting with a restaurant owner recently and he noted that his inability to attract new wait staff had forced him to cut down on the number of days he is open. He now is only open Thursday through Sunday.

With fewer workers, employees are working longer hours, with the average number of hours worked per week hitting 35 in 2020 — the highest level in the last 15 years. Traditionally, longer hours worked contributes to workplace fatigue, which increases the likelihood of workplace injury. The frequency data cited by NCCI would have been even better if the number of hours worked per week had not increased. We have also seen these longer hours and smaller workforces affect service levels and customer satisfaction, which can have a negative spiraling effect on employees' stress levels.

This challenge of finding workers will also likely lead to wage growth as employers fight to attract and retain talent. While this traditionally has a positive impact on workers compensation, it may also prompt employers desperate to keep regular working hours to lower their hiring standards or lower their training and onboarding quality. This will result in workers less suited to their positions, and looser hiring standards will undoubtedly place pressure on both frequency and severity for workers compensation.

Many clients have admitted to "taking what they can find" from the available workforce and they are worried about these downstream effects. Many used to take great pride in how carefully they would use onboarding as a way to demonstrate what was so special about their operation, and often they aren't able to do this today with the same conviction.

Also affecting the industry will be discouraged workers who have dropped out of the workforce and refuse to return to

> This challenge of finding workers will also likely lead to wage growth as employers fight to attract and retain talent. It may also prompt employers ... to lower their hiring standards.

roles in their prior industries, viewing the pandemic as an opportunity to explore their career options.

In fact, the number of small-business job applications received in 2020 showed the largest increase in the past decade. While that increase is positive news on many levels, new businesses traditionally have a higher failure rate as well as training and onboarding issues with new employees that can lead to workers comp claims.

Changes in work situation were also feared to lead to an influx of claims. As the pandemic hit, Stanford University economist Nicolas Bloom estimated that 42% of the U.S. labor force was working from home. At its apex, more people were working from home than were working at their work location. With this transition, which came virtually overnight, many workers were left dealing with less than ideal workspaces from an ergonomic perspective. There were concerns about the impact that this would have on workers compensation. However, in light of recent NCCI data, it appears that the offsetting benefits — including no longer having to drive to work and not being exposed to other work-related hazards — more than made up for those concerns.

At its core, the workers compensation system has always been impacted by economic factors, both positively and negatively. The sheer volume of changes we have witnessed in the last 18 months has required diligent monitoring to evaluate the winds of change. As a line of business, there is little doubt the imprints of this pandemic will be historically indelible.

OPINIONS

COMMENTARY

Vaccine mandates brew more dissent

Keeping track of the changing safety requirements for COVID-19 can be dizzying.

Take my local bar. Like most businesses it closed in March 2020 and then reopened last summer, after adding some outside seating. A few weeks later, it allowed patrons to sit inside with the expectation that they kept their masks on between gulps and rigorous cleaning protocols were enforced. Gradually, the masks disappeared, except for entering, leaving and visiting the facilities, and disinfectant wipe downs were less frequent. Then, as the Delta variant took hold this summer, mask enforcement became stricter again and since last month the host requires customers to show proof of vaccination before entering. And this is for an establishment that sells one product: beer.

Employers at larger companies with more complex operations are having to make tougher and more nuanced decisions and constantly adapt to the changing circumstances, such as whether to enforce vaccine mandates or regular tests.

Gavin Souter
EDITOR

An increasing number of companies are getting comfortable with the notion that while to be vaccinated or not is a choice, they, too, can make choices regarding vaccines — within the parameters of the law — including whether to make them compulsory for some or all workers.

