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REPETITIVE WORK INFLAMES CLAIMS

Cumulative trauma injuries set to rise as workforce ages, fights over comp benefits intensify

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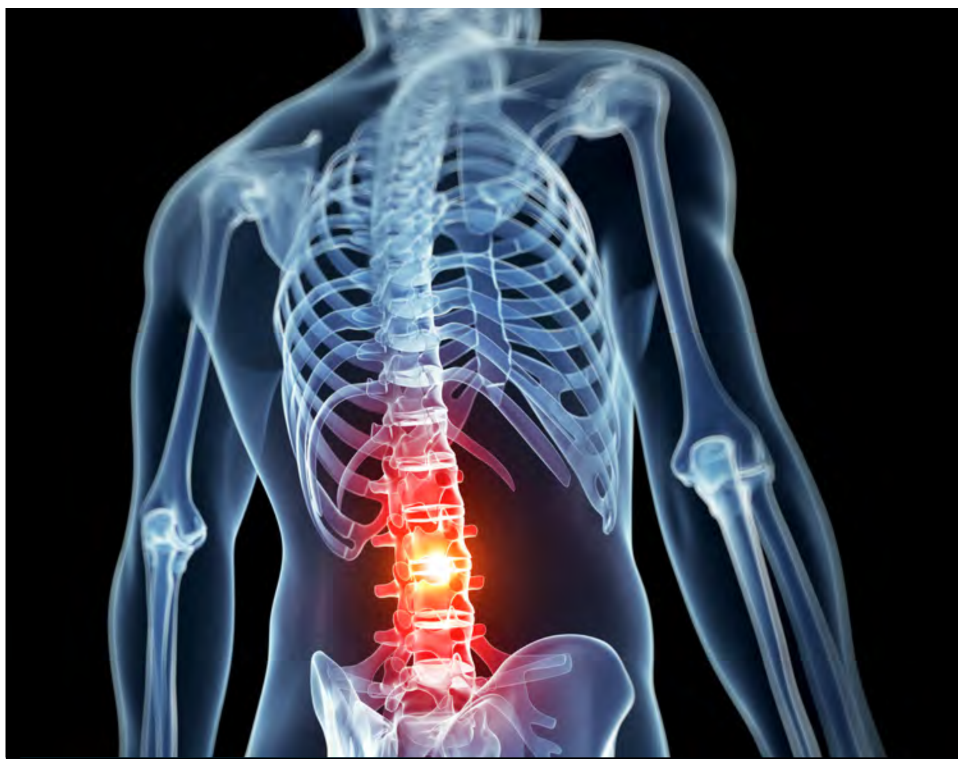

COVER STORY

Claims arising from cumulative trauma injuries — such as carpal tunnel syndrome, tendinitis and hearing loss — are likely to rise given the aging workforce. How states address the perplexing, slow developing injuries and the risk of costly litigation varies significantly. **PAGE 14**

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Directors and officers liability insurance policyholders are seeing their first soft market in years, but several issues could change that, including the risk of an economic slump triggering bankruptcies; aggressive federal regulators; and cyber threats. **PAGE 18**

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VIEW FROM THE TOP

JENNIFER SANTIAGO
Jennifer Santiago plans to promote resilience and advocate for risk managers in the C-suite during her yearlong presidency of the Risk & Insurance Management Society Inc. Ms. Santiago, director, risk management & safety at Wakefern Food Corp., a retailer-owned cooperative based in Keasbey, New Jersey, also discusses RIMS' support for a federal cyber insurance backstop and how risk managers can navigate challenging market conditions. **PAGE 13**

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Worldwide events hit political violence market

BY CLAIRE WILKINSON
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Businesses that purchase standalone political violence and terrorism coverage can expect substantial rate increases and tightening capacity as insurers respond to mounting losses and rising reinsurance costs.

Russia's invasion of Ukraine led to a hardening market, and conditions intensified at Jan. 1 reinsurance renewals, with the effect on insurer political violence and terrorism books of business still evolving, experts say.

Risk aggregations are being scrutinized, and insurers' net positions are shifting, which will likely lead to further rate hikes, they say. In recent years, political violence coverage has broadened to a widening range of perils, and demand has increased while losses have been more frequent.

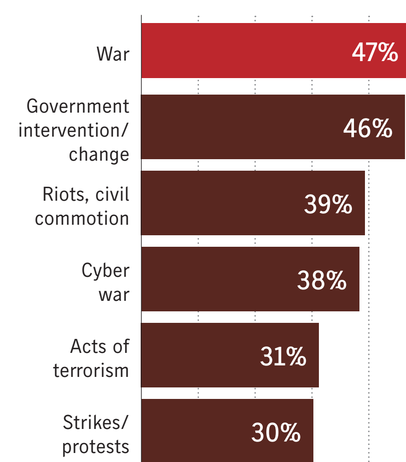
The Ukraine war alone caused an estimated insured loss to the war, terrorism and political violence market of between $1.5 billion and $5 billion, not including aviation and marine losses, said Morgan Shrubb, New York-based head of terrorism for Axa XL, a unit of Axa SA.

Reuters

Russia´s invasion of Ukraine has driven insurer concerns about other geopolitical hotspots.

TOP POLITICAL RISK AND VIOLENCE CONCERNS

Respondents could select more than one risk.



Source: Allianz Global Corporate & Specialty survey

An uptick in mass shooting events in the U.S., riot losses in South Africa in 2021, increasing social unrest due to the cost-of-living crisis, and recent political uprisings in Brazil and Peru have had a "tail wagging the dog" effect, she said.

"Now that reinsurance costs have gone up, obviously insurers can't absorb all those losses on their book and have to start increasing rates to keep up with increased costs and increased risk," Ms. Shrubb said.

Some capacity has retreated from the market because several insurers were unable to negotiate successful Jan. 1 treaty renewals at premiums that would permit them to continue writing the business, said Jen Rubin, New York-based senior underwriting executive and head of war and terrorism at Liberty Specialty Markets, a unit of Liberty Mutual Insurance Co.

Liberty Mutual remains committed to the market but is looking at terrorism and political violence risks with a sharper lens, she said.

"We are seeking rate increases across the portfolio to offset our increased cost of doing business because of the reinsurance rate increases and inflation that we're seeing in the market," Ms. Rubin said.

Across the industry many insurers are seeking minimum 20% rate increases, but rates vary based on the individual risk profile and geographic footprint, she said.

Adam Posner, Miami-based head of U.S. terrorism and political violence at Munich Re Specialty Insurance, a unit of Munich Reinsurance Co., said capacity in the terrorism and political violence market remains robust.

The effect on the primary market of reinsurance treaty renewals is still playing out, but "there is still significant capacity in the standalone terrorism market to be able to cater for the large risks," Mr. Posner said. Munich Re Specialty can deploy $425 million in capacity for a terrorism placement and its appetite hasn't shifted, he said. For political violence perils, capacity varies depending on the threat level of a country, up to $35 million per risk, he said.

It's too early to say how policy language could change, he said.

Political violence and terrorism risks are experiencing limitations in coverage, said Tarique Nageer, New York-based terrorism placement advisory leader for Marsh LLC. Russia's invasion of Ukraine has driven insurer concerns about other geopolitical hot spots such as Taiwan, where there is a "decrease in appetite for political violence cover, with markets looking to reduce their exposures and electing to sublimit perceived higher-risk territories" for operations located there, Mr. Nageer said.

In the past five years, coverage under the political violence umbrella has stretched to include events such as strikes, riots and civil commotion through to war, said Adam McGrath, London-based head of international, political violence, at Mosaic Insurance Holdings Ltd.

Greater awareness of the potential for systemic loss has led to a shift in the breadth of coverage afforded, Mr. McGrath said.

"There's a clear trend of markets trying to limit extensions for things like strikes, riots and civil commotion" through monetary sublimits and narrowing coverage, he said.

Data and analytics can help businesses continue to secure broad coverage terms from underwriters, but contingent time element coverage extensions are contracting, said Fergus Critchley, New York-based head of crisis management North America at Willis Towers Watson PLC.

"Insurers want a lot more information in order to provide that coverage and they're really only offering coverage for named customers and suppliers," he said.

Businesses should align their exposure with the appropriate coverage, "because not all of these products are created equal," said Jeff Buyze, Fort Lauderdale, Florida-based vice president, national property practice leader, at USI Insurance Services LLC.

"The details matter here because if you pick up any monoline terrorism policy, they're all going to have different exclusions, wordings or definitions of what terrorism actually is," Mr. Buyze said. "One line can make the difference between getting paid or not getting paid," he said.

BIG INCREASE IN INSURANCE RATES PROMPTS REVIEW OF EXPOSURES, RISK APPETITE

Businesses should closely evaluate their exposures and coverage needs in a hardening market as political violence and terrorism threats evolve, experts say.

Policies are highly customizable and businesses can choose which locations coverage applies to, said Jeff Buyze, Fort Lauderdale, Florida-based vice president, national property practice leader, at USI Insurance Services LLC.

Businesses need to understand their risks and vulnerabilities and identify appropriate limits, he said.

"Too many times I see insureds buying to their full total insured values for terrorism across their schedule. They have a good spread of risk. There's no sense buying, say, $100 million in coverage when they really only need $10 million," Mr. Buyze said.

Many companies overbuy terrorism coverage, so reducing limits can be an effective way of reducing costs, said Morgan Shrubb, New York-based head of terrorism for Axa XL, a unit of Axa SA.

"Increasing deductibles doesn't really do anything. It's a hard market," she said. Another approach would be to purchase coverage supported by the U.S. federal backstop that was brought in by the Terrorism Risk Insurance Act of 2002, but with property markets still hard, prices are going up and coverage through TRIA is more costly, she said.

Global businesses entering regions with a history of violence and volatility inevitably face associated security and insurance costs in terms of terrorism or strikes, riots and other events, said Adam McGrath, London-based head of international, political violence, at Mosaic Insurance Holdings Ltd.

In the case of strikes and riots, security for soft-target properties is critical, Mr. McGrath said. For example, automatic shutters can immediately protect properties and prevent systemic loss when multiple stores are looted, he said.

Claire Wilkinson

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NEWS ANALYSIS

States push expansion of PTSD benefits in comp

BY LOUISE ESOLA
lesola@businessinsurance.com

Nearly a dozen states as of late January had introduced legislation to expand or enhance workers compensation benefits for employees who suffer mental injuries by presuming they are suffered in the course of work.

"The trend will continue," said Brian Allen, Salt Lake City-based vice president of government affairs, pharmacy solutions, for Mitchell International Inc., a subsidiary of Enlyte Group.

Most of the bills apply only to first responders and propose changes to coverage for post-traumatic stress disorder, yet three separate bills filed last month in Virginia would expand the definition of mental injury beyond PTSD to include anxiety and depression for first responders. Two bills introduced in Connecticut would expand PTSD presumption to all workers who witness a "qualifying event" such as a death. A similar bill last year failed to gain traction.

Connecticut and Virginia also last month introduced bills that would expand the definition of first responders to include dispatchers. Connecticut lawmakers are also considering separate bills that would add several classes of workers to its PTSD presumption, including volunteers, police technicians, dive teams, K-9 search and rescue personnel, and video technicians who review and process police body camera footage.

THE PREVALENCE OF POST-TRAUMATIC STRESS DISORDER

- According to the federal Substance Abuse and Mental Health Services Administration, one in three first responders develops PTSD. By comparison, the incidence of PTSD in the general population is one in five people.
- The Institutes of Health reports that 80% of first responders experience traumatic events on the job.

Last year saw a similar surge in legislation aimed at making it easier to claim comp for mental injuries, with mixed results suggesting a slowing down of successful bills. In 2022, only three states enacted changes after more than 60 bills were introduced, according to two separate analyses by the National Council on Compensation Insurance. Optum Workers' Comp and Auto No-Fault in 2021 published findings that over half of states had made changes to mental injury coverage in workers compensation since 2018.

Among the concerns of those who oppose such legislation are unknown costs.

Bruce Spidell, NCCI's assistant actuary, said data on PTSD presumption claims is "scarce" and that each state's presumption parameters are different, making it challenging to predict claim activity. "Every single (law) is different and there's just not really a benchmark," he said. "We just don't know how much this is going to cost."

Police and fire departments are typically self-insured, adding to the difficulty in gathering data on costs, he said.

The issue hit a roadblock for that reason in 2022 as California lawmakers aimed to expand a 2020 PTSD presumption law — set to expire in 2025 — to include dispatchers and several other classes of emergency response personnel.

California Gov. Gavin Newsom, in a Sept. 29, 2022, letter to legislators on why he would not sign such a bill, said that "expanding coverage of the PTSD injury presumption to significant classes of employees before any studies have been conducted on the existing class for whom the presumption is temporarily in place could set a dangerous precedent that has the potential to destabilize the workers compensation system going forward, as stakeholders push for similarly unsubstantiated presumptions."

Mr. Allen said the uncertainty surrounding cost is the top issue. "You always try to look to figure out if we make this policy change, what is it going to look like five years from now, 10 years from now. What's the upside? What's the downside?"

The way many current laws are written, most first responders would qualify for coverage if they are diagnosed with PTSD, he said.

"Potential for abuse" is another issue, Mr. Allen said, referring to the possibility of PTSD claims being filed by those who are already retiring, resulting in higher benefits.

While opposition to such bills has typically been easy to come by, few municipal groups are speaking out. Calls and inquiries to several state groups that advocate for cities and other jurisdictions seeking comment were not returned.

Michelle Gowdy, executive director of the Virginia Municipal League, wrote in an email that the organization "continues to monitor this issue, but we are not in a position to comment at this time."

The mental health of first responders is "a real issue out there," Mr. Allen said. "The question is how do we approach it? How do we deal with it? What's the appropriate way to cover it?"

Another key issue is that many of the laws and proposals stipulate that a first responder must experience a "qualifying event" to gain access to benefits.

While the language differs state to state most include witnessing or responding to death, including events involving multiple fatalities, and crimes and accidents involving children — all of which are events frequently experienced by first responders, said Mr. Allen, a former police officer.

And while the laws clear red tape for obtaining benefits for PTSD, many are rebuttable, and this issue is starting to show up in the courts.

