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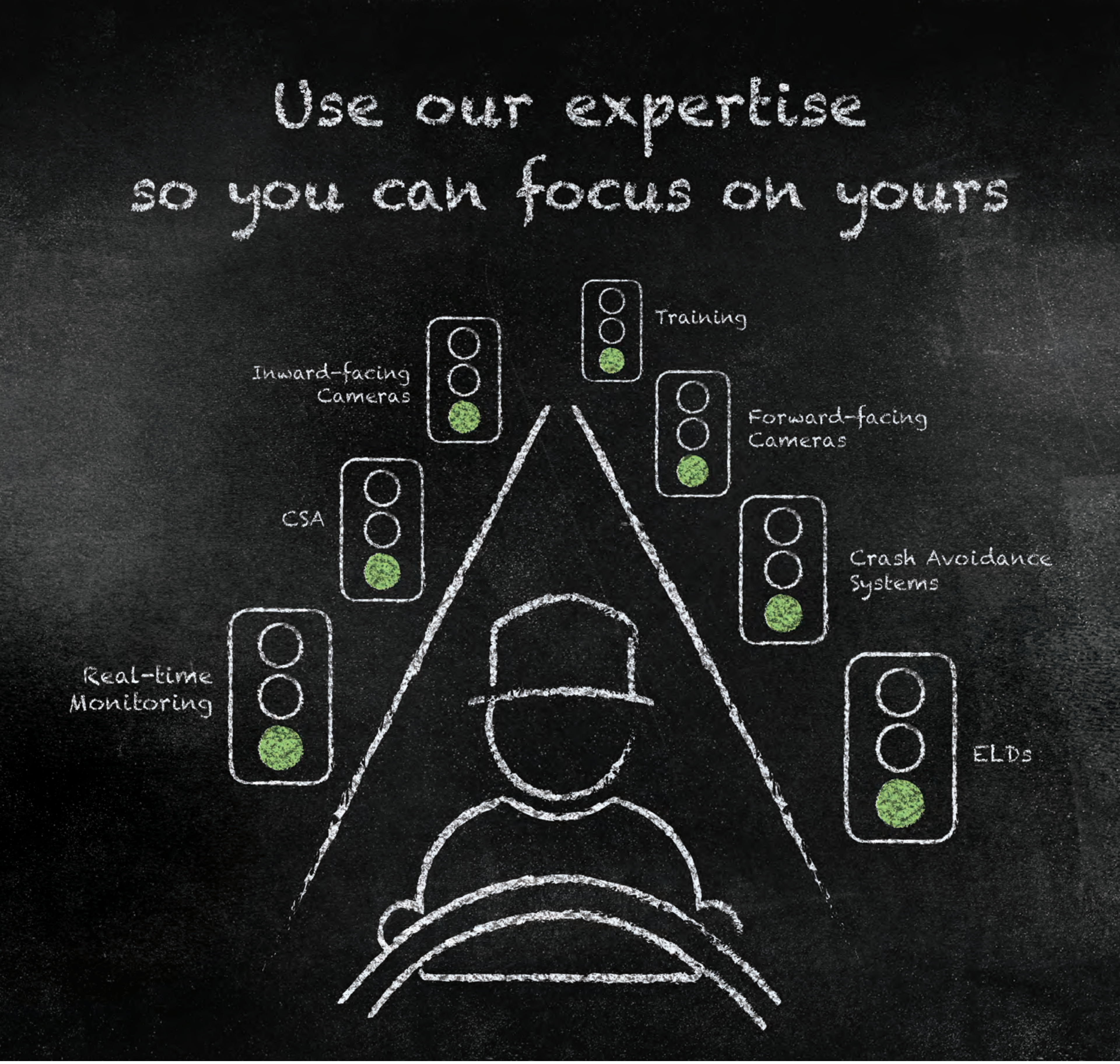

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Companies have faced a surge in ransomware attacks during the pandemic as employees shifted to working from home. But experts say businesses can reduce the threat by focusing companywide on security, developing an incident response plan and maintaining a separate data backup system. **PAGE 16**

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VIEW FROM THE TOP

DAVID POMS

Poms & Associates Insurance Brokers LLC, was founded 30 years ago. David Poms, president of the Woodland Hills, California-based company, is deeply involved in insurance and risk management in the education sector, including helping to formulate laws and procedures to curb child sex abuse. He discusses the challenges in preventing abuse and how related settlements have affected the insurance market. **PAGE 15**

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SPACs face challenges buying D&O cover: Can captives provide the right solution?

BY CLAIRE WILKINSON
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Captive insurers, long a home for hard-to-place risks and seeing greater use in the hardening commercial insurance market, are being eyed as a potential solution for the directors and officers liability problems facing special purpose acquisition companies.

A rapid rise in the volume of SPAC deals has led to a surge in demand for D&O insurance. Recent regulatory scrutiny of SPACs has compounded insurer wariness of these risks. As a result, D&O coverage costs, which were already climbing, have accelerated, leaving the so-called blank check companies exploring alternatives.

But trying to cover SPAC initial public offering D&O risks through captives could be problematic, experts say.

> Captives are "longer-term plays and not really a solution you can pivot to midterm in your negotiations."
>
> Kristin Kraeger, Aon PLC

Captives have been used in D&O programs outside of the SPAC realm, but there are "potential headwinds" for SPACs in using them, said Kristin Kraeger, national SPAC and IPO leader at Aon PLC in Boston.

SPACs have a finite existence (see box), whereas captives are "longer-term plays and not really a solution you can pivot to midterm in your negotiations," Ms. Kraeger said.

Captives are more frequently being discussed as potential vehicles to solve the riddle of maintaining broad coverage, accessing sufficient limits and controlling costs in a hard or hardening market, said Machua Millett, Boston-based SPAC leader at Marsh LLC.

However, the major hurdle for SPACs considering captives is timing. "The typical lifecycle for the SPAC and deSPAC process is only about two years at most, and sometimes as short as six months from the SPAC IPO to the close of the reverse merger. Captives take some time to arrange and set up," Mr. Millett said.

There's a "fundamental mismatch" between the timeline of a captive and the timeline of a SPAC, said Priya Cherian Huskins, San Francisco-based partner and senior vice president at broker Woodruff Sawyer & Co.

"A SPAC typically will decide to form and need its insurance within a very short period of time whereas a captive is designed to be economically efficient for a company that has operating profits and will be in business for many years," she said.

Funding is another factor that makes a SPAC ill-suited for a captive, Ms. Huskins said. "A SPAC by its nature has a limited amount of working capital and then goes into the capital markets and raises a lot of money, but all of that money is held in trust. It's not available for other activities," she said.

Captive conundrum

The Delaware Insurance Department is beginning to receive inquiries about forming captive insurers for SPAC D&O risks, said Steve Kinion, the state's captive insurance director.

"It becomes a question of whether there's enough capacity in the D&O market right now to provide coverage for all these SPACs. If there isn't, then at some point they will need to find coverage somewhere, because like all other companies SPACS want highly qualified directors and officers," he said.

D&O coverage is critical for SPACs to attract and retain qualified directors and officers because the pace at which they target acquisitions and complete deals exposes them to shareholder scrutiny and potential lawsuits.

In Delaware, single-parent captives, captive cells and series captive insurers provide D&O coverage, Mr. Kinion said.

While captives typically provide years

WHAT'S IN A SPAC?

Special purpose acquisition companies are shell companies formed for the purpose of raising capital to acquire existing businesses. The structures allow businesses to become listed without going through a traditional initial public offering.

SPAC LIFECYCLE

STAGE 1

IPO

A SPAC is created, the sponsor selects directors and files a Form S-1 registration statement with the U.S. Securities and Exchange Commission to bring the SPAC public. Once approved by the SEC, the SPAC's shares begin public trading on an exchange.

STAGE 2

Business combination

After the IPO, the SPAC executives search for a target company. Once identified, the SPAC combines with the target to form one publicly traded company. The business combination, known as the de-SPAC, typically occurs within two years of the IPO.

STAGE 3

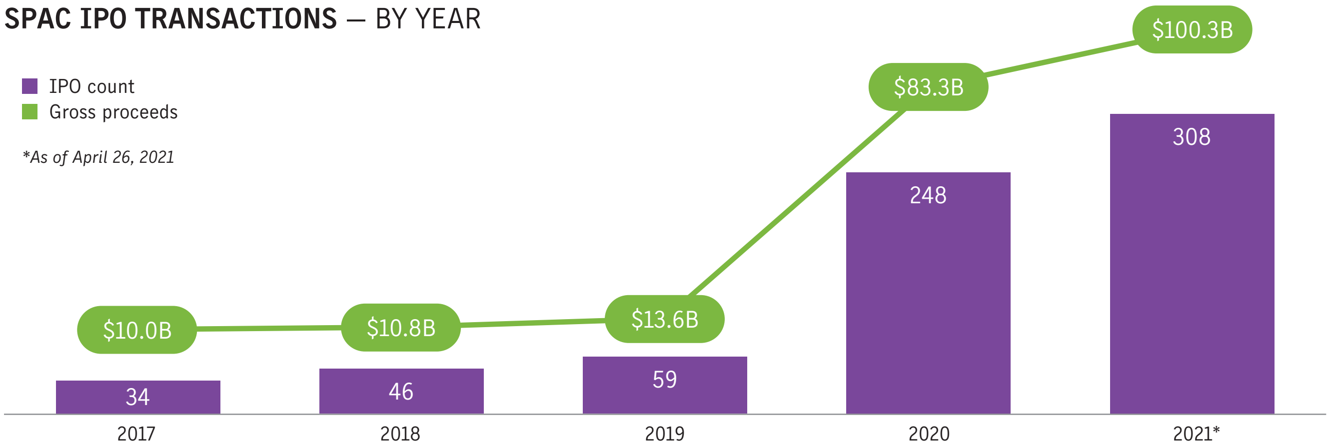
New public company

Once the combined company is fully operating, it carries all the risk of a public company, including the risk of public shareholder derivative lawsuits.

To attract and retain qualified directors and officers, pre-and post-acquisition SPACs must offer comprehensive directors and officers liability coverage.

Sources: Morgan Lewis & Bockius LLP, news reports

SPAC IPO TRANSACTIONS — BY YEAR



Source: SPACInsider

of coverage, captives have been formed to insure joint ventures between two companies where the captive's existence is less than five years, he said.

Many large companies, including operating companies being acquired by a SPAC, may already have a captive, so "the use of that single-parent captive or establishment of a new one would be the most common" approach, said Jeff Kurz, managing director, captive insurance sales and consulting, North America, at Artex Risk Solutions Inc., the captive management unit of Arthur J. Gallagher & Co., in Columbus, Ohio.

However, if a company is looking to cover just its D&O retained risk, then a protected cell captive may be a more cost-effective and less capital-intensive option, he said.

Given a SPAC's limited purpose and existence, a protected cell captive or a group captive is likely a more viable option than a single-parent captive structure, said Jeffrey S. Raskin, San Francisco-based partner at Morgan Lewis & Bockius LLP.

Cell captives, where companies essentially rent the use of a cell within a larger captive, could be a better fit for the accelerated lifecycle of a SPAC because they are "already an existing entity that is used for a fee," he said.

A group captive, in which entities with similar risks come together and jointly own a captive, might also work better than a single-parent captive because it's quicker and easier to access, Mr. Raskin said.

Regardless of which captive funding option is selected, using a proper actuarial study, implementing claims procedures, and following insurance accounting practices are critical to demonstrate that the captive should be treated as an insurance company, Morgan Lewis said in a March brief on SPACs and captives.

The Side A problem

In the hard commercial insurance market companies in general, in addition to SPACs, are exploring alternatives for Side A D&O coverage, including captives.

While some Side B and Side C D&O exposures are covered by captives, Side A coverage is more problematic. Side A coverage provides indemnification for directors, officers and employees for claims when a company cannot provide indemnification. Sides B and C cover corporate exposures.

Business corporate laws may prohibit or place into question whether a captive insurer can provide Side A coverage, Mr. Kinion said.

"The conflict arises because a captive is owned by the company, the insured. Should the captive be providing coverage for a claim when the corporation itself — the company that owns the captive — cannot indemnify the officer or director? That's the issue," he said.

It's possible that the use of a protected cell company could be regarded as more distanced from the company itself and therefore a better fit to fund a nonindemnifiable loss, several experts said.

Other options

In addition to captives, various alternatives, such as buying Side A-only coverage, a 12-month versus a 24-month policy term and different ways to structure premium payments, are being considered by SPACs, said Ms. Kraeger of Aon.

Side A-only policies tend to be about 20-25% cheaper than an ABC policy, Marsh's Mr. Millett said.

Some SPACs are comfortable purchasing Side A-only coverage, said Jonathan Selby, general manager at Foundershield LLC, a brokerage in New York.

Others, such as those wanting higher limits, perhaps up to $10 million or even higher, are buying $5 million of ABC coverage, and "instead of building on top of that with full ABC, they will purchase Side A for another $5 million excess of their underlying ABC coverage," Mr. Selby said. "There are some cost savings to be had by going that route."

In the high-cost environment, some buyers have chosen to purchase Side A coverage only, said Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC.

"How that will respond in the event of a claim is a question they need to work with their legal and insurance advisers on," he said.

The working capital of a SPAC is limited, and SPAC directors and officers don't have access to the trust money to pay their legal fees should an enforcement action begin, Woodruff Sawyer's Ms. Huskins said.

That makes the prospect of sitting on the board of a SPAC with little insurance unappealing. "My advice to people who are thinking about insurance for a SPAC is to … understand what an appropriate budget in the current market is, which is dynamic," Ms. Huskins said.

> "A SPAC typically will … need its insurance within a very short period of time whereas a captive is designed to be economically efficient for a company that has operating profits and will be in business for many years."
>
> Priya Cherian Huskins, Woodruff Sawyer & Co.

Insurers cautious over recent surge in SPAC deals, legal activity

Additional regulatory scrutiny and the sharp rise in SPAC deals in the first quarter of this year have heightened the wariness of the few insurers willing to write primary directors and officers liability coverage for the sector, experts say.

There were 308 SPAC IPO transactions this year as of April 26, compared with 248 for all of 2020, according to SPACInsider.

Some of the most recent SPAC IPOs have started to include information on risk factors related to D&O insurance in their registration statements, said Thomas P. Conaghan, a partner at McDermott Will & Emery LLP in Washington.

"The risk disclosed is that the SPAC will not be able to obtain, or will have to pay high prices for, D&O insurance, because the market has become so tight and the prices have gone up," Mr. Conaghan said.

SPACs are a specialized class with a limited number of underwriters prepared to offer coverage, said Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC.

In 2020, several lawsuits, including a putative class action complaint filed against electric car manufacturer Nikola Corp. in September, "sent a bit of an alarm bell to the D&O underwriting community," he said.

"In Q3 2020 the pricing began to escalate, to the point that by Q4 the pricing for a SPAC IPO was more than double what it would have been just two quarters previously," Mr. LaCroix said.

While SPACs are becoming the path of choice for many companies wanting to go public, they face the same challenges as any other public companies related to D&O risk, said Jeff Kurz, Columbus, Ohio-based managing director, captive insurance sales and consulting, North America, at Artex Risk Solutions.

"It's a hard market — we all understand that — but with SPACs there's heightened awareness of the potential shareholder lawsuit issues that are starting to come to the forefront related to the prospectus and issues and securities class actions," he said.

Generally, insurers are pulling back capacity and increasing premiums but with a "heightened interest" in the unique potential risks that SPACs have, Mr. Kurz said.

Given the SPAC boom, "we're now at the point where sponsor teams on their second, third and even fourth SPAC are asking: 'Why did the price double? Why did retentions increase? Why are my limits more restrictive?'" said Jonathan Selby, general manager at broker Foundershield LLC in New York.

Retentions for a SPAC IPO, which ended 2020 at around $5 million, are now potentially as high as $10 million to $12.5 million, Mr. LaCroix said. Not surprisingly, there's a lot of interest in using alternative vehicles to fund the retention, he said.

Claire Wilkinson

NEWS ANALYSIS

Federal cannabis bill opens door for insurers

BY MATTHEW LERNER
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A bill introduced in Congress that would allow insurers to cover cannabis-related businesses without fear of prosecution under federal law is expected to substantially ease constraints on the burgeoning sector if it makes it into law.

The bipartisan Clarifying Law Around Insurance of Marijuana Act of 2021, which would provide a safe harbor for insurers covering risks in states where the federally banned drug is legal, could help open insurance markets for cannabis operators and companies in their supply chains, industry observers say.

"Any piece of federal legislation that explicitly recognizes the cannabis industry as legitimate would have the effect of increasing capacity significantly for the insurance industry," said Justin M. Lehtonen, vice president at wholesale broker Worldwide Facilities LLC in Los Angeles.

Insurers and others "are looking for an opportunity to begin backing this business," he said.