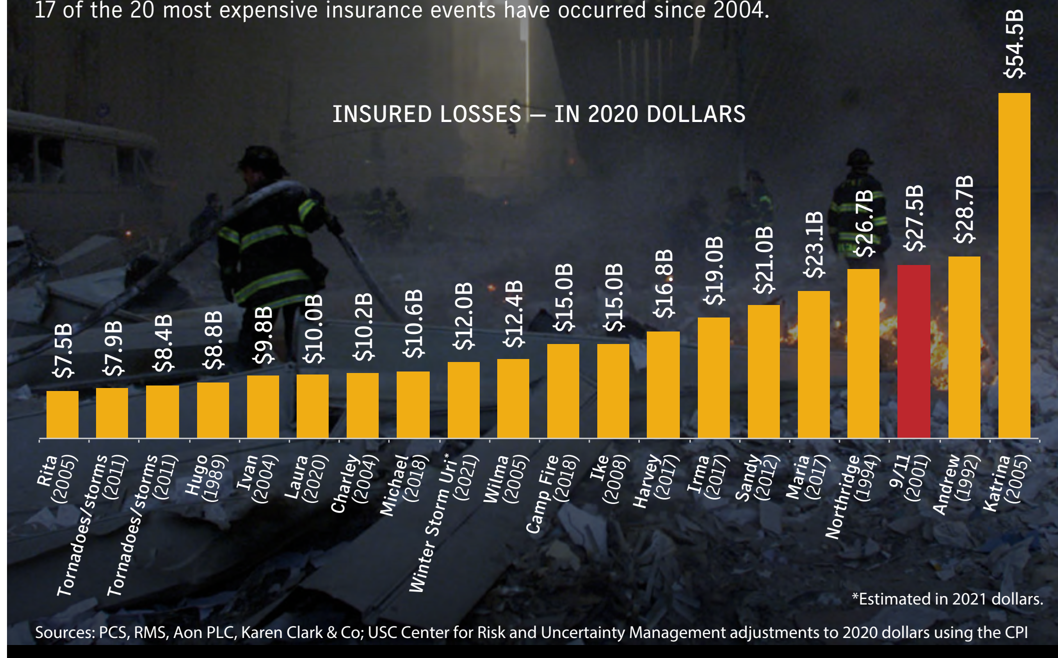
And as employers grapple with the long-term effects and costs of COVID-19, as we report on page 4, they are likely to be even more concerned about curtailing the spread of the disease in the workplace.

Even before the U.S. Food and Drug Administration announced last month that it was granting full approval for the Pfizer vaccine, one survey found that close to 50% of employers said they were more strongly considering a vaccination mandate.

Barring any scientific setbacks, it's hard to imagine that the trend toward such mandates will be reversed. Legal victories, including a federal court dismissing a suit by workers against Houston Methodist Hospital after it required vaccinations, also appear to have emboldened employers. With only a little over half the country fully vaccinated, though, more resistance is almost inevitable, especially when you look at the big geographic differences in vaccine take-up.

As more employers reopen workplaces and push harder and harder for workers to be vaccinated before they are allowed on the premises, they face a huge task in persuading the doubters and in making accommodations for people who have other reasons not to get a shot. It's one thing to tell a consumer to go elsewhere if they don't abide by your rules but it's quite another to take away a person's livelihood.

Expecting people to simply conform with requirements will likely be futile amid so much change and the fact that people are still coming to terms with the virus. We should not forget that less than two years ago no one had heard of COVID-19, even though now everybody knows its name.



VIEWPOINT

Time to revisit backstop

BY CLAIRE WILKINSON
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It's hard to believe it's been 20 years since the catastrophic events of Sept. 11, 2001. As with many who were living and working in Manhattan that day, there are certain sights, sounds and smells that prompt memories of that Tuesday. Any bright, sunny early fall morning is one, missing-people posters is another, the sound of a jet engine flying low overhead and any particularly acrid smoke blowing in the air are others. The personal accounts of the five executives interviewed for *Business Insurance*'s cover story go to the heart of 9/11 and the human losses the insurance industry suffered. There are also memories of people helping each other even as they were in imminent danger, of people coming together and finding support — and of the industry adapting and recovering in the years since.

As is usually the case following major catastrophes, 9/11 led to fundamental changes in the way insurers and risk managers operate and in particular how terrorism risk is modeled and priced. For example, workers compensation insurers began to think about whether a business's operations were located in a potential terrorist target area, and about aggregations of risk if a catastrophic event were to hit multiple industries. For property insurers, where before 9/11 terrorism risk was covered in most property policies, the magnitude of the losses arising from the event and the potential for future attacks led them to introduce exclusions for terrorism coverage until the government stepped in to create a backstop — the Terrorism Risk Insurance Act signed into law in 2002 — to stabilize the market. The terrorism market has since expanded as the nature of the risk has shifted, demand has increased and insurers' comfort level with the risk has grown as the stories on pages 22 and 23 reflect.

