MANDATES: Employers face tough choices on vaccines after high court ruling - PAGE 4

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FEBRUARY 2022

SPECIAL REPORT

MANAGEMENT LIABILITY

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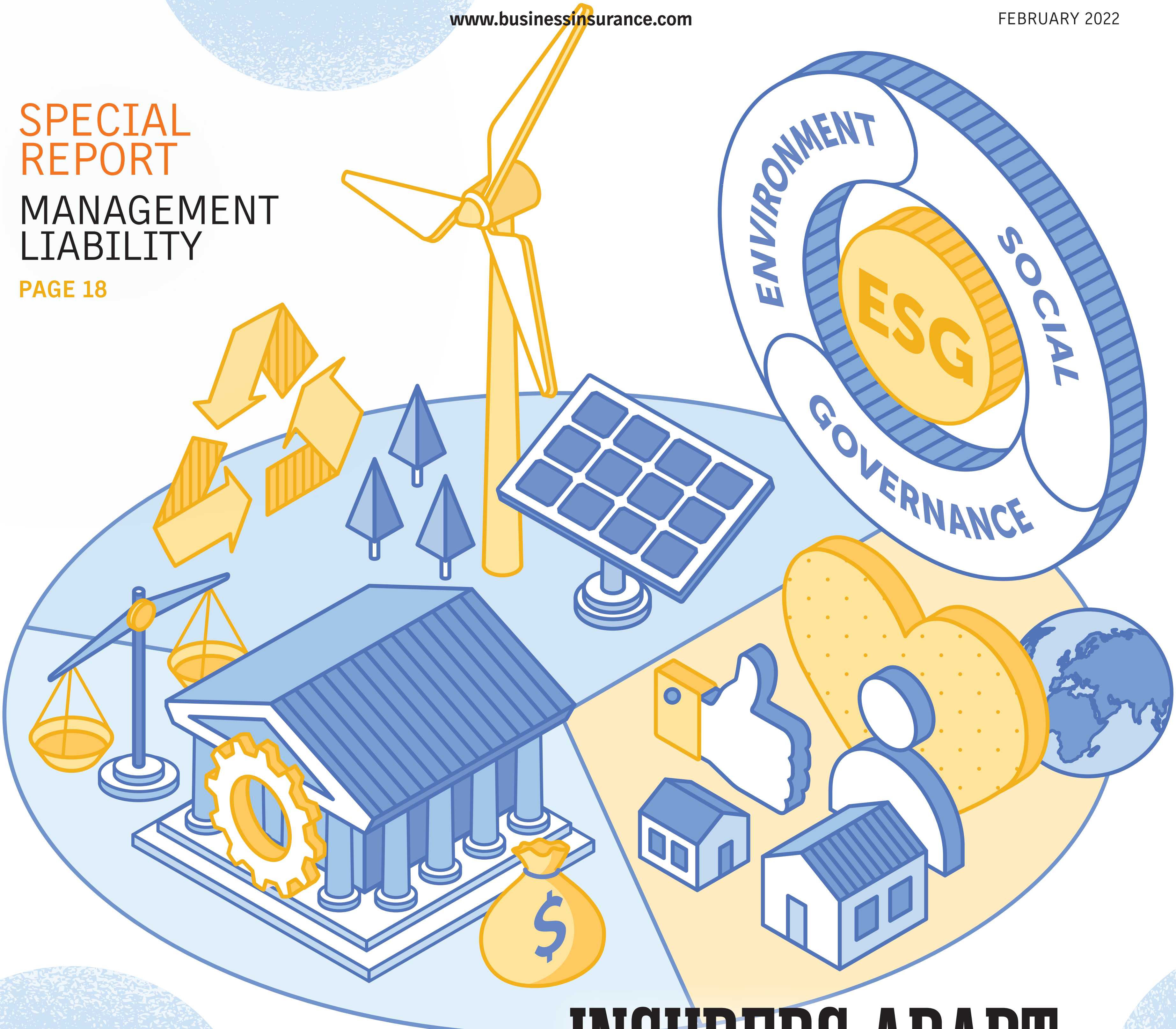

INSURERS ADAPT AS RISKS EVOLVE

Increased focus on ESG exposures creates challenges and opportunities

PAGE 14

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COVER STORY

Environmental, social and governance-related activities and disclosures are coming under heightened scrutiny from regulators and shareholders, creating potential liabilities for companies. Insurers, reinsurers and brokers have responded with coverages and services to transfer or manage ESG exposures. **PAGE 14**

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Directors and officers liability insurers will likely face more lawsuits this year based on the number of special purpose acquisition companies that went public in 2021. Meanwhile, corporate boards are feeling the impact of the pandemic. **PAGE 18**

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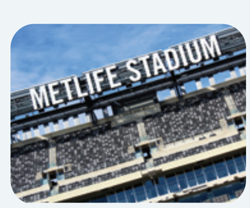

VIEW FROM THE TOP

PATRICK STERLING

Patrick Sterling, vice president of legendary people at Texas Roadhouse, in Louisville, Kentucky, assumed the presidency of the Risk & Insurance Management Society Inc. at the start of the year. Mr. Sterling, a member of the New York-based organization for 17 years, discusses the risk management challenges posed by cyberattacks, business interruption and the Great Resignation. **PAGE 13**

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Court shifts vaccine choice back to employers

BY LOUISE ESOLA
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In the wake of the U.S. Supreme Court decision blocking the federal COVID-19 vaccine mandate for large employers, coffee giant Starbucks Corp. and apparel company Carhartt Inc. made starkly different decisions about their own workplace vaccination policies.

Carhartt, in a memo to employees following the Jan. 13 court ruling, reiterated its requirement for vaccinations, according to an email from company CEO Mark Valade to employees, which went viral.

Conversely, Starbucks publicly stated that, based on the Supreme Court decision, it was scrapping its own vaccine mandate for its workers.

Neither company was wrong, legally, according to legal experts' analysis of the court decision.

The decision blocking the Occupational Safety and Health Administration's COVID-19 vaccine mandate for employers with 100 or more workers, however, muddied the issue for businesses that have their own mandate in place or want to proceed with one.

In some cases, the ruling created confusion for workers and an issue for employers grappling with how to explain it, according to experts.

"Yes, my employer can mandate it and they can also fire me. … That's something that employees are going to have to wrap their heads around," said Alex Maza, New York-based national management liability director Risk Strategies Co., the trading name for RSC Insurance Brokerage Inc. For employers, Mr. Maza said, the questions are: "What's my corporate strategy? Am I going to mandate vaccinations? And, if I am, how will that affect my employee base?"

"I've seen the full spectrum of responses" from employers, said Todd Logsdon, Louisville, Kentucky-based partner and co-chair of Fisher Phillips LLP's workplace safety and catastrophe practice group. "It's all over the place," he said, comparing employer decisions to the variety of "people's opinions about COVID-19 and vaccinations and masks" in general.

Reuters

A protester stands outside the U.S. Supreme Court as it hears arguments over the Biden administration's COVID-19 vaccine-or-testing mandate. The court's decision barring the mandate means employers will have to make individual decisions on requiring COVID shots.

"It's kind of a reflection of our country at this time," he said.

The Supreme Court ruling doesn't bar employers that are determined to require that their workers be vaccinated, according to analyses by comp experts.

Instead, the court found that OSHA alone did not have the authority to regulate public health policy, among other reasons it blocked the mandate, and sent the case back to the lower court for further deliberations. On Jan. 25, OSHA withdrew its mandate, effectively killing the issue.

In a separate ruling, the Supreme Court allowed the Centers for Medicare & Medicaid Services' vaccine mandate to go into effect, requiring vaccinations for health care workers in facilities that accept Medicare and Medicaid.

Meanwhile, employers must still contend with mandates in some jurisdictions. New York City, for example, requires that all workers be vaccinated.

Many businesses unaffected by the existing federal and local mandates already required vaccinations, which is within their rights as private employers, legal experts say.

"I've had a lot of employers — once vaccines became widely available — say, 'I am not waiting for a federal mandate, and we are going to roll this out in our workforce,'" said James Paretti, a shareholder in the Washington office of Littler Mendelson P.C. "Broadly speaking, you didn't need the federal government to let this happen."

Eliminating OSHA's emergency temporary standard let most employers off the hook with regards to the agency's "administration burden" of compliance, yet it did not change some employers' march toward mandatory vaccinations, said Chris Nickels, Milwaukee-based partner and chair of the OSHA subgroup at Quarles & Brady LLP.

"Certainly some of my clients have gone forward with mandatory vaccination policies," he said, adding that some have been barred by state regulations. Several states — Montana and Tennessee, for example — have enacted laws banning employers from mandating COVID-19 vaccinations.

And employers must still comply with the parameters set forth by the U.S. Equal Employment Opportunity Commission, which requires that they permit religious and health exemptions, and that they treat all workers fairly. These are among the compliance issues that kept some employers on the sidelines waiting for the federal government to force the issue, worried they would lose employees to organizations not requiring the vaccinations.

Employers poised to implement a vaccine mandate were dealt a blow when they could no longer cite federal policy, said James Hermon, a Detroit-based member of the labor and employment practice at Dykema Gossett PLLC.

"Employers that wanted to impose a vaccine mandate were looking for some cover from the federal government … and that avoids a lot of conversations with employees on whether this makes sense as an employer policy. They can say, 'It's a government policy,'" he said.

A federal mandate would have "leveled the playing field" for employers concerned that they would lose workers, Mr. Hermon said.

J.D. Piro, Norwalk, Connecticut-based senior vice president and national practice leader of the legal consulting group at Aon PLC, is among legal experts now advising their clients to proceed as they wish.

"This is an employer by employer decision based on their employees' needs, based on the workforce and their industry, and what they need to do to retain talent," Mr. Piro said.

OSHA SCRUTINY EXPECTED TO CONTINUE DESPITE SUPREME COURT DECISION

The elimination of a federal vaccine mandate did nothing to crush the Occupational Safety and Health Administration's determination to investigate and fine workplaces for unsafe COVID-19 protocols, legal experts say.

With the emergence of the omicron variant, and the likelihood that more variants will appear, OSHA will continue to use its catch-all general duty clause — which requires employers to provide safe workplaces for employees — as an enforcement tool, they say.

"This decision by the Supreme Court doesn't halt OSHA's other COVID-19 efforts," said Chris Nickels, Milwaukee-based partner and chair of the OSHA subgroup at Quarles & Brady LLP. "It doesn't completely gut employers' COVID-19 safety programs."

The fact that such safety requirements are in flux — changing from time to time, mostly based on shifting U.S. Centers for Disease Control and Prevention guidance — is causing some confusion for employers.

"The difficulty for employers is, how do you know you are in compliance? You can require masks, you can require social distancing (and) whether that is going to fulfill the general duty clause will depend on the investigator coming out after a complaint," said James Hermon, a member of Dykema Gossett PLLC's labor and employment practice in Detroit. "There are a lot of gray areas."

Employers are also contending with COVID-19-related whistleblowing cases in which an employee contends management is not providing a safe workplace.

Such cases have already "gone through the roof, up 50% to 100%" since the start of the pandemic, and employers should expect more, said Edward T. Ellis, Philadelphia-based shareholder and co-chair of the whistleblowing, compliance and investigations practice group for Littler Mendelson P.C.

Also, complaints regarding state-mandated worker protections will also increase, he said.

Louise Esola

NEWS ANALYSIS

Rise in workplace class-action litigation looms

BY JUDY GREENWALD
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The COVID-19 pandemic will generate more workplace class-action litigation this year, particularly for wage and hour issues, experts warn.

There has been a significant increase in the size of aggregate class-action settlement recoveries, particularly last year, and the trend is expected to continue.

Based on the top 10 largest case resolutions in various workplace class-action categories, settlements totaled $1.58 billion in 2020 and $3.62 billion in 2021, compared with $1.34 billion in 2019, according to Seyfarth Shaw LLP's Annual Workplace Class Action Litigation Report: 2022 Edition.

"The big issue is, you've got the Biden administration that is very, very pro worker, pro regulation, and so you're going to have government enforcement actions that are very much aligned with the plaintiffs class-action bar," which will lead to an uptick in filings, said Gerald Maatman, a partner with Seyfarth Shaw in Chicago.

COVID-19 will contribute to the expected increase this year, experts say.

Employers' efforts to comply with various COVID-19-related obligations "presents uncharted territory, as far as potential class-action claims," said Gregory P. Abrams, a partner with Faegre Drinker Biddle & Reath LLP in Chicago, who represents employers.

"COVID has opened up all new vistas for the plaintiffs bar," said Lisa A. Schreter, a shareholder with Littler Mendelson P.C. in Atlanta.

For example, a California appeals court ruled in *See's Candies Inc. v. Ek*, that South San Francisco-based See's Candies must face a lawsuit filed by an employee who alleged she caught COVID-19 at work and gave it to her husband, resulting in his death.

"It appears to allow what we call 'take home' COVID cases, at least at the pleading stage," and "is certainly not good news for employers if that reflects a larger trend that we see in California of more of those claims," Ms. Schreter said.

Among traditional litigation issues being applied to the pandemic is religious discrimination, which may be asserted by workers who face consequences if they refuse to be vaccinated, Tao Leung, a partner with Hogan Lovells US LLP in Los Angeles.

The recent U.S. Supreme Court decision blocking a COVID-19 vaccine-or-test mandate for large employers could result in charges that employers do not have enough safety measures in place, because it could open companies up to exposure to charges of spreading the virus, said Adam Kemper, Fort Lauderdale, Florida-based partner with Kelley Kronenberg PA.

"As long as COVID's around and employers continue to keep employees in close contact with each other to where they're interacting" there is "always going to be a degree" of this risk, he said.

Meanwhile, wage and hour litigation continues to be "the hot, driving edge of class actions," said Paul E. Starkman, a member of law firm Clark Hill PLC in Chicago.

Situations such as a traveling salesperson who is now working at a company facility or job duties being shifted because of workers calling in sick could result in employees being newly entitled to overtime pay under the Fair Labor Standards Act and create exposure for employers if salaries are not appropriately adjusted, Mr. Kemper said.

"The way in which people are paid is still the No. 1 pressure point," Mr. Maatman said. People working from home will raise questions as to when the workday starts and ends, he said.

However, plaintiff attorney David Sanford, of Sanford Heisler Sharp LLP, in Washington, said fines for wage and hour violations are insufficient to deter some employers because even if they are eventually caught, a fine will still cost less than would obeying the statute.

Experts also point to the "'great resignation" — in which many employees have voluntarily left their jobs during the pandemic, creating labor shortages — as a factor that will contribute to more lawsuits being filed. Workers are more willing to participate in class actions, and plaintiffs attorneys are "harvesting the low-hanging fruit when employers don't follow wage and hour rules," Mr. Starkman said.

There has been a shift in the balance of power between workers and their companies, said Ian Carleton Schaefer, chair, New York employment and labor, at Loeb & Loeb LLP in New York.

"When someone sees something out of order or out of compliance," they have no fear "of acting individually or collectively because they know there are plenty of jobs out there," he said. "It's a lower-risk proposition."