The cannabis industry "definitely needs some kind of federal order," said Jay Virdi, Toronto-based chief sales officer for Hub International Ltd.'s cannabis insurance and risk services in the U.S. and Canada.

According to the text of the bill, which was introduced in March and is an update of unsuccessful 2019 legislation, the intention is "(t)o create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes."

The legislation is sponsored by Senators Bob Menendez, D-N.J., Rand Paul, R-Ky., and Jeff Merkley, D-Ore., and Representatives Nydia Velázquez, D-N.Y., and Steve Stivers, R-Ohio.

Differences between state and federal law, which still classifies cannabis as illegal despite a majority of states passing laws that legalized cannabis to various degrees, has led to confusion and friction among cannabis operators, who often have great difficulty obtaining insurance for their operations.

While some insurers offer coverage to cannabis companies in the U.S., many others are deterred by the potential for sanctions under federal law.

A spokesman from Sen. Menendez's office called the measure "common-sense legislation" to help provide access to "basic tools" for business, including insurance. The CLAIM Act also "recognizes states' rights," he said.

If passed, the measure would be a boost for the cannabis insurance sector, industry experts said.

In addition to establishing the safe harbor for insurers, the legislation is the first of what should be several steps to provide a federal regulatory framework for the cannabis industry, which could include oversight and regulation, such as the Food and Drug Administration overseeing the quality and compliance of cannabis edibles, Mr. Virdi of Hub said.

> **CLAIM Act**
>
> **INTRODUCED BY:**
> Senator Robert Menendez (D-NJ), March 18, 2021
>
> **COSPONSORED BY:**
> Sens. Rand Paul (R-KY) and Jeff Merkley (D-OR)
>
> "To create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes."
>
> "The term 'financial service' ... includes the business of insurance."
>
> Source: 117th Congress, 1st Session

The CLAIM Act is designed specifically for the insurance industry and is simple to understand, said Ian A. Stewart, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles.

"It allows property/casualty and other types of insurers like life to operate with a legal safe harbor" in terms of accepting cannabis-derived monies, he said.

The new legislation changes some definitions from the 2019 version, including those for "financial services" and "cannabis-related businesses" to make them broader and more inclusive, Mr. Stewart said.

Cannabis companies would benefit from increased competition among insurers, which could help drive down insurance prices, create more choice in some specialty lines and alleviate capacity and policy language restrictions in the directors and officers liability insurance market, Mr. Stewart said.

"The CLAIM Act, if it passes, is the best hope for a large increase in capacity," said Jonathan Isaacson, a partner in Woodbury, New York with law firm Kaufman Dolowich Voluck LLP. "With the CLAIM Act and the safe harbor from the federal government, you'll hopefully see capacity increases across the board."

"The introduction of the CLAIM Act is great news as it could enable additional capacity from both issuing carriers and reinsurance providers for the growing cannabis industry," said Charles Pyfrom, chief marketing officer of CannGen Insurance Services, one of the insurers currently writing cannabis business.

Insurance groups have welcomed the legislation, and "this time I think there is a palpable optimism for passage," Mr. Stewart said.

Momentum for Congress to pass the legislation has continued to build, said Nicole Austin, senior vice president of federal affairs for the Reinsurance Association of America, in an email.

The American Property Casualty Insurance Association also supports the legislation.

In addition, more states have a meaningful amount of cannabis-related tax revenue, said Mr. Lehtonen of Worldwide Facilities. "People from states with a significant amount of activity already in the cannabis industry want to see this moved forward."

"If you look at how much tax revenue is being generated by the cannabis industry, it's amazing. The states can really benefit from this revenue," Mr. Virdi said.

MARIJUANA INSURANCE MEASURE COULD CLEAR REINSURANCE INDUSTRY HURDLE

Exclusions in reinsurance contracts have been cited repeatedly by industry sources as a major impediment to expanding the choice of insurers and insurance capacity for cannabis operators and their ancillary service industries.

This could change as the proposed Clarifying Law Around Insurance of Marijuana Act of 2021 has the backing of the principal U.S. reinsurer trade group.

"It is essential that state-legalized cannabis-related businesses and individuals have basic protections that insurance provides so that they can safeguard their property, employees and customers," Frank Nutter, president of the Reinsurance Association of America, said in a statement.

One of the group's larger members also sees the benefits of the legislation.

"The proposed federal CLAIM Act removes the legal uncertainty currently faced by insurers and reinsurers regarding our ability to serve cannabis-related legal businesses and businesses that support them," said Tony Kuczinski, chief operating officer of Munich Re U.S. Holding, in an email.

The creation of a safe harbor would enable the development of "a vibrant insurance marketplace" for legal cannabis-related businesses, Mr. Kuczinski said.

Nicole Austin, senior vice president of federal affairs for the RAA, said the group's member companies have contributed to the development and introduction of the legislation and are very supportive of it.

"Since late 2018, the insurance industry has worked with federal lawmakers on legislation to provide a federal safe harbor for the state-regulated business of insurance so that our industry can provide products and services to businesses and individuals that have a direct or indirect relationship with state-legalized cannabis," Ms. Austin said.

Matthew Lerner

CannGen
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Employers wary of vaccine mandates

BY LOUISE ESOLA
lesola@businessinsurance.com

REUTERS

Some employers are offering workplace vaccination clinics on-site to administer shots to eligible employees.

Employers hoping that widespread COVID-19 vaccinations could enhance their workplace safety protocols are treading lightly when it comes to requiring the shots for their employees.

Emerging state proposals that would ban such mandates and issues surrounding the vaccines themselves make companies cautious about requiring their use, experts say.

Even employers of workers at the greatest risk of COVID-19 infection and transmission are opting to not mandate vaccinations, they say.

Health care workers were among the first group in many states to become eligible for vaccination in December. Results of a poll released in March by the Kaiser Family Foundation and The Washington Post showed that 18% of the 1,327 health care workers polled said they would not get vaccinated and 12% were undecided.

The New York Department of Health in April set a new policy for nursing homes whose staff do not wish to be vaccinated for COVID-19 after finding that as many as half of such employees who work with high-risk populations declined to be vaccinated. Nursing home staff who refuse vaccinations must sign a waiver, according to the new policy.

First responders are another high-risk group of employees with vaccination hesitancy, according to David Miller, Miami-based labor and employment law attorney with Bryant Miller Olive P.A., whose clients include several municipalities. Mr. Miller estimated that roughly half of his clients' first responders have declined the vaccine despite high infection rates. In the summer of 2020 at least one-half of a client's fire department personnel were on leave because of COVID-19, he said.

Overall, 25% of 802 people polled between Feb. 25 and March 1 by Monmouth University researchers said they will not get vaccinated. Other surveys showed similar results and found that some workers didn't want to be vaccinated because of uncertainty surrounding the vaccines' safety and other health concerns.

In mid-April, the U.S. Centers for Disease Control and Prevention reported that 140 million adults — 54% of the U.S. population — had received at least one dose of the vaccine.

> "There's a whole series of controversies related to the vaccine itself."
>
> Dr. Jonathan Weiner, Johns Hopkins Bloomberg School of Public Health

One compelling reason for not mandating vaccinations is that the vaccines are under emergency use authorization and classified as "voluntary," said Helen Holden, a partner at Spencer Fane LLP in Phoenix. "Employers are keenly aware that they are doing this vaccine rollout in an environment with that emergency use authorization," she said.

"There's a whole series of controversies related to the vaccine itself," said Dr. Jonathan Weiner, professor of health policy management and health informatics at the Johns Hopkins Bloomberg School of Public Health.

Mr. Miller said some employers are demonstrating "respect for individual choice."

"This is potentially a life and death decision that people are making and management in charge … don't want to be in the position to force someone to make a decision," he said.

The approval of one of the three available vaccines in the United States — the Johnson & Johnson/Janssen COVID-19 vaccine — was halted in April after several people suffered fatal side effects, but it was later reinstated when regulators determined that the benefits of having the vaccine outweighed the risks.

Also, lawmakers in more than a dozen states are considering bills that would prohibit mandatory COVID-19 vaccinations.

"A lot of employers early on were looking at the mandatory vaccines, and we had a lot of questions about it … and most have settled on encouragement and incentives," Ms. Holden said.

Fern Fleischer-Daves, of counsel with the Washington office of Conn Maciel Carey LLP, is compiling a list of employers offering incentives. They range from $500 cash — such as a large Texas health system is offering its workers — to vacation days and gift cards.

While the U.S. Equal Employment Opportunity Commission has said employers can make vaccinations mandatory, workers can decline for religious or health reasons, and employers would have to accommodate such workers, according to Courtney Malveaux, Richmond, Virginia-based principal and attorney with Jackson Lewis P.C.

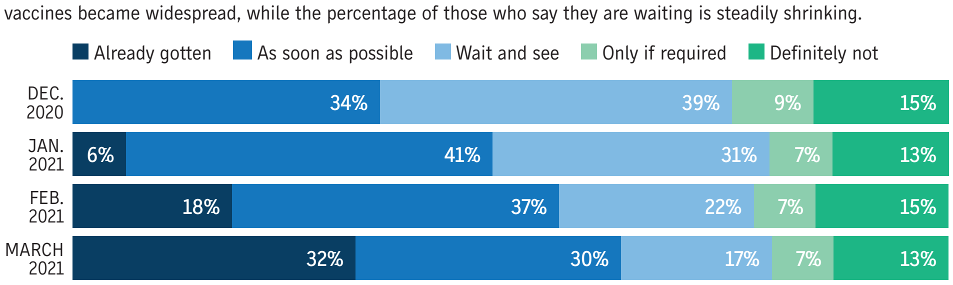
It's another reason many employers are opting to encourage rather than require vaccinations, he said, noting that this approach has resulted in an acceptable outcome for most.

One client was able to get 75% of its workforce vaccinated, Mr. Malveaux said. "Ultimately, they decided 75% is pretty good and we can work with that," he said. "Getting that 25% may not be worth it (legally), and you may never get there."

Angela Childers contributed to this report.

FEWER TAKE 'WAIT AND SEE' APPROACH TO VACCINATIONS

The percentage of people declining COVID-19 vaccinations has remained stable since the availability of vaccines became widespread, while the percentage of those who say they are waiting is steadily shrinking.



NOTE: December 2020 survey did not have an option for respondents to indicate they had already been vaccinated.

Source: Kaiser Family Foundation

MORE HEALTH STAFF GET COVID-19 SHOTS

Vaccine uptake among front-line health care workers is rising, according to a survey by the American Nurses Association.

"We have certainly seen a transition where more nurses are … stating that they have been vaccinated or that they intend to get vaccinated," said Kendra McMillan, a senior policy advisor for nursing practice and work environment at the Silver Spring, Maryland-based association.

The association's most recent COVID-19 survey of 22,316 nurses found that 30% have not been vaccinated but that 34% of those who haven't are planning to do so — a number Ms. McMillian expects to grow, as 25% are undecided.

"We are seeing the data move in the right direction … (but) we do still have those individuals who are in that wait and see category," she said.

"(We are) working to correct what may be incorrect in the information people are seeing" about the vaccine, she said, adding that education and outreach have been key.

"There's a lot of power in hearing about someone's experience and we have to talk about it. … As people see more people get vaccinated, it is friends and family, I think, that influences their decision."

Most employers "are figuring out what the barrier is" for people who have declined to be vaccinated, said Fern Fleischer-Daves, of counsel with the Washington office of Conn Maciel Carey LLP. "For some people, it is misinformation. … (Employers) are combating misinformation, so employers are bringing in the health department to talk to them."

Louise Esola

RIMS LIVE APRIL 19-30 2021

RIMS ANNUAL CONFERENCE | A VIRTUAL EXPERIENCE

THIS YEAR'S Risk & Insurance Management Society Inc. annual conference, which opened April 19, was held virtually. It featured more than 170 online risk management educational sessions covering various hot topics, from how risk managers are navigating the hard market to the COVID-19 pandemic's impact on coverage and claims. The following stories are a roundup of *Business Insurance*'s reporting on the sessions.

RIMS PRESIDENT URGES RISK MANAGERS TO EXPAND SKILLS

Ellen Dunkin

The COVID-19 pandemic has tested the skills of many risk managers, but having helped their organizations navigate the crisis, risk managers should strive to extend their reach, the Risk & Insurance Management Society Inc.'s 2021 president said.

"It seems as though every risk that the risk management community has ever prepared for came to fruition in 2020," said Ellen Dunkin, who is also senior vice president, general counsel and chief risk officer for Amalgamated Life Insurance Co. in White Plains, New York. Ms. Dunkin began her one-year presidency of RIMS in January.

She was speaking during the opening session of RIMS' annual conference.

During the pandemic, risk professionals provided insight and direction to help their organizations adapt and remain resilient, Ms. Dunkin said.

Going forward, risk managers should continue to make their voices heard, she said.

"As individuals and as a community, let's be strategic advisers and key contributors who enable growth and innovation. We must be indispensable," Ms. Dunkin said.

To be successful, risk management must be represented in the boardroom, and a new initiative, RIMS – Path to the Boardroom, explores strategies to help risk managers become members of boards, she said.

"We'll examine the skills and competencies needed for board service and what to expect along this professional journey," Ms. Dunkin said.

The RIMS conference offered sessions related to the initiative, and RIMS plans to add related webinars and podcasts, she said.

In addition, RIMS plans other programs and initiatives to help risk managers, including revamping the RIMS Risk Maturity Model, said Mary Roth, CEO of RIMS. The benchmarking tool was launched more than a decade ago to aid enterprise risk management initiatives.

RIMS will also launch an app giving members access to curated content such as reports and research, she said.

Gavin Souter

CONTINGENCY MARKET MAY SEE PANDEMIC LOSSES UP TO $6B

The contingency insurance market, which includes coverage for the cancellation of special events, could still see multibillion-dollar losses related to COVID-19, possibly as high as $6 billion, according to experts.

Peter Rossow, who handles commercial risk, health and benefits, retirement and reinsurance solutions for Aon PLC, and Ryan McGuinness, managing director, risk management, in Daytona Beach, Florida, for NASCAR, spoke about the elements of such insurance during the Risk & Insurance Management Society Inc.'s 2021 conference.

Contingency insurance can more broadly include things such as hole-in-one insurance, where an insurer covers the cost of the prize if the feat is achieved; or even a contract bonus for an athlete who makes the playoffs, Mr. Rossow said. Covered costs can range from damage to the event location and adverse weather to terrorism, he said.

The policies are usually short-term contacts that cover the days of the events but can be annual contracts covering multiple events, which is the type of policy NASCAR has in place, Mr. McGuinness said.

Event cancellation policies are typically all risk policies, Mr. Rossow said, for which underwriters want to know things like the location and timing of the event, among many other variables, including security. While usually associated with special events like sports, such policies can also cover trade functions such as RIMS, he said.

NASCAR's Mr. McGuinness said underwriters also want to understand what emergency action plan exists, such as that which would cover evacuation.

Both speakers stressed the importance of contract clarity with all parties and vendors associated with an event and said underwriters may even wish to see those contracts as part of their review.

NASCAR's first COVID-19-related cancellation was the March 2020 Atlanta Motor Speedway event, Mr. McGuinness said. Racing returned without fans at the end of April.

Matthew Lerner

MARINE CARGO POLICIES CALL FOR CAREFUL NAVIGATION

Marine cargo policyholders should work with a knowledgeable broker to maximize their coverage and strengthen their hand in the event of a claim dispute, according to Joshua Gold, a New York-based partner at Anderson Kill P.C.

Anachronistic policy language, lack of uniformity across coverage forms and shorter statutes of limitations are key issues that marine cargo policyholders have to navigate, Mr. Gold said during a session of the Risk & Insurance Management Society Inc.'s 2021 conference.

One of the oldest marine cargo insuring clauses refers to "touching the adventures and perils which this company is content to bear and take upon itself, they are of the seas, fires, assailing thieves, jettisons, barratry of the master and the mariners, and all other like perils, losses and misfortunes that have, or shall come to the hurt, detriment or damage of the goods insured or any part thereof," he said.

Even if this kind of language persists, marine cargo policyholders should insist that insuring forms have all risk language akin to what one would see in a commercial property policy, Mr. Gold said.

"Get into the details of what the fine print may mean. It's good to work with your broker to get the most comprehensive language you can," he said.

Other important insuring clauses to watch for are sue and labor coverage, demurrage coverage and fraudulent bills of lading.

Policyholders should work with a seasoned broker to uncover variations in language that might narrow the scope of coverage, Mr. Gold said.

"Get the broadest version you can. Often, it's worth the additional premium money and legwork to comparison shop and find the best coverage form you can," he said.

Many marine cargo insurance policies have a shortened statute of limitations, Mr. Gold said.

"Lots of insurance policies in the first party realm will try and limit the amount of time a policyholder has to start coverage litigation in the event there's a dispute and the insurer refuses to pay the claim," he said.