The Minnesota Supreme Court on Dec. 21, 2022, ruled that a sheriff's deputy is entitled to a presumption that his post-traumatic stress disorder is an occupational disease since he presented a diagnosis of PTSD, even though his employer offered a competing diagnosis of a "major depressive disorder."

A Florida appellate court on Nov. 30, 2022, ruled that a police officer who filed a PTSD claim after responding to a school shooting was eligible for benefits because, while the incident happened before the 2018 change in state law that allowed such claims, his disability didn't begin until he was placed on administrative leave months after the law was enacted.

The ruling, which would clear the way for similar claims filed based on qualifying events that occurred before the change in law, would expand eligibility to events that took place before 2018, said Robert Grace, a partner with Tampa, Florida-based law firm Bleakley Bavol Denman & Grace.

"I do believe the court got it right," he said of the case.

MENTAL HEALTH BILLS WEIGHED

Several states this year are considering legislation that would help manage the mental health of first responders.

Indiana lawmakers are considering a bill that would create a state-funded program to provide unspecified income and mental health services to first responders who have been involved in "a qualified critical incident" and would cover those who are diagnosed with post-traumatic stress disorder. The state is also considering a bill that would provide a first responder with 48 hours of leave immediately following a qualified critical incident.

In Missouri, lawmakers have proposed the First Responder Mental Health Initiative Act that would grant full access to behavioral health care services and treatment as "responsive to the needs of the individual and the professions of police officers, firefighters, emergency medical technicians, 911 dispatchers, and paramedics."

In Florida, a bill would require an "employing agency of a first responder to pay for certain licensed counseling."

Nebraska lawmakers are working on legislation to provide reimbursement for mental health examinations and resilience training for first responders.

And in Utah, lawmakers are seeking to expand access to mental health services — already provided to employed and retired first responders — to the spouses of retired first responders.

Louise Esola

Approach to attorneys fees varies widely in comp

BY JON CAMPISI
jcampisi@businessinsurance.com

The cost of litigating workers compensation claims remains a concern in the industry, but there have been few court rulings overhauling costs and limited legislative efforts on the issue of attorneys fees.

One recent case in New Jersey, however, has attracted attention.

In December, a New Jersey appellate court reversed an attorneys fee award in a case brought by an injured golf course worker.

The panel said a judge erred in approving the large fee award since considerations of reasonableness, and not a blanket 20% of the award, should have been the guiding factor, even though 20% attorneys fees are permitted in New Jersey.

In this case, the attorneys representing the injured worker were awarded 20% of the $164,577 award on the permanency aspect of the case, which amounted to $32,915 in fees.

Permanency in New Jersey deals with the loss of bodily function. Medical bills and lost wages make up the other aspects of comp in the state.

The judge also awarded claimants attorneys fees of $78,000 on temporary disability benefits and medical benefits, bringing the total fees to $110,915. The appeals panel reversed the awards.

Garzon v. Morris County Golf Club was not precedential, so comp judges are not bound by it, but it generated interest, according to legal experts.

"It's going to be discussed in the legal community," said comp defense attorney John Geaney, co-chair of the workers compensation practice at the New Jersey law firm Capehart Scatchard, PA "It's something that other judges might look at. It's persuasive."

The awarding of attorneys fees in comp cases varies between jurisdictions, though caps are similar in many states. Many hover around 20% of the total award, although payment responsibility varies and most are contingency agreements.

In New Jersey defendants pay 60% of attorneys fees in cases that settle, with the other 40% coming out of the total

award, according to Richard Rubenstein, managing partner of Livingston, New Jersey-based Rubenstein, Berliner & Shinrod LLC.

In some states the entire fee is deducted from the injured worker award.

"The judge in *Garzon* failed to make a distinction between a contingency case and an hourly case," Mr. Rubenstein said.

"We're not allowed to charge hourly," he said. "We'd be committing an ethical infraction. They're asking us essentially to keep our hours when we can't charge for them."

Can legislation help clarify matters? Some experts are not sure there's enough movement.

Laura Kersey, executive director of regulatory and legislative analysis for the Boca Raton, Florida-based National Council on Compensation Insurance, said the organization has tracked approximately 60 bills addressing this topic in the past five years. Few have been successful.

This legislative session only two states so far have introduced bills addressing attorneys fees.

In Tennessee, House Bill 82 would cap fees at 20% of the first 450 weeks of an injured worker's award.

New York Assembly Bill 337 includes a revision of what claimants attorneys can submit as a claim for legal services connected to medical treatment.

Judges in various jurisdictions have also ruled on the attorneys fees issue.

Adam Levell, senior legal counsel for NCCI, said that since 2018 the council has reported on 13 cases decided by judges in nine states, with varying outcomes.

In California, there have been "a number of cases to determine the value of the attorneys' work," said Alan Gurvey, a Sherman Oaks, California-based applicants attorney with Rowen, Gurvey & Win. There hasn't been "any real headway in many years in increasing fees for the applicant attorney," he said.

California stands out from other states in that claims administrators are required to pay the fees of claimants attorneys if the defense conducts the worker's deposition, said Sara Widener-Brightwell, general counsel for the California Workers' Compensation Institute. Those fees are set at about 15%, according to Mr. Gurvey.

"That is probably fairly unique to California," Ms. Widener-Brightwell said.

Kaitlin Files, a claimants attorney running a practice in Levittown, Pennsylvania, said one controversial case in Pennsylvania was *Neves v. WCAB (American Airlines)*, a 2020 appeals court decision determining claimants attorneys can be awarded a 20% fee on medical benefits in comp cases in addition to the wage loss portion.

What the decision left open for interpretation is who will pay the medical portion, since claimants attorneys fear it may be the responsibility of the injured worker, she said.

"There's been somewhat of an upheaval in how each specific law firm would choose to address this issue," Ms. Files said.

In Florida, the comp sector continues to experience confusion over the attorneys fee cap issue following court rulings, according to legal experts.

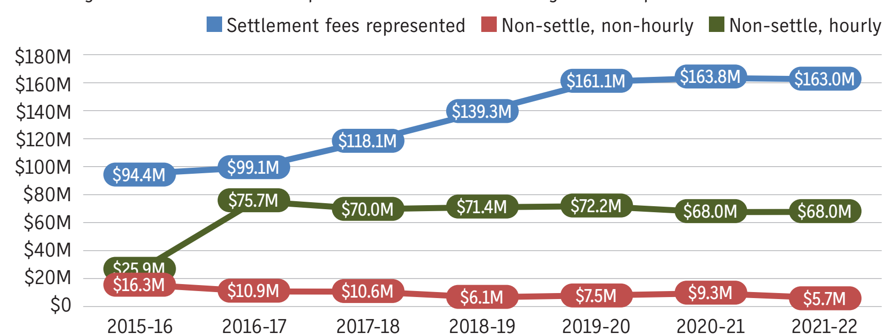
"Some judges think there is no fee cap, some judges think the word 'reasonable' is the fee cap, and some judges think there is a fee cap," said David Langham, Florida's deputy chief judge of compensation claims. "We don't know the answer."

The confusion stems from the 2016 Florida Supreme Court case of *Castellanos vs. Next Door Co.*, a ruling that threw out statutorily imposed fee caps.

The decision brought back a previous system of awarding reasonable attorneys fees via judicial approval, not through statute enacted by legislators.

CLAIMANT FEES CATEGORIZED (2015-2022)

Claimants attorneys fees in Florida workers comp settlements have generally risen in the years since the state Supreme Court ruled a legislatively imposed cap on attorneys fees was unconstitutional, according to the 2021-22 annual report of the Office of the Judges of Compensation Claims.



Source: State of Florida Division of Administrative Hearings

COURT DECISIONS BAR SOME STATE LEGISLATURES FROM CAPPING CHARGES

Some states limit what legislatures can do with regard to attorneys fees.

In 2020, a Florida workers compensation judge approved a more than $1 million attorneys fee award in a case involving a worker who had suffered brain injuries.

The fee, a little more than 25% of the total $3.9 million award, drew attention due to its size.

The award came four years after the Florida Supreme Court ruled in *Castellanos v. Next Door Co.* that the state's statutory cap on attorneys fees was unconstitutional.

Justices determined fee caps should be decided by the judiciary, not legislators.

"My understanding is that it is uncapped as of this moment," George Townsend, a Virginia-based attorney and president of the Workers' Injury Law & Advocacy Group, said regarding Florida.

Similarly, he said, Alabama and Utah also eliminated statutory fee caps because of court rulings that reached a similar conclusion.

In 2016, the Utah Supreme Court, in *Injured Workers Association of Utah v. State of Utah*, found that the judiciary, not the legislature, could regulate the practice of law, including setting attorneys fees.

The Alabama Supreme Court issued a similar decision in *Nora Clower v. CVS Caremark Corp.* the following year.

In Florida, the *Castellanos* ruling initially resulted in a proposed 14.5% workers comp insurance rate increase and caused issues for employers, said Carolyn Johnson, vice president of government affairs for the Florida Chamber of Commerce in Tallahassee.

"(Employers) definitely see the upward pressure that having uncapped attorney fees has had on the system," she said.

Ms. Johnson said work has been done to try and recap attorney fees legislatively, but "we just have not been able to do that."

Jon Campisi

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Pending noncompete ban raising concerns

BY JUDY GREENWALD
jgreenwald@businessinsurance.com

The Federal Trade Commission last month proposed a sweeping ban on noncompete agreements in employment contracts, but opponents say implementation could be delayed or prevented by litigation charging the agency has exceeded its authority.

Others, though, welcomed the move, saying a ban would increase wages and promote economic development in states that don't already have such a provision.

Employers may have to reconsider how they deal with the issue in light of the FTC activity, experts say (see related story).

The insurance sector, which has seen a recent proliferation in employment-related litigation, particularly among brokers, may be less affected than others because companies in the industry usually rely on nonsolicitation or nondisclosure agreements rather than blanket noncompetes. The FTC proposal, though, does create some uncertainty, experts say.

The 216-page proposal issued Jan. 5 would ban employers nationally from imposing noncompetes on their workers, regardless of their salary level, and would apply retroactively. Comments on the proposed rule must be filed by March 20.

Noncompete clauses vary, but they often bar workers from working for a competing company while they are working for or after they leave an employer for a certain period or in a certain region.

The agency said stopping noncompetes could increase wages by nearly $300 billion per year and expand career opportunities for 30 million workers.

"Noncompetes block workers from freely switching jobs, depriving them of higher wages and better working conditions and depriving businesses of a talent pool that they need to build and expand," FTC Chair Lina M. Khan said in a statement.

The proposal was approved 3-1 by the commission, with Trump administration appointee Christine M. Wilson objecting that it "represents a radical departure from hundreds of years of legal precedent that employs a fact-specific inquiry into whether a noncompete clause is unreasonable in duration and scope."

A dozen states and the District of Columbia have enacted measures restricting noncompetes, but they are generally less sweeping than the FTC proposal. Colorado's law, for instance, bars noncompete agreements for employees earning less than $101,250 a year.

The FTC proposal is a "blanket, not very nuanced solution," said James M. Witz, a shareholder with Littler Mendelson P.C. in Chicago, who co-chairs the firm's unfair competition and trade secrets practice group. "There is going to be a lot of pushback from the business community on the need to have noncompetes, especially for senior workers who have access to trade secrets," he said.

Many observers say the FTC has exceeded its authority.

The agency "doesn't have the authority to regulate noncompetes whatsoever, much less ban them," said Erik W. Weibust, a partner at Epstein Becker Green P.C. in Boston. "Noncompetes have been regulated by the states for over 200 years, long before the FTC even existed."

Observers also contend the proposal is unnecessarily broad.

"Why do you need a noncompete for somebody making $35,000 a year?" said Bennett Pine, a shareholder with Anderson Kill in New York. State legislation focuses on higher-paid employees where it makes more sense, he said.

The proposal also fails to balance employers' desire to protect their training and proprietary information with employee mobility, said J. William Manuel, a partner with Bradley Arant Boult Cummings LLP in Jackson, Mississippi.

Amy Epstein Gluck, a partner with FisherBroyles LLP in Washington, said, "The FTC has never done anything like this." She said she would not be surprised if a federal judge issues a nationwide injunction against its implementation.

Others strongly endorse the FTC proposal.

Plaintiffs attorney David Fish, of Fish Potter Bolaños P.C. in Naperville, Illinois, said the proposal "makes a lot of sense, and it's long overdue."

"Businesses have been putting noncompetes in place for years" for employees who have no business having one, he said.

He pointed to Champaign, Illinois-based Jimmy John's Franchise LLC, which in 2016 agreed to stop distributing sample noncompete agreements in hiring packets it sent to its franchisees after then-New York Attorney General Eric T. Schneiderman said they were unlawful.

California has a law similar to the FTC proposal, experts note.

Christopher J. Banks, a partner with Crowell & Moring LLP in San Francisco, said, "There's a lot of literature out there" that contends California has developed its robust economy, in part, because of the rule.

A September 2021 report, for example, states that "researchers have hypothesized that the lack of enforceable (noncompete agreements) in California … was a key factor behind the clustering of highly innovative IT firms in Silicon Valley." The report, which reflected the view of earlier studies, was published by IZA World of Labor, an online platform that provides information on labor market issues.

Some, though, question the California law's economic impact.

"Whether it has been good for California business has been hotly contested and debated," said Thomas E. Wallerstein, partner with Venable LLP in San Francisco.

In recent years, there has been frequent litigation related to insurance brokers who have left their employer to join a competitor or start their own business.

Jeffrey A. Lehrer, a partner with Ford & Harrison LLP in Spartanburg, South Carolina, said traditional noncompetes are rare in the insurance industry, which generally uses nonsolicitation or nondisclosure restrictions to deter departing brokers from taking clients with them. Even if the FTC rule is approved, these arrangements will remain intact, he said.

Clifford R. Atlas, a principal with Jackson Lewis P.C. in New York, sees the FTC rule having an impact on the industry. "It leaves employers, particularly in the insurance world who utilize client restrictions on a regular basis, wondering what the impact of this ultimately will be."

30 million

An estimated 18% of U.S. workers are covered by noncompetes. That's 30 million people.

The FTC estimates that banning noncompetes may:

- Increase workers' earnings by nearly $300 billion.
- Save consumers up to $148 billion on health costs each year.
- Close racial and gender wage gaps by 3.6% to 9.1%.