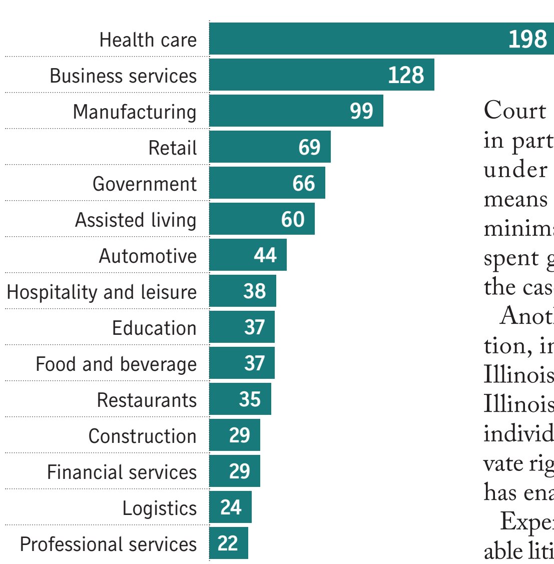
Another issue is nonuniform laws. Plaintiffs attorneys will take advantage of the "complicated patchwork" of employment-related laws, said Jason E. Reisman, a partner with Blank Rome LLP in Philadelphia.

He pointed to a July 2021 ruling by the Pennsylvania Supreme Court in Re: Amazon.com, Inc. that held, in part, there is no "de minimis" exception under Pennsylvania's wage laws, which means employers must pay workers for even minimal amounts of time, such as minutes spent going through screening. This is not the case under the FLSA.

Another concern is privacy-related litigation, including litigation surrounding the Illinois Biometric Information Privacy Act. Illinois remains the only state that permits individuals to pursue litigation under a private right of action, although New York City has enacted such legislation.

Experts say it has already led to considerable litigation in Illinois and will lead to more lawsuits if other states adopt it.

2020 COVID LAWSUITS — BY INDUSTRY



Source: Seyfarth Shaw LLP

BIOMETRIC PRIVACY CLAIMS BREW

A litigation issue employers will face this year is privacy, including lawsuits surrounding the Illinois Biometric Information Privacy Act, experts say.

The 2008 law requires employers that store biometric information to inform the subject in writing that the data is being collected or stored and the purpose and duration for which it is being collected. It also requires that businesses receive the subject's written consent.

So far, Illinois and New York City are the only jurisdictions that permit a private right of action by individuals related to biometrics, but that may change.

"Lots of jurisdictions are looking at it," and the focus of the plaintiffs bar is on the workplace privacy area, said Gerald Maatman, a partner with Seyfarth Shaw LLP in Chicago.

In January, a federal district court in Chicago refused to dismiss *William Naughton v. Amazon.com, Inc. and Amazon.com LLC*, a putative class action lawsuit filed by a former Amazon.com Inc. employee who alleged the company violated BIPA.

Gregory P. Abrams, a partner with Faegre Drinker Biddle & Reath LLP in Chicago, who represents employers, said that in Illinois "the BIPA class actions have been overwhelming and show no signs of slowing down."

If other states adopt similar legislation, it "will continue to be a fertile ground for class-action lawsuits," he said.

"We're continuing to refine what is truly considered private versus what is considered public," and employers' interest in using technology to gather more data to observe employee behavior "could be crossing the line" and raise the issue of invasion of privacy, said Adam Kemper, Fort Lauderdale, Florida-based partner with Kelley Kronenberg PA.

Judy Greenwald

Stable comp sector faces challenges ahead

BY DANIELLE LING
dling@businessinsurance.com

COVID-19 infection claims proved to be relatively inexpensive last year for the workers compensation industry, which entered 2022 on a stable basis, industry experts say.

The market managed to withstand a previously negative outlook in 2021, which A.M. Best & Co. later revised to "stable" due to the surprise "muting" effect the COVID-19 pandemic had on insurers' operating performance and balance sheets, solid risk-adjusted capitalization, redundant loss position and favorable combined ratios.

Additionally, strong retention rates were widely reported by workers compensation insurers in 2021, many of which exceeded pre-pandemic levels, according to Dan Mangano, Bridgewater, New Jersey-based senior financial analyst at Best.

> "The labor shortage impacts workers compensation in many ways. First, premiums are tied to payrolls, so less workers means less premiums."
>
> Mark Walls, Safety National Casualty Corp.

However, that may be due to agents or brokers being reluctant to move accounts, Mr. Mangano said, highlighting the intensifying competition in the market.

"Despite its general stability as a line of business, there's definitely some volatility in the environment right now, particularly with some key variables that directly impact workers comp like interest rates, inflation, the economy and the recovery, unemployment and uncertainty with COVID," said Coleman Johnson, Boston-based chief underwriting officer for the U.S. middle market at Liberty Mutual Insurance Co.

"I don't think it's as easy to peg exactly where those trends are headed and what that means for pricing in the market as it might have been in the past," he said.

Inflation is a top concern for many industry executives.

In a presentation identifying workers compensation trends, Kimberly George, Chicago-based global head of innovation and product development at Sedgwick Claims Management Services Ltd., echoed a common narrative across the industry, calling 2022 "the year of fighting inflation."

This year will see the strongest rate in 39 years, with prices rising in the first half "due in part to the ongoing supply chain concerns and the lack of workers," Ms. George said.

"If inflation doesn't fall as rapidly as hoped, the Federal Reserve may raise rates more aggressively, which leads to the concern of market stability," she added.

A ripple effect identified by industry executives in a study by the National Council on Compensation Insurance is rising medical costs, according to Jeff Eddinger, NCCI's Thomasville, North Carolina-based executive director and actuary.

"The fact that we're seeing inflation in a lot of areas means that we could also be seeing general medical inflation, which has been pretty low in recent years," he said, adding that "if that were to spike up, that could be a cost driver to make some claims more expensive."

The widespread labor shortage could also affect comp financials this year, said Debbie Goldstine, Chicago-based executive vice president of U.S. casualty, technical intelligence and emerging risk at Lockton Cos. Inc.

"The labor shortage impacts workers compensation in many ways," said Mark Walls, Chicago-based vice president of client engagement at Safety National Casualty Corp. "First, premiums are tied to payrolls, so less workers means less premiums."

Despite some offset by higher wages, industry premiums are down in almost every state, he said.

Labor shortages also lead to increased hiring of "new, less-skilled workers," which historically means increases in claims frequency in workers comp, Mr. Walls said.

"Add that to an already positive severity for the line for medical and indemnity, and the frequency of large losses continuing to climb, there's an increasing loss cost that we have to keep up with if we want to have a stable, healthy comp market going forward," he said.

COVID-19 COMP CLAIMS

Nationally, the share of total incurred losses of COVID-19 claims fell far below the disease's share of total claims, the National Council on Compensation Insurance found, indicating that these claims were generally low-cost.

COVID-19 claims accounted for:

- **11%** of claim counts
- **2.4%** of total payments
- **3.5%** of total incurred claims

COVID-19 incurred loss shares in 2021 varied from a low of 0.2% to a high of 12% across states, with a median of 1.7%, according to NCCI data. The share of COVID-19 incurred losses was lower than the share of COVID-19 claims for all states.

Distribution of COVID-19 claims:

- **41%** indemnity only
- **27%** medical only
- **32%** medical and indemnity

Distribution of COVID-19 incurred loss shares by loss type:

- **9%** indemnity only
- **3%** medical only
- **88%** medical and indemnity

Source: National Council on Compensation Insurance

Effect of long-haul COVID on comp claims remains unclear

The COVID-19 pandemic will continue to dominate the workers compensation narrative in 2022, but the conversation may shift to concerns over advancing occupational illness legislation and the mysteries surrounding long-haul COVID.

Long-haul COVID has so far had little effect on workers compensation, but that's because the understanding of it is so new, "dynamic" and "confusing," said Dr. Michael Choo, Wilmington, Ohio-based chief medical officer and senior vice president at Paradigm Corp.

In a recent report, Dr. Choo presented the challenges of long COVID in both understanding the disease and measuring its effect in patient numbers, costs and claims. A recent study found patients reported an average of 21 symptoms, he said.

The U.S. Department of Health & Human Services and the U.S. Department of Justice in July 2021 recognized long-haul COVID, as it is sometimes called, as a federally classified disability, providing protection under the Americans with Disabilities Act to workers suffering from it.

Dr. Choo noted that few patients have been diagnosed with long COVID.

"Since the actual number of people with long COVID is unknown, a critical question remains the size and scope of this issue with respect to potential impacts to our workforce, employers and the workers compensation industry," he said.

Meanwhile, as workplace issues related to COVID-19 infections and vaccinations evolve, states are likely to continue to consider further COVID-19 and infectious disease workers compensation presumption legislation this year.

At least a dozen states in 2021 introduced legislation to establish presumptions for infectious diseases and pandemics, according to NCCI. Tennessee and Washington enacted legislation.

"There's no question that this isn't an issue that's going to just dramatically go away," said Mark Walls, Chicago-based vice president of client engagement at Safety National Casualty Corp. "This is a new frontier for workers compensation and one that is really tough from a risk management standpoint to deal with."

Danielle Ling

Reports gauge near threats, long-term risks

BY MATTHEW LERNER
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Cybersecurity, supply chain and business interruption, and environmental issues top the risk concerns of leaders across the insurance and risk management sector, according to reports released last month.

The COVID-19 pandemic and the uneven recovery from it were also cited as leading concerns, with inflation also poised to become a risk factor.

The World Economic Forum's Global Risk Report and Allianz Global Corporate and Specialty SE's Risk Barometer 2022 also note the interconnection of risks and the continuing influence on other risks of the pandemic.

The Risk Barometer, which is conducted annually and is based on a survey on 2,650 risk management professionals, including Allianz customers and staff from 89 countries, pegged cyber incidents, business interruption and natural catastrophes as the most important global business risks of 2022. Climate change placed sixth, its highest rank ever, rising three positions from the 2021 barometer.

Cyber was again in the top spot after slipping to second last year, said Rani Christie, regional head of distribution, North America, in Alpharetta, Georgia, for AGCS.

"Ransomware attacks, data breaches and information technology outages are at unprecedented levels. We've seen a trend over the last few years almost like a commercialization of cybercriminal activity," Mr. Christie said.

Risk managers are building resilience in their organizations to contend with cyber criminals facing a much lower barrier to entry in terms of technical skills and financing, and who have a global reach, he said.

The risks factors have a bearing on other risks, such as the pandemic leading to more staff working from home, which in turn led to heightened cyber exposures, said Colleen Zitt, chief risk officer at Zurich North America in Schaumburg, Illinois. "The digital transformation and working from home certainly has attracted bad cyber actors and ultimately increased the risk to companies and businesses," she said.

"The remote work environment we've been in for the last couple of years, that's obviously created vulnerability," Mr. Christie said.

The WEF's Global Risk Report, produced in partnership with Marsh & McLennan Cos. Inc., Zurich Insurance Group Ltd. and South Korean conglomerate SK Group, identified heightened supply chain and cyber risks among top near-term challenges, while climate and environmental issues dominated the long view. The report is based on WEF's Global Risks Perception Survey, using 959 responses from professionals across eight regions in technology, economics and other fields.

Marc Wagman, New York-based managing director in the credit and political risk practice group of Arthur J. Gallagher & Co., said more clients are reacting to the uncertainty and potential for increased exposure.

"We are seeing an increase in both consultative activities as well as increased demand for these types of covers. People are more keen than ever to cover credit and political risk exposures," he said. Such coverages relate to payment risks and political risk, he said, "the type of coverage banks, private equity funds and large multinationals buy to protect their assets and income streams in emerging markets."

RISK BAROMETER

1 Cyber
↑ 44%
Ranking history:
2021: 3
2020: 1
2019: 2
2018: 2
2017: 3

2 Business Interruption
↓ 42%
Ranking history:
2021: 1
2020: 2
2019: 1
2018: 1
2017: 1

Source: Allianz Global Corporate & Specialty SE

The pandemic has acted like a stress test for business systems, such as supply chains, highlighting weaknesses, sources said.

"We started to see where the limits of our supply chain and the resiliency were," said Reid Sawyer, head of the emerging risks group and U.S. cyber consulting practice for Marsh LLC in Chicago.

The interconnectivity of the risk factors complicates addressing exposures, Mr. Sawyer said. "How do you stress test for pandemic, even environment, because all of these things intersect with supply chains at some point."

Business interruption, the second greatest threat according to Allianz's Risk Barometer, can directly affect supply chains, Mr. Christie said, again showing how the perils affect each other. "The ripple effect of business interruption is massive," he said.

Environmental concerns dominated the WEF report's long-term view, with "climate action failure," "extreme weather events" and "biodiversity loss" ranking as the top three most severe risks over a 10-year horizon. "It's clear that a transition is needed from fossil fuels," Ms. Zitt said.

Mr. Sawyer said climate change poses some of the same risk and exposure challenges as COVID-19. "How do we think about systemic risk? It's the same system dynamics that are now being tested in ways they haven't been over the past 10 to 15 years," he said.

The WEF report highlights the potentially disparate paths toward recovery from the pandemic taken by different nations and regions as one type of systemic threat. "The economic fallout from the pandemic is compounding, with labor market imbalances, protectionism and widening digital, education and skills gaps that risk splitting the world into divergent trajectories," the report said.

"It's not going to be a balanced process," said Rafael Docavo-Malvezzi, New York-based global chief underwriting officer, political risk, credit and bond, at Axa XL, a unit of Axa SA. "We were all preparing for a smoother transition away from COVID."

Inflation could compound challenges to the economic recovery from business, supply chain and labor disruptions. The combination of inflation becoming more ingrained and central banks adjusting monetary policy and raising interest rates "has the potential to be quite destructive in a lot of emerging markets," Mr. Docavo-Malvezzi said.

"The transition to a higher interest rate environment can be very disruptive," he said.

US, CHINA TENSIONS RAISE GLOBAL CONCERNS

As the largest trading partner of the United States, China plays a central role in global supply chains, and any deterioration in relations between the nations could worsen exposures for those managing supply operations, experts say.

"COVID-19 highlighted the weaknesses in the supply chain," including "the high dependence on China for a lot of basic inputs," said Rafael Docavo-Malvezzi, New York-based global chief underwriting officer, political risk, credit and bond, at Axa XL, a unit of Axa SA.

Goods imported from China last year totaled $456.8 billion through November and accounted for 17.7% of imports, according to statistics from the U.S Census Bureau.

With nearly one fifth of U.S. imports coming from China, rising tensions between the two countries over trade policies, Taiwan and other issues could threaten supply chain security.

"Given how important China is as a trading partner to us, I have a significant concern over what happens" if tensions keep rising, especially in the South China Sea, said Marc Wagman, New York-based managing director in the credit and political risk practice group of Arthur J. Gallagher & Co. "This could be hugely disruptive to the global economy," along with the geopolitical ramifications. "That's a lose-lose for everybody."

Matthew Lerner

RESEARCH & DATA

Broker M&A deals top 1,000 in 2021

BY TIMOTHY CUNNINGHAM, DANIEL MENZER AND STEVE GERMUNDSON

After a surge in broker mergers and acquisitions activity in 2020, a veritable tidal wave hit in 2021, as the total number of deals done increased by 30% to 1,034, yet another record.

These totals include U.S. and Canadian property/casualty and employee benefits brokerages, third-party administrators and related managing general agent operations, but it does not include agencies solely focused on life insurance, investment or financial management. We collect the information from public announcements, buyer websites and other sources in a consistent manner from year to year, but it does not include all transactions, as many are never disclosed publicly.

> This year should be very active from an M&A standpoint, as capital from new buyers continues to pour into the industry, keeping upward pressure on valuations.

The 384 reported fourth-quarter transactions were by far the largest quarterly total on record, fully 26% more than the next largest in Q4 2020 when 305 transactions were recorded. During the second half of 2021, there were 674 transactions reported, compared with 488 for the same period in 2020. To put this into context, the number of deals done in the last six months of 2021 was greater than any 12-month period through mid-year 2020. Buyer appetite remains as large as ever going into 2022, and we don't expect that to change, even if there is a noticeable rise in interest rates. The biggest limiting factor to deal volume in 2022 is likely from the seller side as those who had been contemplating a sale over the past two years most likely took action before the close of 2021.