These time limitations can be much shorter than the six-year suit limitation clause under New York law, he said.

Under a marine insurance doctrine known as "uberrimae fidei" — the duty of utmost good faith — insurers will argue that the policyholder must disclose all information that may be material to their underwriting decision, but which wasn't necessarily inquired about, Mr. Gold said.

"It's an area where some insurers may take a very aggressive approach to an otherwise covered claim and try and rescind the insurance policy to avoid paying a claim," he said.

Claire Wilkinson

MOVING DATA TO CLOUD HELPS UNDERWRITERS ASSESS CYBER LIABILITY RISK

The increased amount of data cloud providers can offer as more information moves to the cloud will help underwriters write cyber risk and their policyholders in turn, say insurers and a cloud provider.

"From an insurance perspective, we like as much certainty as we can get our hands on," said Robert Parisi, New York-based head of cyber-North America for Munich Re's facultative and corporate unit. With organizations migrating to the cloud, "that process becomes simpler."

Mr. Parisi spoke during a session of the Risk & Insurance Management Society Inc.'s 2021 virtual annual conference.

In March, Munich Re and Allianz SE units were offering a program that combined a new cyber policy with up to $50 million in limits, with cloud data provided by a Google LLC unit.

By 2024, more than 45% of IT spending will shift from traditional solutions to the cloud, said panel moderator Monica Shokrai, risk consulting lead and actuary, business risk and insurance, for Google LLC in Mountain View, California. She was citing data from risk consultancy Gartner Inc., based in Stamford, Connecticut.

Mr. Parisi said that while risk aggregation is a concern the insurance industry must be aware of and evaluate, "we really want to get our noses under the tent to see what's going on," which is why cloud migration is exciting to the extent data about an organization can be shared.

Jody Yee, New York-based managing director, alternative risk transfer, at Allianz SE unit Allianz Global Corporate & Specialty, said insurers have to deal with a fast-changing risk landscape. "It's complex," and many companies are still migrating, or planning to migrate, to the cloud, he said.

Mr. Yee said clients have traditionally struggled with managing the risk, as insurers have struggled to identify which vendors the insureds are using, the extent of their engagement, and the criticality of the services they provide.

Obtaining these data resources from cloud providers offers greater insight, so that insurers can prospectively manage their portfolios, Mr. Yee said, adding it can create a sustainable risk transfer.

Judy Greenwald

INVESTIGATE COMP CLAIMANTS ON SOCIAL MEDIA: EXPERTS

From extreme sports competitions to amateur football and twerking, workers compensation investigators have uncovered many instances of workers fabricating injuries and pain.

Employers must commit to helping workers suffering from legitimate work-related injuries, but they also need to take steps to validate questionable injuries and vet social media to uncover fraudsters, experts said during a session of the Risk & Insurance Management Society Inc.'s 2021 conference.

While the "best claim is the claim that never exists … (employers) have to have a key vision — pay the claims that are owed and defend the claims that are not," said Steve Figliuolo, Atlanta-based principal program lead, enterprise risk management, at Chick-fil-A Inc. "If you're an employer, but stories just aren't adding up, it's important to really look at things and see what are the actual objective findings that are coinciding with any subjective complaints."

When it comes to investigating injuries, the wealth of information available on social media has made it easier to scrutinize and surveil those claims, said Kevin Lederer, regional account manager for Command Investigations LLC in Orlando, Florida.

"Over 90% of millennials are using social media. … Half of the baby boomer population are on social media in some sort of fashion," he said.

For example, one woman who claimed she was unable to drive or bend at the waist was not an avid social media user, but through her husband's social media accounts — and public pages from an extreme sports race — investigators learned that she was participating and obtained surveillance in just one day of her crawling through the mud and engaged in other activities that directly contradicted her claimed abilities, according to Mr. Lederer's presentation. That surveillance saved the company more than $80,000 on her claim, he said.

Another claimant who said his pain was so severe he couldn't sleep at night was caught playing football on an amateur team, and another who said he was unable to work was caught spinning and twerking with a group in a dance studio. Both surveillance leads were gleaned from social media, Mr. Lederer said.

"There are times you are going to have claimants that are legitimate," he said. "But when you find someone that is being untruthful with you ... doing a social media investigation on someone who is active (on sites) or has links that are active and monitoring those — it's going to save everybody money in the long run."

Angela Childers

COVID-19 PRESUMPTIONS CREATE CLAIMS CHALLENGE FOR WORKERS COMP SECTOR

The trend of workers compensation presumptions could be a turning point for the industry, according to a panel of workers comp experts.

Dozens of states have in place presumptions for certain workers — mostly first responders — who suffer from various cancers, heart disease or post-traumatic stress disorder. And now COVID-19 is compensable in some cases, with employers on the hook to cover infections that have been presumably contracted at the workplace.

Sixteen states currently have such COVID-19 presumptions in place and several more are considering them, retroactive to the start of the pandemic in March 2020.

Presumptions present challenges for employers in part because "COVID-19 is something you can be exposed to anywhere," said Max Koonce, chief claims officer for third-party administrator Sedgwick Claims Management Services Inc., during a session of the Risk & Insurance Management Society Inc.'s 2021 conference

"The risks of COVID-19 are simply associated with the risks of daily living," he said. "If you are at an employer for eight hours a day you have sixteen other hours a day that you are out there in the environment when you can be exposed to it just carrying on with your life."

He spoke briefly about similar challenges regarding cancer presumptions and the inherent risk that about one-third of adults will get cancer in their lifetime.

Such presumptions are problematic in that they are a "broad brush" for compensability, said Joan Vincenz, managing director of operations risk for United Airlines Inc., which has implemented COVID-19 safety precautions for workers as the Centers for Disease Control and Prevention introduced them.

"As every recommendation has rolled out we implemented it," she said.

Most COVID-19 presumption laws are rebuttable, meaning if an employer can prove the worker was infected elsewhere it can deny the claim. Under some state laws if an employer is taking all safety precautions the claim is rebuttable, Ms. Vincenz said, adding that this "intent" — ensuring employers take safety precautions seriously — is understandable.

Ms. Vincenz said it's the things employers can't control that make her "uncomfortable with the presumptions." She noted that living environments or off-duty activities can expose someone to COVID-19 and that "sometimes it's safer" for an employee to be at work because of the safety measures in place.

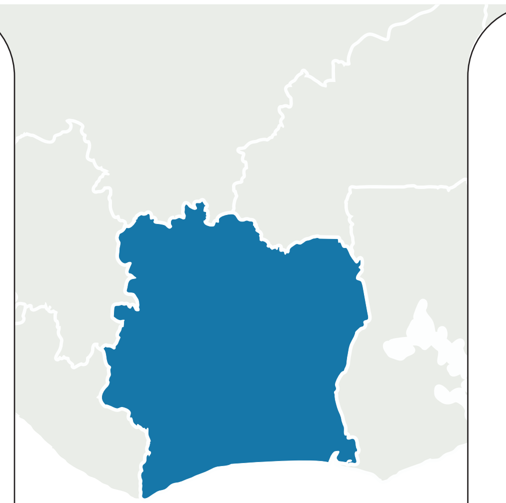
"We are doing everything we can. … We can't control the home environment. That's where I don't think presumptions are meeting the intent," she said. "Similar to flu, it's hard to tell where you got it."

The trend toward presumptions could change the dynamic within workers compensation, Ms. Vincenz said.

"It is always dangerous to use a broad brush; it is all about the details" of an injury, she said. "We need to be ready to investigate each (claim) and make sure that you are deciding on the merits. … That's what I think presumptions are in danger of taking away."

Louise Esola

PROFILE: IVORY COAST



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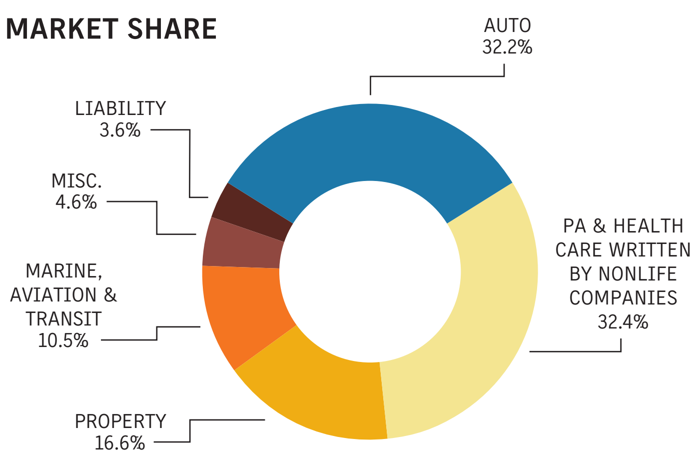
GLOBAL P/C MARKET RANKING

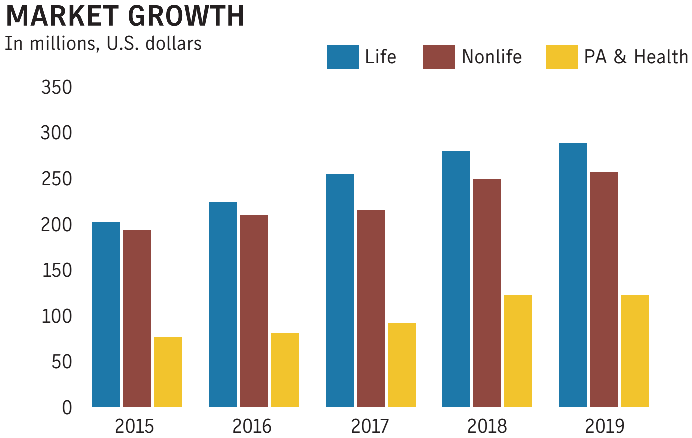
Ivory Coast is the leading market in the Conference Interafricaine des Marches d'Assurances region. It is well developed relative to other markets in the region, with a large number of local and foreign-owned insurers, and it has become a center for reinsurers that wish to obtain authorization to operate in the CIMA region. It has well-developed broking and bancassurance segments and has recently begun to see the emergence of digital-only intermediaries. The growth in the insurance market has been encouraged by a degree of political stability and by foreign investment, notably from China, India and North Africa. Per capita spending on nonlife insurance (property and casualty) is still low at only $9.94 in 2018, reflecting the low earnings of many Ivorians. The market generated $254 million of nonlife premium in 2019.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA

124,503

square miles

POPULATION

20.62

million

MARKET CONCENTRATION

66.16%

market share of top five insurers

2021 GDP CHANGE (PROJECTED)

6.2%

MARKET DEVELOPMENTS

Updated March 2021

- The COVID-19 pandemic has affected sectors differently depending on their size and activity. Reduced investment in the construction and energy sectors meant major projects were delayed until this year, leading to reduced demand for imports of machinery and equipment.
- Large companies across most sectors keep higher stock levels and so were better equipped to withstand the disruption to their supply chains during the pandemic. Small and medium-sized businesses have been hit the most and were more likely to seek insurance premium "holidays" from insurers.
- The pandemic has not resulted in claims under business interruption insurance policies, as a material damage trigger is required, but travel restrictions have reduced motor vehicle usage and auto insurance buying. Sources estimate there was an overall reduction of nonlife market premium of as much as 20% in 2020.
- Publication of the CIMA regulation on digital insurance, expected for several years, has been delayed again because of the need to align it with planned changes to existing regulation designed to encourage the establishment of specialist micro-insurers.
- The Insurers' Association of Ivory Coast is involved in work to create a digital platform for the management of auto third-party liability insurance business, which is compulsory. This is not expected to be completed before 2022.
- Under the 2019 Construction and Housing Code, construction all risks insurance is mandatory as well as the purchase of a performance bond from a bank or insurer.
- Swiss Re opened an underwriting office in Abidjan in October 2019, enabling it to operate across the entire CIMA region.

COMPULSORY INSURANCE

- Auto third-party liability
- Marine cargo imports
- Professional indemnity for insurance brokers
- Construction all risks liability
- Workers compensation (state scheme, part of social security)
- Air carriers and aircraft operators liability for third-party property damage or injury to third parties on the ground as well as injury to passengers and damage to baggage or goods being transported
- Third-party liability and all risks insurance for airport operators
- Shipowners liability for marine oil pollution (financial guarantee or insurance)

NONADMITTED

The law provides that insurance must be purchased from locally authorized insurers, with the exception of companies that provide specialized insurance services to one or more CIMA member states, although this is subject to supervisory approval.

INTERMEDIARIES

Intermediaries must be authorized to do insurance business. They are not allowed to place business with nonadmitted insurers.

MARKET PRACTICE

There is a concerted effort across the CIMA region to reduce fronting and encourage coinsurance as a means to provide extra local market capacity and retain as much premium as possible locally.

Broker loses case due to poor advice

■ The New Hampshire Supreme Court, in a divided opinion, ruled against an insurance broker for providing poor advice on a hotel's insurance coverage.

Golden Beach, Florida-based 101 Ocean Blvd. LLC had worked with Exeter, New Hampshire-based Foy Insurance Group Inc. as its insurance agent for several properties since the early 2000s, according to the 3-2 ruling by the New Hampshire Supreme Court in *101 Ocean Blvd. LLC v. Foy Insurance Group Inc.*

In 2014, Lloyd's of London opted not to renew its policy on the Ocean Boulevard Hotel in Hampton, N.H. Turning to the surplus lines market, Foy obtained a $2 million replacement cost policy that provided for $10,000 in law and ordinance insurance coverage, which is designed to pay for the increased costs associated with complying with current building codes and other ordinances when rebuilding a structure after a loss.

"At no time did Foy recommend that (owner Albert J. Bellemore Jr.) purchase additional law and ordinance coverage on behalf of Ocean," the majority opinion said.

In October 2015, a fire severely damaged the hotel. Mr. Bellemore was told the cost to replace the existing structure would be about $1.1 million, and rebuilding it in compliance with the current building code would cost an additional $905,070. He decided to demolish the structure rather than rebuild it.

After accounting for depreciation, the insurer paid Ocean $910,141 for the structure's replacement cost, which did not include the additional cost necessary to rebuild the structure in compliance with the building code.

Ocean filed suit against Foy, alleging the broker had a duty to inform Ocean that it had insufficient law and ordinance coverage and that Foy had been negligent. A jury returned a verdict largely in Ocean's favor, apportioning 25% fault to Ocean and 75% fault to Foy, and the Supreme Court, in a split decision, affirmed the ruling.

Caesars sues for COVID-19 coverage

■ Caesars Entertainment Inc. filed a COVID-19 business interruption coverage lawsuit against more than 35 insurers and dozens of Lloyd's syndicates in state court in Las Vegas, seeking compensation for the more than $2 billion in losses it said it has sustained from the pandemic.

The Reno, Nevada-based casino operator said it's paying more than $25 million in premiums for more than $3.4 billion in coverage limits under its all-risks coverage, according to the complaint filed in *Caesars Entertainment Inc. v. ACE America Insurance Co. et. al.* It said it has paid more than $135 million for the coverage over the past six years.

The complaint said all of Caesars' properties were shut down in March 2020 under orders of gaming control boards and other civil authorities, and most reopened with limited operations in May and June.

None of the insurers named in the complaint had a virus exclusion in their coverage, according to the complaint.

Caesars said certain of its all-risk policies include coverage triggered when orders of a casino control commissioner or similar authority prohibits access to covered properties.

"This 'Closure by Casino Control Commissioner or equivalent' coverage applies even if the covered Property *never* suffers any physical loss or damage, so long as the order was made *in anticipation* of such loss or damage," the complaint says, stating Caesars is entitled to coverage under this provision.

Supermarket chain prevails in ADA case

■ A supermarket chain whose website is inaccessible to a visually impaired person did not violate the Americans with Disabilities Act, which does not list websites as among places of public accommodation that are subject to the law, a federal appeals court said in a divided opinion that overturned a lower court ruling.

Juan Carlos Gil, a visually impaired, long-time customer of Jacksonville, Florida-based Winn-Dixie Stores Inc., whose website does not have compatible screen reader software, filed suit against the chain in U.S. District Court in Miami, charging it with violating the ADA, according to the 11th U.S. Circuit Court of Appeals in Atlanta's ruling in *Juan Carlos Gil v. Winn-Dixie Stores, Inc.*

The lower court refused to dismiss the case and was overturned by an appeals court panel in a 2-1 ruling.

"The statutory language in Title III of the ADA defining 'public accommodation' is unambiguous and clear," the majority opinion said. "It describes twelve types of locations that are public accommodations.

"All of these listed types of locations are tangible, physical places. No intangible places or spaces, such as websites, are listed. … Absent congressional action that broadens the definition of 'places of public accommodation' to include websites, we cannot extend ADA liability to the facts presented to us here."

The appellate panel vacated the lower court ruling and remanded the case for further proceedings.

Mohawk tribe loses interruption case

■ A Mohawk casino that closed its doors in March 2020 after a COVID-19 case was reported at a nearby college cannot recover under its FM Global unit policy's business interruption coverage, a New York federal district court ruled.

