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BUILDING CHALLENGES

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INTERNATIONAL

Auto business comprises nearly half of the nonlife insurance market in Morocco. **PAGE 11**

VIEW FROM THE TOP

SARAH STANFORD

Sarah Stanford was appointed as active underwriter of Aspen Insurance Holdings Ltd.'s Syndicate 4711 in May 2019. Ms. Stanford, who joined Aspen in 2007 and is based in London, discusses the syndicate's near doubling in size and its opportunities for growth. Among the coverages seeing increased demand in the U.S., she says, is the syndicate's active assailant product, which insures against mass shootings and other violent acts. **PAGE 13**



OFF BEAT

Dolly Parton puts to rest the rumor she has something in common with Betty Grable when it comes to insurance. **PAGE 35**





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Supply chain woes test contractors

BY MATTHEW LERNER

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Underwriters are looking more closely at quality control and assurance issues among construction contractors as supply chains and labor markets are beset by shortages and delays, which are driving construction costs higher and making mistakes more expensive.

Ensuring that appropriate building materials are being installed by trained workers can go a long way to reducing the risk of loss, but difficulties in securing supplies and experienced staff are testing many companies.

Even a general contractor's or subcontractor's finances can be a concern as they must have the resources to withstand the cost of any necessary rework and ensure procurement in a difficult market.

Overall, construction input prices, which include labor and material costs, are up 22.3% from a year ago and nonresidential construction input prices have increased 23.2%, based on an analysis of U.S. Bureau of Labor Statistics data by Associated Builders and Contractors Inc., a national construction industry trade association.

Insurers are taking note of the changes.

"The underwriters are going to want to understand what quality control the contractors have, what practices they have in place and how those practices are followed," said Jim Gloriod, St. Louis-based CEO of Aon Construction Services Group U.S., a division of Aon PLC.

"Carriers are absolutely interested in quality assurance," said New York-based Rob McDonough, a managing director and U.S. construction practice leader at Marsh LLC. "Increasingly, underwriters want to understand, 'What is your supply chain process and procedure? What redundancies do you have in place?'" he said.

"We underwrite our partners' overall practices, so we want to see that they have the mech-



anisms in place to avoid materials issues," said Dallas-based Cheri Hanes, who heads the subcontractor default insurance risk engineering team at Axa XL, a unit of Axa SA.

Good quality practices can help a contractor sell its risk to an insurer in a tough market. "Certainly, the ability to highlight that to a prospective insurer in a hard market and differentiate yourself is always an advantage," said Paul Primavera, Irvine, California-based executive vice president and national risk control services practice leader for Lockton Cos. LLC.

"We certainly look at the track record of the general contractor — have they done this type of job before? What is their history?" said Drew Feldman, senior vice president, global marine business unit leader, in Chicago for CNA Financial Corp.

The insurer could be reluctant to consider covering contractors without relevant experience for the jobs they are taking on, he said.

Brokers are also counseling clients more about sourcing and quality challenges.

"Aon is speaking to more clients around supply chain issues and labor issues," Mr. Gloriod said. "We are advising our clients that this is a topic of interest to the underwriters and to be prepared to talk to the underwriters about quality control programs."

"Our direct service with our insureds is much more supply chain focused than it's ever been before," Ms. Hanes said.

"It's a conversation now with everyone," Mr. Feldman said of his contacts and conversations with clients. "Supply chain is now one of if not the biggest issue that we're contending with."

Construction mistakes

Supply and labor challenges can also exacerbate problems caused by losses and mistakes, experts said.

"Right now, any small issue can turn into something fairly large," Mr. Feldman said.

Difficulties getting materials for repairs and replacements after a loss have led to long delays with customers resuming operations, which in turn caused larger than expected business income claims, Mr. Feldman said.

In addition, errors with materials and installation that must be corrected can lead to a mushrooming in costs over a short time as contractors struggle to quickly find replacement materials.

"If it was difficult, time consuming and expensive to get something the first time, it will be worse to replace any materials that need to be torn out and reinstalled," Ms. Hanes said.

"When we think about material rework, it can be a significant component of total construction cost, and it can certainly result in significant claims," Marsh's Mr. McDonough said.

Issues and errors with materials quality and installation can also lead to project delay, which could necessitate an extension of insurance coverage.

"One of the challenges right now is project extensions. Those extensions can be very expensive," Aon's Mr. Gloriod said.

Market conditions have changed since some larger multi-year projects began. For example, some insurers writing construction risk three years ago are no longer participating in the market, meaning any extension would be with a new insurer. "Extensions have been a challenge for the last couple of years as the market has changed," Mr. Gloriod said.

Insurers are closely examining subcontractors' finances to make sure they have the resources to withstand any materials, quality or reworking issues.

"We are taking a deeper dive on subcontractor financials to ensure they have the finances to cope with rework" and other issues, said Axa XL's Ms. Hanes. "These issues can lead to subcontractor default."

Although the construction sector is benefiting from an influx of innovative tools, such as water damage sensors and worker safety equipment, technology has not yet been developed to fully manage end-to-end supply chain logistics, according to industry experts.

Overall, "there is a tremendous amount of tech being deployed around the construction industry," with some of it focused on quality assurance and quality control, said Jim Gloriod, St. Louis-based CEO of Aon Construction Services, a division of Aon PLC.

Aon Construction has a technology assessment panel for the construction sector to determine how technology can be helpful in different areas, including quality control.



Many tools focus on one aspect or portion of a supply chain or construction process.

"I've looked into tech solutions quite a bit and haven't found one which seamlessly moves from the manufacturing through to the transport" of materials, said Cheri Hanes, risk engineering manager for subcontractor default insurance with Axa XL, a unit of Axa SA. "There are good ones around manufacturing and shipping and very good ones for onsite," she said.