Buyers are broken down into the following categories:

1. Private equity/hybrid — Private equity-backed and private firms with significant outside acquisition financial support
2. Publicly traded
3. Privately owned
4. Bank-owned
5. Others

Grand Rapids, Michigan-based Acrisure LLC reported the most activity, with 122 closed transactions, an increase from the 108 transactions completed in 2019. Acrisure has averaged 104 agency purchases each year for the past five years. It's notable that Lehi, Utah-based PCF Insurance rivaled Acrisure as most acquisitive when it nearly tripled its deal volume in 2021 to 99 transactions.

The PE/hybrid group remains the most active group of buyers, occupying each of the top 10 spots in the table above and a whopping 787 of the 1,034 deals for the year, or 76% of the total. The concentration of acquisitions by the top 10 buyers — as measured in each year independently — was 57% in both 2021 and 2020. In addition to PCF noted above, buyers that stepped up their activity significantly in 2021 included Traverse City, Michigan-based High Street Partners, up 522%; Walnut Creek, California-based Relation Insurance Inc., up 200%; and Deerfield, Illinois-based Alera Group, up 150%. Both PCF and High Street Partners recapitalized last year. Atlanta-based Digital Insurance Inc., which does business as OneDIgital, fell out of the Top 10 from 2020 yet still completed 20 transactions during 2021.

Some other statistics from 2021 activity:

- 40 different PE/hybrid buyers acquired 528 agencies in 2021, an average of nearly 20 transactions each.
- 79 (compared with 85 in 2020) privately owned firms acquired 159 agencies, an average of just over two each.
- 70 firms acquired only one agency in 2021, while 32 acquired five or more.
- There were 77 first-time buyers in 2021.

Property/casualty brokers continued to dominate the sell-side M&A landscape, with 547 of the 1,034 transactions, or 53% of the total. Employee benefits brokers were the second most acquired companies in 2021, with 178 transactions representing 17% of the total.

There were 18 companies whose revenue exceeded $30 million sold during 2021.

There were also several investments and recapitalizations of PE/hybrid-backed active buyers, including:

- Integrated Specialty Coverages LLC sold a majority interest to KKR & Co. Inc. in March.
- Odyssey Investment Partners LLC made a majority investment in Strategic Insurance Agency Alliance in March.
- Huron Capital Partners LLC sold High Street Insurance Partners to Abry Partners LLC in April.
- Patriot Growth Insurance Services LLC sold a majority interest to GI Partners LP in September.
- PCF sold a majority interest to Owl Rock Capital Partners LP in November.
- J.C. Flowers & Co. purchased Tricor Inc. in November.
- GrowthCurve Capital LP made a majority investment in Brightway Insurance Inc. in December.
- Velocity Risk Underwriters LLC sold a majority interest to Oak Tree Capital Management LP in December.

While it's hard to imagine that the activity in 2022 will match that seen in 2021, we nonetheless expect the new year to be very active from an M&A standpoint. More capital from new buyers continues to pour into the industry, which keeps an upward pressure on valuations. Challenges faced by the buyer community will be competing for a smaller base of sellers, a rise in interest rates and a reduced concern over increases in capital gains tax rates.

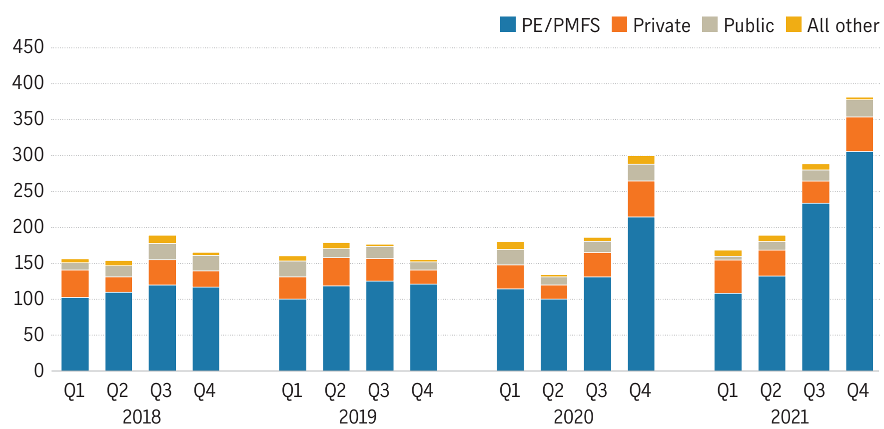
TOP BUYERS

The 10 most acquisitive buyers of insurance agencies and brokerages in the U.S. and Canada in 2021, with comparable totals for 2017-2020:

Buyer	Company type	2018	2019	2020	2021
Acrisure LLC	Private equity/hybrid	101	98	108	122
PCF Insurance Services LLC	Private equity/hybrid	4	4	36	99
Hub International Ltd.	Private equity/hybrid	59	52	65	61
High Street Insurance Partners Inc.	Private equity/hybrid	1	3	9	56
AssuredPartners Inc.	Private equity/hybrid	38	44	38	51
World Insurance Associates LLC	Private equity/hybrid	9	18	42	49
Alera Group	Private equity/hybrid	28	24	18	45
BroadStreet Partners Inc.	Private equity/hybrid	34	34	58	45
Relation Insurance Inc.	Private equity/hybrid		6	11	33
Patriot Growth Insurance Services LLC	Private equity/hybrid		25	21	31
TOP 10 TOTALS		274	308	406	592
ALL OTHER		369	342	389	442
TOTALS FOR YEAR		**643**	**650**	**795**	**1,034**

TRANSACTIONS BY QUARTER BY TYPE (2018 – 2021)

Looking back at quarterly transactions over the past four years paints a clear picture of a slowdown during the uncertain early days of the pandemic and two surges arising from concerns over an expected increase in the capital gains tax rate in the second half of both 2020 and 2021.



Source: Optis Partners LLC

Timothy Cunningham, Dan Menzer and Steve Germundson are principals at Optis Partners LLC, a Chicago-based investment banking and financial consulting firm that serves the insurance distribution sector. Mr. Cunningham can be reached at cunningham@optisins.com or 312-235-0081; Mr. Menzer can be reached at menzer@optisins.com or 630-520-0490; and Mr. Germundson can be reached at germundson@optisins.com or 612-718-0598.

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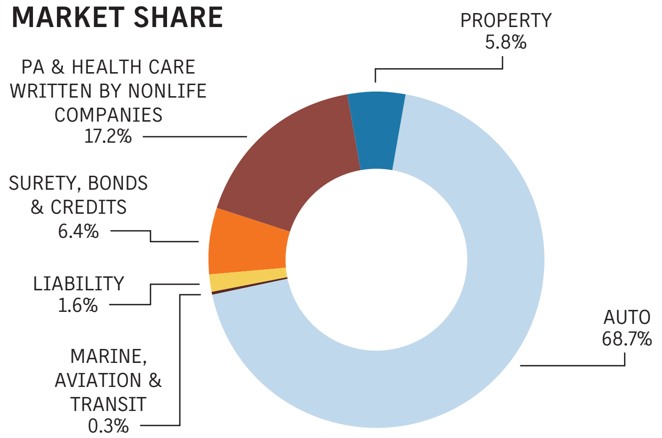
PROFILE: KOSOVO

118
GLOBAL P/C MARKET RANKING

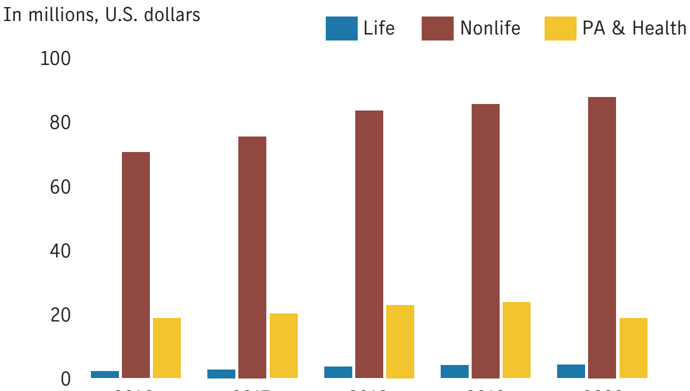
Kosovo, which broke away from Serbia in 2008, has a nonlife insurance market that is young and underdeveloped. There is little disposable income for private individuals and commercial entities to pay for insurance products, unless some form of compulsion is involved, either statutory or contractual. The market saw gross written nonlife premium (excluding personal accident and health) of only €81.2 million ($97.5 million) in 2020, an increase of 5.59% over 2019. Auto third-party liability accounted for 68.7% of the 2020 total. New solvency margin requirements that went into effect in 2017 proved onerous for most insurers to meet. One company, INSIG, had its license revoked in 2019 and went into liquidation. Meanwhile, uncertainty over Kosovo's political status has deterred foreign investors and made it difficult to privatize public enterprises, which have faltered through lack of investment.

MARKET SHARE

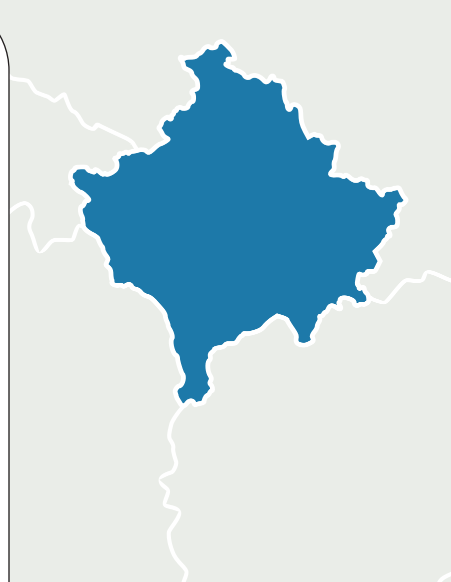


MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA

4,203
square miles

POPULATION

1.94
million

MARKET CONCENTRATION

68.58%
market share of top five insurers

2022 GDP CHANGE (PROJECTED)

4.5%

MARKET DEVELOPMENTS

Updated January 2022

- Kosovo's real GDP contracted by 5.2% in 2020 due to the COVID-19 outbreak but was projected to grow by 4.46% in 2021. The pandemic exacerbated many of the economy's existing structural weaknesses, as fiscal support measures crowded out public investment, and travel restrictions increased external pressures.
- The economy is expected to benefit from improved policy stability following the formation of a relatively unified government, led by the Levizja Vetevendosje (Self-Determination Movement-LVV) party in March 2021 after several years of instability.
- The revocation of insurer INSIG's license in 2019 was seen as the first visible sign of more active intervention by the country's insurance regulator and was a welcome move in Kosovo's efforts to build a stronger and more respected insurance sector.
- The nonlife market made an overall pre-tax profit in 2020, reported to be €4.2 million ($5 million) on a total market premium of €81.2 million ($97.5 million).
- Despite the 2020 profit, the market is in some difficulties. The remaining 11 nonlife companies are under pressure to improve solvency and underwriting results. They have also had to take over INSIG's unexpired auto third-party liabilities. It is likely that there will be more market withdrawals, either voluntary or enforced.

COMPULSORY INSURANCE

- Auto third-party liability
- Third-party liability for hotels and restaurants
- Professional indemnity and surety bonds for insurance brokers and insurance agents
- Professional indemnity for notaries, mediators, auditors and engineers
- Public liability insurance for railway operators
- 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

NONADMITTED

Nonadmitted insurance is not permitted in Kosovo because the law provides that insurance must be purchased from local licensed insurers, with some exceptions.

INTERMEDIARIES

The Regulation on Licensing of Insurance Intermediaries, issued by Kosovo's insurance regulator in 2020, updated the criteria, procedures and deadlines for the licensing of insurance and reinsurance intermediaries.

MARKET PRACTICE

The law is silent on the freedom of buyers to purchase insurance outside Kosovo.

Information provided by Axco.
For free trial access to global insurance intelligence, visit axcoinfo.com.

Insurers sue Texas grid operator, utilities

■ More than 100 insurers have filed suit against Texas' electric grid operator and dozens of utilities in state court seeking compensation for losses they incurred as a result of the loss of power stemming from a February 2021 storm that affected more than 4.5 million households.

The lawsuit, which was filed in state court in Austin, charges that Austin-based Electric Reliability Council of Texas Inc., which was the sole manager and independent system operator of the electric power grid, and the power generating companies that supply ERCOT system's electrical energy, were aware of the potential risk but failed to take action.

The lawsuit says homes and businesses throughout ERCOT's system sustained damage from burst water pipes and low water pressure as a result of Winter Storm Uri, which began Feb. 15, and that at least 57 people died "in connection with the extreme weather and resulting blackouts."

The lawsuit says that although ERCOT and the power suppliers could have been prepared for the storm, they failed to adequately do so, and that ERCOT's own issued projections for the 2020-2021 winter season anticipated the state "would be thrown into the highest state of emergency" if an extreme weather event occurred.

The 84-page lawsuit charges the defendants with negligence and seeks unspecified compensation for payments the insurers have made to policyholders because of the storm.

BIPA case against Amazon proceeds

■ A federal district court refused to dismiss a putative class-action lawsuit filed against Amazon.com Inc. by a former employee who contends the company violated Illinois' biometric law.

William Naughton, who worked for two months in 2020 as a "picker" at an Amazon fulfillment center in Joliet, Illinois, charges the company violated the Illinois Biometric Information Privacy Act by taking scans of his facial geometry without his consent and disclosing the data to other parties, according to the ruling by the U.S. District Court in Chicago in *William Naughton v. Amazon.com, Inc. and Amazon.com LLC.*

The case, which was originally called *Michael Jerinic v. Amazon.Com Inc. and Amazon.Com LLC*, was first filed in state court, then transferred to the U.S. District Court.

Mr. Naughton alleges in his lawsuit that Amazon never informed him it was collecting his biometric data; never developed any publicly available retention schedule and guidelines for permanently destroying the biometric data; and never obtained Mr. Naughton's consent for any disclosure or dissemination of his biometric data to third parties, according to the ruling.

Amazon argued that Mr. Naughton did not plausibly allege the company "purposely collected any data that could qualify as biometric data," according to the ruling.

The court disagreed. "By asserting Amazon itself implemented the facial scans and required workers to submit to these scans as a condition of work, Naughton plausibly alleges Amazon took an 'active step' in collecting his biometric data," the court said in refusing to dismiss the case.

In December, the 7th U.S. Circuit Court of Appeals in Chicago said the Illinois Supreme Court should decide whether violations under the BIPA occur each time an illegal biometric scan is performed, in a case that will determine businesses' potential liability under the law.

Chubb units win Rite Aid opioid case

■ The Delaware Supreme Court reversed a lower court and held in a divided opinion that Chubb Ltd. units are not obligated to defend Rite Aid Corp. in opioid litigation filed by two Ohio counties.

Rite Aid units have been named in more than a thousand lawsuits by government entities, third-party payors of medical care and individuals seeking damages for costs arising out of the company's distribution of opioids.

A 2015 policy issued by Chubb units states it will pay sums the insured becomes legally obligated to pay as damages because of "personal injury" or "property damage,'" according to the ruling in *Ace America Insurance Co. et al. v. Rite Aid Corp. et al.*

Camp Hill, Pennsylvania-based Rite Aid sought defense coverage for lawsuits filed against it by Cuyahoga and Summit counties in Ohio, the Supreme Court ruling said. The counties' lawsuits "expressly disavow claims for personal injury and seek only their own economic damages," the ruling said.