The Saint Regis Mohawk Tribe, which operates Mohawk Gaming Enterprises LLC on reservation land in Franklin County, New York, closed the Akwesasne Mohawk Casino Resort after a virus case was reported at St. Lawrence College, 4.5 miles across the Canadian border in Ontario, according to the ruling by the U.S. District Court in Utica, New York, in *Mohawk Gaming Enterprises, LLC v. Affiliated FM Insurance Co.*

Mohawk filed a business interruption claim with FM Global unit Affiliated FM Insurance Co. seeking business interruption coverage based on the tribe's closure order.

As the 30-day deadline for investigating and settling the claim neared without a response, Mohawk filed suit against the insurer on charges including breach of contract and fraud, according to the ruling.

"Mohawk Gaming's claim for coverage under the policy is grounded in the Civil Authority provision," the ruling said. "Thus, the initial burden is on plaintiff to allege facts that would plausibly establish that the business interruption it suffered is 'the direct result of physical damage of the type insured,'" the ruling said.

"However, as other courts have explained, the inclusion of the modifier 'physical' in a phrase such as 'direct result of physical damage' clearly imposes a requirement that the damage actually be tangible in nature," it said.

"Indeed, numerous courts around the country — including those that have applied New York law — have routinely held that the mere presence or spread of the novel coronavirus is insufficient to trigger coverage when the policy's language requires physical loss or damage," the ruling said, in dismissing the case.

DOCKET

INSURANCE DOESN'T COVER HERTZ LOSS

A federal district court in New York ruled that units of American International Group Inc. and Tokio Marine are not obligated to indemnify Hertz Global Holdings Inc. for $27 million in costs incurred in connection with a U.S. Securities and Exchange Commission investigation. AIG unit National Union Fire Insurance Co. had issued Hertz a $15 million insurance policy that permitted it to recover for securities claims against the company. Tokio Marine provided an additional $15 million of insurance coverage for claims made and paid under the National Union policy.

FIRM PLEADS GUILTY TO OSHA VIOLATIONS

Transportation company Dana Container Inc., based in Avenel, New Jersey, pleaded guilty to violations of Occupational Safety and Health Administration rules pertaining to individuals working in confined spaces, according to the U.S. Department of Justice. On May 31, 2019, one of Dana's workers was scraping crude oil from a rail car at a yard in Pittston, Pennsylvania, when he collapsed and died on the scene of asphyxiation. Although Dana was aware that the agency's regulations require the use of a certified respirator for such confined space tasks, the worker had not been provided one, the DOJ said.

CHUBB UNIT WINS BUS ACCIDENT CASE

The Nebraska Supreme Court unanimously upheld a ruling in a Chubb Ltd. unit's favor over the issue of whether it had appropriately notified the city of Omaha of a subrogation claim involving a bus accident. Chubb unit Great Northern Insurance Co., acting on behalf of its policyholder, the Omaha Performing Arts Society, filed a subrogation action against Omaha's transit authority, which conducts business as Metro Area Transit, over $340,000 in estimated damages in connection with a 2016 motor vehicle accident involving a city bus.

David Poms

POMS & ASSOCIATES

David Poms, president of Poms & Associates Insurance Brokers LLC, founded the Woodland Hills, California-based company 30 years ago. The privately owned brokerage now has about 150 staff, largely in the western United States. Specializing in public entity risks, Mr. Poms has been deeply involved in insurance and risk management in the education sector for much of his career, including advocating and helping to formulate laws and procedures designed to curb the incidence of child sex abuse. *Business Insurance* Editor Gavin Souter recently spoke with Mr. Poms about challenges facing public entities, efforts to prevent sex abuse and how related settlements have affected the insurance market. Edited excerpts follow.

Q What are some of the major risk management issues facing public entities?

A If you just look at COVID and how that has impacted states, cities, counties, educational institutions, park districts, utilities, everyone had to develop emergency procedures to manage that crisis. Some have been more successful than others, but the impact has been profound. We've come a long way since a year ago, but there really has not been a public entity that has not been affected. And insurance has not been a friend. There have been some exceptions, but most if not all the insurance claims have been denied or coverage just doesn't exist, whether it's workers comp or property — specifically business interruption — or liability coverages. They've all historically had exclusions.

Q One of the issues that has affected public entities has been sex abuse claims. How are institutions resolving and managing these risks?

A It's a tremendous challenge. As I learned working with Catholic dioceses early in my career, the first instinct was to hide it. Most dioceses, however, developed better plans to manage these cases. They tried to eliminate the decision-making from the priests and have lay people and attorneys involved in committees to manage the claims.

Now, with the educational institutions, one thing that we've learned is that teachers protect teachers. They don't tell on other teachers out of fear of incriminating someone falsely or they're friends or they just can't believe that they are involved in these horrific acts. And the people that are involved are all masters of grooming, so our job is to educate employees to be able to put their antennas up and look at what other teachers might be doing. We train and educate administrators and other teachers to look for these bad actors and identify what a predator does. Hopefully, we educate them so much that perpetrators stay away from these schools.

We've also developed anonymous reporting processes so employees and kids can report the behavior. At our firm we have almost 40 loss prevention people that provide that training.

Q You were recently involved with passing H.B. 128 in New Mexico, which is a law aimed at preventing abuse. What will that measure do?

A It provides requirements for teachers to report ethical misconduct to the public education department and the superintendent, and there are various requirements for the superintendent to transmit the information, whereas before there wasn't any specific requirement on reporting. Then, the department has to immediately notify law enforcement, so it's a very strict way of reporting. There are also licensure requirements for the public education department to deny or suspend or revoke a teacher's license so they are not able to go from one school district to another school district. It's all trying to eliminate the "pass the trash" types of situation where one school district passes on a bad actor to another district.

Q You are also involved in the U.S. Olympic committee. What sort of risk management measures have been brought in there?

A Several years ago, we formed a separate nonprofit organization called the United States Center for SafeSport. It originally tried to make sure that coaches had ethical obligations and responsibilities, but it got more involved with abuse prevention training because a lot of claims started coming in gymnastics and other sports. It became almost an abuse claim organization handling the large number of claims that had arisen. The U.S. Olympic Committee, because of the gymnastics claims, had to go before Congress and there were a number of congressional meetings that were very critical of the committee for not reporting claims in a timely manner. So SafeSport has developed policies and procedures for coaches, and it has allowed an avenue for athletes to report misbehavior of a coach.

Q There seems to be a common theme in that you have to set up a third-party organization to deal with these problems.

A Everybody knows that training and education are so critical to try to make an impact. Whether it's our organization or similar ones to ours that have the training capabilities or the U.S. Center for SafeSport, we know that education is key. You'd hope that education and training had been there all along but unfortunately you had to have these horrific claims and then react. That's the shame of it. But we are trying to deal with it now.

Q There have been some substantial sex abuse-related insurance claims. How has that affected the insurance market for educational institutions?

A This year is going to be the most difficult year in trying to get coverage and limits that you need. Every carrier, no matter what layer they are on, has been affected by these sex abuse claims. The primary layers have been affected the most, so you are seeing a reduction in the number of those carriers. You are seeing drastic increases in deductibles and retentions and there's been talk that some carriers are going to move to a claims-made form and away from occurrence. Most public entities renew on July 1 and it will be the most difficult insurance renewal that I've experienced since the mid-1980s, which was when public entity pools started forming.

Q Do you see more self-insurance on the horizon now?

A Yes. There's always somebody that comes up with a better mouse trap to be able to provide insurance coverage, so we are going to find things in the next year or so that maybe we don't even know about today.

Every carrier, no matter what layer they are on, has been affected by these sex abuse claims.
The primary layers have been affected the most, so you are seeing a reduction in the number of those carriers.

COVER STORY

HACKERS EXPLOIT SYSTEM LOOPHOLES WITH RANSOMWARE

Pandemic opens more organizations to attacks as criminals take advantage of lax cyber security, remote work

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

Companies have faced a surge in ransomware attacks during the COVID-19 pandemic, but despite the onslaught they can dramatically reduce if not eliminate the threat of ransomware, experts say.

Steps to take should include a companywide focus on security, an incident response plan and a separate backup system for data.

Cracking the code in ransomware negotiations

Ransomware incidents can require delicate skills.

Negotiator Leeann Nicolo, Denver-based incident response director for cyber insurance and security company Coalition Inc., said a typical ransomware case begins with her contacting the hacker, either through a chat forum on the dark web or email, in response to the message the criminal has left behind when files are encrypted.

"I usually kick off the start of communications by asking, 'Can you help me?'" using terms such as "'I' and 'me' instead of 'we' and 'us' to make it seem like we are small," said Ms. Nicolo, who has handled 500-600 ransomware cases.

She also makes a point of using plain English, because English may not be the hacker's primary language. "I make sure everything I'm saying" can be handled by Google's translation function and that "it translates

Leeann Nicolo

in a straightforward way, making sure that no matter what language they speak, they understand what I'm saying," Ms. Nicolo said.

As the next step, "they'll usually come back with some sort of authenticated copy and paste message," telling her the data is encrypted, how much is being demanded and the wallet — the app that allows cryptocurrency users to store and retrieve their digital assets — where the ransom payment should be made.

Ms. Nicolo said she then investigates, gathering threat intelligence to see if payments have been made to the wallet in the past and to learn about the hackers' communications style.

At that point, negotiations generally begin, with the hackers revealing how they came up with the monetary amount.

Negotiations continue for anywhere from eight days to two weeks, with the company paying a negotiated amount, she said.

In about 70% to 80% of the cases, the bitcoin is purchased, its receipt confirmed and the decryption key sent, she said.

In the remaining cases, the hackers come back and "re-extort," demanding additional ransom, and this is usually negotiated down, Ms. Nicolo said.

Judy Greenwald

FIGHTING CYBER CRIME

Steps to mitigate the threat of ransomware include:

- Accept that companies of all sizes are vulnerable.
- Train employees to detect phishing.
- Keep backups inaccessible to outsiders.
- Encrypt files.
- Use multifactor authentication.
- Keep system security patches updated.
- Close open ports, which may permit criminals access to systems.
- Limit administrative access to sensitive or critical information.
- Forbid personal devices from being connected to the system.
- Extend company security protocols to individuals working from home, where possible.
- Incorporate redundancies into a system.
- Introduce "allow" lists rather than attempting to maintain comprehensive "deny" lists of known malware variants.
- Conduct tabletop ransomware exercises and develop a recovery plan.
- Involve top management and encourage a cybersecurity-minded culture.
- Employ a cybersecurity specialist.
- Take advantage of the services insurers offer to mitigate cybersecurity issues.
- Follow guidance provided by the National Institute of Standards and Technology and comparable organizations.

Source: *Business Insurance* interviews

Experts say the huge increase in attacks during the pandemic relates to much higher numbers of employees working from home, often on less-than-secure systems.

Compounding the issue is many hackers work from eastern European countries, where authorities have shown little interest in pursuing them, or on behalf of sponsoring nation states.

In addition to demanding higher payments stemming from their system invasion, more criminals are also threatening to release personal information they have exfiltrated from company systems.

And although hackers are generally reliable in returning keys that decrypt companies' documents, releasing data held hostage during an attack, businesses may still not be totally successful in restoring their data.

Negotiating with cyber criminals can be a complex exercise (see related story).

Meanwhile, insurers are responding to the heightened threat with lower limits, increased rates, higher retentions, coinsurance and ransomware sublimits, observers say (see story page 20).

Ransomware attacks usually involve a criminal hacker inserting malware into an organization's system and blocking access to its data, or threatening to release the data, unless a ransom is paid. Cyber liability and other policies often cover ransomware payments.

"It's become a big problem because it works," said Aaron Aanenson, senior managing director, cyber security, S-RM Intelligence and Risk Consulting 2021, a cybersecurity company in New York.

"There are criminal networks that are greatly profiting off vulnerabilities that continue to exist, so they continue to exploit those vulnerabilities, and it's been fueled by an anonymous payment system," he said, referring to the cryptocurrencies that are generally demanded as payment, in which the payee remains unidentified.

For a long time, companies focused on privacy exposures and those that didn't hold sensitive data felt they faced little risk of a cyberattack, said Sean Curran, senior director of Chicago-based West Monroe Partners LLC, a cybersecurity firm.

While ransomware was already a problem prior to the COVID-19 pandemic, "the work from home over the last year has only made the situation worse," said Elissa Doroff, managing director and cyber technical leader at NFP Corp. in New York.

> "Frankly, a lot of ransomware attacks that we see today could be prevented with basic security measures. The vast majority are not sophisticated. They're just targeting highly vulnerable organizations."
>
> Aaron Aanenson, S-RM Intelligence and Risk Consulting 2021

Working outside of the controlled environment of an office, employees may be using their computers in insecure locations, said Jerry Ray, Singapore-based chief operating officer of Secureage Technology Pte Ltd.

Ransomware's threat is more significant now because it was easier to detect when people were working together in the office, said Scott T. Lashway, Boston-based co-leader of Manatt, Phelps & Phillip LLP's privacy and cybersecurity practice group.

Ransom payments

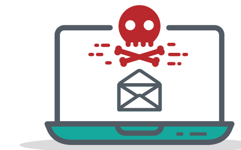
Further complicating the situation, the U.S. Department of the Treasury's Office of Foreign Assets Control has issued an advisory warning that companies that facilitate ransomware payments with those on its "Designated Nationals and Blocked Persons List" or those covered by comprehensive country or region embargoes, such as Cuba, the Crimea region of Ukraine, Iran, North Korea and Syria, face sanctions, thus putting insurers working with policyholders in a difficult situation.

"We provide advice to the client as to what we think they should do, but legally, as an insurance company, we're not allowed to pay in that situation," said Kristen Dauphinais, head of cyber and technology for Beazley PLC in Dallas.

The FBI and New York Department of Financial Services recommend against paying ransomware, but companies that have become increasingly reliant on data and digital assets often feel that with their survival at stake, they have no choice but to pay.

"I never make recommendations on ransomware payments," said Samantha Levine,

See **RANSOMWARE** page 20



RANSOMWARE BY THE NUMBERS

148%
Increase in ransomware attacks, fueled by the pandemic

$20 billion
Anticipated global ransomware recovery costs by the end of 2021

$154,108
Average ransom demand in Q4 2020 (-34% from Q3 2020)

21 days
Average days of downtime in Q4 2020 (+11% from Q3 2020)

70%
Percentage of ransomware in Q4 that included the threat to leak exfiltrated data (+43% from Q3 2020)

90 seconds
How quickly a new Remote Desktop Protocol port — one of the top three ransomware attack vectors — is discovered after first connecting to the internet

4.7 million
How many misconfigured RDP ports are open to the internet

4,000
Average number of ransomware attacks that have occurred daily since Jan. 1, 2016

1 in 3,000
Email messages that contain malware (email phishing is also included in the top three ransomware attack vectors)

Source: Marsh LLC

R!SK PERSPECTIVES

Ways to mitigate supply-chain cyber attacks

By Jacob Ingerslev | Head of Global Cyber Risk

A cyber attack in late 2020 on a technology company whose name many small and mid-sized organizations may have never heard of, offers an important warning about the risks associated with third-party technology products and services.

The December incident involving SolarWinds, which provides network monitoring software to large organizations and government agencies, is an example of a supply-chain attack. Such attacks target products and services delivered by third-party vendors, a fast-growing list that includes software, code-sign certificates, cloud environments, managed services, and even hardware and devices. What made the SolarWinds attack so alarming was the attackers exploited a routine update to access the networks of potentially 18,000 of the company's customers — a group that includes large organizations with sophisticated cybersecurity resources.

If such organizations are vulnerable to supply-chain attacks, what chance do smaller ones, with fewer resources, have? As it turns out, organizations of all sizes can take steps to mitigate their cyber risks. It begins with the realization that there really is no escaping third-party risk because organizations are required to operate their technology infrastructure in certain ways in today's environment. Digital transformation, automation and cloud- or internet-based technology delivery models have made third-party risk both inevitable and more complex. Gone are the days of custom in-house implementations of technology operating in a closed loop.

Measures to improve security

It's unlikely that any organization, despite its best efforts, can find every single vulnerability emanating from its vendors and suppliers. But some measures can help reduce exposure to cyber events and improve security, including:

- **Vendor risk assessments.** Even if an organization lacks the resources to conduct such assessments by itself, it can hire outside cyber security experts to perform them.

- **Test updates before installation.** To improve network security, organizations should run updates on isolated machines not connected to their networks and scan for anomalies.
- **Have a containment and response plan.** If malware does make its way into an organization's network from a vendor or supplier, having technical and administrative resources to contain and respond to the incident is helpful.