Much of the technology now available in the construction sector is focused on job site and worker safety, said Rob McDonough, managing director and U.S. construction practice leader in New York for Marsh LLC.

Matthew Lerner

CONSTRUCTION BACKLOG INDICATOR — IN MONTHS

	January 2021	December 2021	January 2022	1-month net change	12-month net change
Total	7.5	8.2	8.0	-0.2	0.5
INDUSTRY					
Commercial & institutional	7.7	8.5	8.2	-0.3	0.5
Heavy industrial	6.5	7.7	7.6	-0.1	1.1
Infrastructure	7.0	7.3	8.7	1.4	1.7
REGION					
Middle states	5.9	8.2	7.4	-0.8	1.5
Northeast	8.1	7.5	7.1	-0.4	-1.0
South	8.0	9.0	9.8	0.8	1.8
West	8.0	8.4	7.4	-1.0	-0.6
COMPANY SIZE					
<\$30 Million	6.6	7.6	7.4	-0.2	0.8
\$30-\$50 Million	7.9	8.7	7.7	-1.0	-0.2
\$50-\$100 Million	8.8	11.3	12.4	1.1	3.6
>\$100 Million	12.4	10.7	11.9	1.2	-0.5

Source: Associated Builders and Contractors Inc.

Rising material prices, catastrophe losses put focus on multifamily property claims

BY CLAIRE WILKINSON

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Commercial residential properties, already facing a tough insurance market, are seeing double-digit rate increases and even higher for loss-hit risks in catastrophe-exposed locations.

Recent losses, such as the partial collapse of the Champlain Towers South condominium building in Surfside, Florida, in June 2021, have heightened market concerns about underinsured properties, experts say.

The winter storm and freeze that hit Texas and large swaths of the U.S. early last year also led to a substantial volume of claims for insurers in the multifamily sector.

Inflation, which accelerated to 7.5% in January, is driving up costs for insurers, widening the gap between insured values and actual rebuilding costs.

“Insurers having sustained catastrophic losses are looking at those losses versus what insureds reported on schedules, and in some instances there’s a disconnect.”

Maggie McIntyre,
Arthur J. Gallagher & Co.



The collapse of a condominium building in Surfside, Florida, last year heightened concerns over replacement cost values.

“We are in an inflationary economy,” said Maggie McIntyre, area executive vice president with Arthur J. Gallagher & Co.’s global real estate and hospitality practice in Whippany, New Jersey.

“Insurers having sustained catastrophic losses are looking at those losses versus what insureds reported on schedules, and in some instances there’s a disconnect,” she said.

At renewal, policyholders should ensure that replacement cost values are reported accurately. “Most conversations start off with ‘let’s look at the values,’” Ms. McIntyre said.

VALUATIONS BECOME CENTRAL TOPIC OF RENEWAL DISCUSSIONS

Property insurance buyers, including owners of multifamily buildings, should work with brokers and insurers to get ahead of any concerns over valuations, experts say.

Brokers going into a renewal cycle should make sure they are having a conversation with their clients around their values, said Peter Fallon, national property practice leader at brokerage Risk Strategies Co. Inc. in Boston.

Understanding what the valuation is based on and asking if there is an appraisal is important, Mr. Fallon said.

“We can do a cost-per-square-foot calculation for buildings to come up with what we think the value should be and compare that to the statement of values, but it’s up to the client to

tell us whether the machinery and equipment values are accurate because we can’t do a desk job on that,” he said.

Rick Miller, Boston-based U.S. property practice leader at Aon PLC’s commercial risk solutions business, said it should be easier for insurers to understand valuations on a multifamily habitational risk than for a complex manufacturing risk.

With a multifamily property, “you know what it is built from, so it’s fairly easy to understand what the property damage values should be,” Mr. Miller said. The time element component of real estate risks should also be straightforward since rental value exposures are based on the number of units and the amount of rent collected, he said.

For a manufacturing risk where complex, sophisticated machinery is in use, it could be more challenging, he said.

In some cases, insurers will ask clients to substantiate their statement of values, and sometimes they will do their own valuation to come to a value they are comfortable with and quote accordingly, said Maggie McIntyre, area executive vice president with Arthur J. Gallagher & Co.’s global real estate and hospitality practice in Whippany, New Jersey.

Valuations of older buildings, because of the way building materials were used and the data available, present a different challenge than newer buildings, but the focus on valuation is across the board, she said.

In the case of a significant loss, older buildings may need code upgrades, such as sprinkler and electrical systems that comply with local ordinances, said Vivalde Couto, executive vice president of underwriting at American European Insurance Group, a unit of American European Group Inc. in Cherry Hill, New Jersey.

The upgrades can increase rebuilding costs, Mr. Couto said.

Adding ordinance or law coverage to a commercial property policy is an important consideration for policyholders, and some commercial lenders require the coverage, brokers said. However, insurers may have limited capacity for the risk, they said.

Claire Wilkinson

LITTLE RELIEF ON RATES EXPECTED FOR BUYERS AS INSURERS EXIT MARKET

Insurance market conditions are expected to remain challenging for multifamily risks in the year ahead, especially for wood frame construction.

In addition to rising catastrophe losses, multifamily properties are susceptible to water damage and fire claims.

Premium rate increases will be in the 15% to 20% range for many, with hurricane-exposed properties seeing rate increases that are even higher, Risk Placement Services Inc. said in its 2022 Property Market Outlook released in February.

Many insurers are raising wind and hail percentage deductibles on properties in the Midwest, RPS said.