Like 9/11, the COVID-19 pandemic has generated various industry proposals for some type of government backstop to provide market support and enable pandemic risks to become insurable. While there are many reasons put forward by various industry participants on whether this is a good idea, what is clear is that well into the second year of a pandemic in which there continues to be uncertainty for businesses due to the rise of variants and changing agency advice over masking and distancing protocols, lack of coverage continues to be a problem for many commercial insurance buyers. Costly litigation for denied COVID-19-related business interruption claims also continues to unfold, and while much has gone insurers' way, policyholder wins are not ruled out. At a July 22 hearing of the U.S. Senate Banking Committee's Subcommittee on Securities, Insurance and Investment to examine frameworks to address future pandemic risk, Evan Greenberg, CEO of Chubb Ltd., said a public-private partnership would lessen the financial blow of a future pandemic. Martin South, president, United States and Canada division of Marsh LLC, also testified at the hearing that without significant government support, property and liability insurance policies are severely limited in their ability to respond to pandemic-related losses.

The ability to adapt, regroup and reshape out of catastrophic events is a hallmark of the insurance and risk industry. Isn't it time that lawmakers and the industry reach some kind of consensus on pandemic risk?

The business world´s journey to resilience

John Doyle is CEO of Marsh.

A 400-meter container ship veered sideways and lodged itself in the bank of the Suez Canal, choking off one of the most critical trade thoroughfares on the planet and hampering global supply chains for a week. A rare, severe ice storm in Texas knocked out a power grid designed to contend with much warmer temperatures, causing loss of life and property damage and disconnecting a market of nearly 30 million people from the nation's economy. Rampant ransomware attacks have held companies hostage, disrupting their businesses and threatening their data.

These events have essentially nothing to do with each other, however they are all bound by the enormous pressure they have placed on businesses to reevaluate their resiliency. Especially against the backdrop of the ongoing COVID-19 pandemic, organizations require a forward-thinking approach to their risk strategy, one that will help drive preparedness and build resilience to known and unforeseen hazards.

Resilient companies are able to anticipate risk, minimize losses and quickly resume business following an event, gaining a competitive advantage over less-prepared peers. Yet, how many companies are truly prepared for the next supply chain shock, extreme weather event or major cyberattack?

> Against the backdrop of the ongoing COVID-19 pandemic, organizations require a forward-thinking approach to their risk strategy, one that will help drive preparedness and build resistance to known and unforeseen hazards.

Resiliency is an essential priority for businesses that hope to be successful in an unpredictable 21st century economy.

It's difficult for governments, businesses and other stakeholders to prepare for every hard-to-predict risk. But ignoring events doesn't make them less likely to happen, and the impact of being unprepared can be devastating.

Understanding how companies assess their risks and what measures they are taking to mitigate them is crucial in understanding where we are on the resilience journey. To further that understanding, Marsh developed the Risk Resilience Diagnostic, a survey that examined the impacts and interrelation of key risks across core business areas. Among the more than 1,000 companies surveyed, our research found consensus about the importance of the specific emerging risks examined and broad agreement on the need to better prepare for them.

But the Diagnostic also found disparities in the perception of and response to the threats posed by the six risk areas: pandemic; cyberattack; emerging technologies; climate change/environmental, social and governance risks; regulatory changes; and geopolitical risks.

For example, while 75% of respondents believe their risk management and insurance buying processes are aligned to their long-term growth strategies, only 25% have a comprehensive process in place to evaluate and model the impact of these emerging risks on their business.

The findings suggest a significant perception gap, with organizations' risk management functions prioritizing short-term threats over those that are high severity but lower frequency. This potentially leaves them vulnerable to immediate and long-term disruptions to their operations, assets and revenue streams.

We identified four common behaviors for the journey toward becoming more resilient: anticipating important risk issues, connecting risk management to business strategy, avoiding gaps in the perception of preparedness; and measuring relevant data.