Before a supply-chain attack occurs, organizations can take some relatively simple steps to strengthen their security posture. These include:

- **Vendor cyber security requirements.** Organizations should require vendors to have cyber security certifications, such as ISO 27001 or Capability Maturity Model Integration (CMMI), or to comply with frameworks such as the National Institute of Standards and Technology (NIST).
- **Ensure industry-specific certifications are up to date.** Some industries and services have specific certifications, such as the Payment Card Industry-Data Security Standard (PCI-DSS). All vendors with these should be required to keep them current.
- **Multi-factor authentication.** MFA should be required of employees as well as any vendors accessing the organization's system.
- **Apply principle of least privilege.** Limiting user privileges to a minimal level needed to complete necessary tasks is an important security principle for employees and any other system users. For example, very few users should have administrative privileges and those who do should be closely monitored.

Implement network segmentation. A segmented network can help combat unauthorized access and contain malware infections.

Strengthen recovery chances. Frequent backups, stored offline or segregated from the main network, are a critical step in recovering from ransomware or destructive malware.

More challenging, extensive or expensive security measures also are possible. These include: vendor supply-chain risk assessment; vendor indemnification agreements; zero-trust network architecture, which requires verification of everything that connects to a system; and managed detection and response (MDR), which is an outsourced threat monitoring solution that combines analytics and human intelligence.

At a minimum, risk professionals should engage their organizations' leadership on the topic of cyber threats to identify potential exposures and develop a plan for what to do if a cyber event happens.

The Hartford offers a strong combination of cyber insurance and services to address supply-chain attacks. For example, a standard coverage element is contingent business interruption and wrongful acts by third-party service providers. In addition, we compile information from the underwriting process, and our experience with claims and forensic investigations, to provide policyholders with guidance on identified vulnerabilities, attack trends, and remediation with cyber security partners.

Jacob Ingerslev is the Head of Global Cyber Risk for The Hartford.

RANSOMWARE

Continued from page 17

Denver-based senior vice president, professional and cyber solutions, at CAC Specialty, an affiliate of brokerage Cobbs Allen.

It is up to CAC's clients to decide their course of action based on the continued viability of the business if they do not pay, she said.

Experts say that to protect their own reputations, criminals often reliably return the encryption key, but errors may emerge during the process of attempting to restore the data.

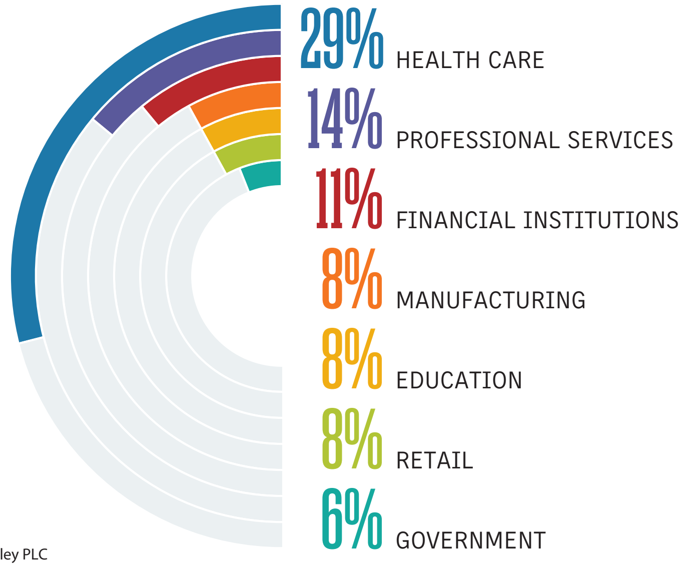
In addition, the growing practice of following up ransomware demands with threats to release exfiltrated data provides criminals with revenue from companies that have adequate data backup and may otherwise be unwilling to pay a ransom, experts say.

> "The reality is that a lot of compromises are being conducted through relatively simple loopholes."
>
> Graeme Newman,
> CFC Underwriting Ltd.

Release of personal information could make companies liable for damages under various state privacy laws and regulations, said Emily E. Garrison, a partner with Honigman LLP in Chicago.

While smaller businesses are often the target of ransomware attacks, larger sophisticated companies are also targets, as the March attack on CNA Financial Corp. illustrates.

INDUSTRIES WITH HIGHEST PERCENTAGE OF RANSOMWARE INCIDENTS



Source: Beazley PLC

CNA, a significant cyber liability insurer, disconnected its systems after it was attacked by a hacker group known as Phoenix. Its systems, email and website remained down for more than a week. The insurer declined to comment on whether it paid a ransom.

Mr. Aanenson said, "There's a trend towards 'big game hunting,'" where large companies are targeted "because there's generally a bigger payout available to them," although it requires more time and effort by the hackers.

Combating ransomware

Experts say ransomware threats must be viewed as a companywide issue and as something that requires the attention of top management, and legal and compliance at a minimum, along with insurers, said Alan Brill, senior managing director with the cyber risk practice of Kroll LLC, an affiliate of Duff & Phelps LLC, in Secaucus, New Jersey.

Companies "need to transition to a more cybersecurity-minded culture in order to be better protected against these things and need better technology to prevent these types of attacks," Mr. Aanenson said.

"Frankly, a lot of ransomware attacks that we see today could be prevented with basic security measures. The vast majority are not sophisticated. They're just targeting highly vulnerable organizations," he said.

Ms. Doroff said she believes some 90% of ransomware attacks could be prevented if policyholders closed open remote desktop protocol ports, which permit connections to remote systems, and introduce multifactor authentication.

"The reality is that a lot of compromises are being conducted through relatively simple loopholes" and through open remote access ports, which can be simply and cheaply secured, said Graeme Newman, London-based chief innovation officer for CFC Underwriting Ltd. Open ports are "like leaving the front door open," he said.

Many companies still don't take basic security measures such as testing systems, running tabletop exercises and developing an incident response plan, said James Holtzclaw, Washington-based senior vice president, cybersecurity consulting and advisory services, for Marsh LLC.

Establishing backups that are impervious to criminal hackers because they are on a separate system or offline is also critical, experts say. Criminals will usually attack backups first "because they know that's (companies') fallback," Mr. Aanenson said.

Furthermore, legacy systems without patches and updates remain common and it can be complex to disconnect them from a network without disrupting operations, Ms. Dauphinais said.

In many organizations, chief information technology officers are responsible for cybersecurity, in addition to their other duties, experts say.

"There needs to be dedicated security folks who are closely watching the activities that are going on in your network," Scott Hellberg, Stevens Point, Wisconsin-based director information security-governance, risk, compliance, for Sentry Insurance.

More broadly, there is a need to address the issue of cryptocurrency's anonymity, which has helped fuel ransomware's growth, experts say.

"We need to have a greater understanding" of cryptocurrency's ecosystem so that financial institutions and law enforcement can go after cyber criminals, said Michael Phillips, New York-based chief claims officer of cyber program manager Resilience and co-chair of the San Francisco-based Institute for Security and Technology's Ransomware Task Force.

Rates, terms tighten as ransom claims grow

Insurers are trying to get a handle on the issue of ransomware as demands increase and are responding with higher rates and tighter coverage.

The highest known ransom demand increased from $15 million to $30 million in 2020, according to a report issued by cybersecurity company Palo Alto Networks, based in Santa Clara, California, and demands are also increasing in frequency.

A report issued by Aon PLC in March said cyber liability claims continue to increase in volume and severity, with much of the increases driven by ransomware events. The higher claims are expected to drive 20% to 50% rate increases for cyber coverage through this year.

Large insurers' "rate and underwriting guidelines have apparently firmed up" across the board, said Paul E. Paray, based in Glen Rock, New Jersey, who advises businesses on cybersecurity.

"People are trying to fix the problem with higher premiums," coinsurance and sublimits rather than broad exclusions, said Nick Economidis, vice president of erisk underwriting for Crum & Forster in Houston.

Crum & Forster wants policyholders to maintain their levels of coverage but have some participation in the losses, he said.

"We are being very, very selective about the risks we want to add to the book," said Kristen Dauphinais, head of cyber and technology for Beazley PLC in Dallas, who predicted the market will continue to harden.

Tracie Grella, head of cyber insurance at American International Group Inc. in New York, said the insurer has introduced a 50% coinsurance for companies that have not implemented what AIG determines to be adequate security measures.

"We've seen a very sharp pivot in underwriting strategies" as companies try to better identify risks and help policyholders identify vulnerabilities, said Meredith Schnur, New York-based cyber brokerage leader, U.S. and Canada, for Marsh LLC.

If the situation gets worse, insurers may no longer provide coverage for ransomware "because that could potentially put the viability of the product at risk," said Sou Ford, Atlanta-based cyber team leader for Willis Towers Watson PLC's southeast region.

Judy Greenwald

Shift to opioid alternatives raises concerns

BY ANGELA CHILDERS
achilders@businessinsurance.com

The use of opioids for pain management in workers compensation continues to decline, replaced by non-steroidal anti-inflammatory drugs, muscle relaxants and dermatological agents. And while the industry lauds the decline in opioid prescribing, the uptick in usage of the more-expensive alternatives is causing concern.

According to recently released preliminary data from the Workers Compensation Research Institute, the payment share of opioids in 28 study states fell to 8% in the first quarter of 2020 from 21% in the first quarter of 2015. Meanwhile, the share of payments for dermatological drugs increased to 21% from 11% during the same time period, and the payment share of non-steroidal anti-inflammatory drugs rose to 19% from 17%.

In California, NSAIDs accounted for nearly 24% of total drug expenditures in 2020, compared with 14% in 2018, when the state's drug formulary took effect, according to research from the California Workers Compensation Institute.

Two high-priced drugs — fenoprofen and ketoprofen — which are exempt from prospective utilization review, accounted for more than a quarter of NSAID drug expenditures in the state in 2020, despite representing just 1% of NSAID prescriptions.

"They're older drugs … drugs that have been on the market since I was in medical school 30 years ago," said Dr. Craig Ross, Bala Cynwyd, Pennsylvania-based regional medical director for Liberty Mutual Holding Co. Inc. "Why physicians are choosing them right now is a little baffling to me. I don't know that there's any great advantage to either of those over other NSAIDs."

The reason for the high price is equally baffling, Dr. Ross said. In California, the average amount paid for a prescription of fenoprofen calcium totaled $1,479 in 2020 — a 636% increase over the average charge in 2016, and the average amount paid for ketoprofen in 2020 was $1,097, up 11-fold from $99 in 2016, according to the CWCI.

"In our book of business, we narrowed down that 70% of (fenoprofen) prescribing is coming from three physicians," said Phil Walls, Tampa, Florida-based chief clinical officer for myMatrixx, an Express Scripts company. "Three generic companies we've identified are charging an average wholesale price per pill higher than the original brand drug Nalfon. All it takes is a few bad actors to totally disrupt the system and drive outrageous cost."

> "Unless you tell them, most [physicians] are probably not going to know what the drug costs are. That's why I think it's so important to have that communication aspect and outreach; sometimes they really don't know."
>
> Ryan Hamm, CorVel Corp.

While Ryan Hamm, Dublin, Ohio-based clinical pharmacist for CorVel Corp., said the increased use of NSAIDs is not surprising given the push for physicians to find alternatives to opioids for pain management, he also questions the reasons behind the increased prescribing of fenoprofen and ketoprofen in California.

"I don't know why they're picking (those) drugs over other ones," Mr. Hamm said. "Speaking pharmacologically, there's not that much difference between NSAIDs, just minor differences in how fast they work."

Another major cost driver in workers compensation drug expenditures is private-label topicals, such as creams, gels and ointments, which are independently manufactured and not recommended based on evidence-based guidelines. These carry "a much higher price tag" than comparable products approved by the Official Disability Guidelines Workers' Compensation Drug Formulary, also known as ODG, said Vennela Thumula, policy analyst for Cambridge, Massachusetts-based WCRI.

Private-label topicals "present some inherent challenges," said Silvia Sacalis, vice president of clinical services at Tampa, Florida-based Healthesystems LLC. "They're not (U.S. Food and Drug Administration) approved, therefore there are no clinical studies that demonstrate safety and efficacy."

In addition, physician dispensing of private-label topicals bypasses typical pharmacy checks as they relate to drug and disease interactions, she said.

"Because most of them are physician-dispensed, it means they're not going through the proper channels. They're skipping over a lot of checks and balances because the injured worker is not getting the medication from a pharmacy," said Reema Hammoud, Southfield, Michigan-based assistant vice president of clinical pharmacy for Sedgwick Claims Management Services Inc.

Ms. Hammoud noted that most private-label topicals are medications that are higher strengths of existing medications — many of which are low-cost, over-the-counter drugs.

"If you think about it, if something was really that beneficial, the FDA would approve it, and it would be manufactured by pharmaceutical companies," Ms. Hammoud said.

One issue is that many physicians don't know the cost of the drugs they're dispensing, Mr. Hamm said.

"Unless you tell them, most are probably not going to know what the drug costs are," he said. "That's why I think it's so important to have that communication aspect and outreach; sometimes they really don't know."

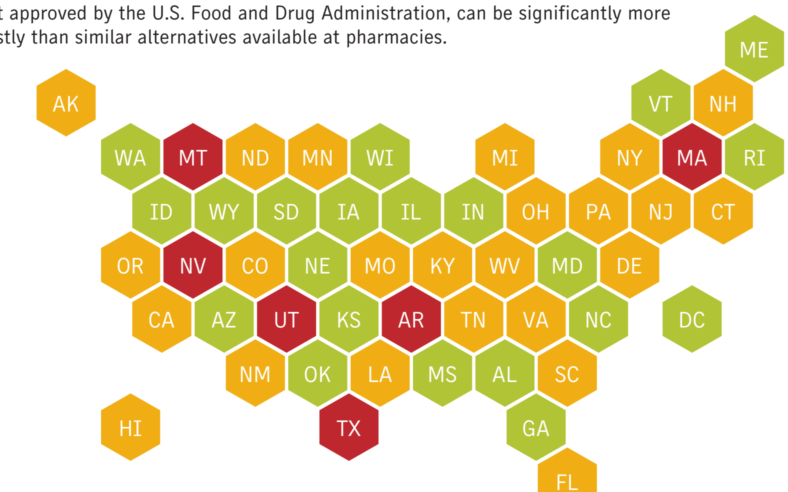
Formularies and utilization reviews are also effective ways to reduce the prescribing of expensive drugs or those that are not evidence-based, though there are limitations, Ms. Sacalis said.

Another issue is that formularies don't always account for fluctuating costs, and that's "where things can go upside down," she said.

Even though some states such as California have robust formularies, "there's always going to be loopholes," Ms. Sacalis said.

PRESCRIBING LIMITS

Most states allow physicians to dispense medications to injured workers, but many have restrictions, including limits on quantities and opioid dispensing. Some physician-dispensed drugs, such as topicals not approved by the U.S. Food and Drug Administration, can be significantly more costly than similar alternatives available at pharmacies.



Allows physicians to dispense medications
Allows physicians to dispense medications with restrictions and/or quantity limits
Does not allow physicians to dispense medications or only does so in rare circumstances

Source: Workers Compensation Research Institute

Specialty drugs drive up costs, bring regulatory focus

Workers compensation drug expenditures have been shifting to antidepressants, anticonvulsants, muscle relaxants and specialty drugs, some of which pose safety and cost concerns.

The prescribing of antidepressants for nerve pain and anticonvulsants such as Lyrica and Gabapentin has been increasing, said Ryan Hamm, Dublin, Ohio-based clinical pharmacist for CorVel Corp.

CorVel is also seeing more prescriptions for muscle relaxants. This is a concern because when combined with other drugs, particularly opioids or benzodiazepines, they can have significant side effects such as depression, drowsiness and dizziness, Mr. Hamm said.

Similarly, myMatrixx, an Express Scripts company, has seen increases in prescriptions for muscle relaxants, antidepressants for off-label use, and anticonvulsants, said Phil Walls, Tampa, Florida-based chief clinical officer.

The pharmacy benefit manager is also seeing a disproportionate share of workers comp drug expenditures going toward specialty drugs.

"There are a lot of newer drugs hitting the market, especially to treat Hepatitis C and HIV that should be on everyone's radar," Mr. Walls said. "They make up less than 1% of the prescriptions that myMatrixx processes but drive almost 10% of all of our drug cost, and 50% of the drugs the FDA is currently reviewing fall into this category of specialty drugs."

Angela Childers

SPECIAL REPORT

Communication plans, technology deployed to steer workers through claims process

BY LOUISE ESOLA
lesola@businessinsurance.com

The so-called advocacy approach to workers compensation claims has gained ground over the past year as injured workers faced anxiety and uncertainty due to delayed medical care and a greater reliance on technology during the COVID-19 pandemic, experts say.

Workers have needed more help steering through the claims process, including using technology to access remote health care, and the extra stresses endured have highlighted the importance of behavioral health services, they say.