Source: Federal Trade Commission

EMPLOYERS ON NOTICE

Employers should consider how they may have to change their current policies in response to the Federal Trade Commission's proposed rule to ban noncompete clauses.

"We're definitely having difficult discussions" with clients as to what it means and how to proceed, said Carrie Hoffman, a partner with Foley & Lardner LLP in Dallas.

Erik W. Weibust, a partner at Epstein Becker Green P.C. in Boston, said that even assuming there are no challenges to the rule, it will be at least eight months before it is implemented "and likely to be far longer than that." He said he is telling clients to "stay the course" and continue to comply with state law.

Mr. Weibust also said that the publication of the proposal "might be an opportunity to have a conversation" as to whether a "full" noncompete is needed or whether a nonsolicitation or nondisclosure agreement might be sufficient.

Clifford R. Atlas, a principal with Jackson Lewis P.C. in New York, said agreements with employees should be reasonable and narrowly focused to protect trade secrets and confidential information.

Eric E. Packel, Kansas City, Missouri-based chair of Polsinelli P.C.'s restrictive covenants and trade secrets practice, said it's usually better for companies to ask employees to sign a nonsolicitation agreement unless they're dealing with a function such as research and development.

Such an approach is "probably going to accomplish their real goal" of preventing employees who have confidential information from going to a competitor and soliciting their customers, he said.

Judy Greenwald

RESEARCH & DATA

Broker mergers slow in changing economy

BY STEVE GERMUNDSON, TIMOTHY CUNNINGHAM AND DANIEL MENZER

Changes appear to be afoot in the brokerage mergers and acquisitions sector as a significant rise in interest rates and economic uncertainty are likely forcing some buyers to pull back and causing nearly all buyers to proceed more cautiously.

The total number of transactions declined 8% to 987 in 2022, from 1,075 in 2021.

These totals include U.S. and Canadian property/casualty and employee benefits brokerages, third-party administrators and related managing general agent operations, and the tally has been expanded for 2022 to include agencies solely focused on life insurance, investment or financial management, consulting and other business connected to insurance distribution. We collect the information from public announcements, buyer websites and other sources in a consistent manner from year to year, but the count does not include all transactions because many are never announced publicly.

When the newly admitted categories of sellers are excluded, the decline is even more dramatic as the number of transactions on a year-over-year basis declined 17% from 1,066 in 2021 to 885 in 2022.

Last year was a tale of two halves. The robust first half was driven by a built-up inventory of deals yet to be completed and still favorable economic conditions; the buying spree continued as there were 24% more deals done than in the same period in 2021. But as soon as the third quarter began and deal inventories fell, the effect of rising costs of capital was felt and the flow slowed. The deal count in each of the first six months of 2022 was higher than the same time frame in the previous year, but the reverse was true in the final six months.

Looking at all transactions reported, the 530 reported second-half transactions in 2022 fell by 25% from the prior-year total but were still 24% above the previous five-year average. During the first half of 2021, there were 674 transactions reported compared with 488 for the same period in 2020. In fact, the decline picked up pace as year-over-year 2022 third-quarter results were down 18% while the fourth quarter accelerated to a 30% decline compared with the prior year.

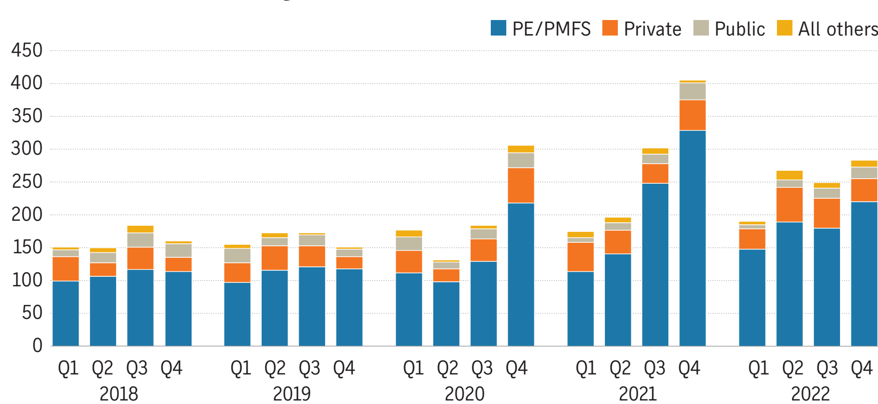
Removing the newly added seller categories to study changes over time on an apples-to-apples basis, there were 482 first-half transactions in 2022, which represented a 32% decline in the sales of retail property/casualty and benefits agents and brokers, wholesalers and TPAs.

TOP BUYERS

The 10 most acquisitive buyers of insurance agencies and brokerages in the U.S. and Canada in 2022 with comparable totals for 2018-2022:

Buyer	Company type	2018	2019	2020	2021	2022
Acrisure LLC	Private equity/hybrid	101	98	108	122	107
PCF Insurance Services LLC	Private equity/hybrid	4	4	36	99	71
Hub International Ltd.	Private equity/hybrid	59	52	65	62	70
High Street Insurance Partners Inc.	Private equity/hybrid	1	3	9	71	44
Inszone Insurance Services LLC	Private equity/hybrid	2	6	10	12	42
World Insurance Associates LLC	Private equity/hybrid	9	18	42	53	39
BroadStreet Partners Inc.	Private equity/hybrid	34	34	58	45	35
Liberty Company Insurance Brokers Inc.	Private equity/hybrid	1	2	2	10	33
AssuredPartners Inc.	Private equity/hybrid	38	44	38	52	33
Alera Group	Private equity/hybrid	28	24	18	45	30
TOP 10 TOTALS		277	285	386	571	504
ALL OTHERS		366	365	409	504	483
TOTALS FOR YEAR		**643**	**650**	**795**	**1,075**	**987**

TRANSACTIONS BY QUARTER BY TYPE (2018 – 2022)



Source: Optis Partners LLC

Yet, compared with longer-term historical activity, each quarter of 2022 outpaced the previous five-year average, even when the new categories of sellers are excluded, which highlights the "deal bubble" that was 2020 and 2021. Some buyers may choose to suspend pursuing deals going into 2023, and many others will likely take a "slow as you go" approach, though there may be a few that see opportunities of potential reductions in valuations that come from increased costs of capital and concern over a potential recession.

Buyers are broken down into the following categories:

- PE-hybrid — Private equity-backed and private firms with significant outside acquisition financial support
- Publicly traded
- Privately owned
- Bank-owned
- Others

Acrisure LLC continued to report the most activity, with 107 closed transactions, a decline from the 122 transactions completed in 2021 but equal to its long-term average. While PCF Insurance Services followed with the next highest volume at 71 deals, its activity dropped dramatically in the third and fourth quarters. Hub International Ltd. announced 70 transactions, bucking the industry trend with a 13% increase in deals over 2021.

The PE/hybrid group remains the most active group of buyers, occupying each of the top 10 spots (see table) and accounting for 735 of the 987 transactions for the year, fully 74% of all agency transactions. The concentration of deals by the top 10 buyers — as measured in each year independently — were 53% and 51% in 2021 and 2022, respectively. Of the top 10 buyers, only Inszone Insurance Services, which announced 30 more deals; Liberty Co. Insurance Brokers Inc., up 23; and Hub International, up eight, increased their number of deals in 2022. The largest decline in the number of deals among this group was at PCF, down 28; High Street Partners, down 27; and Assured Partners, down 19.

The past three years offer a fascinating look at the industry through the lens of deal activity (see graph). In the first half of 2020, deal activity slowed notably as the world learned how to work in a pandemic. The six quarters that followed produced the greatest number of deals ever, largely driven by fear of a potentially significant increase in capital gains rates, which did not go through. This high-level activity continued in the first half of 2022, but the flow slowed as soon as the third quarter as interest rates rose, inflation concerns were realized, and a possible recession loomed.

Some other statistics from the 2022 activity:

- 36 different PE-hybrid buyers acquired a combined 735 agencies in 2022, an average of 20 transactions each; six PE-hybrid buyers made their first acquisition in 2022.
- There were 66 privately owned firms that acquired a combined 163 agencies, compared with 76 that bought 155 agencies in 2021, an average of 2.5 and 2.0, respectively.
- 72 firms acquired only one agency in 2022, while 36 acquired five or more.
- There were 54 first-time buyers in 2022.

Property/casualty brokers continued to dominate the sell-side M&A landscape, accounting for 557 of the 987 transactions, or 56% of the total. Employee benefits brokers were the second most acquired companies in 2021, with 147 transactions representing 15% of the total. In all, the combination of all property/casualty and employee benefits retail sellers was 834, or 84% of all deals done in 2022.

There were eight firms whose revenue exceeded $25 million sold during 2022.

The M&A scene is in a state of change across all industries including insurance distribution. We can expect to see a slower pace of deals over the next six months as buyers navigate the waters of rising interest rates and economic uncertainty. With that said, some dynamics haven't changed, namely the continuation of an aging ownership base that must sell at some point and investors with plenty of dry powder.

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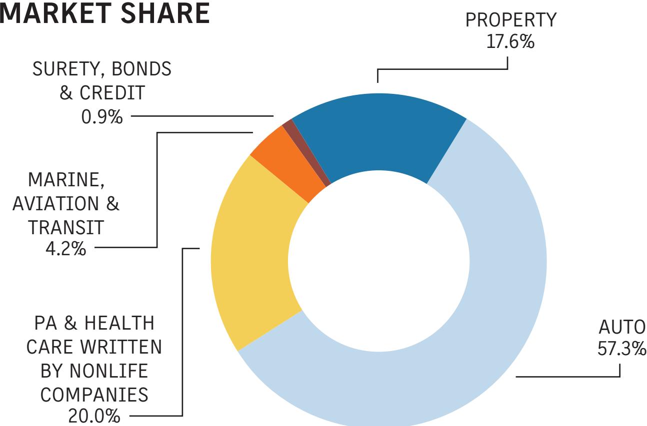
PROFILE: TUNISIA

77
GLOBAL P/C MARKET RANKING

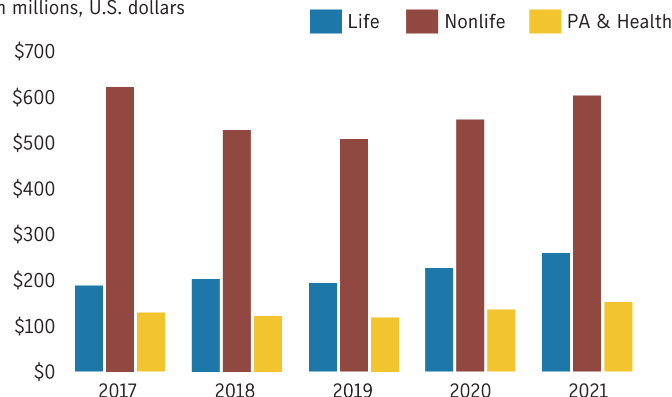
Observers say Tunisia's nonlife insurance market needs to diversify away from auto insurance, which in 2021 represented 57.3% of the total nonlife market, including health insurance. It will likely take some years for significant progress to be made in this respect. Rationalization of the market through the amended insurance law — currently held up by the political situation in the country — will probably have to wait for the restoration of parliament at a future date that cannot be currently predicted. On July 25, 2022, a referendum took place in Tunisia to determine a new constitution for the country. The official results effectively returned the country to an autocracy in which the president is in charge of the army, enabling him to form a government without parliamentary approval and rendering it virtually impossible for him to be removed from office.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA

63,170
square miles

POPULATION

11.9
million

MARKET CONCENTRATION

54.23%
market share of top five insurers

2023 GDP CHANGE (PROJECTED)

1.6%

MARKET DEVELOPMENTS

Updated January 2023

- The General Insurance Committee of Tunisia was seeking a presidential decree to ratify the amended insurance law, which, although having previously passed all the requisite parliamentary procedures, was not enacted due to the dissolution of parliament by the president on March 30, 2022. The committee considered urgent enactment of the law necessary as it contains provisions for insurers to merge as well as another provision to substantially increase the minimum capital of insurers, which is likely to encourage mergers. As parliament had not been reconstituted at the time this report was being prepared, the amended insurance law had not yet been enacted, and its likely date of approval and enactment was not known.
- According to the insurance regulator's 2021 annual report, market nonlife premium volume grew 8.4% in that year, compared with 5% in 2020. It should be noted that in 2021 the local currency depreciated against the U.S. dollar and further depreciated in 2022 amid high and increasing domestic inflation, which increased sums insured for auto, property and marine cargo business.
- In October, insurers asked the regulator to increase obligatory auto third-party premium rates by 10% to 15% due to poor technical results in the line. The deficit situation was exacerbated in 2021 and 2022 by increasing spare part costs as a result of rising manufacturers' prices, a depreciating currency and supply chain difficulties. The outcome of the insurers' request had not yet been reported.

COMPULSORY INSURANCE

- Auto third-party liability
- Workers compensation (state scheme)
- Professional liability for lawyers and other legal representatives, waste transporters, port operators and registered professional maritime operators
- Liability insurance for air carriers for injury to passengers and damage to baggage or goods during international journeys
- Pollution insurance for oil and gas companies
- Shipowners liability for marine oil pollution (financial guarantee or insurance)
- Clinical trials liability

NONADMITTED

Nonadmitted insurance is not permitted because the law provides that insurance must be purchased from locally authorized insurers, with some exceptions.

INTERMEDIARIES

Brokers and agents have to be authorized to do insurance business. Locally licensed intermediaries are not allowed to place business with nonadmitted insurers.

MARKET PRACTICE

Locally issued policies are invariably purchased because it is acceptable to place up to 100% reinsurance on any risk or risks.

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

LEGAL BRIEFS

Bad faith verdict upheld on appeal

A federal appeals court affirmed a $1.1 million bad faith jury verdict against an insurer over its handling of a construction accident in which a worker lost his ability to walk.

Within months after Ernest Guthrie fell from a roof and became paralyzed from the waist down, his medical bills climbed to more than $400,000, with future payments projected into the millions, according to the ruling by the 11th U.S. Circuit Court of Appeals in Atlanta in *American Builders Insurance Co. v. Southern-Owners Insurance Co.*

Lansing, Michigan-based Southern-Owners was the primary insurer for Mr. Guthrie's company, while at the time of the accident he was performing contracting work for a company that had a primary policy with Montgomery, Alabama-based American Builders and an excess policy with Markel unit Evanston Insurance Co.