A company that anticipates risk expects the unexpected. More than just having a crisis management plan in place, it looks farther and digs deeper. One thing we saw during the pandemic was that even organizations with robust business continuity plans struggled. Why? In many cases they didn't fully anticipate how widespread and long-lasting the damage from a pandemic could be.

Resilience also involves fully integrating risk management with an organization's operations and strategy. Failing to do so can limit the ability to develop effective responses. Most organizations we surveyed do not adequately connect resilience planning with their long-term investment strategy. Those that do make the connection are taking a step toward mitigating financial exposure, reputational damage, business interruption and other losses.

For any journey, it's important to clearly see the path ahead. In terms of resilience, this translates to needing an accurate perception of organizational preparedness. A false sense of security can halt an organization in its tracks. We found a gap between how organizations view risk importance and how they perceive their own preparedness: Companies often overestimate their ability to respond to and recover from a given risk.

The final behavior on the path to resiliency is to measure what matters. In this era, there is no shortage of data and analytics, but applying metrics consistently is a stumbling block for many companies, according to our research. We would have expected that risks that companies rated as important or highly important would be met with an appropriately high rate of modeling and forecasting. However, only a minority of companies are doing so, and most of those are only performing it in select areas.

> We found a gap between how organizations view risk importance and how they perceive their own preparedness. Companies often overestimate their ability to respond to and recover from a given risk.

There is a considerable mismatch between the understanding that great risks face our economy and businesses and the measures being taken to prepare for them. Closing that gap requires a significant investment in research, planning and preparation for events that have become all too common. However, they are necessary steps businesses must take to compete and succeed in today's dynamic, unpredictable global market.

Lockton launches reinsurance quoting system

Lockton Re, the reinsurance business of Lockton Cos. LLC, said it has partnered with Bermuda-based Nephila Holdings Ltd. to launch Lockton Re SageLink Automated Placement Solutions, an automated reinsurance quoting system.

Both Lockton Re and Nephila use proprietary application programming interfaces on the system to allow Lockton Re to submit applications and receive quotes, Claude Yoder, global head of analytics at Lockton Re, said in a statement.

The system can shorten timeframes associated with the reinsurance broking process and help improve reinsurer underwriting workflow management, Lockton said.

AlphaRoot rolls out cannabis casualty covers

AlphaRoot, part of Founder Shield LLC, said it is offering a suite of casualty coverages for cannabis operators.

Cannabis companies can secure general liability and product liability with limits up to $1 million per occurrence and $2 million aggregate as well as hired and non-owned auto with $1 million in limit; excess liability is available up to $10 million, according to an email from a company spokeswoman.

Coverage is available where cannabis is legal, either medically or recreationally. Worldwide coverage is available as long as primary business operations are in the U.S., according to the spokeswoman.

Drew Taylor, managing director and head of broking at New York-based AlphaRoot, said in a statement that "insurance will play a key role in ensuring responsible growth" of the cannabis industry.

Broker offers coverage for vacant buildings

Pathpoint Inc. has launched a liability coverage for unoccupied buildings and land, the San Francisco-based digital excess and surplus brokerage said.

Coverage is available either as monoline general liability, property or a package policy, with term lengths from three months up to one year.

Liability limits of $1 million per occurrence, $2 million general aggregate and a $2 million personal and advertising limit are available.

Coverage is for properties and land that are under renovation or that are less than 30% occupied, Pathpoint said in a statement.

Properties and land can be vacant for any length of time.

Buildings up to three stories in height and up to 25,000 square feet, and those built as early as 1900 are eligible. Coastal and wind-exposed property will be considered, Pathpoint said.

Coverage is available in all 50 states, with a particular focus on Alabama, Florida, Georgia, Maryland, Massachusetts, Minnesota, Ohio, Pennsylvania, Texas and Virginia.

"Vacant property is yet another product that independent agents need regular access to and often find themselves leaning on wholesalers to place. … If it's something our markets want to cover, any agency can quote it in a few minutes with us," Alex Bargmann, Pathpoint's CEO and co-founder, said in the statement.

Sompo launches epidemic risk coverage

Sompo International Holdings Ltd. said it is introducing epidemic and pandemic risk coverage.