"This industry segment has gotten

crushed over the last four to five years from both catastrophe losses and attritional losses," and many insurers have exited the market, said David Novak, San Francisco-based area president in the property practice at RPS, the excess and surplus lines broker and managing general agent unit of Arthur J. Gallagher & Co.

"Five years ago, there were maybe seven to 10 markets; now there are just three to four markets writing the class," Mr. Novak said. As a result, there is a supply and demand imbalance, which drives up prices, he said.



The overarching theme of renewals is underwriting discipline, said David Pagoumian, president of the Red Bank, New Jersey, office and property practice member at CRC Group, a unit of CRC Insurance Services Inc.

He cited the recent renewal of a high-rise tower in Manhattan. Part of the residential property houses a hotel, now unoccupied, and its expiring insurer declined to renew the risk. It took at least six insurers to produce a quota share on the account, and the premium

tripled, Mr. Pagoumian said. Still, he described this as "an outlier."

Many multifamily habitational properties tend to be lighter construction such as frame which is a "bad combination" when mixed with the human component associated with water damage and fires, said Rick Miller, Boston-based U.S. property practice leader at Aon PLC's commercial risk solutions business.

Renewals are expected to continue to be "reasonably challenging" going forward for accounts that have experienced losses, but for accounts that have done a good job managing risk that have higher retentions, renewals are expected to go well, Mr. Miller said.

Claire Wilkinson

Every policyholder should expect pressure to review property values going forward, said Rick Miller, Boston-based U.S. property practice leader at Aon PLC's commercial risk solutions business.

Construction costs have increased significantly, and the pandemic has exacerbated the problem, with supply chain challenges and rising prices for building materials such as lumber, copper and roofing, Mr. Miller said.

The higher prices of materials are driving up replacement costs, said Vivalde Couto, executive vice president of underwriting at American European Insurance Group, a unit of American European Group Inc. in Cherry Hill, New Jersey. "The rates are up, but in addition to rates going up, we also have more of a need to increase the building limit so that the insured continues to have replacement cost coverage," he said.

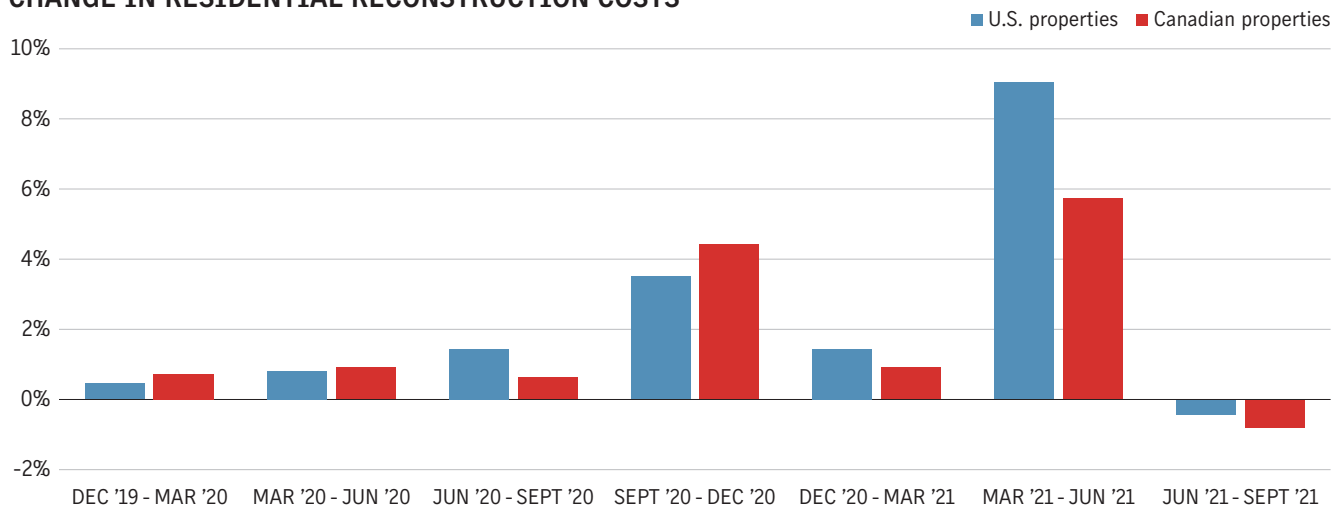
Every insurer is asking policyholders about how they are valuing their properties, said Marc Reisner, Boston-based multifamily practice leader at Marsh LLC. In addition to inflation, insurers are responding to loss experience and "how much they are paying out in claims that had been above what clients are estimating their replacement values to be," Mr. Reisner said.

Impact of losses

Winter storm Uri, which struck hardest in Texas but also hit states from Florida to the Northeast, and the Surfside condo collapse both highlighted the importance of valuing properties appropriately, brokers say.

The Texas freeze resulted in a significant volume and severity of claims in a part of the country that historically was unused to plunging temperatures, said David Novak, San Francisco-based area president in the property practice at Risk Placement Services Inc., the excess and surplus lines broker and managing general agent unit of Gallagher.

CHANGE IN RESIDENTIAL RECONSTRUCTION COSTS



Source: CoreLogic Inc.

"We've got accounts that had \$20 million to \$30 million in Texas freeze claims on their portfolio of habitational business that was neither accounted for, nor expected or placed for," he said.

Insurers are pushing for more information on values, he said. "The tough part for insureds is not only are they seeing rate increases because the cost of capital has gone up, so their cat exposure has gone up year over year, but now they are also getting dinged with an increase in insurance to value," he said.