> "Prehab gets them in a better position so when they do have that surgery, rehab will be much shorter because of what they did beforehand."
>
> Tammy Bradly,
> Coventry Workers Comp

"Advocacy is really about helping the injured worker navigate the workers compensation landscape and their medical care. … Over the last year that need has only increased," said Mike Hessling, Rollings Meadows, Illinois-based CEO North America of Gallagher Bassett Services Inc.

The advocacy approach in workers compensation has been a trend in recent years as the industry has strived to avoid adversarial issues that could lead to complications with claims and possible litigation. Essentially, the approach has called for improved communications with injured workers and coordination of care.

Liberty Mutual Insurance Co. has put more emphasis on the advocacy approach, said Patrick Hiles, St. Louis-based vice president and manager of the south region for workers compensation for the insurer. "It's making sure they understand the process … and making sure we address their concerns and questions. Staying away from jargon."

Social isolation during shutdowns has added to the stress of injured workers and led to more anxiety, said Tammy Bradly, Birmingham, Alabama-based vice president, clinical product development at Genex | Coventry, part of Mitchell International Inc.

A greater focus on advocacy has been part of the "dramatic change in the way some of the claims are being managed

CLAIMS MANAGERS TAP INJURY RECOVERY DATA TO IMPROVE TREATMENT, DRIVE BETTER OUTCOMES

Data analytics and predictive modeling are helping workers compensation claims managers better understand injuries and mitigate potential problems.

"Of all the things we are doing this is making the biggest impact," said Chris Schaffer, Wilton, Connecticut-based CEO of Charles Taylor TPA, a subsidiary of Charles Taylor Ltd.

For example, predictive modeling can use data analytics to identify slow recovery concerns for an injured worker who is overweight and has comorbidities. "If we know we are going to likely have a higher-dollar claim, we know we should put extra mitigation tactics on that," he said. Early attention to such claims can drive down costs, he said.

Use of data analytics has also led to some surprises, Mr. Schaffer said.

For example, data shows that most workers with expensive shoulder injuries are likely to follow the same early treatment protocol as any worker with a shoulder injury with little variance, Mr. Schaffer said.

"Through our artificial intelligence and analysis of claims … we found that for the first five months a shoulder claim is just a shoulder claim and the adjuster is not likely to have an impact. … This allows us to deploy resources where and when we can make an impact," he said.

> "If we know we are going to likely have a higher-dollar claim, we know we should put extra mitigation tactics on that."
>
> Chris Schaffer, Charles Taylor Ltd.

Data analytics modeling deployed by Liberty Mutual Insurance Co. has helped flag claims, moving them into a "complex group" for enhanced case management, said Patrick Hiles, the insurer's St. Louis-based vice president and manager of the south region for workers compensation.

"We have several models that we run in the background on a claim," he said, adding that for some common claim characteristics there's a "high level of reliability those claims may have an issue with severity."

Mike Hessling, Rollings Meadows, Illinois-based CEO, North America, of Gallagher Bassett Services Inc., said the data approach helps the industry "understand the levers that help drive better claims outcomes."

Louise Esola

over the past year with the onset of the global pandemic," Ms. Bradly said.

Newly emerging processes and communications protocols are also being used, she said.

Most large workers compensation insurers and third-party administrators now offer workers access to a smart phone or tablet application that simplifies filling out forms and other processes. And injured worker interest in on-demand access to claim information has increased during the pandemic, experts say.

At the onset of the pandemic "we saw a greater influx in the use of self-service technology," said Max Koonce, Fayetteville, Arkansas-based chief claims officer at Sedgwick Claims Management Services Inc., whose application MySedgwick has become an integral part of the TPA's claims-management communications. Improved communications lead to "better relationship building, working through the dynamics of a claim," he said.

The pandemic also brought an explosion in the use of telemedicine technology.

DATA & CLAIMS MANAGEMENT

Claims organizations with a claims closure ratio of **100% or more** deploy predictive modeling **eight times more frequently** than companies with less success in closing claims.

Half of all organizations use data warehousing, and usage among high performers is **five times the rate** of lower performing peers.

Source: Rising Medical Solutions' 2018 benchmarking study

> "To get the best results, you have to treat the whole person; that includes mental, emotional and physical. If we improve communication and advocacy, we will continue to bring in the entire person into the recovery process."
>
> Max Koonce,
> Sedgwick Claims Management Services Inc.

Once slow to catch on in the workers comp sector, telemedicine helped workers access care, with some third-party administrators and providers reporting exponential growth in services that use technology to connect providers with patients to manage treatment.

"The pandemic certainly drove greater adoption (of telemedicine) than we have ever seen in any point in comp," Mr. Hessling said.

Claims handlers had to rethink how they did their job and how to help injured workers become comfortable with technology that enabled continuance of care, Ms. Bradly said.

Telemedicine also helped claims managers manage surgery and other treatment delays that became common in the pandemic, providing an extended period prior to surgery to intervene and support patients, she said.

"Prehab gets them in a better position, so when they do have that surgery, rehab will be much shorter because of what they did beforehand," Ms. Bradly said, adding that greater reliance on technology kept workers connected while they waited on surgery delays.

A year into the pandemic, a hybrid approach has developed with coordinated telemedicine and in-person care. The model has improved communication with injured workers and led to greater attention to mental health, which is an issue the workers comp industry once avoided, experts say.

Joe Paduda, Skaneateles, New York-based principal of comp consulting firm Health Strategy Associates LLC, said greater attention to behavioral health has become crucial and is growing.

"What happened in the industry is they didn't want to take on psych treatment when really anybody with an injury has some behavioral element attached to it," he said, adding that the industry still has work to do in accepting mental injury aspects of claims, which have typically been separated from the claim and deemed not compensable.

Behavioral health is something that is becoming more of a concern in workers comp, Mr. Koonce said.

"To get the best results, you have to treat the whole person; that includes mental, emotional and physical. If we improve communication and advocacy, we will continue to bring in the entire person into the recovery process," he said.

NOTICE TO THE POLICYHOLDERS, DEBTORS, PRINCIPALS, OBLIGEES, CLAIMANTS, CREDITORS AND ALL OTHER PERSONS INTERESTED IN THE AFFAIRS OF BEDIVERE INSURANCE COMPANY (BEDIVERE) (IN LIQUIDATION)

NOTICE IS HEREBY GIVEN:

The Commonwealth Court of Pennsylvania ordered BEDIVERE Insurance Company (BEDIVERE), formerly know as One Beacon Insurance Company, into liquidation effective March 11, 2021. Jessica Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, was appointed as the Statutory Liquidator, and was ordered to take possession of BEDIVERE's property and to liquidate its business. Deputy Insurance Commissioner Laura Lyon Slaymaker oversees the liquidation on her behalf.

In recognition of the December, 2020 order issued by the Pennsylvania Insurance Department approving BEDIVERE's merger with The Employer's Fire Insurance Company ("Employers"), Lamorak Insurance Company (formerly OneBeacon American Insurance Company) ("Lamorak"), and Potomac Insurance Company ("Potomac") made under Article XIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.1401—991.1413), all references herein to BEDIVERE shall include Employers, Lamorak, and Potomac.

This information is important. It is recommended that you read it carefully before contacting the Liquidator's Office with questions. You may also want to consult your attorney or insurance advisors before you proceed.

A paid BEDIVERE policy or bond will terminate at its normal expiration, upon replacement or April 10, 2021 (30 days from the date of liquidation), whichever is soonest.

If you have and want to pursue a claim against BEDIVERE, you must file a proof of claim in order to have your claim considered. Proofs of claim must be filed no later than December 31, 2021

A proof of claim must be filed even if a claim was made against BEDIVERE prior to liquidation, and a separate proof of claim form must be filed for each claim you have. A proof of claim shall include the following: A proof of claim form containing the original signature of the claimant; a description of the claim and any security interest; whether collateral security or personal security is pledged in accordance with the terms of the policy; documentation of any payments made on the claim; and a statement that the amount is justly owed the claimant. If you require additional proof of claim forms, please request them from the Statutory Liquidator.

A Guaranty Association may cover certain claims under a BEDIVERE insurance policy or bond. Guaranty Associations have been created under state laws to protect insureds, residing in the state whose insurance company became insolvent and was ordered liquidated, against certain types of policy claims, subject to both various statutory defenses and claim limitations. Property insurance claims are directed to the appropriate Guaranty Association in the state where the property is located. Workers compensation claims are directed to the appropriate Guaranty Association in the state where the claimant resided at the time of the incident and all other casualty claims are directed to the appropriate Guaranty Association in the state where the insured maintained its residence or principal place of business. A list of the addresses and pertinent numbers of Guaranty Associations can be found on the Department's website, www.insurance.pa.gov. DO NOT FILE A PROOF OF CLAIM WITH A GUARANTY ASSOCIATION. ALL PROOFS OF CLAIM MUST BE FILED WITH THE LIQUIDATOR OF BEDIVERE.

You are a third-party claimant if you have a claim against a BEDIVERE insured, which may be covered by the insured's insurance policy (other than a claim against a bond). You may either file a Proof of Claim with the Statutory Liquidator or pursue legal action against the insured to recover your claim. If you file a claim with the Statutory Liquidator, filing of the claim shall operate as a release of the insured's liability to you on that cause of action up to the amount of applicable policy limits. If the Liquidator avoids coverage of the claim, this release becomes null and void. NOTE: The above paragraph does not pertain to claims filed against BEDIVERE bonds.

It is important to note that although BEDIVERE is insolvent it has significant assets, including reinsurance that must be collected by the Liquidator. It will be several years before all BEDIVERE assets are collected and distribution amounts can be determined. To participate in a distribution you must file a Proof of Claim, particularly where there is no guaranty association coverage or where the claim exceeds the limit of such coverage. It is important that you keep BEDIVERE fully advised of all developments in the cases so that BEDIVERE can use this information to recover funds from reinsurers and thereby potentially increase the distribution to policyholders and creditors. Claims for losses under policies of insurance have the highest priority for payment other than administrative expenses.

Proof of Claim forms can be obtained as follows:
Download: www.insurance.pa.gov
Click on Regulations, then Liquidations & Rehabilitations, then Estates in Liquidation.
Request by E-Mail: ra-in-claims@pa.gov
Request by Telephone: (717) 787-7823
Request by Mail: Statutory Liquidator for BEDIVERE, Capitol Associates Building, 901 N. 7th Street, Harrisburg, PA 17102

Whenever a claim is based upon an instrument in writing, a copy of the document should be attached to the proof of claim. If the document has been destroyed, a statement of the facts and circumstances of the loss must be filed, under oath, with the claim.

The Order of Liquidation enjoins all persons from instituting or continuing any action at law or in equity or any attachment or execution against BEDIVERE, or the Statutory Liquidator. All persons indebted to or having any property of BEDIVERE in their possession, directly or indirectly, are hereby notified to tender an account of the indebtedness and to pay the same and deliver such property to the Statutory Liquidator.

CHANGE OF ADDRESS NOTIFICATION

YOU ARE REQUIRED BY ARTICLE V OF THE INSURANCE DEPARTMENT ACT TO NOTIFY THE STATUTORY LIQUIDATOR OF YOUR CHANGE OF ADDRESS. IF YOU FAIL TO DO SO YOU MAY JEOPARDIZE RECOVERY FROM THIS ESTATE.

Additional material which answers frequently asked questions regarding the liquidation process, along with Guaranty Association information, can be found at the Department's website www.insurance.pa.gov (click on Regulations, then Liquidations & Rehabilitations). Please review this material carefully.

This notice and the information contained herein are in summary form and may not contain all necessary information for your particular situation. You are urged to consult an attorney if you have any questions. All claims are subject to payment only in accordance with applicable law.

General questions about the liquidation procedure should be addressed to the Statutory Liquidator at: Statutory Liquidator of BEDIVERE, Capitol Associates Building, 901 N. 7th Street, Harrisburg, PA 17102, (717) 787-7823. Or through email at Ra-In-Claims@pa.gov

Pandemic prompts claims rethink

BY MATTHEW LERNER
mlerner@businessinsurance.com

The COVID-19 outbreak and the upheavals in work policies that followed sent claims professionals scrambling to maintain their operations.

From staying connected to keeping on top of evolving public health policies and crippling travel restrictions, insurers, adjusters, third-party administrators and others found themselves in unprecedented circumstances.

While many claims staff were already working remotely, companies had to shift nearly all their operations to all-remote for a sustained period and leaned heavily on technology to enable that transition.

Many of the changes in the use of technology are expected to remain in place after the pandemic subsides, but it remains unclear which changes will last as in-person claims assessments return, experts say.

"Our first priority was getting people working from home quickly," said Pat Van Bakel, Toronto-based president, loss adjusting, North America, for Crawford & Co.

Adjusters and other claims professionals are often field-based, and many staff were already equipped with technology to work remotely, so the challenge was to make "desk positions" remote, he said.

Technology has played a key role in the claims process.

"Now more than ever, and the pandemic helped bring this out, you have to lead with technology," said Dennis Tierney, national workers compensation claims leader in New York for Marsh LLC. For example, artificial intelligence and machine learning can be deployed to help pinpoint claims with the potential to escalate, he said.

> "The hardest thing was making sure everybody understood which states you were allowed to travel into without having to quarantine. This required a lot more planning."
>
> Jill Dalton, Aon PLC

Aon PLC was "in the process of getting some of these virtual processes going," and the pandemic expedited adoption, said Jill Dalton, New York-based managing director of Aon's U.S. property risk consulting group, who handles property claims for large commercial clients.

Mobile damage assessments, such as inspections carried out over video calls, are a good option, but for some large commercial claims "being there in person will always be best," she said.

Sedgwick Claims Management Services Inc. used technology "to reimagine the best way to handle claims under the circumstances," said Max Koonce, chief claims officer for the TPA in Fayetteville, Arkansas.

"We looked at how we could provide claims handling services to our clients to include telemedicine, virtual client and injured worker meetings," as well as handle the complexities of getting medical care for workers during a pandemic, he said.

The realignment toward technology is notable, Mr. Van Bakel said. "Institutional change across the industry was not easy. Digital adoption rates were low, and we've seen massive improvements in those fundamentals in the last year."

While in-person visits remain important, the technology is playing a growing role in claims, Mr. Van Bakel said.

"The expertise-led aspect of our business is always going to be more effective when we're face to face with someone. There will be a much different use of technology as a sustainable part of the business model," he said.

"Carriers have been adapting more and more to doing remote adjusting, and I think that trend is going to continue," said Joseph Miele, an insurance coverage partner with Kaufman Dolowich & Voluck LLP in Fort Lauderdale, Florida.

During the pandemic, the expectation of how insurers are supposed to handle a claim has changed to include a greater reliance on connectivity and technology, such as remote inspections, Mr. Miele said. Whether this situation reverts to its pre-pandemic condition remains to be seen, he said.

In addition to connectivity, where systems were strained with thousands of employees online and many staff were unfamiliar with online communications systems, there were and continue to be informational challenges during the pandemic, sources said.

"Regulation and law changes have been a moving target," even into this year, Marsh's Mr. Tierney said, referring to various workers compensation presumption laws that require insurers and employers to cover first responders for COVID-19-related illnesses. "That definitely was a challenge. You had to keep up with each state, which industries, how long. Each state had its own twist to it."

At Sedgwick, "information ranged from ongoing jurisdictional updates, restrictions and compliance measures to more routine information such as how to wear a mask properly. We also closely monitored and communicated provisions and changes around workers compensation presumptions," Mr. Koonce said.

State regulations governing immunities from liability claims for health care workers also have evolved over time, with different states enacting legislation at different times, said Robert Blasio, managing director of Gallagher Bassett Specialty, a division of Gallagher Bassett Services Inc., who has clients in the health care field. "At the beginning, there was considerable concern from clients as to what their exposure was."

"The hardest thing was making sure everybody understood which states you were allowed to travel into without having to quarantine. This required a lot more planning," Ms. Dalton said. Such planning was difficult given the random nature of claims and the need for expediency in adjusting and settlements.

The abundance of legal and regulatory changes also translated to more advisory services, Mr. Tierney said. "The advisory that went on around COVID from a claims standpoint was at an all-time high."

SHUTTERED COURTS LED TO INCREASE IN SETTLEMENTS

Court closures forced by the COVID-19 pandemic had an indirect effect on some insurance claims disputes by removing a major avenue of resolution, attorneys say.

With courts unable to open due to government restrictions, binding arbitration became a more compelling way to resolve disputes, said Robert Blasio, managing director of Gallagher Bassett Specialty, who is an attorney by training.

"The whole thing made us think out of the box about alternative ways" to resolve cases and disputes, he said.

Binding arbitration, which was often conducted over video, offered a "safe and expedient environment and would allow for the resolution of the case," he said. While not all clients were amenable to arbitration, "we had many scenarios in which we were able to resolve cases."