The Bermuda-based specialty insurer said its Sompo GRS Epidemic and Pandemic Protection Program provides coverage based on available pre-set coverage options, including loss of income, extra expense, debt servicing, supply chain disruption and other fixed costs.

The statement said that in the program's first year, limited capacity will be available to Sompo GRS clients and their captives in the real estate, hospitality, financial services, professional services, technology and life science industries, as well as the unit's Asian-interest accounts.

A Sompo spokeswoman said in a statement the insurer is offering up to $25 million in limits, with coinsurance, deductibles and other elements varying slightly by the type of coverage purchased, and limited capacity available in the first year.

Amwins combines gun, molestation coverages

Amwins Group Inc. said it is combining two coverages, deadly weapons protection and sexual molestation liability, into a single policy.

The Charlotte, North Carolina-based wholesaler said the coverage, which is being written in partnership with a London syndicate, will have annual premiums of $10,000 to $25,000 and $1 million to $5 million in limits. The coverage also includes crisis management extensions of up to $1 million as a separate limit, the company said.

Amwins said this is the first product to bring these coverages to small and middle-market business in a single policy.

The company said in its statement that because of loss frequency and severity, many insurers are adding exclusions or sublimits for these types of risks in general liability or other policies, and that small and medium companies have been most adversely affected by significant gaps or high retentions.

A spokeswoman said in a statement the coverages are being combined into one policy so retailers do not have to find a separate replacement for each.

Brown & Brown subsidiary adds recovery services

A disability insurance subsidiary of Brown & Brown Inc. has added recovery services to its offerings, the Daytona Beach, Florida-based brokerage announced.

Brown & Brown Absence Services Group's recovery service will provide reimbursement assistance for clients related to overpayments of disability insurance and will absorb the brokerage's second injury fund recovery business, which has operated under the Adeo Solutions brand since 2014.

Beazley updates virtual health care policy

Beazley PLC had introduced changes to its virtual care policy for health and wellness organizations, which it launched in 2017 to cover remote and technology-enabled health care.

The policy, which includes limits up to $10 million, now includes affirmative bodily injury coverage across its four coverage areas: medical malpractice and professional liability, technology and media liability, cyber liability and breach response, and general and products liability, Beazley said in a statement.

DEALS & MOVES

Gallagher renegotiates Willis reinsurance deal

Arthur J. Gallagher & Co. announced it has agreed to buy Willis Towers Watson PLC's treaty reinsurance business for a purchase price that could rise to $4 billion.

The announcement comes less than a month after a deal for Gallagher to buy a larger slice of Willis' business for $3.57 billion fell apart after the transaction it was contingent on — Aon PLC's much bigger proposed acquisition of Willis — was terminated in the face of regulatory opposition.

Under the terms of the latest deal, which is expected to close in the fourth quarter, Gallagher will make an initial payment of $3.25 billion and potentially pay another $750 million subject to third-year revenue targets, a Gallagher statement said.

Gallagher will take on about 2,200 Willis reinsurance staff.

Dual expands with $800M purchase of Align

Dual Group, the underwriting arm of London-based brokerage Howden Group Holdings Ltd., agreed to acquire Align Financial Holdings, a San Diego-based general agency and underwriting management group, for $800 million.

The deal will create an international underwriting group with over $2 billion in gross written premiums and 1,000 employees operating in 16 countries, according to a statement announcing the deal.

Risk Strategies buys med mal specialist

RSC Insurance Brokerages Inc., which does business as Risk Strategies Co., said it has acquired Delray Beach, Florida-based Danna-Gracey Inc., a medical malpractice liability agency.

Terms of the deal were not disclosed.

Established in 2001, Danna-Gracey specializes in placing coverage for doctors and other health care providers, Risk Strategies said in a statement.

Hub acquires education specialist in Kansas

Hub International Ltd. said it has acquired commercial broker Dissinger Reed LLC.

Terms of the deal were not disclosed.

Overland Park, Kansas-based Dissinger Reed provides insurance for more than 200 colleges and universities, 27 state high school associations across the country and the National Federation of State High School Associations, the Hub statement said.