In its 2022 Property Market Outlook released in February, RPS cited the Surfside condo collapse as a cautionary example of what can happen when a structure isn't insured to its current valuation.

The condominium association had purchased a \$31.4 million property policy for a building where 136 condo unit values ranged from approximately \$400,000 to nearly \$3 million, RPS said.

On Feb. 11, a tentative settlement was announced by attorneys that would split \$83 million among those condo owners who lost property in the collapse that left 98 dead. Those who agree to the settlement would be released from possible liability claims under a Florida law that

makes unit owners liable for acts by their condo association board.

Losses such as Surfside had a ripple effect across the marketplace, both in terms of rates and valuations, said Brendan O'Connor, vice president of operations at ReShield LLC, part of Baldwin Risk Partners LLC, in New York.

"The rates are up, but in addition to rates going up, we also have more of a need to increase the building limit so that the insured continues to have replacement cost coverage."

Vivalde Couto,
American European Insurance Group

Insurers are more frequently conducting onsite inspections to take a hard look at what they're insuring, Mr. O'Connor said. "Insurers want to make sure they are collecting appropriate premiums," he said.

They are also thorough in the questions they ask property owners about their risk

mitigation tactics and loss control.

In some cases, habitational risks are "terribly undervalued," said Peter Fallon, national property practice leader at brokerage Risk Strategies Co. Inc. in Boston.

"I've seen some that are \$50 per square foot, some that are \$80 per square foot. Now, underwriters are saying unless you can get it to \$100 per square foot then we may not quote, or, if we quote, we may eliminate a blanket (limit) ... and therefore the limit would apply per location," Mr. Fallon said.

Other restrictions insurers may impose include co-insurance provisions and occurrence limit of liability endorsements, "so you will pay bounty either in the absolute limit or as a percentage of it," Marsh's Mr. Reisner said.

Insurance-to-value concerns have always been an issue, said David Pagoumian, president of the Red Bank, New Jersey, office and property practice member at CRC Group, a unit of CRC Insurance Services Inc.

"The reinforcer for today is you're not going to be able to convince an underwriter to accept unreasonable valuations unless you want restrictive coverage," Mr. Pagoumian said.

Sorting vaccine injury cover burden

BY LOUISE ESOLA

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Pivate employers that require their workers to get vaccinated for COVID-19 are on notice: Their workers compensation insurers will likely foot the bill for vaccine injuries.

As of mid-February, seven states had introduced legislation requiring employers with mandates to cover such injuries under workers comp — a move some comp experts say is not necessary, as many have said that under a mandate a vaccination would arguably put a worker in the course and scope of employment. In 2021, more than a dozen states introduced such measures — none were successful.

Four of the seven 2022 bills — in Kentucky, New Hampshire, South Carolina and Wisconsin — are “presumption bills” for “adverse effects from a COVID-19 vaccination,” according to the National Council on Compensation Insurance.

That could be a problem for workers compensation, said Steve Bennett, Washington-based assistant vice president for workers compensation programs and counsel for the American Property Casualty Insurance Association.

“Adverse reactions to a vaccine would most likely be covered under comp, but let the worker prove it was an injury related to the vaccine requirement,” he said. Presumptions flip the burden to the employer to prove the injury was not caused by the vaccine in an environment in which medical information is continually in flux.

The challenge for workers comp will be to determine the difference between a COVID-19 vaccine injury and a side



Reuters

effect (see related story), and to navigate an unknown realm of claims.

Because workers comp insurance has little experience with mandated vaccines and vaccine injuries, experts say clues might be found in the federal vaccine injury program, which provides compensation for individuals harmed by vaccines.

Several insurers did not return requests for comment on the issue or declined to comment.

The federal Countermeasures Injury Compensation Program, run by the Health Resources and Services Administration, covers COVID-19 vaccines and provides compensation — “based on compelling, reliable, valid, medical and scientific evidence” — for injuries found to be “directly caused” by the medical intervention.

The so-called CICP has collected 3,321 claims alleging injuries or deaths from COVID-19 vaccines, according to a data page that was updated Jan. 1. This is different from the Vaccine Adverse Event Reporting System, which is a self-reported, non-verified database of alleged vaccine injuries — not claims for compensation. That system, dubbed VAERS, has garnered tens of thousands of entries.

A detailed chart of alleged injury claims filed with the CICP includes anaphylactic shock, myocarditis, and blood clots or thrombosis — all considered COVID-19 vaccine injuries by the Centers for Disease Control and Prevention. The list of other conditions touches on virtually all major health systems and includes appendicitis, hearing loss, kidney injury, arthritis and depression.

That could be a potential problem for workers comp: None of the vaccine injury bills introduced provide details of what constitutes a vaccine injury or adverse event. While the federal government has more than three decades of experience in handling vaccine injury claims, workers compensation has virtually no guidelines.

Jeff Adelson, a partner with Newport Beach, California-based Adelson McLean P.C., said he has been getting “a lot of ques-

tions” from employer clients regarding who pays when someone is harmed by a mandated vaccine.

“The end result of injuries or claims by employees required to be vaccinated will likely fall on the workers compensation system,” Mr. Adelson wrote in a recent email to a client, in which he also addressed the federal program, referring to it as a “last resort” for a worker injured by a mandated vaccine.

The federal government sets the bar high for vaccine injuries, according to James Ostendorf, of counsel with Dane Shulman Associates LLC in Boston.

“You have to tie the claim to a known side effect of the vaccine, and if you can’t your route will be much more difficult,” he said, adding that the federal government relies on a list of proven, well-documented injuries. “It depends on what you are claiming and what vaccine, and whether anybody else has had that issue.”