There was "a lot of rush to settle cases," especially in the early days of the pandemic, due to the uncertainty brought on by the lack of access to courts, said Patrick Kennell, New York-based co-chair of the insurance coverage and litigation practice group at law firm Kaufman Dolowich & Voluck LLP. Defendants' and plaintiffs' "appetite to resolve them was really high," he said.

Court closures "definitely changed the way both sides approached mediation and alternative dispute resolution negotiations because there's a perception that with more limited access to the courts, deals should be done," Mr. Kennell said.

The court closures also removed a bargaining chip for plaintiffs, said Joseph Miele, an insurance coverage partner at Kaufman Dolowich in Fort Lauderdale, Florida. "The fact that courthouses are closed and a plaintiff cannot pressure me with an impending trial works for the defense, in this case insurers," he said.

The reliance on technology and remote connectivity resulting from the pandemic restrictions also laid bare any shortcomings among the courts' capabilities.

"Even the most technologically advanced courts learned they had a lot to learn," Mr. Kennell said.

Matthew Lerner

SPECIAL REPORT

THIRD-PARTY ADMINISTRATORS

LARGEST THIRD-PARTY ADMINISTRATORS*

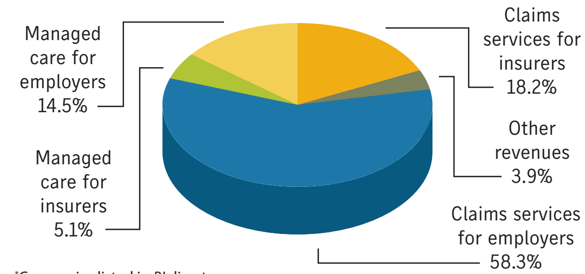
Ranked by 2020 gross revenue

Rank	Company	TPA services provided	Gross revenue 2020	Gross revenue 2019	% increase (decrease)	Total number of claims-handling staff	Officers
1	Sedgwick Claims Management Services Inc.	Multiline**	$3,478,231,916	$3,504,017,191	(0.7%)	24,027	David A. North, Jr., executive chairman; Michael A. Arbour, CEO; Robert J. Peterson, president
2	UMR Inc.	Employee benefits only	$1,300,000,000	$1,230,000,000	5.7%	3,400	Scott Hogan, president-CEO
3	Crawford & Co.	Multiline**	$1,016,195,000	$1,047,627,000	(3.0%)	5,154	Rohit Verma, CEO; Joseph Blanco, president
4	Gallagher Bassett Services Inc.	Multiline**	$973,195,976	$977,111,429	(0.4%)	5,089	Scott Hudson, president-CEO; Mike Hessling, CEO-North America
5	CorVel Corp.	Multiline**	$592,000,000	$596,000,000	(0.7%)	1,300	Gordon Clemons, chairman; Michael Combs, president-CEO
6	Meritain Health	Employee benefits only	$554,000,000	$547,700,000	1.2%	N/A	Melissa Elwood, COO
7	ESIS Inc.	Multiline**	$404,900,000	$460,520,000	(12.1%)	1,369	Leigh Anne Sherman, president
8	Helmsman Management Services LLC	Multiline**	$357,140,323	$345,205,364	3.5%	990	David Dwortz, president-CEO
9	Trustmark Health Benefits Inc.	Employee benefits only	$225,000,000	$226,984,104	(0.9%)	520	Nancy Eckrich, president-CEO
10	Cannon Cochran Management Services Inc., dba CCMSI	Multiline**	$172,000,000	$160,000,000	7.5%	1,023	G. Bryan Thomas, president-CEO

*Companies listed in *BI* directory; **Includes employee benefits and/or property/casualty and/or workers compensation
Source: *BI* survey

TPA REVENUE*

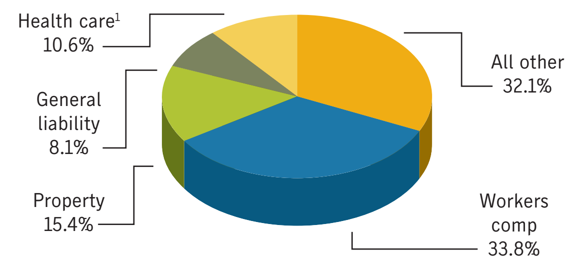
Percentage of 2020 revenue from all services provided



*Companies listed in *BI* directory

TYPES OF CLAIMS MANAGED*

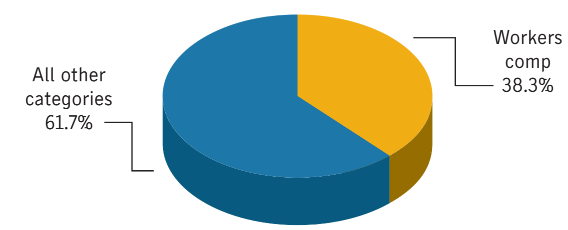
Percentage of claims by category



*Companies listed in *BI* directory
[1]Includes medical, vision, dental and prescription drugs

VALUE OF CLAIMS PAID*

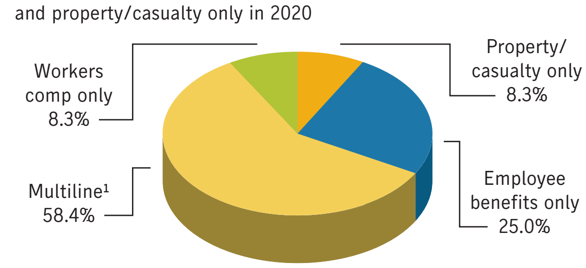
Based on the amount of claims paid in 2020



*Companies listed in *BI* directory

TYPES OF SERVICES PROVIDED*

Percentage of TPAs handling multiline[1], employee benefits only and property/casualty only in 2020



*Companies listed in *BI* directory
[1]Includes employee benefits and/or property/casualty and/or workers compensation
Source: *BI* survey

LARGEST CLAIMS-HANDLING TPAs*

Ranked by 2020 gross revenue from claims handled for employers

Rank	Company	2020 revenue[1]
1	Sedgwick Claims Management Services Inc.	$1,604,510,781
2	UMR Inc.	$1,300,000,000
3	Gallagher Bassett Services Inc.	$565,277,015
4	Meritain Health	$508,200,000
5	Crawford & Co.	$450,000,000

*Companies listed in *BI* directory [1]Excludes managed care and medical billing services
Source: *BI* survey

LARGEST MULTILINE[1] TPAs*

Ranked by 2020 gross revenue from claims handled for employers

Rank	Company	2020 revenue[2]
1	Sedgwick Claims Management Services Inc.	$1,604,510,781
2	Gallagher Bassett Services Inc.	$565,277,015
3	Crawford & Co.	$450,000,000
4	ESIS Inc.	$262,600,000
5	Helmsman Management Services LLC	$181,756,598

*Companies listed in *BI* directory; [1]Includes employee benefits and/or property/casualty and/or workers compensation [2]Excludes managed care and medical billing services
Source: *BI* survey

LARGEST BENEFITS-ONLY TPAs*

Ranked by 2020 gross revenue from claims handled for employers

Rank	Company	2020 revenue[1]
1	UMR Inc.	$1,300,000,000
2	Meritain Health	$508,200,000
3	Trustmark Health Benefits Inc.	$198,000,000
4	Amalgamated Employee Benefits Administrators Inc.[2]	$63,549,000
5	Health Plans Inc.	$48,644,121

*Companies listed in *BI* directory [1]Excludes managed care and medical billing services
[2]Formerly Alicare Inc.
Source: *BI* survey

OPINIONS

COMMENTARY

Clarity needed on cannabis coverage

It's taken Congress a long time to get realistic about cannabis, but there are signs that it is edging closer to a practical approach to dealing with the use of the drug.

Like it or not, cannabis is increasingly viewed as a useful alternative medication by many state legislatures and as an acceptable social drug by some.

There are plenty of arguments to be had over its efficacy for treating chronic pain, glaucoma, epilepsy or any other condition cannabis is cited as relieving, and there remain legitimate concerns over side effects related to its recreational use, but the already widespread use of the drug means that a legal and regulatory framework that reflects the real world is required.

According to the U.S. drug schedule, cannabis remains a Schedule I drug, alongside the likes of heroin, ecstasy and LSD, and ahead of Schedule II drugs such as cocaine and methamphetamine. You don't have be a connoisseur of any of these drugs to spot the odd one out.

Gavin Souter
EDITOR

The continued classification of cannabis as an illegal drug at the federal level has produced well-documented frustrations in the insurance market. While some insurers see minimal risk of incurring federal penalties for insuring participants in the cannabis trade, many others are much more risk averse and unwilling to cover the industry even though cannabis use is legal in most states.

If insurance is the lubricant that ensures the smooth running of commerce, then it's not surprising that in the absence of coverage some cannabis businesses are having trouble cranking up operations, if not completely seizing up.

But help may be on the way. As we report on page 6, bipartisan legislation has been introduced in both chambers of Congress that specifically targets insurance coverage for cannabis companies. Similar legislation has failed in the past, but there is a sense that this time it could get through.

The Clarifying Law Around Insurance of Marijuana Act of 2021 does not try to be a panacea for the commercial cannabis sector. Instead, it focuses specifically on insurance and the reality of the differences in state and federal law. By providing a safe harbor for insurers that cover state-sanctioned cannabis companies and associated businesses, the measure would fix the insurance problem without trying to radically change federal drug regulation.

The CLAIM Act is a commonsense approach to the issue of ensuring that cannabis industry liabilities are covered and claims are paid.

The country is amid what's already been a lengthy journey to legalizing cannabis and regardless of whether it decides to reverse course and reinforce the criminalization of the drug or go full speed ahead and allow its use and distribution nationwide, insurance needs to be in place while the ride continues.

CANNABIS INSURANCE COVERAGE

The wording of the **Clarifying Law Around Insurance of Marijuana Act 2021** focuses on differences in state and federal law regarding cannabis use.

"With respect to engaging in the business of insurance within a State, political subdivision of a State, or Indian country that allows the cultivation, production, manufacture, sale, transportation, display, dispensing, distribution, or purchase of cannabis pursuant to a law (including regulations) of such State, political subdivision, or Indian Tribe that has jurisdiction over the Indian country, as applicable, an insurer that engages in the business of insurance with a cannabis-related business or service provider or who otherwise engages with a person in a transaction permissible under State law related to cannabis, and the officers, directors, and employees of that insurer may not be held liable pursuant to any Federal law (including regulations) —

(1) solely for engaging in the business of insurance; or

(2) for further investing any income derived from such business of insurance."

VIEWPOINT

Flood insurance evolves

BY CLAIRE WILKINSON
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One thing that may have been missed in the Federal Emergency Management Agency's recent release of Risk Rating 2.0 — its first major update to the National Flood Insurance Program's pricing system in 50 years — is that the new pricing system applies to businesses as well as homeowners. Commercial properties account for 4%, or 199,394, of total NFIP policies, according to market sources. To put that in context, the NFIP provides around $1.3 trillion of flood insurance coverage for more than 5 million policyholders across the United States. The new pricing system will apply to all properties insured through the NFIP and all categories of policies will see increases or decreases.

Risk Rating 2.0 sets out to provide actuarially sound flood insurance rates that should be more equitable and easier for policyholders to understand, leveraging improved technology and understanding of flood risk. For policyholders, the change means that premiums will be based on a property's value and specific flood risks, such as proximity to the coast and the risk of flooding, rather than just its elevation in a flood zone. For some parts of the U.S. that are prone to coastal storms, surges and floods like Florida, where property rate hikes are already significant, this will mean even higher costs for insurance buyers.

In developing the new rates, FEMA coordinated with subject matter experts from the U.S. Army Corps of Engineers, U.S. Geological Survey and the National Oceanic and Atmospheric Administration, as well as experts from the insurance industry and actuarial science. David Maurstad, senior executive of the NFIP, described the new pricing system as "the right thing to do. It mitigates risk, delivers equitable rates and advances the agency's goal to reduce suffering after flooding disasters." FEMA's long-overdue recalibration comes after the NFIP racked up $20 billion in debt when claims resulting from multiyear hurricanes exceeded premiums.

What does all that mean? Out of the 199,394 NFIP commercial policies, some 43% are expected to see premium decreases. But for many of the tens of thousands of businesses with NFIP coverage, there will be material increases. Some 27%, or 53,836, of commercial NFIP policies, will see their premiums increase by more than $240 a year, sources say. Any premium increases will transition gradually and within the existing statutory limits until the full-risk rate for the property is reached.

Despite the premium increases, there are reasons for optimism from a risk and risk management standpoint. The new pricing system will likely act as a stronger disincentive to locate businesses in areas prone to flooding, and businesses will have increased incentives to mitigate against flood risk.

Since Risk Rating 2.0 is actuarially on a sounder footing than its predecessor, it's also likely the higher rates will push more businesses into the private flood market, which could lead to increased competition.

For private flood insurers and alternative capital risk vehicles, the Risk Rating 2.0 system presents an opportunity as businesses, already balancing tough commercial insurance market conditions, will be eager to smooth the volatility of rising flood coverage costs and losses by shopping around and looking for alternatives. Putting public coverage on a more commercial footing should help the private market rise to the challenge of solving a problem that is only likely to get worse.

Yes, employers, you can win at ADA-FMLA-workers comp whack-a-mole

Robin E. Shea is a partner at Constangy, Brooks, Smith & Prophete LLP in Winston-Salem, North Carolina. She can be reached at RShea@constangy.com.

Ten years ago or so, employers were struggling with the interaction between the Americans with Disabilities Act, the Family and Medical Leave Act and workers compensation, also known to employment lawyers as "the Bermuda Triangle."

The idea was that trying to keep all these laws in mind while dealing with injured employees caused employers to become disoriented, without a compass and lost.

After a lot of training, it seemed that employers were getting the hang of dealing with all three laws at once. But since employment lawyers have stopped harping on it, we are beginning to see employers struggle again with ADA-FMLA-workers compensation.

And it is even more complicated now, because since at least 2015, employers may also be required to accommodate pregnancy and related conditions. That makes four laws.

A better metaphor for the current state of affairs is whack-a-mole. An employer thinks it has fulfilled its obligations under one of these laws, and then — *whoop!* — up pops a new "mole."

Two whack-a-mole scenarios

Scenario 1: The employee has a severe injury on the job and is out of work for six months. At the end of that time, his physician says that he is at maximum medical improvement with a 50% disability rating. The physician recommends light duty. Your policies allow light duty for a maximum of 90 days, for work-related injuries only. You give the employee a light duty assignment for 90 days. When that period ends, you terminate the employee. Is that a problem?

It could be. First, let's assume you let the employee use up his FMLA leave during the six months that he was completely out of work, so you don't have an FMLA issue anymore — unless we are in a new FMLA leave year, in which case you might. You've handled the workers compensation part correctly — assuming your insurer doesn't hate you for placing a time limit on light duty. But is there an ADA issue?

Not necessarily, but it's likely. A disability rating for workers comp purposes is not the same as an ADA-protected disability, but there is a lot of overlap. By the time you terminated your employee, he had been unable to work in a regular job for nine months, which is treading dangerously into ADA territory. To stay out of trouble from an ADA standpoint, and avoid a disability discrimination charge, at the end of the light duty assignment you should have at least considered whether it would have been possible for the employee to perform a "regular" job with reasonable accommodations. This should be discussed through an "interactive process" — also known as a "conversation" or "brainstorming session" — between the employee and the employer, with the help of health care providers if needed. If you go through the process and determine that no accommodations are possible, then you will be on firmer ground when you terminate the employee. If you don't go through the process, then you assume the legal risk that there was an accommodation that would have worked.

Scenario 2: Your material handler is pregnant. Her doctor places her on a 10-pound lifting restriction until after the baby is born … seven months from now. You can't accommodate this type of restriction with a material handler because her entire job consists of lifting and moving loads of 25 pounds to 50 pounds. You would give her "make-work" light duty, but that's only for people with on-the-job injuries. You'd put her out on FMLA leave, but she's been employed with you for only six months, so she is not eligible. Since you can't accommodate her lifting restriction, and she isn't eligible for FMLA leave, you offer her a one-month personal leave and tell her that if her lifting restrictions are still in place at the end of the month her employment will be terminated but she'll be eligible to reapply when she is able to meet the lifting requirements.

No problem, right?

Well, yes, maybe a big problem, related to that "make-work" light duty. Because you have this type of work and offer it to employees who are "similar in their ability or inability to work," then you should offer it to your pregnant material handler as well. Failure to do so could violate Title VII, which prohibits discrimination based on sex, including pregnancy.

A proposed protocol

The best way to avoid whack-a-mole with a sick, injured, or pregnant employee is to go through a process of "ruling out" applicable laws, and then acting based on the laws that do apply. Let's say you have an employee with a congenital heart condition that limits his ability to perform the essential functions of the job. Rule out!