PEOPLE

"One of my goals is to take a proactive step toward incorporating a risk management information system, which will allow us to forecast, prioritize, identify, manage and monitor the assortment of risks facing our organization."

UP CLOSE

Jessica Lyons

NEW JOB TITLE: San Bernardino, California-based director of risk management, San Manuel Band of Mission Indians.

PREVIOUS POSITION: Las Vegas-based director of insurance, Treasure Island Hotel Casino, Circus Circus Hotel Casino and Casino Miami.

OUTLOOK FOR THE INDUSTRY: A hard market existed before the pandemic and the reality is that the market is ostensibly getting worse. Unfortunately, there are no positive signs that the hard market will dissipate. I expect to continue to encounter stress across multiple lines for 2021, into 2022. Correspondingly, cyber liability is now seen as a requirement rather than an extravagance, given the remote work environment many companies have adopted in the wake of the pandemic and the increasing number of cyberattacks. These are extraordinary times, and businesses should recognize the challenging landscape and anticipate continuing to feel the effects.

GOALS FOR YOUR NEW POSITION: One of my goals is to take a proactive step toward incorporating a risk management information system, which will allow us to forecast, prioritize, identify, manage and monitor the assortment of risks affecting our organization.

CHALLENGES FACING THE INDUSTRY: Outside of the challenges the pandemic has created, California wildfires and climate change pose additional and costly challenges for us, particularly in the property marketplace where insurers are reevaluating the capacity they are willing to write.

FIRST EXPERIENCE: I started as an executive administrative assistant for the vice president of risk management in the gaming industry, not really knowing what risk management truly encompassed. I quickly began to appreciate the necessity of a good risk management program and immersed myself in each aspect to gain more knowledge and understanding.

ADVICE FOR A NEWCOMER: Create allies, friends and partnerships, ask questions, lots of questions. Listen, observe, know your audience and, most of all, take ownership of your work.

DREAM JOB: I would love to get paid to travel and explore.

LOOKING FORWARD TO: I'm looking forward to new challenges that can help broaden my experience. I am excited by the opportunity to work with such an innovative, successful enterprise whose mission I firmly believe in.

COLLEGE MAJOR: Business management.

FAVORITE MEAL: I don't really have a favorite meal, but I love Thai food and pretty much anything spicy.

FAVORITE BOOK: "The Alienist," by Caleb Carr. Although it's a crime novel, I enjoy reading historical and psychological books.

HOBBIES: I love to garden; it's extremely rewarding and it helps me unwind.

FAVORITE TV SHOW: My guilty pleasure is watching DIY home improvement shows.

ON A SATURDAY AFTERNOON: Most Saturday afternoons, you can find me relaxing with my husband and family at home.

SEE MORE ONLINE

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ON THE MOVE

Willis Towers Watson PLC named **Carl Hess** to succeed John Haley as CEO from Jan. 1, 2022, appointing him president of the company effective immediately. Previously, Mr. Hess was head of investment, risk and reinsurance.

Zurich North America appointed Schaumburg, Illinois-based **Kelly Kinzer** to the newly created role of head of construction, casualty. Previously, Ms. Kinzer led the insurer's construction property business.

Alliant Insurance Services Inc. appointed Dallas-based **Tim McGinnis** to the newly created position of senior vice president, construction services group. Mr. McGinnis had been West regional construction leader for Willis Towers Watson PLC.

Elizabeth Olsson, formerly a senior vice president at Aon PLC, has joined Marsh LLC. Ms. Olsson, who is Atlanta-based, is senior vice president and senior client adviser with Marsh's FINPRO practice in the Southeast region. Before joining Aon in January 2020, Ms. Olsson was senior vice president and national practice leader at USI Insurance Services LLC.

Aon PLC named New York-based **Adam Bixby** managing director, proactive security leader, for cyber solutions North America. Previously, Mr. Bixby was co-practice leader of Aon's cybersecurity testing team. He also serves as a hacking technical consultant for TV and movies and was a security forces member in the U.S. Air Force.

Guy Carpenter & Co. LLC, the reinsurance brokerage business of Marsh & McLennan Cos. Inc., appointed Australia-based **Michael Harden** president of Asia Pacific. Previously, Mr. Harden was president, Asia Pacific, for Willis Re.