For acceptable COVID-19 vaccine injuries, the federal government is “building the plane as we fly,” said Daniel Pogoda, Boston-based managing attorney with Dane Shulman. “Right now, it is hard to know what they are going to do with these vaccine injuries.”

The chances of a federal claim going through are slim, said Paul D. Rheingold, founder of Paul D. Rheingold P.C. in Rye, New York, adding that “in order to make a claim of your injury with the government you have to have strong proof.”

Mr. Rheingold said he sees one “viable” claim for about every 150 calls regarding alleged COVID-19 vaccine injuries. Given the bar set by the federal government, it’s not an easy road, he said, adding that the government requires “epidemiological proof” of injury, which with such a new vaccine is hard to gather.

“They need to find a significant statistical rise (in injuries among) people taking that vaccine, and the CDC or the Mayo Clinic has to come up with data or studies,” he said.

If a potential client is employed and the vaccine was required for work, Mr. Rheingold gives this advice: “Look into workers comp.”

INJURIES FROM COVID SHOTS RARE

The Centers for Disease Control and Prevention cites COVID-19 vaccine injuries as rare and describes side effects as mild, including pain, redness or swelling at the injection site, tiredness, headache, muscle pain, chills, fever and nausea.

As for more serious events, the list is short: myocarditis and pericarditis, anaphylaxis, thrombosis with thrombocytopenia syndrome, Guillain-Barré syndrome and death are included in a Feb. 14 update.

For an injury to be compensable under a system such as workers compensation, anything that requires medical intervention is “what I would start to think of as an injury,” said Dr. George W. Rutherford, professor of epidemiology at the School of Medicine at the University of California in San Francisco. But he cautioned the lines could blur.

“A side effect is your arm is sore,” Dr. Rutherford said. “A side effect is a temporary, mild to moderate reaction, and it causes no lasting harm,” he said.

James Ostendorf, a vaccine injuries attorney with Dane Shulman Associates LLC in Boston, said if the COVID-19 vaccine follows the script on injuries related to other vaccines the most common issue will likely have nothing to do with the vaccine specifically.

“The injuries we are seeing have nothing to do with COVID. These are general injuries that happen to people who just get vaccines,” he said. “It comes from the fact that you are being injected with some vaccine; they are injuries to muscles and tendons when they are given the vaccine in the wrong place.”

Such an adverse event, he said, can lead to paralysis. However, such events are “astronomically rare,” he said.

Daniel Pogoda, managing attorney at Dane Shulman, said the volume of claims right now stems from the magnitude of the COVID-19 vaccination program.

“These injuries have been happening for decades,” Mr. Pogoda said. “The thing is not that these are new injuries, but that all these people have had these vaccines all at once, which has never happened. ... Something like this is making that very, very tiny percentage of people who get (a) vaccine injury seem like suddenly it’s everywhere, because of the numbers game you are playing.”

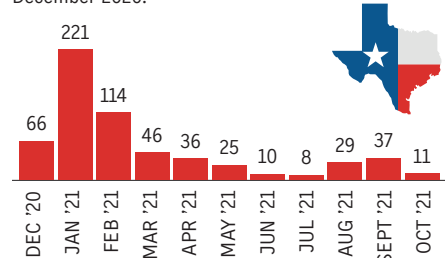
Louise Esola

VACCINE DATA IN TEXAS

The Texas Department of Insurance is one of the few state regulators that is collecting data on adverse events related to the COVID-19 vaccine. In a memo to employers last year, the department said that if a COVID-19 vaccination “relates to an employee’s job, and it causes the employee to miss one or more days of work,” the employer should file a First Report of Injury with the department.

It noted that this “does not mean that a COVID-19 vaccine reaction is work-related or that the insurance carrier is liable for payment.”

In its latest workers comp report, published in December 2021, the department said that insurers had reported 603 vaccine reaction claims since December 2020.



More states consider PTSD comp bills, raising concerns over costs, diagnoses

BY DANIELLE LING

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Four states last month introduced or moved forward on workers compensation presumption bills that would make post-traumatic stress disorder and other mental ailments compensable for first responders, in a continuation of a years-long legislative trend.

According to a 2021 paper by service provider Optum Workers' Comp and Auto No-Fault, more than 50% of states have enacted PTSD policies or policy changes since 2018. Many laws passed in recent years have followed major emergencies and tragedies that triggered legislatures to act. The COVID-19 pandemic is shaping up to be no different.

"With COVID, people are more amenable to the idea that mental injuries are a problem than (they have been) in the past," said Tom Howard, an attorney at workers compensation firm Gerber & Holder LLP in Atlanta.

Opponents of such legislation have claimed that the presumptions are or could be costly, with nearly every first responder representing a potential claim. Proponents, meanwhile, say the presumptions are much needed to fill the gap created when first responders face mental illness.

"With COVID, people are more amenable to the idea that mental injuries are a problem than (they have been) in the past."

Tom Howard,
Gerber & Holder LLP

H.B. 3899 in Oklahoma and H.B. 274 in Alabama aim to provide PTSD and other mental injury coverage for first responders, while H.B. 689 in Florida would amend existing statutes to provide first responders more time to file such claims.

This follows the 2021 legislative season, when at least half a dozen states introduced bills with mixed results, according to the Optum report.

Florida, which has had a presumption in place since 2018, is among the first to publicly release data on costs. Since expanding workers comp coverage for mental health costs, the state has paid out approximately 50 claims for \$2.1 million total, or \$42,330 per claim, according to



the Department of Financial Services.

A National Council on Compensation Insurance study of mental health claims for first responder classes found the group accounted for approximately 1.6% of privately insured costs for mental treatment, with most states showing a range of 0.5% to 3%.