The Delaware Superior Court ruled in September 2020 that Chubb was obligated to defend the drug store chain "because there was arguably a causal connection between the counties' economic damages and the injuries to their citizens from the opioid epidemic," the Supreme Court ruling said.

A majority of the Delaware Supreme Court disagreed. "To recover under the insured's policy as a person or organization that directly cared for or treated the injured person, the plaintiff must prove the costs of caring for the individual's personal injury," the ruling said.

"Here, the plaintiffs, governmental entities, sought to recover only their own economic damages, specifically disclaiming recovery for personal injury or any specific treatment damages."

Comp fraud alleged in COVID-19 case

■ New York State Inspector General Lucy Lang announced the arrest and indictment of a Staten Island man who allegedly falsified multiple COVID-19 test results over five consecutive months in 2020 to obtain workers compensation benefits.

Ajani Shaw was arraigned in Richmond County Supreme Court on several felony counts, including grand larceny, insurance fraud, falsifying business records and workers compensation fraudulent practices.

In March 2020, Mr. Shaw was working as a part-time kitchen service employee at Staten Island's Seaview Nursing Home when he filed a workers comp claim for exposure to COVID-19, providing an "out-of-work" note signed by a physician and proof of a positive COVID-19 test.

His employer's insurer began paying him $150 a week in benefits.

In the following months Mr. Shaw submitted seven additional COVID-19 positive test results and "out-of-work" notes from a doctor. The insurer continued to pay benefits through July 24, 2020, which is when it noticed that many of the positive test results used the same specimen identification, according to the inspector general.

The investigation determined that Mr. Shaw submitted two legitimate COVID-19 positive test results in April 2020 and had two appointments with a physician that same month but was not seen again until August 2020. In total, the investigation found that Mr. Shaw allegedly submitted six fabricated positive test reports to the insurer in addition to a false medical note.

DOCKET

QBE FILES POACHING SUIT AGAINST APPLIED

QBE Insurance Group Ltd. units filed suit in state court in New York against Applied Underwriters Inc. in connection with Applied's hiring away 13 people in its aviation insurance division in September. The complaint, which seeks unspecified damages, charges Applied with tortious interference against QBE. Applied said in a statement that QBE was trying "to accomplish with a nuisance suit what they could not accomplish with investment in the sector and with an effective marketing approach."

COURT REVERSES ACID CASE RULING

A federal appeals court reversed on technical grounds a ruling in favor of an Alleghany Corp. unit in a case in which two people were injured when apartment maintenance workers mistakenly poured acid down a ventilation shaft in an effort to unclog plumbing pipelines. The incident occurred in August 2016, according to court papers in *Capitol Specialty Insurance Corp. v. West View Apartments Inc. et.al.* The acid spilled on to two people who were in a bathroom at the time, causing severe burns and injuries, according to the court papers.

MARKEL MUST DEFEND ENERGY SHOT MAKER

Evanston Insurance Co., a Markel Corp. unit, must defend a producer of liquid energy shots in a trademark infringement lawsuit, a federal appeals court said in overturning a lower court ruling. Glen Mills, Pennsylvania-based Vitamin Energy LLC was sued by the owners of the 5-hour Energy brand in connection with the former's marketing, according to the ruling by the 3rd U.S. Circuit Court of Appeals in Philadelphia. The U.S. District Court in Philadelphia granted Evanston's motion to dismiss the case but was overturned by a unanimous three-judge appeals court panel, which said that under Pennsylvania law, an insurer's duty to defend is broader than its duty to indemnify.

Patrick Sterling, vice president of legendary people at Texas Roadhouse, in Louisville, Kentucky, assumed the presidency of the Risk & Insurance Management Society Inc., effective Jan. 1. Mr. Sterling, a member of the New York-based organization for 17 years, joined the RIMS global board of directors in 2018 and has served as board secretary, treasurer and vice president. Mr. Sterling recently spoke with *Business Insurance* Deputy Editor Claire Wilkinson about RIMS' upcoming annual conference and the outlook for risk management. Edited excerpts follow.

Patrick Sterling

RISK & INSURANCE MANAGEMENT SOCIETY

Q RIMS will hold its first in-person annual convention in two years in San Francisco in April. How are preparations coming along?

A The planning is going along great. It's going to be our first hybrid annual conference. We are excited about that because that ensures greater inclusivity, not just for global audiences but for those folks that don't have the opportunity to travel. It allows them to get engaged. We are in continuing contact with our partners in San Francisco to make sure we pull this off in a safe way. We are planning for many different scenarios, but we are doing everything we can to hold an in-person event. Safety is our top priority, and we'll continue to monitor that, but we do know that people want to meet in person. We are hearing that loud and clear.

Q How has the global risk landscape shifted, and what are the opportunities for risk managers?

A The risk management profession has seized the opportunity over the last couple of years. The world of risk management is ripe to step up and help organizations. Why do I say that? Because risk managers are the ones providing insight to organizations on what the risk landscape is out there and what things are coming down the road. I love to talk about the VUCA world. It's volatile, it's uncertain, it's complex and ambiguous. If anything, that's what risk managers do. We make sense out of all that and provide information to our businesses to help them make smart risk decisions.

Q What emerging risks are at the forefront?

A Cyber risks used to be about data breaches, and now it's about ransomware. That's an emerging risk we're keeping an eye on. Talent risk is another that didn't always hit the radar of risk managers but needs to because without the right talent you can't accomplish your goals. With the labor shortages so many industries are experiencing and the Great Resignation, you can have the best business plans in the world, but if you don't have the right talent you're not going to be able to even start. That risk has elevated. Supply chain risk wasn't on the table for many folks years ago. During the pandemic, we saw how fragile supply chains are and how quickly they can break and what impact that has.

Q Many small businesses, especially restaurants, took a huge financial hit in the pandemic. On top of that, their existing insurance policies didn't and don't provide pandemic coverage. What are the risk management lessons learned?

A We have learned a lot about business interruption risk. Many people had pandemic in their risk management plan, but maybe it was not as elevated as it should be. Now, we know it can happen, and we've got to learn how we can be better prepared in the future. It was painful to see small businesses suffer like they did. For large businesses, their cashflow was affected by lockdowns, but they may have more access to cash, whether lines of credit or strong balance sheets to navigate that better than the mom-and-pop businesses out there. Those are some of the lessons learned. We can't let that happen again.

Q Is a Pandemic Risk Insurance Act still a priority?

A We need to be able to come up with a public-private partnership, a solution to help mainstream mom-and-pop businesses and all the people they employ. We need to provide that certainty if we have another pandemic in a year or two. This is a solution everyone should be able to support because it helps business and it helps people. We are continuing discussions about PRIA.

Q RIMS CEO Mary Roth is retiring. Can you update us on the search for her successor?

A We have started the search. We have hired Russell Reynolds as our search firm, one of the leading executive search firms in the country. It is going well. There is a lot of interest. RIMS is a great organization, and this is an attractive position. We'll announce it when we have the right candidate.

Q How would you characterize insurance market conditions?

A Overall you're seeing prices rise, but you're seeing some softening in certain markets, especially in the directors and officers, property, and liability spaces. The cyber market is where you're seeing the biggest increases because of ransomware. Talking to some of my peers, cyber is the line that is most challenging.

Q How can risk managers strengthen their negotiations with insurers?

A We should approach them as we always do. You have to be really good at telling your story, about what you are doing to mitigate risk. Having good enterprise risk management programs in place helps. When you go to market and show you take risks seriously, that all levels in the organization are focused on that and that you have great risk mitigation plans in place, that's the most successful approach.

Q Are insurers asking too much of risk managers?

A Losses have always been part of insurance pricing — that is nothing new.

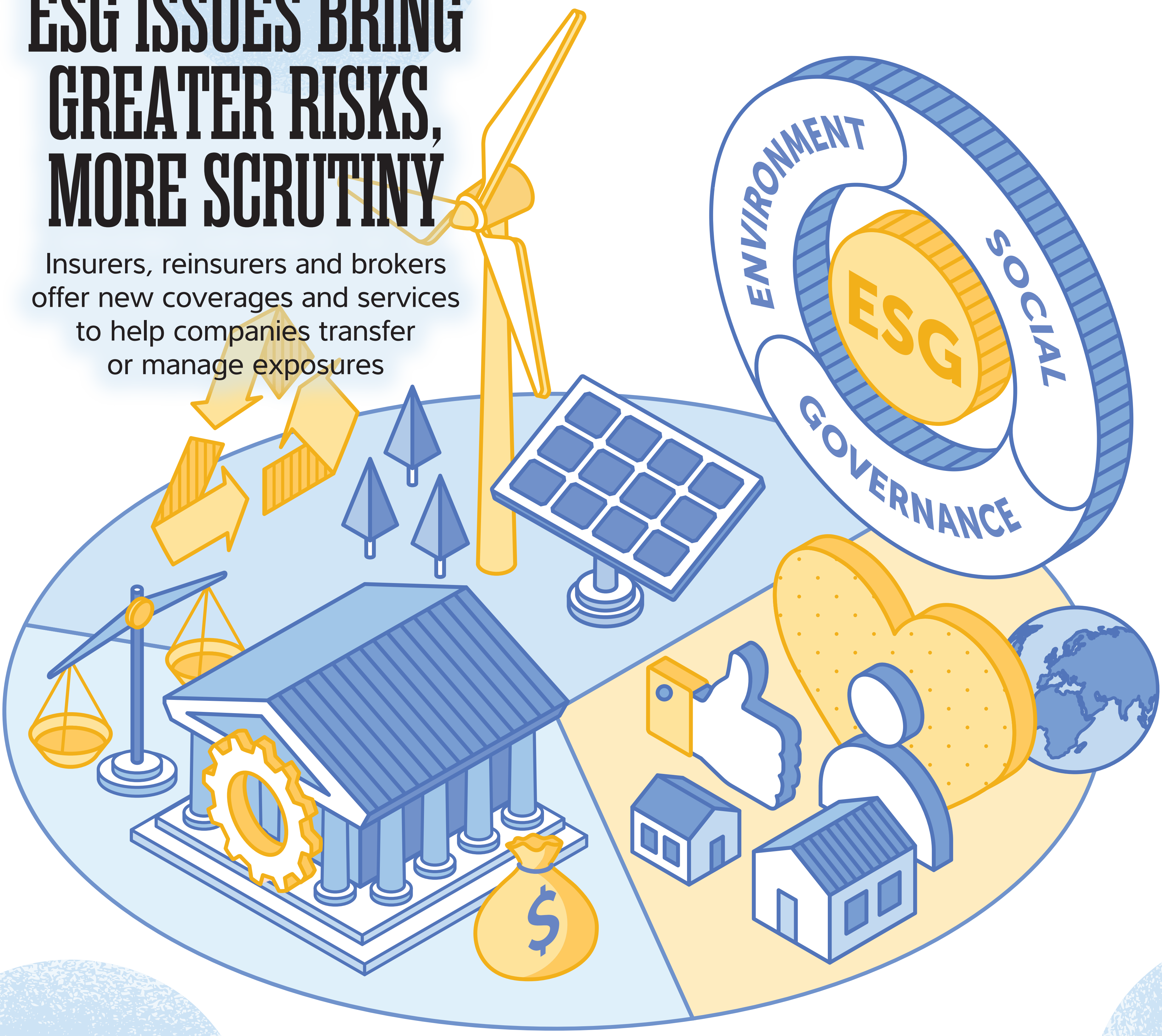
Depending on capacity, depending on losses in the market and insurers' financial performance, they are going to take a stronger look into risk management and loss prevention programs. Losses should and always have driven pricing. In some ways I prefer that to be the case. I like to be able to pay a fair price based on what my loss history is versus having to pay high prices because of other people's loss history. I don't mind insurers asking a lot of questions because that's part of good risk management. It can help make your risk management program stronger.

With the labor shortages so many industries are experiencing and the Great Resignation, you can have the best business plans in the world, but if you don't have the right talent you're not going to be able to even start.

COVER STORY

ESG ISSUES BRING GREATER RISKS, MORE SCRUTINY

Insurers, reinsurers and brokers offer new coverages and services to help companies transfer or manage exposures



BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

Environmental, social and governance-related activities and how companies disclose and report them are coming under heightened scrutiny, leaving businesses exposed to a growing range of risks.

The threat of regulatory enforcement actions, shareholder activism and increased societal concerns around a range of issues have created potential liabilities for a broad range of corporations.

Insurers, reinsurers and brokers are responding to the increased concerns with an evolving stable of insurance coverages, risk management services, technologies and practices intended to transfer or manage ESG exposures.

While much of the focus has been on climate risk and addressing the risk financing needs of businesses as they transition to a low-carbon economy, reputational risks are also coming to the forefront as organizations increasingly find themselves held accountable for ESG issues.

> "The regulatory pressures, the litigation risks, the social pressures are all coalescing."
>
> Meredith Jones, Aon

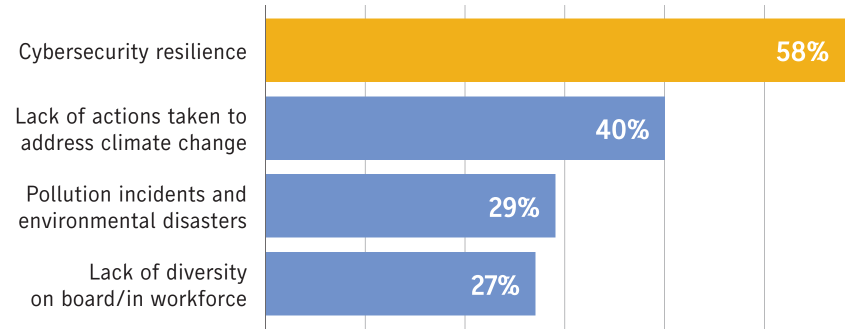
Social issues have also risen in significance out of the #MeToo and Black Lives Matters movements, along with diversity, equity and inclusion considerations, experts said.

Cyber is an ESG risk trend that is of significant concern, driven by the rising frequency and severity of cyberattacks and an increase in data security regulations. In Allianz Global Corporate & Specialty SE's 2022 Risk Barometer released in January, respondents ranked cybersecurity resilience as their major ESG priority. Climate change was ranked as the second top ESG concern.

Pollution incidents and environmental disasters, and lack of diversity on boards and in the workforce rounded out the top ESG concerns, Allianz said. Supply chain disruptions are also seen as a top threat as companies come under pressure to be more transparent about their suppliers and the environmental impact of their supply chains.

Which ESG risk trends are of most concern to your company?

Top four answers



Source: Allianz Global Corporate & Specialty SE

Rising demand

Demand for ESG-specific coverages is growing, said Meredith Jones, Nashville, Tennessee-based partner and global head of ESG at Aon PLC. The brokerage currently offers more than 50 ESG-related services across its risk diagnosis, risk advisory and risk transfer practices, she said.

ESG is an area of focus for Aon this year, Ms. Jones said. "The regulatory pressures, the litigation risks, the social pressures are all coalescing," she said.

Historically, ESG interest has been high among companies with high environmental or personnel exposures, such as those with workforce safety issues or high greenhouse gas emissions, Ms. Jones said.

"Pharmaceuticals, health care, technology, banking — it's come up with lots of different types of clients," she said.

Renewable energy, electric vehicles, parametric insurance and ESG-focused directors and officers liability coverages are some of the areas where insurers are focused on ESG, according to a December report by Oldwick, New Jersey-based ratings agency A.M. Best Co. Inc.

Existing insurance coverages and products will evolve, and new ones will emerge that address the growing number of ESG risks, Best said in the report.

Several insurance organizations, including Lloyd's of London and Zurich Insurance Group Ltd., announced plans to expand their insurance coverage to target the green energy sector in the lead up to the United Nations COP26 meeting held in late October and early November 2021, for example.