American Builders investigated the accident, assessed the construction company's liability and evaluated Mr. Guthrie's claim, the ruling said.

"Southern-Owners, in contrast, did little to nothing for months" and "when push came to shove" refused to pay anything to Mr. Guthrie to settle the claim, while American Builders and Evanston contributed up to $1 million each, according to the ruling.

American Builders sued Southern-Owners, charging bad faith, which resulted in a three-day jury trial in which the U.S. District Court in West Palm Beach, Florida, entered a final $1.1 million judgment.

A three-judge appeals court panel affirmed the judgment.

"There was enough evidence to allow the jury to reasonably find that Southern-Owners acted in bad faith because it delayed acting on its duty to investigate and settle Guthrie's claim," the ruling said.

Markel wins battle over fraud exclusion

A Markel Corp. unit does not have to continue defending a company in connection with its former CEO's embezzlement, a federal appeals court ruled in overturning a lower court decision.

Paul Donisthorpe, former CEO of Albuquerque, New Mexico-based Desert State Life Management, which acted as a trustee for disabled individuals, ran an embezzlement scheme in which he intentionally misappropriated and comingled more than $4.9 million of the entity's client funds for his own use, according to the ruling by the 10th U.S. Circuit Court of Appeals in Denver in *Evanston Insurance Co. v. Desert State Life Management et al.*

Regulators declared Desert State financially unsound in March 2017, and in August 2017 Christopher Moya was appointed its receiver, according to the ruling.

Mr. Donisthorpe pleaded guilty to wire fraud and money laundering in November 2017. He was sentenced to 12 years in prison and ordered to pay $6.8 million in restitution and a $4.8 million judgment.

Three former clients sued Desert State, Mr. Donisthorpe, his ex-wife, a director and others, demanding restitution, and their cases were consolidated into a class action.

Mr. Moya asked Desert State's professional liability insurer, Markel unit Evanston Insurance, to defend and indemnify the company.

Evanston responded by sending a reservation of rights letter to Mr. Moya, then later refunded the premiums paid under the policy and made an offer to rescind the coverage, which Desert State did not accept.

In July 2018, Evanston sued Desert State and others in U.S. District Court in Albuquerque seeking to rescind the policy and be granted a declaration the class-action defendants were not entitled to coverage under the policy and that Evanston had no duty to defend against claims arising from Mr. Donisthorpe's criminal conduct.

The district court ruled the policy insured Mr. Moya and the director for the claims filed against them.

It was overturned by a unanimous three-judge appeals court panel, which ruled that the lower court had erred in not applying a policy exclusion that barred coverage for any claim arising out of misappropriation or commingling of funds.

The case was remanded for further proceedings.

Dozens of firms lose COVID ruling

In a sweeping consolidated ruling, the 3rd U.S. Circuit Court of Appeals in Philadelphia ruled in favor of several insurers and held that dozens of companies were not entitled to COVID-19-related business interruption losses.

It joined 10 other federal appeals courts in ruling against policyholders on the issue, with only the U.S. Court of Appeals for the District of Columbia Circuit not having issued a decision.

Plaintiffs in the case, *Rhonda H. Wilson; The Law Offices of Rhonda Hill Wilson P.C. v. USI Insurance Service LLC; Hartford Casualty Insurance Co.*, are businesses in Delaware, Maryland, New Jersey, New York and Pennsylvania in the food service, medical, health and wellness, art, music and legal sectors.

The 3rd Circuit affirmed lower district courts in ruling policyholders were not entitled to business interruption loss coverage because there was no physical damage.

Its language echoed that of earlier federal appeals court decisions.

"To establish coverage under the business income and extra expense provisions, the businesses must show that their operations were suspended because of 'direct physical loss of or damage to' the properties," it said.

"The businesses argue that the loss of their ability to use their properties for their intended business purposes constitutes 'physical loss of' the properties. We disagree."

The court said the plaintiffs' argument was "completely divorced from the physical condition of the premises" and that they lost use of the properties because of governmental orders, with the structures remaining "intact and functional."

Policy doesn't cover ransomware attack

An insurer does not have to provide coverage under a business owners policy for a ransomware attack because there was no physical damage, the Ohio Supreme Court ruled in overturning a lower court decision.

Kettering, Ohio-based EMOI, a medical software company, was the target of a September 2019 ransomware attack, according to the unanimous ruling by the Ohio Supreme Court in *EMOI Services LLC v. Owners Insurance Co.*

EMOI paid the $35,000 ransom, and most of its system files returned to normal following a decryption process. There was no hardware or equipment damage.

After Lansing, Michigan-based Owners denied coverage, EMOI sued the insurer.

A trial court granted Owners summary judgment but was reversed by a state appeals court, which ruled that an electronic equipment endorsement potentially applied to EMOI's claim if the company could prove that its software was damaged by the encryption.

The Ohio Supreme Court overturned the decision, saying the endorsement is "clear and unambiguous in its requirement that there be direct physical loss of, or direct physical damage to, electronic equipment or media before the endorsement is applicable."

"Since software is an intangible item that cannot experience direct physical loss or direct physical damage, the endorsement does not apply in this case," the high court said, ruling in the insurer's favor.

DOCKET

COURT RULES IN FAVOR OF D&O INSURERS

The Delaware Supreme Court affirmed a lower court ruling in favor of American International Group Inc., Chubb Ltd. and QBE Insurance Group Ltd. in directors and officers liability insurance litigation filed by Littleton, Colorado-based Stillwater Mining Co. The Stillwater County, Montana-based company unsuccessfully argued, following an earlier Delaware ruling in another case, that Montana law rather than Delaware law should apply on the issue of whether it could recover expenses it incurred in defending a Delaware stockholder appraisal action.

ASBESTOS DEATH RULING OVERTURNED

A Pennsylvania appeals court overturned a trial judge's dismissal of a case brought by the widow of a worker who died after developing cancer that the man claimed was tied to his exposure to asbestos-containing products while on the job. The Pennsylvania Superior Court reversed a November 2019 Philadelphia Common Pleas Court decision that granted summary judgment to Lancaster County, Pennsylvania-based Kreider Dairy Farms Inc.

OPIOID DISTRIBUTOR LOSES FEDERAL APPEAL

A federal appeals court affirmed a lower court ruling that two insurers do not have to defend or indemnify an opioid distributor, holding the company's claims for economic damages were beyond the scope of its policies. Murray, Kentucky-based Quest Pharmaceuticals Inc., a pharmaceutical wholesale distributor, is being sued in about 75 lawsuits for its allegedly wrongful conduct in promoting and distributing prescription opioids, according to the ruling by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Westfield National Insurance Co.; Motorists Mutual Insurance Co. v. Quest Pharmaceuticals Inc.*

Promoting resilience and advocating for risk managers in the C-suite are major themes for Jennifer Santiago's yearlong presidency of the Risk & Insurance Management Society Inc. Ms. Santiago, director, risk management & safety at Wakefern Food Corp., a retailer-owned cooperative based in Keasbey, New Jersey, discussed RIMS' support for the development of a federal cyber insurance backstop and how risk managers can navigate challenging market conditions with *Business Insurance* Deputy Editor Claire Wilkinson. Edited excerpts follow.

Jennifer Santiago

RISK & INSURANCE MANAGEMENT SOCIETY

Q How did you get your start in the industry?

A There weren't a lot of programs for risk management when I came out of school. I had an internship as a medical liability representative for a medical malpractice organization and that really enabled me to get my first big job, which was at NYU Medical Center in New York. I came in at entry level and within two years was promoted to director, managing a team, reporting to the CFO and engaging with the captive insurance company. I was very fortunate to get that start and that led me down the path of risk management. I went to my first RIMS conference in 1999, and Colin Powell was the keynote speaker. And I remember thinking, wow, this is a pretty incredible organization. There were thousands of risk managers all waiting outside the auditorium to be able to get in, and that really drew me in. It's the community that has always kept me engaged.

Q You've served in broking and risk management roles across different industries. How has that influenced you?

A I love the pivot and the challenge and the change of learning a new business model, learning about the key critical risks of the operation and then developing solutions. It's really the toolkit of the risk manager that goes with you. That's what's been exciting for me, continuously being out of my comfort zone and always challenging and pushing. I did the broker stint for a little while and then decided risk management was really my sweet spot. I spent a lot of time in risk management and insurance, enterprise risk, ethics and compliance, and risk assessment at Novartis Pharmaceutical Corp., Ingersoll Rand, Arthur J. Gallagher & Co., and was chief risk officer at Penn State University right before my current role. So I really diversified from an industry standpoint and that's kept it interesting.

Q What are your goals for RIMS for the year ahead?

A RIMS has a long history of success and incredible leaders and risk management professionals that have been committed to the society for decades. We've come through the pandemic and the key word for me is resilience. What's important about resilience is coming out on the other side stronger and better and ready for the next challenge. My focus is on getting our community back together — because COVID did change the way people interact — and to reconnect and strengthen the community that we have. The pandemic really shone a light on risk management professionals.

Everybody works in their silo and the risk professional knows what goes on across the organization, so it was logical that they would be right at the table when the pandemic hit. There's momentum there, and we need to capture that and push forward. We also need to advocate for the risk professional to make sure that we're getting into the C-suite in chief risk officer roles, that we're sitting on boards and providing expertise. The other thread is DEI, creating more diverse, equitable, inclusive environments for people to be successful.

Q RIMS is advocating for a federal cyber backstop. Why do risk managers want government support for cyber coverage?

A RIMS issued a comment letter to the Federal Insurance Office last November. The dialogue is about creating a federal backstop to deal with large-scale cyber incidents. As risk managers, we know when we're placing cyber coverage that we're seeing erosion of coverage, capacity and cost. That creates a very challenging environment for the risk management professional. There's a fear that coverage will evaporate, so there'll be fewer markets willing to write cyber and more exclusions — sort of a Swiss cheese policy. I think that's a real, legitimate fear. There are concerns about systemic cyber risk and a hit to infrastructure causing a massive shutdown. That's an important piece but there's also the day-to-day cyber risks where the coverage is eroding. We want to talk about a cyber backstop from the government not just being limited to critical infrastructure and having a broader scope. Whether it is somehow attached to TRIA, the Terrorism Risk Insurance Act, or completely stands alone, needs to be determined. So, there's a lot of parts to it, but it makes sense because as more insurance companies pull back the reins, the need for a federal backstop becomes more critical.

Q What can risk managers do to leverage the best outcome in a challenging insurance market?

A It's been a tough couple of years, and I don't suspect that it's going to get much better, and for certain lines of insurance, like cyber and property, we're going to continue to be very challenged. So, helping boards understand what the situation is, and understanding the risk appetite and tolerance at an organizational level, is important. How much risk can we tolerate in-house? How much can we transfer? What do we want to pay for that risk transfer? There's a balancing act between retain and transfer. The number of captives is growing and people are looking for ways to self-insure. It's really the three C's of coverage, capacity and cost, and all three are being challenged. There was a time when, as you raised your deductible, your premium went down and you had premium savings, so that was a strategy. Now you raise the deductible, and your premiums are still 20%, 30%, 40% higher. What we hear as risk managers from the insurance industry is that it's really being driven by the reinsurers. So it's a knock-on effect from the reinsurance market to the insurance market to the risk manager.

Everybody works in their silo and the risk professional knows what goes on across the organization, so it was logical that they would be right at the table when the pandemic hit. There's momentum there, and we need to capture that and push forward.

COVER STORY

CUMULATIVE TRAUMA CLAIMS COSTS ADD UP

Proof of injury, lawsuits and lengthy settlements test employers but focus on loss control helps

BY LOUISE ESOLA
lesola@businessinsurance.com

Injuries to body parts that are caused by repetitive motion, frequent exposure to sounds, chemicals or even vibrations are among the most perplexing in the workers compensation sector.

Claims arising from cumulative trauma injuries, such as carpal tunnel syndrome, tendinitis and hearing loss, will likely rise given the aging workforce and an overall trend toward litigation, comp experts say.

How states address cumulative trauma injuries varies significantly, with some states — as well as some courts — tending to be sympathetic to workers, employer lawyers say. Employers have won some significant legal victories, though.

Concerns over cumulative trauma injuries stack up: Sometimes there is little or no objective medical evidence that proves causation or degree of injury; many claims are litigated, adding to costs and often taking several years to close; return to work is frequently not a given or a goal, because some of the claims are filed post-employment.

"It's easy to know when a rock falls on somebody's head —what the cause was, the circumstances that led to it —and you are able to identify it as work-related and what the injuries were," said Bert Randall, principal at Franklin & Prokopik P.C. in Baltimore. "But with cumulative trauma claims, those claims arise over a long period of time (and) are much more problematic."

Liberty Mutual Insurance Co. in 2022 released a report on the top 10 costliest workers compensation claims that said overexertion, other exertions and awkward postures — typical issues associated with musculoskeletal cumulative trauma — account for more than 28% of costs to the system.

"That's what we are talking about," said Craig Karasack, Fort Lauderdale, Florida-based product director of ergonomics

ACTING ON ERGONOMIC ADVICE CAN REDUCE INJURIES

Some cumulative trauma claims are preventable, according to loss control experts, who say workplace safety, automation and sound ergonomics are among the best risk management practices to keep workers on the job without pain or overuse injuries.

Such technologies and best practices are not new, have helped lower claim frequency overall in workers compensation and have the potential to curb repetitive trauma injuries, they say.

"We're continuing to try to get our customers to understand the risk factors that contribute to this type of human trauma disorders and have risk mitigation strategies in place to help stop them in the first place," said Woody Dwyer, director of loss control and certified professional ergonomist with AmTrust Financial Services Inc. in Hartford, Connecticut.

One step is to know your workers, processes and injury data, said Kim Pfingstag, Memphis, Tennessee-based manager, occupational care & recovery, in the global risk management department of International Paper Co.

"There's a way to look at our data and identify where we've got opportunities to prevent injuries," she said, adding that data can lead to improved communication between departments and work sites.

From there, employers can better "understand that there is an opportunity to do things like ergonomic assessments, or just simple things like rotating workers so that they're not doing the same job duties continuously, or letting them have more breaks," she said. "Even ask employees to offer suggestions for how they might do this better."