Bruce Spidell, NCCT's actuarial committee liaison, said that based on the study findings he believes legislation focusing on first responders may have a relatively small impact on overall workers comp costs.

Rep. Gregg Kennard, who is sponsoring H.B. 855 in Georgia, said the cost of the bill would be \$3 million to cover 33,650 first responders, according to the Georgia House Budget & Research Office.

The Georgia bill has received significant public attention and support based on one police officer's experience and lobbying efforts. Gwinnett County police officer Ashley Wilson was on duty in 2018 when her partner was shot and killed.

"I stayed with him the whole time, from the scene to the trauma room to the medical examiner's office to the funeral till we buried him in California," she recalled.

Ms. Wilson developed PTSD and began medical treatment in the months after the shooting. She said she returned to work "happy and healthy" but with \$20,000 in medical debt. She discovered at least some of the coverage she needed was available in other states and later

turned to the legislature for help.

"It started gaining support quite quickly because, unfortunately, suicide is not uncommon or a surprising factor in our communities," she said.

Multiple studies in recent years have confirmed that suicide rates among emergency medical workers are significantly higher than those of the general public. And, according to a Ruderman Family Foundation report, law enforcement officers and firefighters are more likely to die by suicide than in the line of duty. It's

estimated 30% of first responders develop behavioral health conditions, compared with 20% in the general population, according to the Substance Abuse and Mental Health Services Administration.

A 2016 study cited by SAMHSA found 37% of fire department first responders have considered suicide — a rate 10 times higher than the national average. Additionally, the study found 6.6% of fire and EMS professionals reported having attempted suicide, as compared with just 0.5% of civilians.

RAND Corp. researchers, however, found that firefighters and peace officers do not appear to have worse mental health or higher suicide rates than other workers exposed to trauma on the job, though lack of data prevented RAND researchers from directly measuring the incidence of PTSD, according to a 2021 paper by the think tank.

Opponents have also raised concerns of "how easy it is to give a diagnosis in the mental health realm," Mr. Howard said.

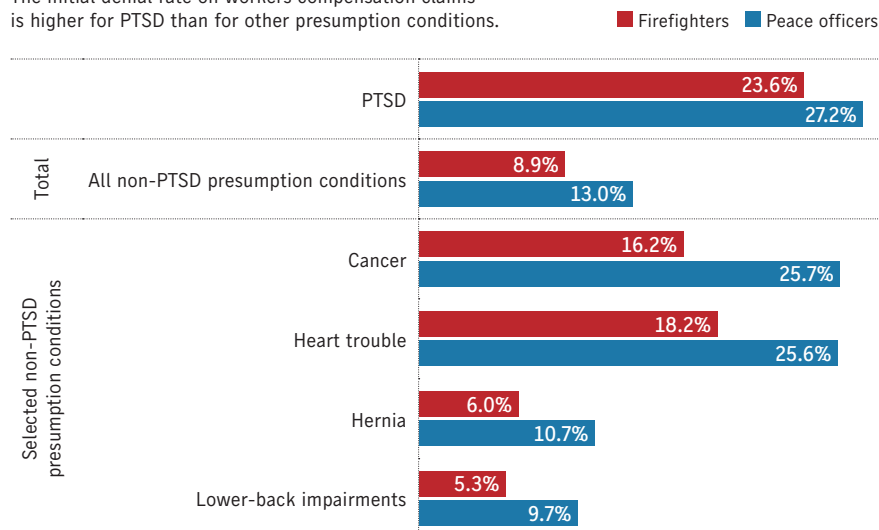
Rep. Kennard countered this idea, citing a second bill, S.B. 342, pending in the Georgia Senate, which would establish the Mental Health Parity Act.

"Trained professionals can certainly ascertain if there's been some connection between the job performed and any psychological injury," he said. With this bill medical health injuries would be treated the same as physical injuries, "which means it has to go through the same thresholds of proof," he said.

Nearly every PTSD bill nationwide has included parameters for diagnoses, with all requiring documentation from a medical provider who can verify the symptoms of PTSD.

PRESUMPTION CONDITIONS DENIALS

The initial denial rate on workers compensation claims is higher for PTSD than for other presumption conditions.



Source: RAND Corp.

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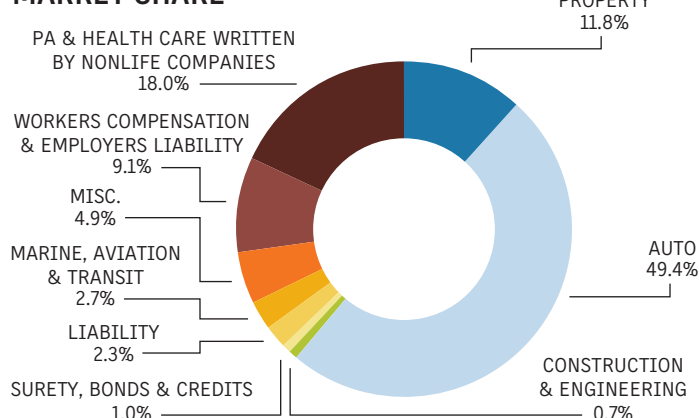