Although the initiatives are expected to be small initially relative to total business written, they may become more material over the medium to long term, Best said in the report.

The renewable energy sector and the insurance market supporting it are seeing explosive growth, said Brian Tyluki, New York-based senior vice president and senior underwriter at GCube Underwriting Ltd., a unit of Tokio Marine HCC.

By 2026, global renewable electric capacity is expected to rise more than 60%, according to the Paris-based intergovernmental organization International Energy Agency's annual renewables

See **ESG** next page

ESG

Continued from previous page

market report published in December. “Renewable power will make up about 95% of the increase in global power capacity through 2026, and solar is supposed to account for half of that. The writing is on the wall,” Mr. Tyluki said.

“We don’t have enough people to adequately handle the level of submissions we see in terms of the renewals we are handling and new business,” he said.

> “In some areas, such as directors and officers, we’ve got good data that shows us that there is a clear relationship between good ESG risk management and improved D&O underwriting performance.”
>
> Amy Barnes, Marsh LLC

The projected growth in renewables is driven by stronger support from government policies and more ambitious clean energy goals announced before and during the COP26 climate change conference, the International Energy Agency said. Many insurers have also set emissions targets for their organizations and a growing number have said they will restrict coverage for companies that build or operate coal mines and plants.

Environmental insurance, whether it be a site-specific policy or coverage for contractors working at a site, is becoming much more mainstream, said Daniel Drennen, national environmental practice leader at Amwins Group Inc. in Atlanta.

Previously, only about 15% to 20% of policyholders would buy an environmental insurance policy, but now “you’re definitely seeing tremendous growth in this area,” Mr. Drennen said.

Risk management

As insurance coverage evolves there is a heightened focus on ESG risk management, experts said.

Clients want to know the extent to which their management of ESG risks will be reflected in their insurance programs, said Amy Barnes, London-based head of sustainability and climate change strategy at Marsh LLC.

“In some areas, such as directors and officers, we’ve got good data that shows us that there is a clear relationship between good ESG risk management and improved D&O underwriting performance,” Ms. Barnes said. Marsh last October introduced a directors and officers liability initiative around ESG (see related story).

Part of the challenge in managing ESG risks is limited data, Ms. Barnes said. “Intrinsically we believe that a company with good ESG risk management will be a better liability risk, that a company that is trusted will have fewer or less severe liability losses, but we can’t prove that correlation yet,” she said.

ESG

U.S. INSURERS AND ESG INVESTMENTS

41% said their companies began to include ESG in their investment considerations in 2021.

92% cited corporate reputation as the No. 1 reason for adopting an ESG investment focus.

68% agree there is a short-term risk to investing with ESG, but it is worth that risk.

Source: Conning Inc.

Most companies have disclosed corporate social responsibility in their statements and proxies for years, but there is a heightened focus by the U.S. Securities and Exchange Commission, state regulators and others on how companies address the risks, said Ziad Kubursi, New York-based head of financial, executive and transactional liability at Hartford Financial Services Group Inc.

In the past, companies were not held accountable for what they did or didn’t do in relation to corporate social responsibility, but ESG disclosure regulations are changing the dynamics, he said.

“Now you are going to see enforcement actions, shareholder actions and client/customer concern about the companies they are doing business with and purchasing coverage from, and all this has an impact on directors and officers liability insurance,” Mr. Kubursi said.

Insurers can play an important role in ESG risk management, such as by advanced modeling of climate risks and in incentivizing change by putting capacity into a sector or by encouraging the rebuilding of properties in a more resilient way, several experts said.

QBE last November introduced a tool to provide businesses with a risk management framework to assess ESG risk, said Mark Pasko, chief legal officer and corporate secretary at QBE North America in New York.

“The tool presents risk managers and insureds with a series of questions to challenge them to think about sustainability, what they have in their operations, how they market and conduct themselves. It’s getting them to think critically of what their operations look like, to be honest about what sustainability is,” Mr. Pasko said.

Traditionally a business might not have looked at the construction materials in its buildings or at its energy practices and operations, and “now they should,” he said.

ESG risk management is “good business for us, too, because risks that think about sustainability are typically better risks for us,” he said.

Opportunities — and risks

Despite the growing opportunities for insurers in the development of ESG-related coverages and risk management tools, the products and services do not come without risks, experts said.

In the renewable energy sector, the speed of project developments, continuously evolving technologies and rising natural catastrophe risks can be challenging, said Mr. Tyluki of GCube, an insurer of on- and offshore wind, solar and energy storage risks in Europe and the United States.

A 2019 hail loss at a solar farm in Midland, Texas, resulted in a $75 million loss for GCube because it was insuring the asset 100%. “That loss in particular shaped the industry,” and since then the insurer has taken steps to significantly mitigate its exposure by sub-limiting natural catastrophe risks, Mr. Tyluki said.

Insurers and reinsurers face risks both

ESG considerations increasingly factor into D&O underwriting

Insurance buyers can expect increased due diligence from insurers around their management of environmental, social and governance risks, which may affect coverage and pricing.

While the integration of ESG factors into underwriting remains uneven, it is playing a growing role in directors and officers liability insurance, experts say.

Marsh LLC last October introduced a directors and officers liability initiative in which its clients work with various international law firms to review or validate their ESG frameworks, and, then, subject to underwriting, will be considered for preferred D&O policy terms and conditions on ESG-related exposures. This could include more favorable pricing, policy retentions and limits.

“To the extent we can say this is a better risk quality, that is an advantage,” said Amy Barnes, London-based head of sustainability and climate change strategy at Marsh LLC.

At least four D&O insurers are participating in the program, including Hartford Financial Services Group Inc.

Hartford wants to make sure it is deploying its capital to businesses that are taking ESG issues seriously, said Ziad Kubursi, its New York-based head of financial, executive and transactional liability.

“This gives us the confidence that they are going the extra step to engage with these law firms, understanding the environment around ESG and how they can improve their ESG operations and initiatives,” Mr. Kubursi said.

If a company is committed to advancing ESG initiatives, Hartford will provide coverage enhancements such as sub-limits for ESG-related books and records inquiries and investigations around ESG disclosures, he said.

“These are critical to companies, because it’s typically the board of directors and officers that are impacted when shareholders, customers, clients and investors are looking at whether or not they are compliant with these requirements,” Mr. Kubursi said.

With private companies, often insurers are more comfortable if policyholders have a director and officer who is accountable and responsible for all ESG matters, said Ralph Banbury, London-based management liability underwriter at CFC Underwriting Ltd.

If a private company is private equity- or venture capital-backed, the financial institutions typically do a substantial amount of due diligence themselves before investing their capital, Mr. Banbury said.

To the extent that companies can demonstrate that they are on top of their ESG, they could see some type of credit. Each account is different, but “if you can gain significant satisfaction and comfort around ESG, it will be beneficial to the overall underwriting and revision of coverage,” Mr. Banbury said.

Claire Wilkinson

on the assets and investments side of their business from the climate transition.

If underwriting is inadequate there is a risk that coverage could be mispriced, Ms. Jones of Aon said. There is also an investment risk if insurers don't take into full account ESG concerns, she said.

The corporate social responsibility and governance aspects of ESG have always been a risk for companies, but investors and insurers are asking organizations more questions, said Keith Fortson, global head of ESG at Riskonnect Inc., an Atlanta-based risk management technology company.

"There's been a fundamental shift in the insurer landscape on both the asset side and liability side," Mr. Fortson said. For instance, many assets held by insurers that used to be considered stable, such as real estate, are changing with ESG concerns and the effect of different weather patterns, he said.

"We are seeing reallocations in assets, and that same lens applies to the liability side. If I am going to write a policy for you, I need to make sure you have all of these risks covered," Mr. Fortson said.

As insurers look to meet the risk financing needs of businesses transitioning toward a greener economy, the underlying risks may be more nuanced.

It's critical for insurers to do their due diligence regarding ESG, said Ralph Banbury, London-based management liability underwriter at CFC Underwriting Ltd.

"There is a huge focus on the environment, as there should be, but the social pillar is equally as important," Mr. Banbury said. The social pillar encompasses employee welfare, health and safety, cyber protocols, supply chain, and diversity and inclusion.

With the rise in events-driven litigation, companies face growing D&O risks from ESG risks whether from failure to act, not having adequate procedures in place, or the potential for "greenwashing" or overinflating their ESG credentials, he said. Companies can also come under fire for the use of child labor in their supply chains, he said.

PARAMETRIC COVER PLAYS BIGGER ESG ROLE

Parametric coverages are playing a growing role in mitigating environmental, social and governance-related risks such as climate change, cyber and reputational harm, experts say.

Policies based on parametric triggers can offer buyers an alternative structure to cover key risks, especially when gaps in traditional coverage may exist.

Parametric coverage is increasingly being used to mitigate climate change risks, said Daniel Drennen, national environmental practice leader at Amwins Group Inc. in Atlanta. "Whether it be hurricanes, specific wind and flooding events, they are becoming more mainstream," he said.

Steel City Re LLC, a Pittsburgh-based parametrics insurer for reputation risk, last September launched a modified version of its parametric coverage designed to cover boards of directors from ESG issues, said CEO Nir Kossovsky.

The policy pays out for a range of costs a business may incur due to extraordinary "strategic managerial and governance actions signaling corporate values" that may arise in the context of an ESG crisis such as a product recall, cyber incident or employee liability event, Steel City Re said.

The policy is designed as an additional level of protection to a captive insurer, Mr. Kossovsky said. A synthetic index of reputational value called the RVM Index is the parameter underpinning the coverage. Payment is triggered if a company's RVM index value dips below a trigger value for 20 weeks following an adverse event.

While parametric coverage is not new, it is seeing greater use, said Jessica Botelho-Young, associate director, analytics, at Oldwick, New Jersey-based ratings agency A.M. Best. Co. Inc.

Parametric insurance serves a dual purpose by "providing cover and quickly closing the protection gap in underserved communities," Ms. Botelho-Young said.

Parametrics also contribute to microinsurance, which is another area where insurers have developed coverages in the agricultural sector, improving financial inclusion, she said.

Nature-based insurance designed to facilitate recovery and restoration activity of natural assets, such as coral reefs in the wake of hurricane damage, have also incorporated parametric coverage.

Parametric triggers offer a faster payout than traditional insurance and require no loss assessment. The level of payout is based on a triggering event that exceeds a certain threshold, such as hurricane wind speed, temperature or rainfall total that is measured by a third-party index.

Claire Wilkinson

SPECIAL REPORT

Insurers weigh future claims after SPAC boom

BY JUDY GREENWALD
jgreenwald@businessinsurance.com

INSIDE

Directors and officers liability insurers are likely to face more lawsuits just based on the sheer number of special purpose acquisition companies that went public in the United States last year.

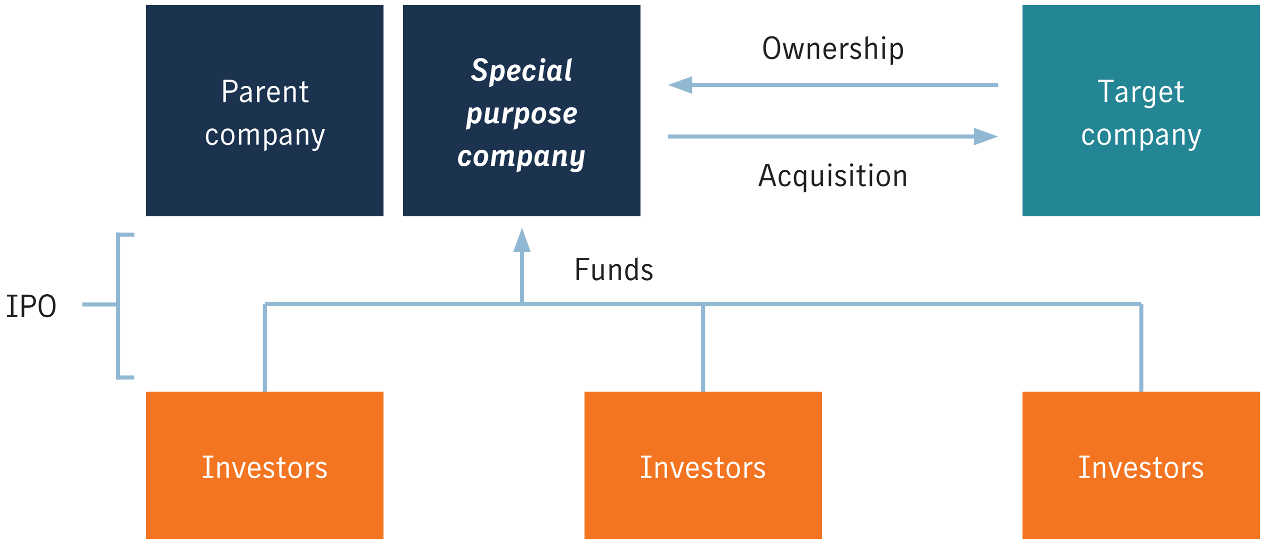
SPACs, also called blank check companies, are publicly traded shell companies formed to raise capital to acquire a private company, which they usually have two years to do after their initial public offering.

A de-SPAC transaction occurs when a private company merges with a SPAC. In the next step, the merged entities operate as a public company.

While SPACs have been around for decades, their growth last year was explosive. The 613 completed last year, raising $162.4 billion, compared with 248 in 2020, raising $83.3 billion, according to SPACInsider.

Meanwhile, the U.S. Securities and Exchange Commission has made clear its interest in further regulating the SPAC market (see related story).

Experts say the D&O situation is complex, with three coverage towers potentially involved — the SPAC, the target private company and the newly merged



Source: CFI Education Inc.

entity — which raises the issue of risk accumulation.

There are a handful of insurers offering primary and excess layers for SPAC risks, most prominently American International Group Inc. and Axa XL, a unit of Axa SA, and some experts expect more to enter the market.

Larry Fine, New York-based management liability coverage leader for Willis Towers Watson PLC, said SPACs typically have about a $5 million retention, and deSPACs' retentions can start at $10 million.

Insurers are stepping back and looking at the market "a little bit more skeptically or judiciously," said Brian Dunphy, senior vice president and managing director at Alliant Insurance Services Inc. in New York.

The risks are unknown with regard to the target, when the business combination is expected to take place, "and what the prospect for any potential litigation is after that," he said.

Andrew Doherty, New York-based national executive and professional risk solutions practice leader for USI Insurance Services LLC, said, "They'll still be underwritten very carefully, and I think it'll still be a more limited marketplace and be more expensive" with higher retentions.

"We're looking at the deSPAC space a little bit closer" because they are "grounded in more of the traditional principles that we're used to underwriting" compared with SPACs, said Matthew Azzara, North American head of management liability commercial business at Allianz Global Corporate & Specialty, a unit of Allianz SE, in New York.

Tom Neufeld, Boston-based east regional product leader, corporate public, financial lines at AIG, said, "There's an overriding sense there may not be 600-plus companies out there in the marketplace that are worthy of investing in at this point in time."

Erin McGinn, Hartford, Connecticut-based vice president, claims, professional lines, for Axa XL, said of the industry, "It's going to be a big year (for claims) where the rubber's really going to meet the road on what the SPAC claims are worth" and whether they will survive or "fizzle out." She added, however, that "this is not some massive financial bomb that we're all sitting on."

SPACs can be considered vulnerable because of how they operate. They typically must make an investment within two years for sponsors to get a return on their investment, even if the deal is a bad one. "Otherwise, they have to hand all the money back," said David M. Kroeger, a partner with Jenner & Block LLP in Chicago.