Craig Karasack, Fort Lauderdale, Florida-based product director of ergonomics and manufacturing technology at Liberty Mutual Insurance Co., said a better understanding of work processes is helpful in prevention. "Our tenet is to look at the work design," he said.

Not following through on mitigation strategies is a common pitfall, said Mike Milidonis, Freeport, Florida-based national manager, ergonomics and employer services, for Genex Services, a Enlyte LLC company.

For example, he said, companies can order an ergonomic evaluation, receive recommendations for equipment that might help an individual, and yet not purchase that equipment.

"That's the worst thing because you know there's a problem and nothing ever happens," he said. "And the person is just going to continue down that discomfort road until it gets into that work comp side, or possibly disability."

Not understanding a worker's history is another concern, said Neil DeBlock, Schaumburg, Illinois-based vice president, workers compensation claims, for Zurich North America.

"Many years ago, people worked at one employer for their entire career and currently that doesn't happen any longer; they go from employer to employer to employer," he said. "In some jurisdictions it's the last employer, the last carrier that is stuck with the entire (cumulative trauma claim) and you don't know what the worker was doing in their prior employments, and that works against you."

Investigating a worker's prior employers is helpful, he said.

According to attorneys, this can involve checking Occupational Safety and Health Administration logs to examine a company's record of lost-time injuries and frequency.

Another tip is to create detailed job descriptions that provide guidelines on such factors as the weight of materials a worker should handle. Employers should also keep documentation of such rules and practices, Mr. DeBlock said.

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CUMULATIVE CLAIMS

Continued from previous page

and manufacturing technology at Liberty Mutual. Cumulative trauma is "a bit of a challenge because it's very obvious when somebody falls and hurts themselves, or you know when something sharp comes in contact with the body because it's immediate. The challenge with these types of injuries that we're talking about is that the damage is done over time."

"Cumulative trauma is on the horizon and is something we have to pay close attention to," said Steve Bennett, Washington-based assistant vice president for workers compensation programs and counsel for the American Property Casualty Insurance Association.

"As the population gets older, and there's a chance of having more of these claims, there's also the issue whether or not they're work-related or part of general everyday life," he said. "These claims can be pretty expensive and become a large cost driver if they get out of hand."

The industry is seeing a rise in cumulative trauma injuries, said Neil DeBlock, Schaumburg, Illinois-based vice president, workers compensation claims, for Zurich North America.

The profile of an average worker is also contributing to the challenge, according to Jennifer Cogbill, Frisco, Texas-based senior vice president of GBCare with Gallagher Bassett Services Inc.

"We see an aging workforce with people with more physical health challenges," she said. "We may not be as fit and healthy as we were 20 to 30 years ago, and some of those preexisting health issues will contribute to complications, pain and the opportunity for a cumulative trauma claim."

Most states allow workers to be awarded comp benefits for some cumulative trauma injuries, although the definitions and guidelines vary, according to the Workers' Compensation Research Institute, which issued a state-by-state analysis in 2022.

Virginia's law, for example, covers only hearing loss and carpal tunnel syndrome. Florida has no statutes on cumulative trauma claims, meaning none are prohibited. In several states, including Oregon and Tennessee, injuries must be primarily caused by the work performed, leaving room for interpretation.

In California — said by several experts to be experiencing a "phenomenon" of cumulative trauma activity — 60% of cumulative trauma claims have indemnity components whereas only 35% of other claims do, according to a 2022 analysis by the Workers' Compensation Insurance Rating Bureau of California.

Any changes to laws are usually slow, according to experts who say most states take a worker-friendly approach.

As of late January, only one state legislature in its current session has proposed tightening the law permitting such injuries. Oklahoma lawmakers are considering a bill that states the "date of injury for cumulative trauma shall be the last date of injurious exposure prior to the filing date of the Employee's First Notice of Claim for Compensation," which must be filed within six months after the first distinct manifestation of the disease or cumulative trauma or within six months after death.

Illinois in 2022 aimed to limit exposure with a bill that would have restricted conditions under which repetitive or cumulative trauma is compensable, providing "that gradual deterioration or progressive degeneration of the body caused by aging is not compensable as repetitive or cumulative trauma." That bill died in committee.

Meanwhile, state courts are divided on the issue.

In California, most outcomes are worker-friendly or would require so much in medical-legal expenses that insurers will likely settle in some cases, according to attorneys. Some state courts, aligning with state laws, have been less likely to rule in favor of the worker.

The Louisiana Supreme Court in 2021 ruled that a 30-year-old fireman did not qualify for permanent partial disability due to hearing loss he suffered after years of exposure to loud noises because state law requires hearing loss for disability purposes be "solely due to a single traumatic accident."

An appeals court in Ohio granted summary judgment to United Airlines Inc. in a case involving a flight attendant who alleged a cumulative trauma injury resulted from repeated chemical exposure from an in-flight air freshener because the worker failed to prove causation, in line with parameters set by state law.

Conversely, the Supreme Court of Kentucky in 2021 reversed earlier rulings that dismissed a cumulative trauma claim filed by a retired nurse suffering from "crippling injuries" to her neck, back and hands due to her alleged failure to provide a reasonable notice of her injury. The state high court ruled that the lower courts misapplied a 2018 law that established time limits on injury reporting.

The same court in 2021 also granted compensability — again, over the issue of time the claim was filed — to a Ford Motor Co. plant worker who suffered injuries to her neck and spine because of repetitive-motion duties going back to 2007. The worker testified that she had performed the same task 300 times per day.

Such claims are often litigated over causation, timing, comorbidities, and other factors, according to industry experts, who say early intervention and prevention are key.

"There's a willingness among a lot of commissioners and judges to find that, even if there are comorbidities present, if there is a part of it that is work-related, they're sympathetic to that," said Mr. Randall of Franklin & Prokopik.

Cumulative trauma cases are "very difficult to win" for employers, said Nathan Levy, Atlanta-based partner with Levy, Sibley, Foreman & Speir LLC, adding that in Georgia, "you've got to show that this occurred pretty much somewhere else."

Suspected fraud is also a factor, given the nature and timing of some injuries — post-layoff filings are common — and the lack of clear medical evidence, experts say. California, in particular, has gained notoriety for much post-employment claim activity.

"Like everything, there's extremes on both sides, and somewhere in the middle we're supposed to take care of the diligent worker," said Jeffrey Adelson, general counsel and co-managing shareholder at Adelson McLean APC in Newport Beach, California.

"I just don't think the legitimately injured workers should be thrown out and lose an opportunity to get what they deserve … because of others," he said.

CHARACTERISTICS OF CUMULATIVE TRAUMA CLAIMS

AVERAGE INCURRED
$31,000

CLOSURE RATE
22%

LITIGATION RATE
57%

AVERAGE DURATION
774 DAYS

Source: Gallagher Basset Services Inc.

CALIFORNIA STRUGGLES WITH RISING COSTS

- 77% of indemnity cumulative trauma claims involved more than $1,000 in expenses attributed to settling and defending claims, while only 53% of other claims do.
- The average paid per medical-legal evaluation is more than 20% higher on cumulative trauma claims than other claims over nine years post-report of injury, with a peak at year two.
- There are over 60% more legal evaluations on cumulative trauma claims than with other claims.
- Cumulative trauma indemnity claims close "consistently more slowly" than other indemnity-only claims, with the largest difference at 18 months from claim inception, when only 20% of cumulative trauma indemnity claims are closed compared with 50% of all other indemnity claims.

Source: Workers' Compensation Insurance Rating Bureau of California

COLLABORATION WITH WORKERS, EARLY CLAIMS SUPPORT CRITICAL TO RECOVERY

When a cumulative trauma claim is filed with an employer the approach should be much the same as with all claims, experts say: If the claim is accepted, worker advocacy is often the best medicine.

"Injured worker advocacy and support early in the cycle of the claim is critical," said Jennifer Cogbill, Frisco, Texas-based senior vice president of GBCare with Gallagher Bassett Services Inc.

The advocacy approach typically involves supporting the worker with improved communication and guidance — the aim is to establish a collaborative relationship instead of one that might be deemed adversarial, according to experts.

"If a worker is presenting with pain, and they're not sure where to go, we want them to come to us to help them, as opposed to feeling like they need to seek out an attorney to give them the best options on the recovery," she said.

Employers should establish a trusting relationship with workers and engage with them in the recovery process, said Tammy Bradly, Birmingham, Alabama-based senior director of clinical product marketing for Enlyte Group LLC.

Ms. Bradly said most cumulative trauma injuries take time to heal, and that keeping in touch with workers can help go a long way in avoiding litigation.

Dr. Mary Capelli-Schellpfeffer, Boston-based national medical director for workers compensation claims for Liberty Mutual Insurance Co., said that may include helping workers manage comorbidities or other factors outside of a claim.

"The workers comp industry realizes that there are factors that are going to affect the claim," she said, adding that better coordination of care between a worker's current doctors and those treating the injury can help "remove a barrier to communication and assure that that injured worker's total health is managed."

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SPECIAL REPORT

MANAGEMENT LIABILITY

D&O rates fall but economy fuels unease

BY JUDY GREENWALD
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INSIDE

FED PRESSURE
ESG focus and climate disclosures head up robust regulatory agenda. **PAGE 20**

RESEARCH & DATA
D&O insurance pricing, class-action activity, SEC filings and underwriter views on future trends. **PAGE 21**

Directors and officers liability insurance policyholders are seeing their first soft market in years, but a host of issues are creating significant uncertainty.

These include the economic outlook, which has led to concern about increased bankruptcy-related claims; an aggressive U.S. Securities and Exchange Commission and Department of Justice; and cyber, cryptocurrency, COVID-19 and environmental, social and governance-related issues.

There is "a bit of a minefield ahead of us which we're trying to navigate," said Mike McGuinness, New York-based senior vice president-public management liability, for QBE North America.

Experts say with fewer initial public offerings and the special purpose acquisition company market's collapse, more capacity has been freed up, which has prompted new and established insurers to compete more vigorously for the remaining business.

While D&O rates are decreasing it's unknown how long that will continue,

experts say.

The tipping point will be when the overabundance of capacity dries up and rates fall below breakeven, said Matthew Azzara, head of management liability for North America for Allianz Global Corporate & Specialty SE.

Beginning last year, D&O rates overall have decreased by several percentage points, with the declines particularly strong in excess layers, where new capacity is generally focused. Insurers are generally not increasing limits, experts say.

"I've been surprised by the rapidity with which rates have fallen," and it remains to be seen how low the floor will be, said Priya Cherian Huskins, San Francisco-based partner and senior vice president at broker Woodruff Sawyer & Co.

> "I've been surprised by the rapidity with which rates have fallen."
>
> Priya Cherian Huskins, Woodruff Sawyer & Co.

"We're still not back to where we were in the hard market, but the question for everyone is what happens in 2023," said Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC.

He said that while some have predicted the market will plateau at a lower level, he's "a little more skeptical."

Some insurers "are holding the line and slowing down the increases, but we still see an overall trend down for some time," said Larry Fine, New York-based management liability coverage leader for Willis Towers Watson PLC.

Furthermore, the more than 30 new D&O markets that have recently entered the sector "haven't started to drop out or consolidate yet," while the increased premiums insurers had anticipated from SPACs and IPOs did not materialize, he said.

"We just have to make sure that these insurers are here to stay" and that they are financially stable, said Devin Bernsheim, New York-based executive vice president, specialties practices, with Lockton Cos. LLC.

First-quarter renewals will be more telling as accounts that had reductions last year are renewed, said Patrick Whalen, a New York-based underwriter on Beazley PLC's executive risk team.

"There's a lot of talk in the marketplace about stability," with insurers pointing out the inventory of claims from earlier calendar years that have not yet been settled, said Tim Fletcher, Los Angeles-based CEO of Aon PLC's financial services group in the United States.

They are "talking about trying to hold the line," and at least for the next few months "we're expecting a similar pricing environment" to the current one, he said.

There is ample capacity and competition among established and newer insurers, Mr. LaCroix said.

ISSUES FACING D&O POLICYHOLDERS INCLUDE:

- An uncertain stock market
- Rising inflation, interest rate increases and recession fears
- Expected increase in bankruptcy claims
- Proposed or issued U.S. Securities and Exchange Commission rules on special purpose acquisition companies, climate, pay for performance and salary clawbacks
- Environmental, social and governance-related issues, including so-called "anti-ESG" state laws
- Rising whistleblower awards
- Aggressive enforcement by the SEC and Department of Justice
- Cyber risks
- Cryptocurrency turmoil
- COVID-19 litigation

Source: *Business Insurance* interviews

CYBER, CRYPTO TOP D&O CONCERNS AS FEARS OVER SPAC CLAIMS EASE

Cyber and cryptocurrency issues are front and center in the directors and officers liability insurance market, while the heavy focus on special purpose acquisition companies of a year ago has waned considerably.

Cyber "brings with it the possibility of huge exposures for officers if they're getting their cyber process wrong," said William G. Passannante, a shareholder with Anderson Kill P.C. in New York.

David M. Kroeger, a partner with Jenner & Block LLP in Chicago, noted, however, that "there have been some fairly prominent dismissals" of D&O litigation in this area, such as a Delaware court's rejection of cybersecurity-related oversight breach claims asserted against SolarWinds Corp. following a 2020 hack.

Cryptocurrency could be another source of claims.

In December, the SEC advised public companies to examine whether they need to disclose to investors any potential impacts from turmoil in the cryptocurrency industry.

Cryptocurrency "does present a big opportunity for carriers willing to get up to speed and understand better the risk, and what has gone wrong in the past," said Larry Fine, New York-based management liability coverage leader for Willis Towers Watson PLC.

Meanwhile, SPACs, which had attracted plenty of attention in the D&O space, have moved out of the spotlight.

Investors lost interest in the SPAC market last year because of a combination of rising inflation, interest rate increases and a proposed U.S. Securities and Exchange rule issued in March that would require additional disclosures and remove SPACs' liability immunity with regard to forward-looking statements.

This left hundreds of SPACs without public company partners with which to merge, but observers say this should not be a problem for the D&O market.

"By and large" the SPAC and deSPAC markets were "highly concentrated," so their decline will not affect everybody, said Peter Taffae, a D&O liability insurance expert at Los Angeles-based wholesale brokerage Executive Perils Inc.