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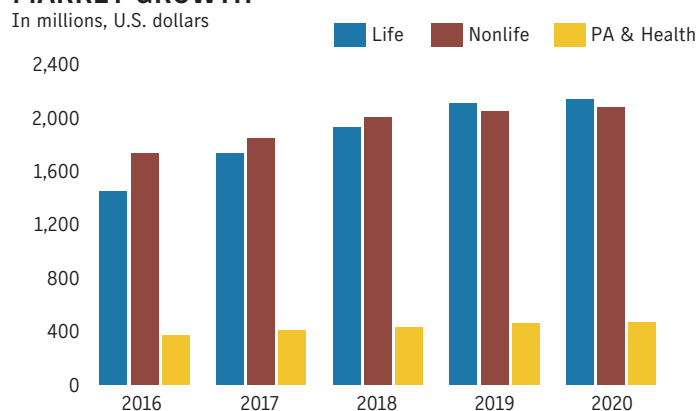
45
GLOBAL
P/C MARKET
RANKING

The Moroccan nonlife insurance market is dominated by auto business, which accounted for 49.4% of total written premium in 2020, according to statistics released by the Federation Marocaine des Societes d'Assurances et de Reassurance. Other important classes of business are property, workers compensation and personal accident/PMI written by nonlife insurers. According to preliminary figures from FMSAR, the Moroccan nonlife market grew by 0.04% in 2020, a historically low rate caused principally by the effects of the COVID-19 pandemic. For comparison, from 2017 to 2019 nonlife insurance market growth rates were consistently in excess of 5% on an annual basis. The auto insurance sector is reported to have suffered a small reduction in premium income in 2020 of 0.4% due principally to the impact of the pandemic, according to FMSAR's preliminary figures.

MARKET SHARE



MARKET GROWTH



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party bodily injury and property damage
- Workers compensation
- Professional indemnity for insurance agents and brokers, accountants and architects
- Construction all risks insurance
- Air carriers and aircraft operators liability for third-party property damage or injury to third parties on the ground, injury to passengers, and damage to baggage or goods being transported
- Shipowners liability for marine oil pollution (financial guarantee or insurance)
- Clinical trials liability

NONADMITTED

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

INTERMEDIARIES

Intermediaries are required to be authorized to do insurance business. They are not permitted to place business with nonadmitted insurers unless prior approval has been granted by the regulator.

MARKET PRACTICE

Risks situated in Morocco must be underwritten and managed by insurance and reinsurance enterprises licensed there.

MARKET DEVELOPMENTS

Updated January 2022

- The insurance regulator has been closely monitoring solvency margins, and these were reported in early 2021 to have generally remained within acceptable margins.
- Risk-based solvency measures were due to be introduced in 2020, but a report dating from November of that year indicated that full implementation had been somewhat delayed. The solvency system will be on broadly the same basis as the three-tier Solvency II methodology in the European Union.
- The regulator is considering legislative measures to simplify microinsurance contracts with limitations on exclusions, reduced delays for paying indemnities and simplification of claims procedures. The expansion of distribution through a wide range of payment system providers in the financial sector is also being studied.
- Reports from the market suggest that property premium rates increased between 10% and 30% in 2020. For risks unaffected by claims and small to medium-sized local risks, rate increases were limited to around 10%. Property premium rates rose in 2020 as a result of hardening in the reinsurance market and preparation for the impact of new solvency regulations.
- Auto insurers increased their premium rates by 20% to 30% in 2020 for all risks cover in preparation for the application of risk-based solvency. Auto third-party rates remained unchanged.
- In September 2020 the regulator approved the transfer of the entire insurance and reinsurance portfolio of SANAD to Atlanta Assurance. The merged entity was named AtlantaSanad Assurance.

AREA

276,662
square miles

POPULATION

36.56
million

MARKET CONCENTRATION

75.7%
market share of top five insurers

2022 GDP CHANGE (PROJECTED)

3.1%

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Federal court won't dismiss BIPA case

■ A federal district court refused to dismiss putative class-action litigation filed against a company charged with downloading more than 3 billion facial images from the internet in violation of the Illinois Biometric Information Privacy Act.

The multidistrict lawsuit filed in U.S. District Court in Chicago charges that New York-based Clearview AI Inc. “scraped” the facial images from the internet and then used artificial intelligence algorithms to scan the face geometry of each individual depicted to “harvest” unique biometric identifiers and corresponding biometric information, according to the ruling in *In re Clearview AI, Inc., Consumer Privacy Litigation*.

Clearview used the information to create a database that allows users to identify unknown individuals by uploading a photograph to the database, which can be searched remotely by licensed users, according to the ruling.

The lawsuit charges the company with violating BIPA, which requires businesses that store biometric information to inform the subject in writing that data is being collected or stored and the purpose and duration for which it is being collected, and also that they obtain the subject's written consent. Numerous lawsuits have been filed under the law.

The court rejected Clearview's First Amendment argument that its analysis of public faceprints is protected speech, saying that “unlike fingerprints, facial biometrics are readily observable and present a grave and immediate danger to privacy, individual autonomy and liberty.”

University's COVID suit can proceed

■ A Colorado state court refused to dismiss COVID-19-related business interruption coverage litigation filed by the University of Colorado against Factory Mutual Insurance Co.

The district court in Boulder rejected a motion by Factory Mutual for partial judgment in the case, which is scheduled for a 10-day trial beginning June 6, accord-

ing to court papers in *The Regents of the University of Colorado v. Factory Mutual Insurance Co.*

The insurer had argued that neither COVID-19's presence nor the loss of the property's use constituted physical damage and that a contamination exclusion in the coverage applied.

The court ruled that the phrase “physical loss or damage” is susceptible to more than one reasonable interpretation, citing a 1968 Colorado Supreme Court ruling that held that the accumulation of gasoline around and under a church building constituted direct physical loss “when the premises became so infiltrated and saturated as to be uninhabitable.”

When paired with the university's allegation that the virus was found on numerous structures, it is “at least plausible to conclude that a property could become so saturated with contaminated objects, aerosols, and droplets, that its buildings were uninhabitable,” said the ruling, which also held that the coverage's contamination exclusion “does not unambiguously foreclose coverage.”