Concern about risk aggregation because of the multiple towers involved is causing a pullback in capacity, said Derek Lakin, New York-based senior vice president and national SPAC practice co-leader for Lockton Cos. LLC.

Insurers are focused on the deployment of capacity on all three segments of the market "and potential litigation could impact all three of those programs," said Kristin Kraeger, Boston-based managing director at Aon PLC. "That dynamic is not going to change."

There were 31 SPAC-related securities class lawsuits filed in federal court in 2021, with nine of those involving the electric vehicle industry, according to Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC. One was also filed in mid-January of this year.

In January, Delaware's Chancery Court issued a ruling in *In re Multiplan Corp. Stockholders Litigation*, in which it refused to drop charges filed by stockholders who challenged the SPAC's structure.

"The litigation is this big unknown" and "an expensive proposition to be wrong on," said Bill Dixon, Edison, New Jersey-based Amwins Group Inc. group executive vice president and group practice leader, professional lines.

However, Mach Millett, Boston-based SPAC and de-SPAC practice leader for Marsh LLC, said, "I don't see this as a crisis point" in litigation.

"I see this as opportunistic activity by the plaintiffs bar," he said, adding that most of the litigation is in its early stages, with "no real activity" by the courts in terms of determining whether the lawsuits will continue or their severity.

> "There's an overriding sense there may not be 600-plus companies out there in the marketplace that are worthy of investing in at this point in time."
>
> Tom Neufeld,
> American International Group Inc.

REGULATORS STEP UP SCRUTINY, LOOK TO REVAMP RULES

Directors and officers liability insurance policyholders and insurers are waiting to see what the U.S. Securities and Exchange Commission will do about special purpose acquisition companies.

Although the agency has taken only two SPAC-related enforcement actions so far, SEC Chair Gary Gensler has been outspoken about his concerns over investor protections.

Accounting guidance the agency issued in April 2021 stating SPAC warrants should be classified as liabilities instead of equity instruments led to a dramatic drop in the number of SPACs.

James Rizzo, New York-based underwriter for U.S. executive risk for Beazley PLC, said of the agency, "They haven't intervened in any material way" and that the two enforcement actions taken so far involved "outliers."

The SEC "has been a little bit of a wild card," said Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC.

If it becomes more aggressive in this area, as it has signaled it intends, it could impact underwriters' willingness to participate in the market, he said.

Reuters

U.S. Securities and Exchange Commission Chair Gary Gensler has raised concerns about investor protections related to SPACs.

Leo Daly, Boston-based vice president for Allied World Assurance Company Holdings, Ltd., said the SEC's position on SPACs will likely evolve, possibly resulting in "more stringent rules and guidelines."

Priya Cherian Huskins, San Francisco-based partner and senior vice president at broker Woodruff Sawyer & Co., said she thinks the SEC would like to see SPACs be "more like traditional IPOs," which unlike SPACs do not have a safe harbor for making forward-looking statements.

The SEC is worried "that people are just loose with their projections about how successful the company will be," she said.

A bill now in committee in the House of Representatives, H.R. 5910, would exclude SPACs from having a safe harbor for forward-looking statements.

Judy Greenwald

Pandemic-related securities lawsuits evolve

BY CAROLINE MCDONALD

The far-reaching consequences of the COVID-19 pandemic, which upended life for so many, also extend to corporate boards and the liability concerns of directors and officers.

While COVID-19-related lawsuits targeting publicly traded companies have largely been unsuccessful, organizations still face directors and officers liability exposures linked to the pandemic, experts say.

"We were seeing publicly traded companies being sued for a number of things, such as misinformation, especially in the beginning of the pandemic," said Michaelene Cody, policyholder counsel, executive liability practice, at Hub International Ltd. in Los Angeles.

An example was a suit filed against Norwegian Cruise Lines, "which, as far as class actions, was a big one," she said.

The securities class-action lawsuit, filed March 12, 2020, alleged that the Miami-based cruise company made false and misleading statements — some of which had been leaked to the Miami Herald — to encourage the purchase of cruises, jeopardizing customers and crew members. The complaint also noted that the company's share price dropped a dramatic 26.7%.

As has also been the case with several

> "We've seen fewer COVID securities class actions and fewer lawsuits as a whole than we would have expected."
>
> Christopher Vlasich,
> Allianz Global Corporate & Specialty

other coronavirus-related class actions, the case was dismissed, with the court ruling that the company's statements were "corporate puffery."

While a flood of D&O lawsuits was expected to result from the pandemic, "We've been pretty surprised," said Christopher Vlasich, assistant vice president, financial lines and liability, North America claims, at Allianz Global Corporate & Specialty, a unit of Allianz SE, in Chicago. "We've seen fewer COVID securities class actions and fewer lawsuits as a whole than we would have expected."

There were 291 securities class actions filed in 2019, "which was the highest we have on record," he said. After nine months of the pandemic, in 2020 only 219 were filed. "We expected it to be close to 2019 if not higher," Mr. Vlasich said. "Last year, in 2021, a full COVID year, there were only 194 claims filed."

The number of class actions was expected to be higher, partly because multiple bankruptcies and insolvencies were anticipated as a result of lockdowns that followed the outbreak of COVID-19 in the United States in March 2020 and other economic consequences. "But we have not seen a bankruptcy explosion," Mr. Vlasich said. "Public companies have been far more resilient than I expected."

Of the COVID-19-related securities class actions filed so far, "We don't have that many rulings yet," Mr. Vlasich said. In those cases that have been decided, companies generally have been coming out ahead.

"The courts tend to be ruling in their favor, saying that they can't be reasonably expected to predict a global pandemic," Mr. Vlasich said.

Going forward, however, things could change as staffing and supply chain issues heat up. Diminished talent retention in the workplace "can lead to lawsuits and litigation among companies and between employers and employees. These can be large-scale lawsuits," Ms. Cody said.

Even under the best circumstances, "it would be difficult to change your supply chain processes and procedures," Mr. Vlasich said, "but adding staffing issues will make it even more complicated."

Allegations vary in the D&O COVID-19-related litigation that has been filed, said Sarah Downey, managing director at Lockton Cos. LLC in New York.

Companies can face claims they misrepresented or failed to disclose risks associated with COVID-19, failed to prepare adequately to deal with the pandemic, made false statements about how it affected business operations, and misrepresented how a "return to normal" could affect their business, she said.

Ultimately what leads to D&O litigation or securities lawsuits filed against a company by shareholders is "any time the company misses its numbers," said Adrian Atilano, executive liability practice leader at Hub California, a unit of Hub International.

Other pandemic-related issues, such as supply chain or staffing difficulties, could also lead to D&O-related litigation, which often hinges on a fall in stock price after an event, he said.

D&O insurance pricing

While pricing for D&O insurance climbed dramatically in 2020 and parts of 2021, that market is easing as more insurers enter it, Mr. Atilano said.

"It's basic economics — supply and demand," he said, noting that as of November 2020, about 20 new markets have entered the sector. "Why are they here? Because they liked the pricing and felt it was a good time to jump in." The result is that the added competition has created an overall flattening in D&O prices.

While some new companies have been formed, most of the insurers entering the D&O market "are companies that have been around, offering products like workers compensation and property, and now are diving into D&O liability," he said.

EMPLOYERS STILL NEED TO EXERCISE CAUTION ON COVID-19 WORKPLACE RISKS

An ongoing issue for many organizations during the COVID-19 pandemic has been potential liabilities arising from exposure to the disease in the workplace.

"Companies that can, would be smart to continue to allow flexible working conditions until COVID fears lessen, or they likely will face the prospect of COVID-related employment practice liability suits," said Christopher Vlasich, Chicago-based assistant vice president, financial lines and liability, North America claims, at Allianz Global Corporate & Specialty, a unit of Allianz SE.

Requiring employees to be vaccinated and return to the office comes with risk. Not requiring vaccinations of employees is risky as well.

If enough COVID-related EPL suits are filed, or filed as a class action against a company, "they could present D&O risk," Mr. Vlasich said.

A big concern for D&O-related litigation is over-optimistic statements. "Companies would be wise to couch their future prospects carefully, until they are certain COVID-related issues are in the rearview mirror," he said.

Sarah Downey, managing director at Lockton Cos. LLC in New York, said that failing to make accurate and complete disclosures could prove costly.

"You'll spend about $1.5 million to $2 million in defense costs and lawyers' fees just to win in court and make the lawsuit go away," she said.

"If it goes further, especially in a securities class action, you could spend $5 million to $10 million, which doesn't include the settlement."

Adrian Atilano, executive liability practice leader at Hub California, a unit of Hub International Ltd., said that if a company's stock drops 15% or more, "it's important to notice if the rest of the market drops as well. The plaintiffs attorneys will have less argument to sue if the entire marketplace is down."

However, he added, "if the stock market is doing well and your stock drops, plaintiffs lawyers will peel the onion and see if they have an opening for a lawsuit."

How to head this off? Mr. Atilano summed it up: "Many publicly traded companies have a good public relations firm and their law firm on speed dial." Because when something negative happens, "you are obliged to share it if it will impact the company's stock. This is where communications and law firms can help to minimize the damage," he said.

Caroline McDonald

PERSPECTIVES

D&O market eyes tighter insider trading rules

Deirdre Martin is senior vice president, chief underwriting officer, commercial management liability and financial institutions, for Sompo International's U.S. insurance business. She can be reached at dmartin@sompo-intl.com.

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Last year provided insight into what we may see in the U.S. Securities and Exchange Commission's enforcement agenda. A succession of active commentary from SEC Chair Gary Gensler evidenced commitment toward robust enforcement of market exposures, both new and old.

Beyond the warning stage, we witnessed prioritized action by the SEC toward legacy securities market misconduct, in the form of enforcement actions last summer charging individuals with insider trading.

Efforts to uncover carefully orchestrated insider trading are not new to the SEC's enforcement agenda. However, a review of recent Enforcement Division action shows a commitment to forcing individual accountability for abuse and misconduct and halting unfair trading advantages in the market.

Shadow trading

In late August 2021, the SEC filed charges alleging "shadow trading" against an employee of a company targeted for acquisition by Pfizer Inc. Allegedly, the individual bought shares of a competing company in anticipation of the effect the merger announcement would have on the competitor shares. It was perhaps a harbinger of the SEC's commitment to cast a wide net in halting unfair trading advantages.

The shadow trading case was followed by the SEC's pursuit of a $3 million insider trading ring related to Netflix Inc. common shares that demonstrated the strength of the SEC's increasing analytics sophistication. "The defendants allegedly tried to evade detection by using encrypted messaging applications and paying cash kickbacks," said Joseph Sansone, chief of the SEC's Market Abuse Unit in a statement detailing the case. "This case reflects our continued use of sophisticated analytical tools to detect, unravel and halt pernicious insider trading schemes that involve multiple tippers, traders, and market events."

Last month, the SEC brought charges against three individuals in an alleged multimillion-dollar insider trading scheme involving trading on information gained from a relative who sat on two boards of directors of companies involved in certain transactions. To date, the director, the source of the nonpublic information, has not been charged and is only referred to as "Insider 1" in the SEC Complaint.

Reform of 10b5-1 plans

Traditional compliance protocol to prevent insider trading has centered around a company's institution of individual 10b5-1 plans. But, as of late, in addition to recently initiated enforcement actions, Mr. Gensler has ordered his staff to undertake reform of 10b5-1 plans, the mechanism corporate insiders use to disclose intent of and initiate trading in their company's stock.

Rule 10b5-1 provides an affirmative defense from insider trading for corporate insiders and companies to buy and sell company stock, provided they adopt their trading plans in good faith and while not in possession of material nonpublic information.

In effect, the rule allows beneficiaries to demonstrate that a purchase or sale was not made "on the basis of" MNPI. If a 10b5-1 contract, instruction or plan is properly established, the issue is not whether the insider had MNPI at the time of the purchase or sale of the security but rather that analysis was performed at the time the instruction, contract or plan was established. One of the possible changes for Rule 10b5-1 trading plans would be the addition of a "cooling off period" intended to lessen potential abuses.

10b5-1 plans allow insiders to trade company securities without the threat of being accused of insider trading. The issues with the plans as they stand are that there can be red flags, which may allow for allegations of dishonesty, and plans can be modified or canceled without advance notice or scrutiny. If the proposed changes to 10b5-1 occur, this may not continue, as directors and officers could be subjected to making trades of their respective companies' securities pursuant to certain timeframes and restrictions in a cooling off period where they can make a modification to the plan prior to selling shares.

On Dec. 15, 2021, the SEC voted unanimously to propose new rules in connection with Rule 10b5-1 plans. The proposals have a 45-day period from the date of publication in the Federal Register before becoming official rules. The proposed amendments, which are available on the SEC's website, would add new conditions to the availability of the Rule 10b5-1(c)(1) affirmative defense to insider trading liability.

D&O insurance implications

The directors and officers liability insurance sector should pay close attention to this and any further modifications of Rule 10b5-1, focusing on how to react to the change of tone and determining the best compliance protocols to make sure there is defensibility should an action arise.

News of the potential changes to 10b5-1 raises concerns that the plaintiffs bar is watching and planning on alleging claims of insider trading should certain actions fall outside of compliance as a result of the changes. The plaintiffs bar is adept at modifying the way in which claims are asserted and will welcome any extra ammunition Mr. Gensler's comments may portend. One thing that plaintiffs need to prove when filing securities class action is scienter — or knowledge as to potential wrongdoing. If directors and officers are not following the 10b5-1 compliance, shareholders can use evidence of insider sales to try and indicate that the defendants knew that they were in the wrong and acted despite this knowledge.

If the rules change — and the period in which the SEC is soliciting commentary ends in February — this will represent a paradigm shift for D&O insurance. Changes to the regulation will subsequently change the risk profile; in addition to securities class-action implications, there is a heightened settlement exposure when insider trading is part of the complaint and has legitimacy. Defense costs will rise, and the potential for insider trading accusations to bring more losses cannot be underestimated. Further, SEC Enforcement Director Gurbir Grewal has stated the intent of SEC enforcement to push for admission of wrongdoing in civil case resolution, in addition to referral of the criminal case to the U.S. Department of Justice. Such admission would likely increase settlement and resolution costs.

Assessing risks

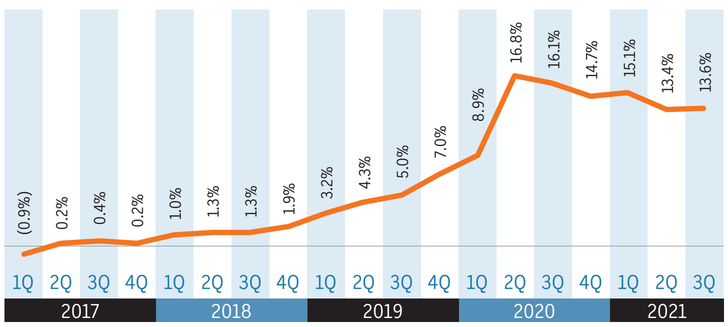
As we wait to see exactly how the SEC will act, the insurance industry should take a close look at companies that have created these plans to protect their directors and officers and determine how they plan to comply with any new rules and regulations. We want to empower directors and officers to engage and to avail themselves of the corporate successes to which they, as shareholders, are entitled, pursuant to a fair and transparent procedure complying with attendant rules and regulations. Yet it is important to note that all public companies are at risk here, regardless of size or industry. We need to fully understand the risks and help our clients to do the same. Collectively, it is incumbent upon us all to be aware of changes, review plans, understand the best practices being employed to mitigate regulatory risk, and take steps now to ensure strict compliance.