SPAC investors that have not found merger partners are likely to just accept a return of their investments, some experts say.

"I don't think a ton of claims would come from that," unless, out of desperation, there was a merger "that did not make financial sense," said Andrew Doherty, New York-based national executive and professional risk solutions practice leader for USI Insurance Services LLC.

Mr. Passannante, though, said those that did not get the substantial returns on their investments that they expected could file litigation.

A positive development for the D&O sector overall has been relatively flat securities class actions. There were 110 new securities class-action lawsuits filed in federal and state courts in the first half of 2022, which compared with the 107 filed in the second half of 2021, according to a report released by Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse.

"It feels like a period of stability," and there currently is no reason to expect the number of cases will spike or plummet, Mr. Doherty said.

Carolyn H. Rosenberg, a partner with Reed & Smith LLP, said, "I think you'll continue to see a steady stream of securities-related litigation."

Judy Greenwald

D&O

Continued from previous page

Other factors could also change the market, said David Lewison, senior vice president and national professional lines practice leader for Amwins Group Inc. in New York. "There's always some wild card thing that happens that changes the market a little bit."

Frequently cited as a worry by D&O experts is the economic uncertainty, with higher interest rates and a jittery stock market. The S&P 500 was down 19.44% for 2022.

Litigation tends to increase when the stock market tightens, which could affect D&O, said Ernest Martin Jr., a partner with Haynes & Boone LLP.

The concern is "about whether we're going to have a rough economic year in 2023," said Andrew Doherty, New York-based national executive and professional risk solutions practice leader for USI Insurance Services LLC.

"I don't think we've begun to see the full impact of the high inflationary environment on corporate earnings," as companies anticipate the impact of federal policies, Mr. McGuinness said.

Earnings continue to be propped up by a strong labor market and stimulus money, but that money is starting to dry up, he said. "We're seeing now a wave of corporate layoffs" that will lower consumer spending and increase the risk of missing earnings estimates, he said.

Depending on how the economy develops, some observers expect more bankruptcy-related claims.

"I expect to see an uptick in claims due to the headwinds many of these companies are still facing," Mr. Azzara said, adding he expects underwriters to scrutinize companies' capital, earnings and liquidity.

"I would expect an increase in bankruptcy activity in the next 12 to 18 months, Mr. McGuinness said. "We've seen a lot of immature and speculative companies come to the public markets in the last two years," especially in the SPAC sector, he said, predicting they will not find the capital they require.

Executive risks grow as SEC climate disclosure rules evolve

A heightened federal regulatory environment, including interest in environmental, social and governance issues, could make the directors and officers liability insurance market more difficult.

Among recent regulatory developments, a Securities and Exchange Commission clawback rule adopted in October requires, in cases where stock issuers must prepare an accounting restatement, the recovery of erroneously awarded incentive compensation paid to current or former executive officers for the preceding three-year period.

In August, the SEC adopted "pay vs. performance" criteria, requiring registrants to disclose information detailing the relationship between executive compensation and the registrant's financial performance.

An SEC rule on climate-related disclosure issues is also anticipated.

> "The more disclosures, the more they open themselves up to scrutiny, but those that are doing the wrong thing and not talking about it are still a cause of concern."
>
> Patrick Whalen, Beazley PLC

In September, the Department of Justice updated an October 2021 memo and announced new guidelines for prosecutors to use when assessing corporate criminality, stating its first priority in corporate criminal matters is to hold individuals accountable.

In a Jan. 17 speech, assistant attorney general Kenneth A. Polite, Jr. announced revisions to its enforcement policy, stating they "provide specific, additional incentives for voluntary self-disclosures as well as for cooperation and remediation."

Matthew McLellan, Washington-based managing director and D&O product leader for Marsh LLC, said federal regulatory activity is "an area that underwriters are pretty concerned about."

"When you have large government investigations, that really does provide a road map for the plaintiffs bar" that is even better for them than a short seller report, he said.

ESG, in particular, is a concern, experts say.

ESG will continue "to really require a lot of attention," with insurers looking in greater depth at what companies are doing in this area, said Scott Seaman, a partner with Hinshaw & Culbertson LLP in Chicago.

Matthew Azzara, New York-based head of management liability for North America at Allianz Global Corporate & Specialty, said the compliance requirements surrounding ESG and the prospect of regulatory and legal action "can very much impact" D&O policies.

He said it is important that policyholders neither understate nor overstate their ESG disclosures. Companies with "robust and realistic frameworks" will likely find procuring insurance easier, he said.

Insurers raise ESG in discussions, "but they don't ask very specific questions," said Larry Fine, New York-based management liability coverage leader for Willis Towers Watson PLC.

"They tend to have one or two questions about climate, and sometimes one or two questions about diversity in discussions," he said, adding that ESG does not appear to be a direct factor in determining pricing.

Ernest Martin Jr., a partner with Haynes & Boone LLP in Dallas, said insurers will question how vocal companies are on certain "hot-button" ESG issues.

"I wouldn't be surprised if down the road you begin to see some exclusions that might apply" in this area, he said.

One of the challenges of underwriting ESG-related risk is that it is an amorphous term that encompasses a wide range of risks, experts say.

"It's this big, broad topic" and there is a belief it can be quantified and measured and used in underwriting, which is "optimistic at best," said Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC.

Meanwhile, experts predict the SEC's anticipated climate disclosure rule could lead to more securities litigation and higher D&O rates.

One of the ironies of the situation is that companies that make forecasts may be more likely to be hit with litigation for making unkept promises than companies that set no climate-related goals, observers say.

"The more disclosures, the more they open themselves up to scrutiny, but those that are doing the wrong thing and not talking about it are still a cause of concern," said Patrick Whalen, a New York-based underwriter on Beazley PLC's executive risk team.

A related issue is the possibility of litigation arising from so-called anti-ESG legislation. These laws, primarily enacted in conservative states, generally restrict state entities from doing business with financial institutions that will not invest in companies associated, for instance, with fossil fuels or firearms.

In December, Florida Chief Financial Officer Jimmy Patronis announced that the state would divest its investments from management by BlackRock because of its pro-ESG stance.

In January, Texas Attorney General Ken Paxton said he had made a decision that "has the effect" of Texas halting Citigroup C.N.'s ability to underwrite most municipal bond offerings in the state because it had discriminated against the firearms sector. Citigroup has denied the charge.

William G. Passannante, a shareholder with Anderson Kill P.C. in New York, said the anti-ESG issue could prompt litigation

Experts say another area of concern is the SEC's whistleblower awards.

Mr. Fine said the SEC "is more active every year" in awarding record amounts — an indication the agency "has stepped up its game a bit."

The agency awarded more than $5 million to a whistleblower in January, which followed a more than $20 million award in December, a $20 million award in November and a more than $10 million award in October.

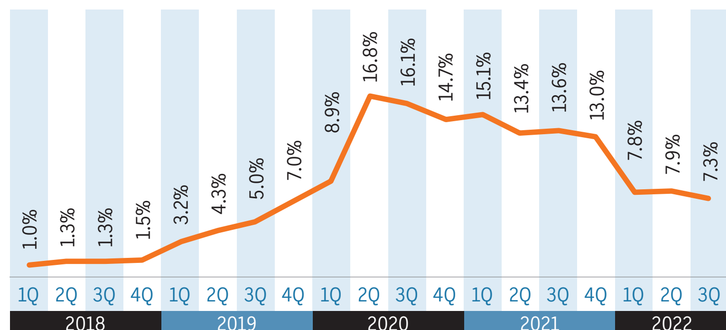
Judy Greenwald

DIRECTORS AND OFFICERS LIABILITY INSURANCE

D&O RENEWAL PRICING

According to the Council of Insurance Agents & Brokers' Q3 2022 Commercial Property/Casualty Market Index, D&O liability insurance prices saw an average increase of 7.7% in the first three quarters of 2022, ending a nearly two-year period of double-digit percentage increases.

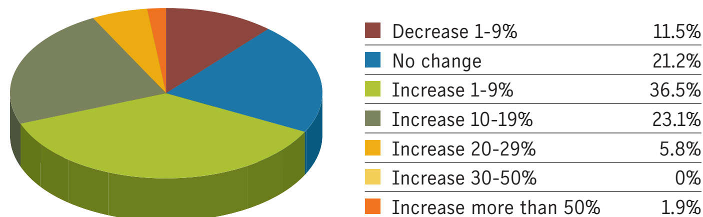
AVERAGE D&O RENEWAL PRICING CHANGES BY QUARTER SINCE 2018



Source: Council of Insurance Agents & Brokers

D&O PRICING

During the third quarter of 2022, about a third of respondents saw their premium rates decrease or remain the same.

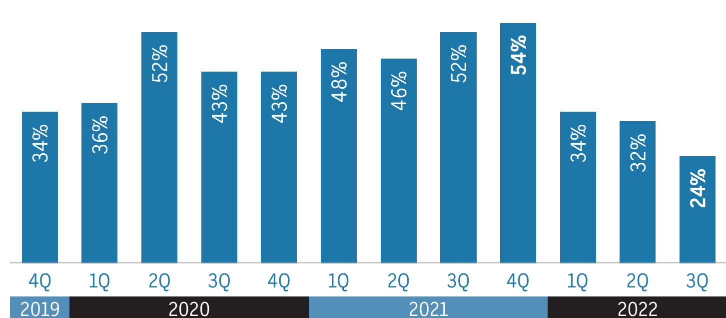


Source: Council of Insurance Agents & Brokers

D&O CAPACITY

Only 24% of respondents saw a reduction in D&O insurance capacity during the third quarter of 2022, the lowest level in three years, down from 54% in Q4 2021.

PERCENTAGE OF BROKERS REPORTING A DROP IN UNDERWRITING CAPACITY



Source: Council of Insurance Agents & Brokers

CLASS ACTIONS

There were 110 filings in the first half of 2022, and a total of 218 filings for the full year 2021, the lowest since 2016. The trend continued in the first half of 2022.

Year	Filings
H1 2016	128
H2 2016	160
H1 2017	222
H2 2017	190
H1 2018	211
H2 2018	209
H1 2019	207
H2 2019	220
H1 2020	185
H2 2020	148
H1 2021	111
H2 2021	107
H1 2022	110

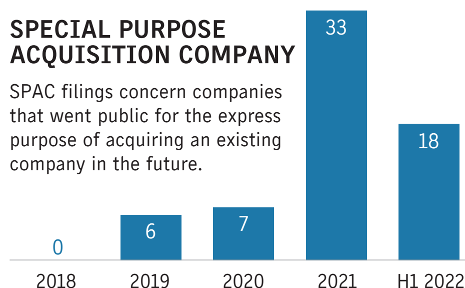
Source: Cornerstone Research Inc.

SECURITIES CLASS-ACTION TRENDS

Filings against special purpose acquisition companies remained the most dominant securities class-action trend in the first half of 2022, with 18 filings. Cryptocurrency was the next most common trend, with 10 filings, followed by COVID-19 at 8 filings. There were no opioid-related filings in H1 2022.

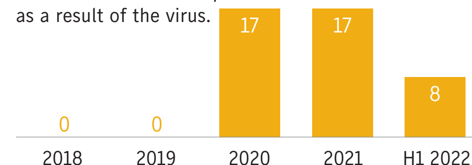
SPECIAL PURPOSE ACQUISITION COMPANY

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



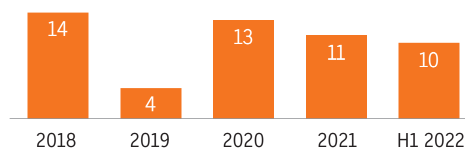
COVID-19

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



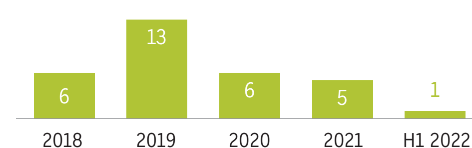
CRYPTOCURRENCY

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



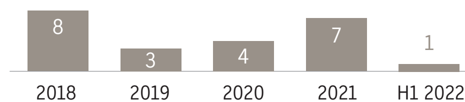
CANNABIS

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



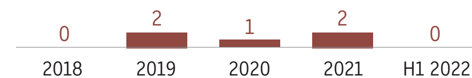
CYBERSECURITY

Cybersecurity filings are those that involve allegations related to data breaches or security vulnerabilities.



OPIOID

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



Source: Cornerstone Research Inc.

SPAC AND U.S. IPO ACTIVITY

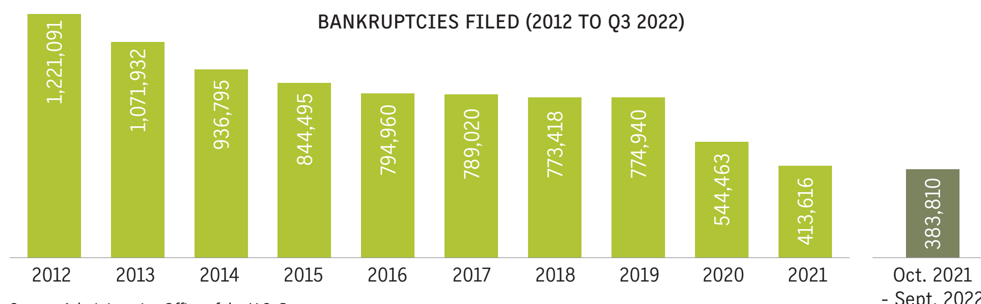
Initial public offerings by special purpose acquisition companies dropped significantly from a record of 613 in 2021 to 86 in 2022. However, such activity still comprised 73% of total IPOs in the U.S.

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
2012	9	147	6%	$490	$50,131	1%
2013	10	220	5%	$1,447	$70,777	2%
2014	12	258	5%	$1,750	$93,040	2%
2015	20	173	12%	$3,902	$39,232	10%
2016	13	111	12%	$3,499	$25,779	14%
2017	34	189	18%	$10,048	$50,268	20%
2018	46	225	20%	$10,750	$63,890	17%
2019	59	213	28%	$13,600	$72,200	19%
2020	248	450	55%	$83,386	$179,389	46%
2021	613	968	63%	$162,503	$334,650	49%
2022	86	118	73%	$13,392	$22,842	59%

Source: SPAC Analytics

BANKRUPTCIES FILED

There were 383,810 bankruptcy filings in the 12-month period ended Sept. 30, 2022, based on the latest quarterly filings by the Administrative Office of the U.S. Courts. The courts received 413,616 bankruptcy filings for the full year 2021.