Dog ate my ability to return to work

Work-life balance perks have long been a staple for employers aiming to attract and keep good workers, and it's becoming clear that as the pandemic turns a corner, employers will need to throw workers another bone if they want to avoid the risk of turnover: Don't forget about Fido.

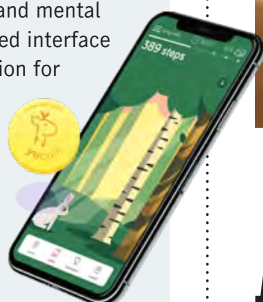
In a piece documenting the anticipated separation anxiety between pandemic pooches and their owners who used stay-at-home mandates to adopt their furry best friends, Time magazine provided some insight employers may want to pay attention to.

Specifically, of 400 dog owners surveyed by pet product company Honest Paws, 67% said they would consider looking for a different job if their company no longer offered remote work, and 78% said they would stay if they could bring their pets to work.

New spin on game of life insurance

A startup in London is trying to breathe new life into the mundane world of life insurance.

YuLife, a company that claims it will incentivize and reward users to focus on their physical and mental health through a gamified interface app, has raised $70 million for its insurtech startup, techcrunch.com reports.



The app was built by veterans of the gaming industry and designed around the concept of different environments, currently covering forest, ocean, desert and mountains, which YuLife collectively terms its "Yuniverse," according to an article.

Within each of these personalized environments, users are encouraged to walk, cycle, meditate and do other activities, while at the same time being able to compare their progress with that of their co-workers.

SOCIAL MEDIA INFLUENCERS MAKE FRAUD SEEM COOL

According to those tracking fraud trends, social media influencers selling fraud tips and guides online is the new black.

Going the way of the latest "it" accessory, influencers are selling their methods at full speed, touting the availability of "fullz," which is slang for information intended to cause harm to individuals, banks and retailers, according to a report on BBC.com.

With the fullz in hand, fraudsters can follow the steps in the guides to make online purchases or even take out a loan in someone else's name. The information often comes from phishing scams that pretend to be from legitimate sources and con people into revealing their personal information, according to the report.

TikTok, Twitter, Facebook, Snapchat, Instagram and YouTube all told the BBC they did not allow fraud on their platforms, and said they "took fraud very seriously and were constantly clamping down on criminal content."

Yet the report poses this question: Can social media companies take content down faster than it is posted?

Champagne for everybody!

Costco Wholesale and Tiffany & Co. have settled their eight-year trademark infringement dispute over alleged counterfeit sales of generic diamond engagement rings bearing the "Tiffany" name, which more than 3,000 club members had thrown in their jumbo carts.

As reported by Reuters, the jewelry empire sued the bulk-and-discount retail chain on Valentine's Day in 2013 over the rings they said caused consumer confusion, which Costco argued did not.

The undisclosed settlement came after a federal appeals court in Manhattan tossed out a $21 million jury award to Tiffany following a lower-court decision that Costco was liable for selling the disputed rings, despite its claim that "Tiffany" had become a generic term that described the rings' pronged setting, according to Reuters.

Work communication isn't rocket science

Giving 110%, or rather mentioning it, runs the risk of annoying colleagues, according to a survey of 1,000 workers that found half of them regard such cliche business jargon as "annoying" or "really annoying."

According to the survey by career website Resumebuilder.com, 38% of employees feel pressured to use such language "to fit in or appear competent," and 41% report "excessive use of business jargon leaves them feeling left out and disengaged."

In a rundown of the top 20 offending phrases — starting with "giving 110%" — "I'll ping you," "think outside the box" and "reinvent the wheel" were among the "low-hanging fruit," which also made the list.

The most common party that uses workplace jargon is upper management, according to 33% of those surveyed.

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- **Liberty Mutual ErgoValuator —** *Liberty Mutual Insurance Co.*
- **MakuSafe Wearable & MakuSmart Risk Analytics Platform —** *MakuSafe Corp.*
- **Marsh Risk Resilience Diagnostic —** *Marsh LLC*
- **Mentor by eDriving —** *eDriving LLC*
- **Parametric Hail —** *Swiss Re Corporate Solutions*
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