DIRECTORS AND OFFICERS LIABILITY INSURANCE

D&O RENEWAL PRICING

According to the Council of Insurance Agents and Brokers' Q3 2021 Commercial Property/Casualty Market Index, premiums for D&O saw a notable average increase of 13.6%, marking six consecutive quarters of double-digit percentage increases.

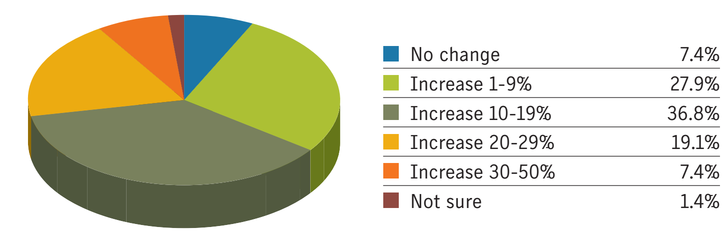
AVERAGE D&O RENEWAL PRICING CHANGES BY QUARTER SINCE 2017



Source: Council of Insurance Agents & Brokers

D&O PRICING

During the third quarter of 2021, 91.2% of survey respondents saw increases.

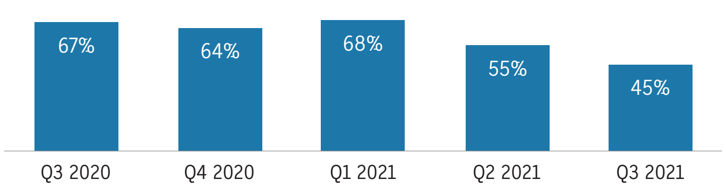


Source: Council of Insurance Agents & Brokers

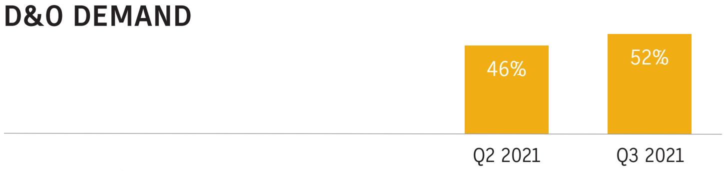
D&O UNDERWRITING CAPACITY

D&O saw tightening capacity, increased deductibles and additional coverage restrictions, with demand increasing 6 percentage points to 52% in the third quarter of 2021 from the previous quarter.

PERCENTAGE OF BROKERS REPORTING A DROP IN UNDERWRITING CAPACITY



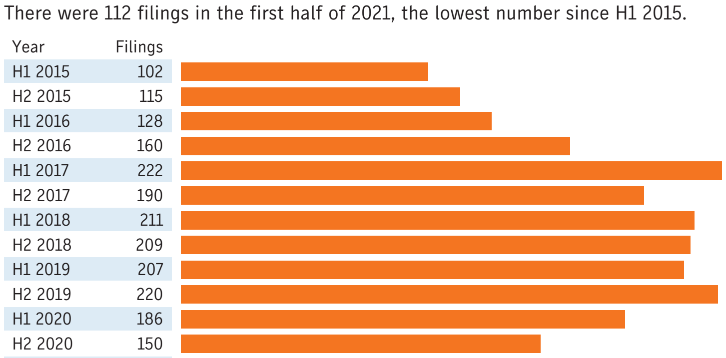
D&O DEMAND



Source: Council of Insurance Agents & Brokers

CLASS ACTIONS

There were 112 filings in the first half of 2021, the lowest number since H1 2015.



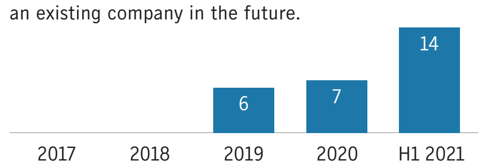
Source: Cornerstone Research Inc.

SECURITIES CLASS-ACTION TRENDS

The most dominant securities class-action trend in the first half of 2021 related to special purpose acquisition companies, with 14 filings. COVID-19 was the next most common trend with 10 filings, largely concentrated in the first four months of 2021. Filings related to cryptocurrency, cannabis, cybersecurity and opioids continued on pace with 2020.

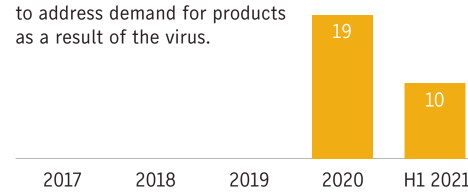
SPECIAL PURPOSE ACQUISITION COMPANY

SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future.



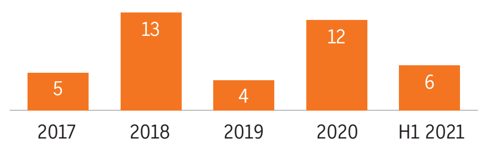
COVID-19

COVID-19 filings include allegations related to companies negatively impacted by the virus or looking to address demand for products as a result of the virus.



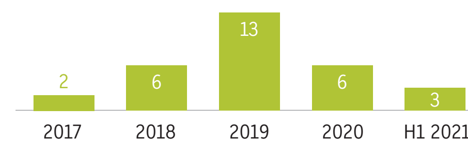
CRYPTOCURRENCY

Cryptocurrency filings include blockchain or cryptocurrency companies that engaged in the sale or exchange of tokens (commonly initial coin offerings), cryptocurrency mining and cryptocurrency derivatives, or that designed blockchain-focused software.



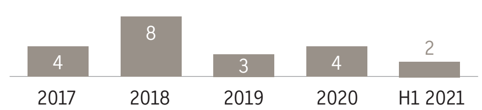
CANNABIS

Cannabis filings include companies financing, farming, distributing or selling cannabis and cannabidiol products.



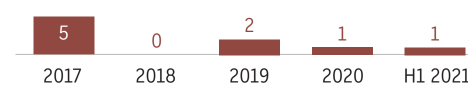
CYBERSECURITY

Cybersecurity filings are those in which allegations relate to data breaches or security vulnerabilities.



OPIOID

Opioid filings involve allegations related to opiate drugs that are addictive, were falsely marketed as non-addictive or caused other opiate-related issues.



Source: Cornerstone Research Inc.

SPAC AND U.S. IPO ACTIVITY

2021 saw a record 613 initial public offerings by special purpose acquisition companies, comprising 63% of total IPOs in the U.S. SPAC proceeds jumped to a record $162 billion.

Year	Number of SPAC IPOs	Total number of U.S. IPOs	Percent of total IPOs	SPAC proceeds (in millions)	Total U.S. IPOs (in millions)	Percent of total
2021	613	968	63%	$162,285	$334,432	48%
2020	248	450	55%	$83,386	$179,389	46%
2019	59	213	28%	$13,600	$72,200	19%
2018	46	225	20%	$10,750	$63,890	17%
2017	34	189	18%	$10,048	$50,268	20%
2016	13	111	12%	$3,499	$25,779	14%
2015	20	173	12%	$3,902	$39,232	10%
2014	12	258	5%	$1,750	$93,040	2%
2013	10	220	5%	$1,447	$70,777	2%
2012	9	147	6%	$490	$50,131	1%
2011	16	144	11%	$1,110	$43,240	3%

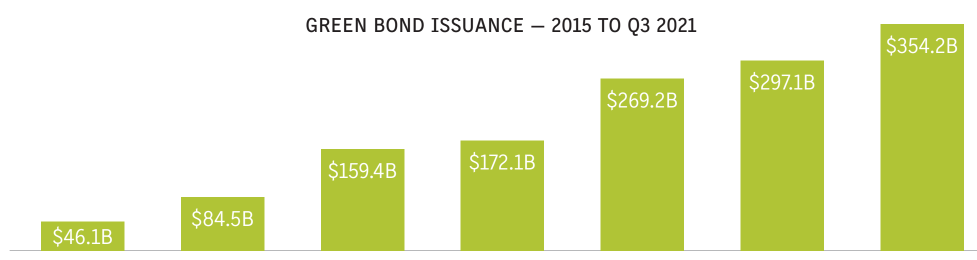
Source: SPAC Analytics

N/A = Not available

GO GREEN

Total annual green investment (green bonds, green loans and green sukuk) reached a record $297 billion in 2020. At the end of Q3 2021, green bond issuance for the calendar year stood at $354 billion, surpassing the previous year's record.

GREEN BOND ISSUANCE — 2015 TO Q3 2021



Source: Climate Bonds Initiative

MARKET PULSE

Willis establishes crisis management unit

Willis Towers Watson PLC said it has combined its special contingency risks and terror/political violence practices to form a global crisis management unit.

The unit, with 110 employees globally, will sit within its financial solutions line of business and will be headed by Jo Holliday, managing director of special contingency risks. It will offer crisis management and contingency risk management to multinational businesses.

The crisis management segment covers special crime, including kidnap & ransom, extortion, hijack, maritime piracy and political evacuation; terrorism; political violence; accident and health, including personal accident, business travel, contingency, sports and entertainment; and active assailant coverages.

Global Risk Solutions, Addvalora team up

Miami-based loss adjuster Global Risk Solutions Inc. said it has entered into an agreement under which its complex claims solution operation will work with Addvalora Global Loss Adjusters, the specialist loss adjusting arm of Madrid-based Addvalora Group.

GRS said in a statement that Addvalora specializes in corporate and complex claims and has significant operations in Turkey, Saudi Arabia and across Latin America.

The statement said Addvalora specializes in energy, including power, oil and gas, and renewable energy; forensic accounting; liability; engineering and construction; mining machinery; iron, steel and metal production; environment and environmental liability; and cyber.

Generali, Protos partner on tech, engineering

Generali Global Corporate and Commercial, part of Italian insurer Assicurazioni Generali SpA, will collaborate with consultancy Protos Check Srl to provide technical and engineering services to Generali clients.

Protos Check specializes in technical and financial advisory for large projects in infrastructure, renewable and green energy, and real estate.

The collaboration will enable Generali Global Corporate and Commercial to offer a greater range of technical services in risk analysis, risk mitigation and risk monitoring for large construction projects, with a focus on renewable and green energy, Generali Global Corporate and Commercial said in a statement.

The agreement covers all Generali Global Corporate and Commercial territories, with specific focus on Italy, the U.K., Iberia, Latin America and Asia.

Manlio Lostuzzi, Generali Global Corporate and Commercial CEO, said in the statement that risk assessment and monitoring in construction and complex infrastructures management is a key service and that the collaboration with Protos will enhance the insurer's technical capabilities.

PRODUCTS & SERVICES

Zurich launches workplace diversity service

Zurich Resilience Solutions in North America, a global business unit of Zurich Insurance Group Ltd., said it is launching a workplace diversity, equity and inclusion service in collaboration with Inclusion Score, a diversity advisory organization, to help businesses work toward the new ISO standard.

Zurich Resilience Solutions will work with customers to incorporate diversity, equity and inclusion into their organizations, including in governance, human resources, product delivery and supply chain, using the new ISO standard as a benchmark.

The diversity, equity and inclusion program includes assessment and reporting, consulting, and services and training. Zurich Insurance Group Ltd. created the business unit last year, the statement said.

Julia Oltmanns, director of diversity, equity and inclusion services for Zurich Resilience Solutions, said in the statement the new service will help companies measure their diversity, equity and inclusion practices.

Obsidian partners on contractor cover

Obsidian Insurance Co. said it has partnered with Integrated Specialty Coverages LLC to provide coverage for contractors and tradesmen.

The ISC contractors general liability program provides limits of $1 million per occurrence and $2 million aggregate for small general contractors and artisan subcontractors that are unable to secure coverage in the admitted market due to their size or hazard class.

The program will be written on a surplus lines basis on paper provided by Obsidian Specialty Insurance Co.

FutureWork, Service Lloyds team up on tech services

FutureWork Insurance Solutions announced a partnership with Service Lloyds Insurance Co., an Austin, Texas-based workers compensation insurer, to provide predictive analytics.

FutureWork provides workers compensation software that predicts individual worker risk, offers mobile-enabled incident reporting, and delivers digital coaching and training materials, according to a statement.

Clara Analytics unveils automated platform

Clara Analytics Inc. introduced an automated platform for adjusters and nurse case managers that records and organizes medical records and case details.

The platform, called Treatment Summary, is enabled by Clara's artificial intelligence platform, which the company says aims to help workers compensation insurers reduce medical costs and improve outcomes for injured employees.

The company said the platform applies AI and machine learning to analyze structured and unstructured data, perform contextual analysis with natural language processing, and develop forecasts and recommendations for claims managers.

Treatment Summary is priced per claim.

Willis designs, places parametric climate cover

Willis Towers Watson PLC said it has designed and placed a parametric cover to support the government of Belize's debt-restructuring for marine conservation.

Underwritten by Munich Re, the coverage enabled Belize to refinance its sovereign debt under The Nature Conservancy's Blue Bonds for Conservation program, Willis said.

DEALS & MOVES

Alera purchases New York-based brokerage

Alera Group said it has bought Foa & Son Corp., a New York-based brokerage that places commercial retail, benefits and personal lines business.

Terms were not disclosed.

Foa reported $29.6 million in brokerage revenue in 2020, the latest year for which figures are available. The company, which was founded in 1861, has about 90 employees.

AssuredPartners buys Massachusetts agency

AssuredPartners Inc. said it has acquired Fred C. Church Inc., a Lowell, Massachusetts-based agency.

Terms of the deal were not disclosed.

Fred C. Church reports $37 million in annualized revenue, AssuredPartners said in a statement. Its 160 employees will remain under the leadership of Mike Reilly, president and chairman, AssuredPartners said.

Randy Larsen, president of AssuredPartners, said the acquisition strengthens the brokerage's footprint in New England.

Charles Taylor acquires Louisville-based TPA

Insurance services provider Charles Taylor Ltd. said it has acquired Underwriters Safety & Claims LLC, a third-party administrator and managed care services provider based in Louisville, Kentucky.

Terms of the deal were not disclosed.

Specializing in workers compensation and liability, US&C serves municipalities, utilities, school districts and private employers in the Southeast and Midwest, Charles Taylor said in a statement.

US&C's services include bill review, access to preferred provider organizations, utilization review, 24-hour nurse triage and case management.

Gallagher purchases Risk Transfer Insurance

Rolling Meadows, Illinois-based Arthur J. Gallagher & Co. announced its acquisition of Orlando, Florida-based Risk Transfer Insurance Agency LLC.

Terms of the deal were not disclosed.

Founded in 2000, Risk Transfer is a full-service commercial property/casualty agency and program administrator offering insurance and risk management services for professional employer organizations.

2022 BUSINESS INSURANCE®

event schedule

WORLD CAPTIVE FORUM
FEBRUARY 9-11 | MIAMI

CANNABIS WEBINAR
APRIL 21 | VIRTUAL

CYBER SECURITY WEBINAR
MAY 25 | VIRTUAL

BREAK OUT AWARDS
JUNE 9 | CHICAGO
JUNE 23 | NEW YORK CITY
JUNE 30 | LOS ANGELES

NOMINATIONS JAN 20 - MAR 7

LONG-TERM CARE CONFERENCE
JULY 21 | CHICAGO

DIVERSITY & INCLUSION CONFERENCE
TBA

INNOVATION AWARDS
SEPTEMBER 13 | NEW YORK CITY

NOMINATIONS MAR 22 - MAY 13

U.S. INSURANCE AWARDS
SEPTEMBER 13 | NEW YORK CITY

NOMINATIONS MAY 3 - JUNE 27

CANNABIS & HEMP CONFERENCE
OCTOBER 20-21 | CHICAGO

WOMEN TO WATCH AWARDS & CONFERENCE (EMEA)
NOVEMBER 17 | LONDON

NOMINATIONS JUNE 7 - AUG 1

WOMEN TO WATCH AWARDS & CONFERENCE (US)
DECEMBER 7-8 | NEW YORK CITY

NOMINATIONS JUNE 7 - AUG 1

Event dates and formats are subject to change.