Source: Administrative Office of the U.S. Courts

COMMENTARY

Restrictions impair employees, industry

Keeping hold of high-performing employees has long been a major concern for many organizations, and the current competitive job market only makes employers more anxious not to lose some of their best people to their competitors.

Devising ways to attract and hold on to top employees has led to many metaphorically golden incentives — whether they be handcuffs, handshakes, hellos or parachutes. Companies, though, have also resorted to contractual requirements that benefit them but offer little to employees.

Noncompete agreements, for example, are implemented ostensibly to prevent people from moving to a rival after an employer has invested in training or to preserve trade secrets. They are sometimes applied, though, in absurd circumstances to staff who are in no position to negotiate. For example, sandwich maker Jimmy John's infamously required employees to sign a noncompete that effectively barred them from moving to make sandwiches at a rival.

In addition, noncompetes are often included in boilerplate employment agreements without much thought about their necessity or the possibility of enforcing them.

Noncompetes, though, may be on the way out. As we report on page 9, the Federal Trade Commission has proposed a ban on the agreements in employment contracts, saying they block workers from freely changing jobs and deprive them of higher wages and better working conditions. Legal challenges are expected, but the move at least puts their use under the spotlight.

Gavin Souter
EDITOR

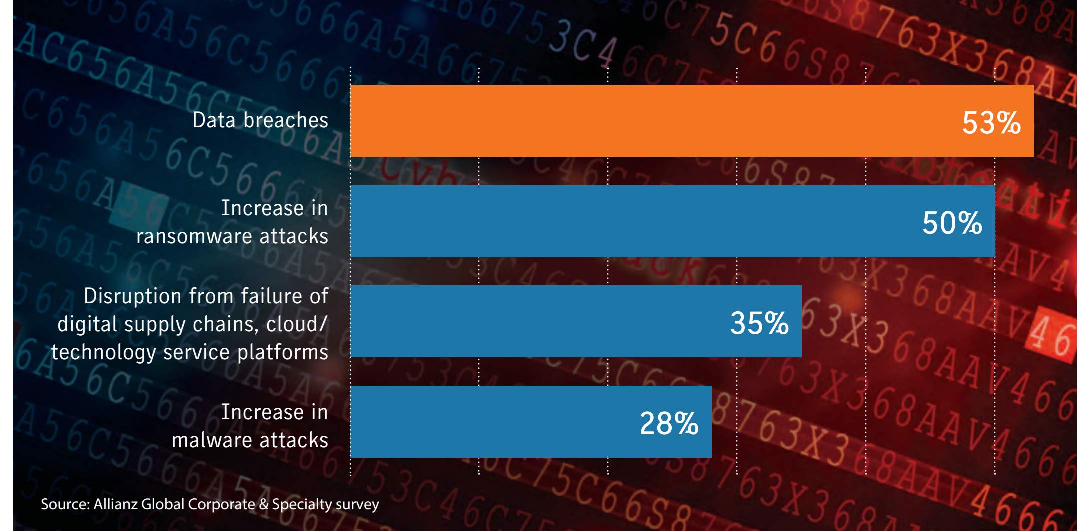
Rather than noncompetes, the insurance sector often uses nonsolicitation or nondisclosure agreements in employment agreements, which are less restrictive but still lead to plenty of disputes, especially among brokerages. Lawsuits proliferate alleging that brokers did things like downloaded client lists before exiting to join a competitor or set up a rival shop. The suits are often settled by the new employers who seem to regard the payments as a cost of winning new business.

In some countries, such as the United Kingdom, employers use extensive notice periods that departing employees serve out away from the office on "gardening leave." Such an approach could help employers in other jurisdictions, but the agreements seem cumbersome.

All the various restrictions don't seem to account for the preferences of the clients. In an industry that relies so heavily on relationships, why shouldn't a client stick with an individual that he or she has trusted for years if they change firms? Conversely, if they value the support, products and market clout of a brokerage firm, there is nothing to stop them from staying and starting a relationship with a new account executive.

Freedom of movement also has the benefit of promoting innovation as ideas and skills are spread.

Clearly there are circumstances where poaching companies are gaining benefits that they should be paying for, but unnuanced restrictions that stop employees from working where they want to work can't be good for the industry in the long run.



VIEWPOINT

Cyber pressures mount

BY CLAIRE WILKINSON
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Cyber threats continue to be top of mind for businesses globally, with incidents such as information technology outages, ransomware attacks and data breaches ranking first among global business risks for 2023, for the second consecutive year, according to Allianz Global Corporate & Specialty's annual risk barometer released last month. Its analysis shows that the frequency of ransomware attacks remains elevated, and the average cost of a data breach is at an all-time high of $4.4 million and expected to rise to more than $5 million this year. The war in Ukraine and wider geopolitical tensions have heightened the risk of a large-scale cyberattack by state-sponsored actors.

Meanwhile, at the World Economic Forum gathering of business and finance leaders in Davos, Switzerland, in January, experts predicted that 2023 will be a consequential year for cybersecurity. An expanded threat landscape and increasingly sophisticated cyberattacks were cited. For the first time, widespread cybercrime and cyber insecurity ranked among the most severe risks in the next 10 years in the WEF's Global Risks Report. Cyberattacks on critical infrastructure also ranked among the most immediate crises with the greatest potential impact on a global scale.

The opening weeks of the year appear to have borne this out, with the United Kingdom's postal service hit by a ransomware attack — suspected to have been caused by a hacker group with links to Russia — that disrupted its international export services. In the United States, thousands of flights were grounded after a computer outage at the Federal Aviation Administration, though late last month the FAA continued to say that it had so far found no evidence of a cyberattack or malicious intent.

Meanwhile, global geopolitical instability has helped to close the perception gap between business and cyber leaders on the importance of cyber risk management, with 91% believing that a far-reaching, catastrophic cyber event is at least somewhat likely in the next two years, based on their responses to the WEF 2023 Global Cybersecurity Outlook report. Both business and cyber leaders have a clearer view of their organizations' cyber capabilities and vulnerabilities, and cyber issues are more integrated into enterprise risk management and are receiving more board focus.

But there is still more work to do. While cyber and business leaders and boards of directors are communicating more frequently on strategies to overcome cyber threats, they speak very different languages. Cybersecurity experts need to speak less technical jargon, while boards need to help them understand what assets and processes should be prioritized for protection, the WEF report said.

For risk managers and insurers, figuring out ways to mitigate and underwrite cyber risks continues to be challenging. In an interview on page 13, Jennifer Santiago, 2023 president of the Risk & Insurance Management Society Inc. and director, risk management and safety at Wakefern Food Corp., talks about how risk managers face an erosion of coverage, capacity and cost when placing cyber coverage for their organizations. Risk managers fear that fewer markets will be willing to write cyber and more exclusions will be introduced, what Ms. Santiago dubs "a Swiss cheese policy." That's why many risk managers believe creating a federal backstop to help deal with cyber risks — both large-scale cyber incidents and day-to-day cyber risks — is critical. While the devil is in the details on how such a program would be structured, momentum is growing inside the risk management community toward a solution that could ease some of the market pressures exacerbated by near-daily cyberattacks and be a positive step for policyholders. But to have any chance of passage soon in a bitterly divided Congress, insurers need to get fully on board, too.

Will cyber insurers be partners or adversaries in 2023?

It is no secret that cyber risk is one of the top risks, if not the top risk, that concerns executives this year.

A decade ago, cybersecurity and data privacy were viewed as concerns primarily for technology firms, companies selling directly to consumers, and health care-related organizations. Times have changed and the views of potential buyers of robust cyber liability insurance programs have changed, too. More and more companies — whether business-to-business with little personally identifiable information or companies that had been traditional buyers of cyber insurance due to their risk profiles — are buying cyber insurance or are interested in doing so.

Risk managers also know that one of the biggest questions they face from their stakeholders is: Is cyber insurance worth the paper it's written on? Let's hope that in 2023, insurance underwriters can answer that question affirmatively.

Changing risk

Although the risk of disclosing PII or protected health information remains, criminals have changed how they operate, and the cyber-related risks of corporate policyholders have changed, too. Ransomware attacks and business email compromises have skyrocketed.

Many underwriters and claims personnel, who developed experience in determining potential defense and settlement costs in connection with putative class actions alleging exposure of PII or PHI, seem to struggle with the losses that result from ransomware attacks and business email compromises.

They might be used to predicting how much time it will take for a potential settlement to be approved by a court and when payments ultimately must be made, and likely are used to negotiating over a total settlement amount to resolve litigation. Ransomware and business email compromises, though, are different. If a victim company chooses to pay a ransom to resolve an event, the decision to pay and the actual payment often must take place within a day or two, if not just a few hours, of the attack. And the demands, even if there is a chance to negotiate them down, often are for significant funds. With business email compromises, the payment to fraudsters is not something that can be negotiated and the payment window cannot lag, as might happen with a class-action settlement requiring court approval.

These changing risks mean that policyholders need insurance policies with robust coverage for these risks. The nature of the risks also means that buyers need insurers that will partner with them. Why is it that many insurers have offered policies with reduced limits for the biggest risks? Or that underwriters and claims adjusters have started blaming their customers for having fallen victim to these criminal attacks?

Lack of advice

Years ago, an advertisement from a major insurer explained that it had figured out the source of a common cause of loss for its policyholders in the construction industry. Using that knowledge, the insurer helped its policyholders implement a form of loss control to address the cause of the loss, and, after the fix was implemented, claims plummeted. A win-win situation for insurers and policyholders.

In the cybersecurity sector, though, the provision of loss control advice from insurers seems to be nonexistent. Instead, many insurers appear content to require policyholders to fill out longer and longer applications, without any discussion about what the questions mean in the view of the insurers, what steps applicants could take to improve cybersecurity and how to prevent losses based on what insurers know.

The broadest coverages under cyber policies continue to be in coverage parts that harken back to 2012 and 2013. Today's risks often are carved back and chock-full of limitations and exclusions for many buyers.

Undoubtedly, cyber insurance claim departments have the largest troves of information about cyberattacks, how they are caused, how organizations have fallen victim to the attacks and what worked to prevent or limit the impact. Why aren't insurers engaging in widespread training and loss control efforts with their policyholders to reach a win-win outcome for everyone?

More money, less coverage

Organizations that bought or renewed cyber insurance from 2020 forward undoubtedly saw huge increases in premiums. In addition some insurers inserted several ransomware-related exclusions and limitations into their policies.

Insurers have protested that with more frequent and more expensive claims they had no choice but to raise rates. Industry reports and third-party reporting indicates that loss ratios for cyber insurers in 2020 were approximately 70%, up from around 45% in 2019. The bright spot is that loss ratios for 2021 reportedly decreased.

Unfortunately, increases in premium often were coupled with lower overall limits. It is not uncommon for corporate policyholders to be told that their primary insurer would only offer 50% of the limits offered previously.

In addition, war, widespread attack, and "outdated" software exclusions and limitations abound.

The London insurance market made big news in 2022 when the Lloyd's Market Association determined it would require members to use new so-called war exclusions. It is unclear whether the exclusions are the result of the war in Ukraine or the result of recent court rulings that said old war exclusions fail to eliminate coverage for cyberattacks. Either way, this is another avenue where certain insurers are asking policyholders to pay more and get less. Some insurers have gone further, using sublimits, co-insurance, or full exclusions to limit losses resulting from wide-ranging attacks or certain older software programs.

Another unwelcome development in 2022 was litigation over rescission of a cyber insurance policy. In that litigation, *Travelers Casualty Co. of America v. International Control Services*, filed in federal court in Illinois, the insurer alleged that the policyholder provided incorrect information about the use of multifactor authentication. It is unclear whether the insurer discussed the answers to the application at the time of underwriting, or if it simply thought that it could try to rescind the policy later if the information was not accurate, regardless of whether the policyholder had provided the information innocently or mistakenly. Will that case be a sign of things to come? Will more insurers turn to coverage counsel as soon as an expensive claim comes in, asking counsel to treat the policyholder like an adversary and concentrate on gathering information that will support a rescission claim, rather than helping the insured resolve the matter?

Hopes for 2023

Cyber insurance policies were created as outgrowths of technology errors and omissions policies, with the goal of covering the costs of investigating PII breaches and defending and resolving litigation arising out of such breaches. The cyber risk landscape of today, however, is far different.

Scott N. Godes is a Washington-based partner at Barnes & Thornburg LLP, where he co-chairs the firm's insurance recovery and counseling, and data security and privacy groups. He can be reached at scott.godes@btlaw.com

As cyber insurance buyers know, the scope of coverage under the policies slowly but surely expanded to address emerging risks such as ransomware and business email compromises. Nonetheless, the broadest coverages under cyber policies continue to be in coverage parts that harken back to 2012 and 2013. Today's risks often are carved back and chock-full of limitations and exclusions for many buyers.

In a more perfect world, insurers would work with policyholders during the underwriting and placement process. That would include an evaluation of the answers to policy applications, making certain that insurers and applicants view the questions in the same way. It also would include loss control advice and best practices. After all, fewer and less-expensive claims are to everyone's benefit.

Let's hope that 2023 presents a market where underwriters offer policies providing the most coverage for the most difficult risks to today's buyers.

MARKET PULSE

Digital brokerage offers cover for startup founders

■ Embroker Inc., a digital insurance brokerage, said it has introduced an online platform offering commercial coverage to startup founders.

Seven coverages are currently available via the One by Embroker platform with limits as follows: directors and officers liability, $5 million; tech errors and omissions and cyber package, $5 million; lawyers professional liability, $5 million; crime coverage, $3 million; employment practices liability, $2 million; fiduciary liability, $1 million; and monoline cyber and privacy liability, $2 million.

Coverage, which is available on both an admitted and nonadmitted basis, is provided under policies devised by Embroker but is expected to expand to additional insurers. Embroker operates as a managing general agency and retains risk through its captive insurer.

Beazley introduces hybrid event coverage

■ Beazley PLC has introduced hybrid event cancellation coverage for U.S. companies for hybrid events that mix aspects of physical and virtual elements, the company said in a statement.