- Is a congenital heart condition work-related? No, so you can forget about workers compensation.
- Has the employee been with you for at least 12 months (need not be consecutive) and worked 1,250 hours in the last 12 months? If not, you can forget about the FMLA.
- Even if the employee has been with you for at least 12 months (need not be consecutive) and worked 1,250 hours in the last 12 months, has he already exhausted his FMLA leave? If so, you can still forget about the FMLA.
- Is the employee pregnant? No, so you can forget about Title VII (at least, in relation to the way you handle the heart condition).
- Does the employee have an ADA-covered disability? Probably so, which means you will have to engage in the interactive process and try to arrive at a reasonable accommodation that will let the employee perform the essential functions of the job. (And, if you offer light duty for workers comp cases, you should consider doing it as a reasonable accommodation.)

Hey, that wasn't so bad! Let's try it again. Your employee has work-related carpal tunnel syndrome. Rule out!

- Is the CTS work-related? Yes, so you have a workers comp case.
- Is the employee eligible for FMLA leave? If not, you can forget about the FMLA. If she is eligible, then let the FMLA leave run concurrently with the workers comp leave. Once you've met your FMLA obligation, you can forget about the FMLA.
- Is the employee pregnant? No, so you don't have to worry about Title VII.
- Does the employee have an ADA-protected disability? Probably. You can offer her light duty since the condition is workers comp-related, or you can consider reasonable accommodations in a "real" job, following the interactive process.

Last one! Your employee is pregnant. Rule out!

- Is pregnancy work-related? No, so no workers comp to worry about.
- Is the employee eligible for FMLA leave? If so, let her use it any time that she needs to be out of work for prenatal care or any pregnancy-related conditions.
- Is the employee pregnant? Yes, so you will have to treat her the same as you treat other employees with similar limitations, which could include employees on light duty for on-the-job injuries.
- Does the employee have an ADA-protected disability? Probably not, unless there are complications with the pregnancy or childbirth. So, you can probably forget about the ADA.

That mole is whacked!

MARKET PULSE

Paradigm partners with Shirley Ryan AbilityLab

■ Catastrophic care management company Paradigm Management Services LLC announced it has partnered with Chicago-based Shirley Ryan AbilityLab to better anticipate injured workers' recovery trajectory and the long-term costs associated with care and treatment.

Through the agreement, Walnut Creek, California-based Paradigm will conduct initial case assessment and then work with Shirley Ryan AbilityLab, a rehabilitation research hospital, to establish mutual outcome benchmarks related to cost and recovery.

RPS offering home-based business coverage

■ Risk Placement Services Inc. has launched an admitted coverage for home-based businesses underwritten by Axis Insurance Co., the specialty insurance arm of Bermuda-based Axis Capital Holdings Ltd.

The coverage includes limits for general liability and professional liability of up to $2 million each and an optional add-on coverage for business contents of up to $10,000.

Available online, the coverage extends to outside the policyholder's home office, including clients' offices, trade shows and other locations.

The coverage is available in all U.S. states except Florida, New York, Washington, Hawaii and Alaska, the Rolling Meadows, Illinois-based wholesale broking and managing general agent unit of Arthur J. Gallagher & Co. said in a statement.

Mitchell Genex Coventry unveils specialty business

■ Mitchell International Inc., operating as Mitchell | Genex | Coventry, announced the launch of Apricus, the organization's specialty networks business.

Mitchell | Genex | Coventry, based in San Diego and Wayne, Pennsylvania, provides cost-containment technology, provider networks, clinical services, pharmacy benefit management and disability management for the casualty insurance market, including the workers compensation industry.

The new business will combine what has been historically known as DMEplus and Priority Care Solutions, according to a statement.

Apricus will coordinate and schedule durable medical equipment, diagnostic imaging, physical medicine, home health, and transportation and translation, among other specialty offerings.

PRODUCTS & SERVICES

Amwins offers transport programs

■ A unit of wholesale brokerage Amwins Group Inc. is introducing coverage for automotive-related and other risks with a fronting insurer.

Trinity Underwriting Managers, a unit of Charlotte, North Carolina-based Amwins, will offer insurance for towing, automotive repossession, sand and gravel, paratransit and intermodal trucking businesses with fronting insurer Obsidian Insurance, a unit of San Francisco-based Genstar Capital LLC, a statement said.

Intermodal refers to the use of two carriers to transport goods from shipper to consignee.

The program provides $1 million in auto liability, $300,000 in cargo coverage and $250,000 for physical damage, according to a spokeswoman.

TUMI, as part of Amwins Underwriting, specializes in designing marketing and underwriting niche transportation programs, the announcement said.

The Obsidian partnership augments reinsurance relationships, providing the ability to write more premiums on a larger scale and expand its product and program offerings, Amwins said.

Lloyd's, Bounce pair on parametric quake cover

■ Lloyd's of London has partnered with insurance startup Bounce to launch a parametric earthquake insurance policy for commercial customers and homeowners in New Zealand.

The new product uses real-time data from government agency GeoNet to track peak ground velocity, which triggers payment to policyholders when tremor shakes reach 20cm per second. The policy automatically pays out within five days of breaching the trigger point and payments are stepped, with stronger earthquakes resulting in larger payments under the cover.

Developed in partnership with Bounce's founders — Lloyd's, Guy Carpenter, Marsh and Jumpstart Insurance — the product is designed to work alongside traditional earthquake insurance but target quick payments to policyholders in the immediate aftermath of a tremor.

RMS plans to launch climate change models

■ Catastrophe modeler Risk Management Solutions Inc. said it will launch climate change models in June initially for its North Atlantic hurricane, Europe inland flood and windstorm models.

The models are designed to help customers assess the near- and long-term effects of climate change on physical assets and their businesses so they can make risk and financial decisions, Newark, California-based RMS said in a statement.

The models incorporate forward-looking predictive insights and analysis and feature probabilistic modeling to capture events across different climate change scenarios, RMS said.

They can also adjust time horizons and representative concentration pathways, which are greenhouse gas concentration trajectories adopted by the Intergovernmental Panel on Climate Change.

Models will include climate change specialist advisory and consulting expertise and support for regulatory, environmental, social and governance and climate-related financial disclosure requirements.

Association captive offers cover for cannabis sector

■ Cannabis dispensaries and associated grow facilities can obtain property, general premises liability and product liability coverage through TrichomeTM, the insurance brand of the association captive owned by The National Cannabis Risk Management Association, the group announced.

The launch of TrichomeTM "is a direct response to our members' expressed need for fairly priced and risk management-based insurance coverage to a rapidly emerging and evolving industry," said Rocco Petrilli, chairman of NCRMA.

Products are available immediately, and additional lines of coverage and expansion to other cannabis businesses are planned for later this year, the association said.

The captive model will help "successfully forge the path to insurance sustainability," Mr. Petrilli said.

DEALS & MOVES

Brown & Brown unit buys wholesaler

Bridge Specialty Group, a unit of Brown & Brown Inc., has bought Metuchen, New Jersey-based wholesaler Leon Silver Associates LLC, the companies announced.

Terms of the deal were not disclosed.

Leon Silver, which has about a dozen employees, according to its website, will become part of Bridge's Morstan General Agency in Woodbridge, New Jersey, the statement said.

Brown & Brown formed Bridge earlier this year to house its wholesale units.

Hub acquires Wyoming agency

Hub International Ltd. has acquired Wyoming Financial Insurance, an independently owned insurance agency in Casper, Wyoming.

Terms of the transaction were not disclosed.

WYFI, which has 12 offices in Wyoming and Colorado, provides commercial insurance, surety bonds and other coverages to the construction, health care, hospitality and transportation industries.

WYFI's 77 employees will be joining Hub Mountain.

Marsh & McLennan Agency expands in Northwest

Marsh & McLennan Agency LLC, the middle-market business of Marsh LLC, said it has bought PayneWest Insurance Inc., an independent agency with about $135 million in annual brokerage revenue.

Terms of the deal were not disclosed.

Missoula, Montana-based PayneWest has more than 700 employees operating from 26 locations in the Northwest. All of the employees will join Marsh & McLennan Agency, and PayneWest will operate as the broker's Northwest regional hub.

Gallagher Bassett makes acquisition

Gallagher Bassett Services Inc., the claims management unit of Arthur J. Gallagher & Co., has acquired Pleasantville, New York-based Terrier Claims Services Inc. and its affiliate MT Investigations LLC.

Terms of the transaction were not disclosed.

Founded in 1996, TCS is a full-service claims investigation firm that focuses on insurance defense, third-party administrators, defense attorneys and government agencies, Gallagher said in a statement.

PEOPLE

UP CLOSE

> "There's no rule that future insurance products and services need to resemble past ones, and with the surge of insurtech, we may be on the verge of a sea change."

Christy Kaufman

NEW JOB TITLE: Madison, Wisconsin-based vice president, risk management, Zillow Group Inc.

PREVIOUS POSITION: Madison, Wisconsin-based head of strategy, governance and compliance, American Family Ventures.

OUTLOOK FOR THE INDUSTRY: The insurance market has hardened, which means it'll soften at some point. The question I ask myself is whether it's going to transition into a new paradigm as it softens. There's no rule that future insurance products and services need to resemble past ones, and with the surge of insurtech, we may be on the verge of a sea change. I'm confident the insurance landscape will continue to evolve through advancements in self-insurance, perfect pricing, default insurance and other data-driven solutions.

GOALS FOR YOUR NEW POSITION: Our customers come to Zillow simply wanting to move. We are building a seamless experience, with a suite of offerings, to get them from searching and dreaming into their new home. It's an exciting time to be joining the Zillow team where I'll be evangelizing the value of risk management to my internal partners.

CHALLENGES FACING THE INDUSTRY: We need to press ourselves for an answer on what's coming next. We're living in an age of VUCA (volatility, uncertainty, complexity, ambiguity), and as an industry, we have to get better and faster at anticipating risk. (The year) 2020 showed us that very low-probability risks can still occur, and the impact can be devastating. As risk managers, we need to grow an appreciation for these potential events, even if they live outside the imaginable.

FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET: Coming out of graduate school, I was a consultant for Ernst & Young, helping a wide array of clients develop and strengthen their risk management programs. When I say a wide array, I mean everything from household conglomerates to nonprofits. That experience showed me that risk management is far from one-size-fits-all. It needs to be aligned to an organization's strategy, complexity and culture.

ADVICE FOR A NEWCOMER: This is a fun question for me because I also teach risk management at the University of Wisconsin, and I tell my students to stay current and prepare for the risk industry that exists today — digital, data-driven and fast-changing. For anyone who just joined the industry, I point them to the Risk & Insurance Management Society Inc. I'm proud to serve on the RIMS global executive board. It's a supportive community for risk professionals, and full of resources and insights that will help you progress in your career. And for those further along in their careers, I would challenge you to continue to disrupt yourself. If you're at the top of your learning curve, it may be time to jump to a new one.

DREAM JOB: That's easy: fashion designer. Given that I can't even sew, it's likely not happening anytime soon!

LOOKING FORWARD TO: I came to Zillow because it's an opportunity to show others how risk mitigation looks in a 21st-century business. I'm excited about translating risk management — a time-honored field — into a digital-first setting. The talent within Zillow is astonishing, and the challenge to position risk management as a business enabler has me excited for what's to come.

FAVORITE MEAL: Big shocker, I'm a pretty risk-averse eater. I stick to comfort foods; even the occasional PB&J brings a smile to my face.

TV SHOW: I can't stop watching "Ozark." We even went on a family trip to the Ozarks this year to check it out. It was very different.

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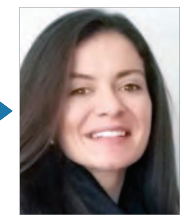
ON THE MOVE

EPIC Insurance Brokers and Consultants hired **Heather Wilkinson** to lead its cyber risk management practice in the West. Los Angeles-based Ms. Wilkinson spent more than 13 years at Willis Towers Watson PLC, most recently as a vice president. In 2018, she was a *Business Insurance* Break Out Award winner.



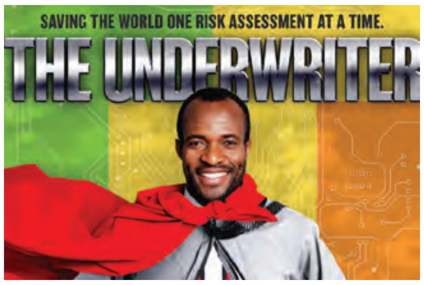
Aon PLC appointed New York-based **Julia Papastavridis** managing director, representations and warranties insurance. Previously, Ms. Papastavridis was a senior transaction risk insurance broker at Willis Towers Watson PLC.

Acrisure LLC named Boston-based **Matthew Marolda** its first chief innovation officer. Mr. Marolda, who most recently was chief analytics officer of Legendary Entertainment, will focus on Acrisure's artificial intelligence, data and technology platform.

Liberty Mutual Holding Co. Inc. appointed **Virna Rhodes** senior vice president of workers compensation claims. Ms. Rhodes, based in Marlton, New Jersey, previously was vice president, global risk solutions. In 2020, Ms. Rhodes was named one of the *Business Insurance* Women to Watch.

McGriff Insurance Services Inc. named **Conor Hampel** senior vice president, producer in the firm's executive risk advisors group. Based in New York, he was most recently East team leader for financial, executive, and professional risks for financial institutions for Willis Towers Watson PLC.

Sarah Downey, a former directors and officers liability and digital asset leader at Marsh LLC, joined rival brokerage Lockton Cos. LLC. Ms. Downey, based in New York, will lead Lockton's executive risk claims unit and be blockchain risk advisory leader.



Insurance terms hit the big screen

"In a world where risk lurks around every corner, a hero will rise. Don't miss pop culture's Next superhero phenomenon when 'The Underwriter' arrives at a theater near you."

Not really, but a genius concept for those struggling to understand insurance: Next Insurance, a small-business digital insurance company, is on a mission not-impossible to help business newbies better understand common insurance lingo by reimagining terminology as blockbuster films.

As in: "Named Perils," an action-packed flick that tells the tale of Agent Nichola Ext, "who knows what to look out for in a world full of risks but has no idea when they're coming."

The campaign also includes "Prior Acts," an action revenge thriller following Sheriff Ian Surance on his mission to make up for the mistakes of small businesses in the past.

Sounding alarm on work-from-home

There's working in your pajamas. Trouser-less Zoom sessions. The absence of road rage. And now this: The German Insurance Association says it is noticing significantly fewer home burglaries with more people working from home in the COVID-19 pandemic.

Break-ins fell to an all-time low — dropping to 85,000 in 2020, 10,000 fewer than the previous year and the lowest since the association began tallying figures in 1998 — as renters and homeowners who stayed away from the office began moonlighting as their own daytime security, according to Reuters.

"Burglars often had no opportunity to carry out the deed," the association's leader Joerg Asmussen told a reporter.

As a result, damages fell to an equivalent of $270 million, $83 million less than in 2019.

All quiet on the big dipper

Here's one new COVID-19 guidance that roller coaster enthusiasts might not find thrilling: no screaming on roller coasters.

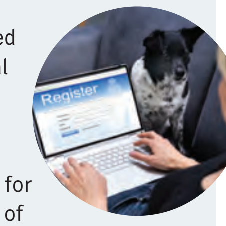
Theme parks in California have gotten the OK to open this spring, and the California Attractions and Parks Association is advising in new guidelines for patrons to avoid "singing, shouting, heavy breathing and raising one's voice" on the various attractions, according to People magazine.

Mask requirements and "modifications to seat loading patterns" are also being implemented by the parks to "mitigate the effects of shouting," according to the article.

California's parks are not the first to promote peace and quiet on rides: Japan did the same thing when it reopened its theme parks in July 2020, with signage at one amusement park telling riders to "Please scream inside your heart."

Don't make online data easy to fetch

There's nothing warm and fluffy about using your pet's name as a password.



So says the United Kingdom's National Cyber Security Centre, which is advising people to use random words for passwords instead of pet names after a recent survey revealed that 15% of U.K. citizens use their pet's name as a password to protect their online accounts.

The same goes for significant dates, favorite sports teams, family member's names and even the word "password" — all shown to be common password preferences, according to the NCSC survey that found most passwords to be made of easily guessable, predictable words.

Ketchup packets are 2021's toilet paper

Citing a year's worth of COVID-19 restaurant closures, workplace safety issues and the resulting strain on the supply chain, the ketchup industry says it is playing catchup as supplies dwindle and businesses seek to ramp up inventories, according to the Wall Street Journal.

Restaurants in search of packets are mostly feeling the squeeze.

"We've been hunting high and low," Chris Fuselier, owner of Denver-based Blake Street Tavern, told the newspaper of his struggle.

The problem is the pandemic limited many restaurants to take-out service, "making individual ketchup packets the primary condiment currency for both national chains and mom-and-pop restaurants," the newspaper reported.

And packet prices are up 13% since January 2020, with at least one fast-food restaurant — the 700-restaurant chain Long John Silver's LLC — reporting as much as $500,000 in extra costs related to America's favorite condiment, according to the report.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