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**Event details subject to change*

COMMENTARY

Firms must weigh private mandates

The failure of the Biden administration's attempt to introduce a federal vaccine-or-test mandate for larger companies means that the decision over whether to use one of the key workplace safety tools available to fight the pandemic is back in the laps of employers.

How many choose to use compulsory shots to protect workers from serious COVID-19 infections, though, remains to be seen.

The mandate, which sought to make vaccines or weekly testing compulsory for workers at organizations with 100 or more employees, faced legal challenges from the time it was announced in early November. A case was fast-tracked to the U.S. Supreme Court, which in early January ruled that the administration had overstepped its authority, sending the case back to the lower court. Later in the month, the Occupational Safety and Health Administration, which had been set to implement the mandate, withdrew from the fight.

Gavin Souter
EDITOR

The fate of the proposed federal rule was always going to be in the balance, given the anti-vaccine sentiment among a significant minority of the U.S. population and the make-up of the Supreme Court, but its demise creates challenges for employers.

Although many employers said that implementing the requirement would be onerous, it would have had the effect of taking out of their hands the controversial decision whether workers should be vaccinated.

As we report on page 4, private employers will still, subject to some restrictions, be able to require that workers be vaccinated. The high court's decision, however, has already split employers, with some withdrawing existing vaccine requirements and others pressing ahead.

Companies that require vaccines have understandable reasons for moving forward with their plans or keeping their rules in place. The apparent disparity in the severity of symptoms between the vaccinated and the unvaccinated who contracted COVID-19 over the past couple of months would seem to indicate that the surge in infections that accompanied the spread of the omicron variant would have been far less disruptive had vaccines been more widely accepted in the United States, where the fully vaccinated rate remained stubbornly below 65% late last month.

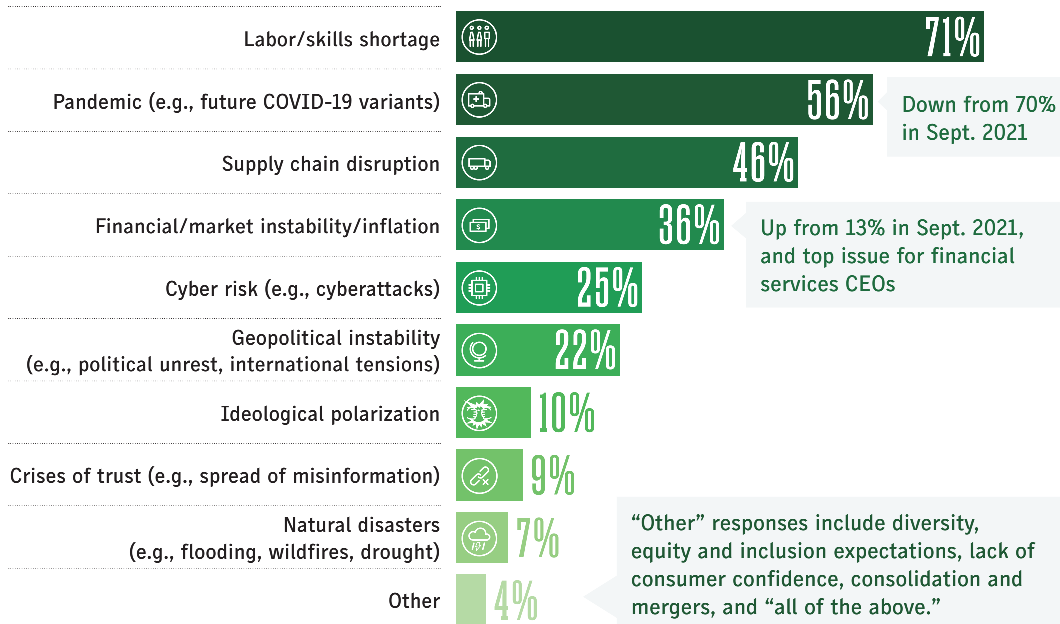
Organizations with a healthy workforce clearly have a competitive advantage over their peers with a less healthy employee population, and maintaining a safe working environment is in everyone's interest.

On the other hand, those that insist on vaccines in areas of the country where resistance is high risk inflaming unvaccinated workers in an environment where staff shortages are already causing acute problems. In addition, consequent lawsuits alleging discrimination and other violations will be a drain on resources, regardless of whether they are ultimately unsuccessful.

While a vaccine mandate would have been a simpler solution, the country clearly was not ready for it, so employers are back in the hot spot and will have to choose individually what makes sense for them and their workers.

What external issues do CEOs expect to influence or disrupt their business strategy within the next 12 months?

CEOs WERE ASKED TO SELECT THEIR TOP 3.



Source: 2022 Fortune/Deloitte CEO Survey, Deloitte Development LLC

VIEWPOINT

Talent crunch creates risk

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

Among the many risks highlighted by top executives for 2022 is the ongoing shortage of talent. While this is by no means the first time the challenge of attracting and retaining skilled workers has been discussed by insurance executives, it appears that the issue has come into full focus with the unpredictable nature and duration of COVID-19.

In the 2022 Allianz Global Corporate & Specialty Risk Barometer, the shortage of skilled workforce placed ninth among top risks. This is the first time the issue has entered the top 10. Attracting and retaining workers has rarely been more challenging, according to CEOs, risk managers, brokers and other insurance experts. By industry, the talent shortage was ranked as a top five risk in the engineering, construction, real estate, public service and health care sectors, and as the top risk for transportation.

Similarly, in Deloitte's first CEO survey of 2022, talent remains a top concern. When CEOs were first asked in June 2021 about the biggest challenge they faced, one quarter pointed to talent-related issues. Asked the same question in September, nearly half said talent, and that concern remains, with half of CEOs in January saying talent and workforce is their main challenge. Difficulties in fighting COVID-19 fatigue among employees, finding/keeping the best people and responding to new work paradigms were some of the issues that CEOs specifically called out.

Perhaps more pertinent for the risk management and insurance industry, 71% of CEOs selected labor/skills shortage as one of the top three external issues they expect to influence or disrupt their business strategy within the next 12 months. Take supply chain risk, for example, a longtime concern that has intensified during the pandemic. Labor shortages can have a major effect on supply chains, with a swathe of workers such as truck drivers, warehouse workers and local delivery drivers in short supply, and businesses, faced with higher operating costs, struggling to recruit and retain workers.

When asked what supply chain challenges their organization has experienced, more than three quarters of CEOs in the Deloitte survey said labor shortages, and more than half noted production and/or logistics delays.

As the world becomes more interconnected, supply chain vulnerabilities are emerging in many areas of business. Cybersecurity is a good example. The attack on the Colonial Pipeline in the U.S. last May underscored the need to strengthen and plan for future outages. The shutdown of the pipeline following a ransomware attack that forced the company to take some systems offline and halt the pipeline's operations disrupted a major supply of fuel to the East Coast for about a week. Natural disasters, from hurricanes and tsunamis to floods and tornadoes, are also increasing and with rising climate risks inevitably global supply chains will be further disrupted.

It's clear that with the labor shortages so many industries are experiencing, even with the best business continuity plans, organizations will struggle if they don't have the right talent. For risk managers, business leaders will be leaning heavily on their expertise to address future volatility, disruption and uncertainty, and they are well-positioned, after two years of the pandemic, to contribute to their organizations' success.

PEOPLE

“Cybersecurity remains a boardroom concern for companies big and small. The increase in ransomware frequency and severity has affected all industries.”

UP CLOSE

Jennifer Livingstone

NEW JOB TITLE: New York-based head of strategic agency management, Coalition Inc.

PREVIOUS POSITION: New York-based chief marketing officer and senior vice president, responsible for global distribution and marketing, CNA Financial Corp.

OUTLOOK FOR THE INDUSTRY: I see tremendous opportunity for growth in our industry. Technology has transformed us all into an on-demand economy, but some insurers have been slow to respond to change and adopt new solutions that can protect policyholders from emerging risks. At Coalition, we are leading the charge to solve cyber risk by providing our policyholders with a combination of technology and insurance to not only cover risk but actively monitor and prevent it whenever possible.

GOALS FOR YOUR NEW POSITION: My goal is to build upon the successful foundation Coalition has established with its distribution partners by leveraging my experiences and industry network. We are a rapidly evolving insurtech, and our successful growth presents us with an opportunity to optimize what we do and how we do it with our most strategic partners.

CHALLENGES FACING THE INDUSTRY: Cybersecurity remains a boardroom concern for companies big and small. The increase in ransomware frequency and severity has affected all industries and resulted in a constriction of capacity, significant rate increases and a reduction in coverage across the industry.

FIRST EXPERIENCE: I entered the workforce in the early ’90s and like most of us back then I didn’t know much about the insurance industry. I joined AIG as an operations analyst, which meant I learned about all aspects of the business outside of underwriting. However, the regional executive for whom I worked strongly encouraged me to get some underwriting experience if I was going to work at an insurance company, so I quickly moved into financial lines underwriting.

ADVICE FOR A NEWCOMER: Collaborate across silos and learn as much as you can about all aspects of your organization and industry. Treat every professional with respect and every meeting as if it were an interview because you never know where or when your next opportunity will arise.

DREAM JOB: I’d love to be a professional chef. I have a great deal of respect for creative people who can transform ordinary ingredients into delicious meals and bring joy to those around them.

COLLEGE MAJOR: Bachelor of Science in international studies-political economy from the College of William & Mary.

LOOKING FORWARD TO: Working with highly talented and collaborative professionals committed to evolving the way the industry assesses risk.

FAVORITE MEAL: I can never pass up a gourmet thin-crust pizza.

FAVORITE BOOK: “All the Light We Cannot See,” Anthony Doerr.

HOBBIES: Leisure travel, Peloton-Power Zone, outdoor activities.

FAVORITE TV SHOW: I’m just about to finish “Yellowstone,” which is quite entertaining.

ON A SATURDAY AFTERNOON: Any outdoor activity with my family and friends.

SEE MORE ONLINE

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

ON THE MOVE

AssuredPartners Inc. named **Mark Hammond** chief financial officer, effective March 2. Mr. Hammond, currently deputy chief financial officer and global treasurer at Chubb Group, will be based at the brokerage’s Lake Mary, Florida, headquarters.

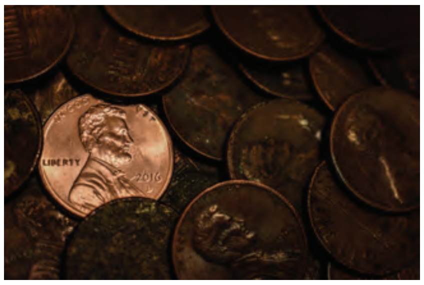
Alera Group Inc. named former Lockton Cos. Inc. executive **Peter Caine** as executive vice president, operations. Mr. Caine, who is based in Boston, previously was chief operating officer of Lockton Midwest.

Chubb Ltd. named New York-based **Julie Dillman**, formerly senior vice president, Chubb Group, and global head of operations and technology, to the new position of executive vice president, Chubb Group, and digital transformation officer.

Lloyd’s of London named London-based **Dawn Miller** commercial director, effective in the second quarter. She will replace Caroline Dunn, who left Lloyd’s last year. Previously, Ms. Miller was regional executive officer, central region, and country president for Switzerland at Chubb Ltd.

Axa XL, a unit of Axa SA, named **Maria Duhart** chief underwriting officer for its specialty niche business in the Americas. She replaces Alex Blanco, who joined Bermuda-based Vantage Group Holdings Ltd. as CEO of insurance in November. Previously, Summit, New Jersey-based Ms. Duhart headed Axa XL’s commercial bonds business.

Axis Capital Holdings Ltd. said **Vincent C. Tizzio**, who had been executive vice president and head of global specialty at Hartford Financial Services Group Inc., has joined as senior adviser, insurance market strategy, and will become CEO of Axis Insurance on June 1, 2022. Based in Atlantic Highlands, New Jersey, Mr. Tizzio will succeed Peter Wilson.



Feds go after boss over penny dump

The U.S. Department of Labor announced it has filed a lawsuit against a Georgia auto repair shop owner who paid a former worker's final wages in oily pennies, saying the move amounted to retaliation and more.

According to the suit filed in the U.S. District Court for the Northern District of Georgia against Peachtree City, Georgia-based Autoworks LLC and its owner Miles Walker, an employee who resigned filed a complaint with the DOL regarding the employer's failure to submit his last paycheck, prompting an investigation.

Upon his discovery that he had been reported to the DOL, Mr. Walker allegedly paid the former employee's final wages of $915 by delivering about 91,500 oil-covered pennies and a pay stub marked with an expletive to the worker's home — blocking and staining his driveway and requiring nearly seven hours for him to remove.

Driver: Women getting short end

A female delivery driver for Walmart Inc. has sued her employer in a federal class-action lawsuit alleging the retailer provides work pants and laundry services for men but not for female truckers.

Plaintiff Diana Webb said Walmart offered to provide her work uniform — mandated by the company — when she went to work at the company's distribution center in Cullman, Alabama, in July 2020. The company gave her shirts that fit, she said, but only offered pants and shorts in men's sizes and designs, according to a news report on AL.com.

Ms. Webb said she bought her own pants and was not reimbursed, according to the suit filed in Alabama.

The lawsuit asks that a federal judge bar Walmart from treating female delivery drivers differently than their male counterparts.

Forehead diamond hits rough patch with health insurer

A rapper's health insurance company couldn't wrap its head around its client's decision to implant a diamond in his forehead and nearly canceled his policy as a result.

According to a story on the entertainment news site Showbiz Cheat Sheet, Lil Uzi Vert's $24 million implant — so placed in 2021 as to not misplace the valuable jewel, according to the artist's own admission — caused his health insurance company to rethink its risk.

"My insurance tried to cut me off. They were like, 'This kid's trying to kill himself.' They really were. Because we knew it was a piercing, my insurance looked at it like, 'OK, this kid just implanted this diamond in his head. He's gonna die,'" Lil Uzi Vert said during a podcast.

To avoid losing coverage, he said he had to prove to his insurer that his piercing was done in a safe way and wasn't going to hurt him.

Hey, good lookin' under that mask

Believe it or not, the top risk management strategy for the COVID-19 pandemic may also make one more attractive, according to a study conducted by Cardiff University in Wales.

As reported by KGTV in San Diego, researchers showed participants images of people with and without a mask and found the ones wearing a surgical mask were rated best looking.

And while pre-pandemic, masks were associated with disease, researchers found that no longer holds true.

Researchers pointed to other studies that found covering half the face made people look more attractive because the observer's brain fills in the missing gaps and exaggerates how good a person looks, according to the report.

Teams enjoying 'home-state' edge

A class-action lawsuit has been filed in U.S. District Court against the NFL, New York Giants, New York Jets and MetLife Stadium in New Jersey claiming the Giants and Jets, playing in New Jersey, are improperly and illegally benefiting from the use of "New York" in their team names.

New York resident and plaintiff Abdiell Suero contends the franchises benefit from using "New York" in their monikers. MetLife Stadium is in East Rutherford, New Jersey.

The complaint alleges false advertising, deceptive practices, civil RICO and unjust enrichment. Mr. Suero wants the teams ordered back to New York by 2025, that they rename themselves "New Jersey" or "East Rutherford" until then, and that the class be awarded $6 billion.

"Plaintiff and the class of New York Giants and Jets fans respectfully request that both teams return to the State of New York so they can enjoy all the healthy social, psychological and physical benefits associated with sports identifications of their home NFL teams," the suit says.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