The product is available to U.S.-domiciled businesses on a surplus lines basis, Beazley said.

The hybrid event cancellation offers coverage in a single policy against both physical and virtual threats that could lead to cancellation, abandonment, interruption, postponement, relocation or curtailment, Ryan McFadden, contingency underwriter at Beazley, said in a statement.

Coverage includes third-party infrastructure failure, errors and omissions leading to computer system failure, host platform failure, venue closure, adverse weather and terrorism.

Limits are available up to $50 million for physical in-person events and up to $10 million for virtual transmission, according to product information from Beazley.

Zurich group captive focuses on sustainability

■ Zurich North America has launched a group captive that will offer auto, general liability and workers compensation coverage and risk management programs to companies in different industries that are focused on sustainability.

Envision Re Ltd. is a member-owned captive based in the Cayman Islands that is fronted by Zurich and managed by Waukee, Iowa-based Innovative Captive Strategies, Zurich said.

Zurich will conduct a standard risk assessment of prospective members of the captive as well as a sustainability assessment of their carbon footprint and energy consumption.

The purpose is not to hold them to a single standard but to provide baseline data and a report from which they can develop or adjust their sustainability strategy, the insurer said in a statement.

Prospective members of Envision Re must be committed to sustainability and reducing their carbon footprint. Zurich stopped insuring companies that generate more than 30% of their revenue from thermal coal, oil sands and oil shale in 2021.

Businesses in the agriculture, alternative energy, construction, manufacturing, professional services, supply chain, technology, transportation and logistics, and wholesale industries are currently being vetted, Zurich said.

The group captive will have a sustainability committee and risk control, finance and underwriting committees. Coverage will be available on a primary basis, with the potential for some excess coverage.

Coverdash launches after seed financing

■ Coverdash Inc., a New York-based digital insurance agency, said it has launched after raising its seed financing in a round led by Bling Capital, a San Francisco-based venture capital firm.

The startup enables e-commerce merchants, gig workers and other business owners to obtain commercial insurance quotes online and is backed by several insurers and longtime insurance industry executives.

Angel investors include Greg Hendrick, CEO of Vantage Group Holdings Ltd.; Garrett Koehn, president of CRC Group; and Steve Shenfeld, chairman of MidOcean Credit Partners.

Other investors include Axis Digital Ventures, a unit of Bermuda-based insurer Axis Insurance Holdings Ltd.; Tokio Marine Future Fund, a unit of Japanese insurer Tokio Marine Holdings Inc.; New York-based Expansion Venture Capital LLC; and Oklahoma City-based Cameron Ventures.

Coverdash lists 14 insurer partners on its website, and coverages include liability, property, workers compensation and cyber.

The startup, which is live in all 50 states, aims to simplify the process of buying and managing coverage for business owners, according to a company statement.

Apex, Mosaic, Aon combine on ESG cover

■ Bermuda-based investment fund service provider Apex Group Ltd., Mosaic Insurance Holdings Ltd. and Aon PLC have combined on a directors and officers liability insurance program for funds that offers lower premiums based on environmental, social and corporate governance scores.

Apex provides ESG assessments for policyholders and "improving ESG scores will result in premium benefits," the company said in a statement.

Mosaic, which uses its insurtech platform for the Apex Protect program, provides up to $15 million in limits per risk.

Additional limits are available for nonexecutive directors, pre-claim costs in the event of an inquiry or investigation, and regulatory and public relations costs for directors and officers of funds, according to the statement.

MGU launches protected cell captive

■ Xchange Benefits LLC, a managing general underwriter owned by Ambac Financial Group Inc., launched a protected cell captive that will provide medical stop loss coverage for self-funded employers.

Distribution Re is domiciled in Tennessee and will be run by Marlton, New Jersey-based captive manager Captive Planning Associates LLC.

The captive will insure accident and health risks, mainly high-deductible medical stop loss plans, Armonk, New York-based Xchange Benefits said in a statement.

Ambac acquired a majority stake in Xchange in 2020.

DEALS & MOVES

Gallagher purchases Ireland-based brokerage

Arthur J. Gallagher & Co. said it has acquired Ireland-based brokerage First Ireland Risk Management Ltd.

Terms of the transaction were not disclosed.

Founded in 1982, First Ireland provides commercial and personal coverage, life insurance and pensions. The brokerage has about 120 employees.

Joint managing directors Tony Gill and Linda Gallagher and staff will remain in its Dublin headquarters under the direction of Ronan Foley, head of Gallagher's insurance brokerage operations in Ireland.

Marsh unit buys $50 million brokerage

Marsh McLennan Agency, the small and midsized brokerage unit of Marsh LLC, said it has bought HMS Insurance Associates Inc., a Hunt Valley, Maryland-based agency with about $50 million in annual revenue.

Terms of the deal were not disclosed.

All of HMS' more than 120 staff, including President Gary L. Berger, will join MMA, a Marsh statement said.

High Street acquires Nebraska brokerage

High Street Insurance Partners Inc. said it has acquired Kearney, Nebraska-based Barney Insurance Group Inc.

Terms of the deal were not disclosed.

Barney is a commercial insurance and personal lines broker with a specialty in church insurance.

The deal adds offices in Lexington and Lincoln, Nebraska, to High Street, together with Barney's 25 employees, led by Dave Chally, agency president, High Street said in a statement.

Specialty Program Group makes MGA acquisition

Specialty Program Group LLC said it has acquired managing general agency Euclid Specialty Managers LLC, which does business as Euclid Fiduciary, from Itasca, Illinois-based Euclid Insurance Services Inc.

Terms of the deal were not disclosed.

Euclid Fiduciary, based in Vienna, Virginia, specializes in complex fiduciary liability and related professional liability insurance for employee benefit plans, a Specialty Program statement said.

PEOPLE

“The pricing pressures, unavailability of coverages for certain types of risks and insureds, and continuing desire for capital markets to take on insurance risks uncorrelated to financial markets will lead to development of unique market solutions.”

UP CLOSE

Huhnsik Chung

NEW JOB TITLE: New York-based partner, ArentFox Schiff LLP.

PREVIOUS POSITION: New York-based shareholder, Carlton Fields P.C.

OUTLOOK FOR THE INDUSTRY: Insurance is integral to the existence of the global economy, but change is accelerating due to three important factors. First, advancements in technology are affecting virtually all aspects of insurance, including distribution and customer engagement, underwriting and policy issuance, claims handling, reinsurance and capital market participation. Second, new risks have emerged that continue to morph, such as global pandemics, climate change, cannabis, cyber, litigation funding leading to greater social inflation, digital assets and the metaverse. Third, younger, tech-embracing entrants to the industry are replacing the retiring workforce.

GOALS FOR YOUR NEW POSITION: I will continue to provide value-added counseling to clients by providing a one-stop shop of multidisciplinary teams of ArentFox Schiff lawyers who can help with any regulatory, transactional and dispute matter.

CHALLENGES FACING THE INDUSTRY: The pricing pressures, unavailability of coverages for certain types of risks and insureds, and continuing desire for capital markets to take on insurance risks uncorrelated to financial markets will lead to development of unique market solutions. They will include development of new insurance markets, including exchanges and capital providers, new insurance products, and continuing growth of both cat and non-cat ILS funds drawing even more capital market participation.

FIRST EXPERIENCE: I started working in 1989 for Mitch Lathrop, who was coordinating national coverage counsel for St. Paul, ERC and Westport for all environmental claims.

ADVICE FOR A NEWCOMER: Learn all aspects of insurance as you work hard to excel in your role while exercising good judgment.

DREAM JOB: Lead asset/security tokenization platform and exchange, as that is where the financial sector is headed.

LOOKING FORWARD TO: Working with smart people in a mutually supportive role while helping to scale a significant insurance practice to leave as a legacy.

COLLEGE MAJOR: B.S., economics.

FAVORITE MEAL: Omakase at sushi counter accompanied by good sake.

FAVORITE BOOK: “The Chronicles of Thomas Covenant,” “The Unbeliever.”

HOBBIES: Offshore fishing, boating and shotgun sports.

FAVORITE TV SHOW: “Star Trek.”

ON A SATURDAY AFTERNOON: Indulge in my hobbies and walking my dog Soju with family.

ON THE MOVE

Dan Glaser, former president and CEO of Marsh & McLennan Cos. Inc., has been named an operating partner at Clayton Dubilier & Rice LLC, a New York-based private equity firm. Mr. Glaser retired from Marsh McLennan at the end of 2022.

Hub International Ltd. named former Aon PLC executive **Carol Murphy** executive vice president and casualty leader. Ms. Murphy was most recently Chicago-based chief client officer, U.S. casualty, at Aon. In 2009, she was named one of the *Business Insurance* Women to Watch.

Longtime insurance brokerage executive **Tom Fitzgerald** has joined World Insurance Associates LLC as president, retail business. Previously, Mr. Fitzgerald was president, specialty and commercial, at QBE North America. He joined the insurer in 2020 after spending 28 years at Aon PLC, where he rose to be CEO of Aon broking.

The National African American Insurance Association named **Ebony N. Little** national program director. Previously, Ms. Little was senior education programming specialist for the Claims and Litigation Management Alliance.

American International Group Inc. said former Bristlecone Partners partner **Don Bailey**, who also had senior roles with Marsh LLC and Willis Towers Watson PLC, has joined the company as global head of distribution and field operations. Mr. Bailey is based in New York.

Brown & Riding Insurance Services Inc. named Seattle-based **Chris Bading** national property practice leader. Mr. Bading succeeds Guy Rawlins, who is stepping down. Mr. Rawlins will continue as a property broker, managing a team and book of business. Mr. Bading was previously principal.

SEE MORE ONLINE

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Competitor gets picky over pickles

Burger chain Wahlburgers is in a bit of a pickle over whether its products are as fresh and all-natural as it claims.

A lawsuit filed in U.S. District Court in New Jersey by competitor Grillo's Pickles Inc. alleges that contrary to their labeling, Wahlburgers brand pickles contain an artificial chemical preservative meant to extend their shelf life, CBS News reports.

The lawsuit also claims that Wahlburgers uses similar packaging to Grillo's, putting stores and customers in a pickle over which brand to buy.

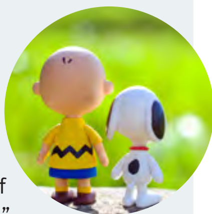
"Absent these false and misleading statements, Wahlburgers pickles would not have been in the same fresh, artificial-preservative-free category as Grillo's pickles and would not have been purchased by consumers," the lawsuit states.

Wahlburgers, which is owned by actor Mark Wahlberg and his family, has yet to comment on the lawsuit.

Snoopy helps sell pet insurance

One could not be faulted for thinking that if there's one dog in the world who needs insurance, it's Charlie Brown's dog, Snoopy.

The cartoon canine is coming onboard at MetLife Pet Insurance to help "build greater awareness of the critical importance of pet health insurance," the insurer said in a statement.



Indeed, perhaps no one knows this better than Snoopy himself, who is said to have both a pool table and a Van Gogh in his doghouse.

MetLife says that although there are more than 90 million families with pets in the U.S. today, fewer than 3% of those pets are insured. The insurer added that 84% of pet parents reported increased pet care costs in 2022, and another 50% were concerned rising costs will prevent them from being able to be a pet parent in the future.

OFF-THE-RACK PRICING GOES OFF-THE-WALL

With identical models and photo shoots, a new clothing company is being accused of trying to pass off its products as those which were actually created and marketed by the international fast fashion brand Zara, according to the Fashion Law blog.

According to a complaint filed in a New York federal court, Los Angeles-based Thilikó LLC and owner Queenie Williams have built a business "by passing off Zara's fast fashion wares as their own, including by acquiring Zara garments, removing the Zara tags and replacing them with ones that bear the Thilikó name, and passing those goods off as its own — complete with exorbitant mark-ups," the blog stated.

As evidence, the complaint includes identical catalogue photographs for both companies featuring the same svelte model in a crisp white frock. You can't make this up. The price points? Zara's $49.90 to Thilikó's $328.

Zara and its parent company, Inditex, are accusing the self-professed "socially responsible" clothing startup of engaging in a "serial" scheme of copyright infringement, false advertising, unfair competition, and deceptive trade acts in order to mislead consumers about the source and nature of their apparel and accessories, according to the blog.

Insurer protected from STD claim

The Missouri Supreme Court stifled one of the more unusual auto insurance claims when it ruled a woman who had contracted a sexually transmitted disease after liaisons in a Hyundai Genesis insured by GEICO could not collect damages from the insurer.

The intimate meetings between the unnamed consenting adults took place in November and December 2017, according to the ruling.

The woman contracted HPV from the man and wrote to GEICO demanding it pay the bodily injury policy limit to compensate her. GEICO denied coverage, saying it should only be on the hook for injuries arising "out of the ownership, maintenance or use" of the car, court papers say.

The post-pandemic passport stamp-pede

Pay no attention to the chaos at the airports; the post-pandemic travel revival will continue into 2023, according to a travel insurer that analyzed plans for the year.

Carmel, Indiana-based Seven Corners Travel Insurance released its analysis of travel insurance sold in 2022 for trips being taken in 2023. To forecast the state of travel, the company then compared that with travel insurance sold in 2021 for trips scheduled for 2022. Data from this comparison showed that more travelers had already purchased travel insurance for trips in 2023.

Travel insurance sales for those with a departure date in the first half of 2023 were up 20.7%, compared with customers who purchased insurance in 2021 for trips in the first half of 2022.

As for top destinations, Seven Corners found that the most popular destination is Mexico, with Italy, the United Kingdom, and France rounding out the top four locations.

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Winners will be announced online in late April and their profiles will be published in the June 2023 issue of *Business Insurance*. The program culminates with a **Break Out Awards** recognition event in Chicago in June.

ENTRY REQUIREMENTS & ELIGIBILITY

- Nominations must be submitted online at **BusinessInsurance.com/BreakOut**
- Nominations must include three (3) recommendations from clients, managers and/or co-workers.
- While there is no age limit, nominees must have less than 15 years of experience in the risk management and property/casualty insurance field and must be working in the sector on June 1, 2023.

Nomination submissions are due Monday, February 13, 2023.

Submit an entry & learn more about this awards program:
BusinessInsurance.com/BreakOut

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