A few days before the Colorado decision, a New Jersey court refused to dismiss a COVID-19 business interruption case filed by Rowan University against Factory Mutual.

The Glassboro, New Jersey, institution, which has 19,600 students, had sought coverage from Factory Mutual under its all-risk commercial property insurance policy, which included communicable disease response coverage, according to the complaint in *Rowan University v. Factory Mutual Insurance Co.*, which charges the insurer with breach of contract.



Broker scores win in poaching dispute

■ A federal district court judge agreed to make permanent a temporary injunction issued in poaching litigation filed by AssuredPartners Inc. against a competitor and five departed employees.

Judge Robert C. Jones of the U.S. District Court in Reno, Nevada, had issued a temporary injunction in *AssuredPartners of Nevada LLC vs. L/P Insurance Services LLC et al.* in October.

The litigation has been settled for an undisclosed amount, according to court papers.

The injunction issued last month permanently enjoins Reno-based L/P Insurance Services and the five departed employees from disclosing any of AssuredPartners' confidential information, using it for any purpose or contacting an agreed-upon list of restricted clients. It covers the period through Sept. 30, 2023, and exceptions include cases in which the brokers have mutual clients.

In its request seeking the permanent injunction, AssuredPartners said that under a plan with the code name “Project Forest Fire,” an L/P Insurance Services official had set a goal of hiring “most, if not all” of AssuredPartners' Reno employees.

The five former AssuredPartners employees accounted for 75% of its Reno sales force and “managed and influenced” about 80% of its revenue, according to court papers.

After their departure, 27 AssuredPartners clients moved to L/P Insurance Services in seven days and the “irreparable harm” they caused only stopped when the temporary restraining order was issued, court papers say.

Georgia firm settles EEOC disability suit

■ The U.S. Equal Employment Opportunity Commission said a fabrication company would pay \$250,000 to settle a disability discrimination lawsuit in which it was charged with firing a depressed worker.

The EEOC said Milner, Georgia-based Ranew's Management Co. Inc., a national fabrication, coating and assembly products company, told an employee who informed the company of his severe depression diagnosis to take as much time as he needed to get well, after the employee asked for three weeks off work, based on his doctor's recommendation, the agency said.

However, when the worker returned six weeks later and presented a release to return to work from his doctor, the CEO said he could not trust the employee to perform his job duties and fired him, the EEOC said.

The agency sued the company, charging it with violating the Americans with Disabilities Act.

Under the consent decree resolving the lawsuit, in addition to paying \$250,000 to the employee, Ranew's agreed to train its executives, managers and employees on the company's obligations under the ADA.

“The ADA makes it clear that employment decisions must be made based on employee qualifications rather than on stereotypes about an employee's disability,” said Marcus G. Keegan, regional attorney for the EEOC's Atlanta district office, in a statement.

DOCKET



FIRM'S OWNERS CHARGED WITH COMP FRAUD

The husband and wife owners of a chicken processing business were charged in an alleged workers compensation fraud scheme, the California Department of Insurance said. Wei Wen Wu and Feng Wen Lam, owners of Golden Food Inc. in El Monte, California, were charged with 43 felony counts of insurance fraud, grand theft and conspiracy after allegedly underreporting nearly \$4.5 million in employee payroll, which reduced the company's workers compensation insurance premium, according to the suit.

COURT RULES FOR USI IN NONCOMPETE SUIT

A Pennsylvania state appeals court affirmed a 2020 ruling in which a lower court awarded USI Insurance Services LLC \$1.1 million in litigation over a former employee's alleged failure to honor his noncompete agreement. USI had charged that Eric M. Frieman, a former employee of Wells Fargo Insurance Services USA Inc., which USI acquired in 2017, violated his nonsolicitation and noncompete agreement when he left Wells Fargo for Baltimore-based RCM&D Self-Insured Services Inc., which conducts business as SISCO, and then solicited business from 18 Wells Fargo clients, according to court papers.

NATIONWIDE PREVAILS IN EMPLOYMENT CASE

A Nationwide Mutual Insurance Co. unit is not obligated to provide discrimination coverage to a maintenance company under an exclusion in its policy, a federal appeals court said in affirming a lower court ruling. Overland, Missouri-based Columbia Maintenance Co., which had been sued for alleged employee discrimination, sought coverage from its insurer, Nationwide unit AMCO Insurance Co., according to the ruling by the 8th U.S. Circuit Court of Appeals in St. Louis in *AMCO Insurance Co.; Depositors Insurance Co. v. Columbia Maintenance Co.; MK Maintenance, LLC et al.*



Sarah Stanford was appointed as active underwriter of Aspen Insurance Holdings Ltd.'s Syndicate 4711 in May 2019. Based in London, Ms. Stanford joined Aspen in 2007 as a member of the insurer's newly formed financial lines team. She recently spoke with *Business Insurance* reporter Matthew Lerner about the syndicate's near doubling in size as Aspen realigns its business, current market conditions and opportunities for growth. Edited excerpts follow.

Sarah Stanford

ASPEN INSURANCE

Q Is the syndicate's expansion existing business, or new?

A The syndicate has been on a journey of transformation over the last three years to optimize and reposition our portfolio. 2022 is really an opportunity to look forward. We've exited lines of businesses that were not performing, or not aligned to our strategy. Our Lloyd's syndicate is the platform of choice for our London market business and our European insurance business. As a result, we've de-emphasized our insurance company platform in the United Kingdom and transferred a significant portion of our business to Lloyd's during 2021, increasing our plan premium to £815 million (\$1.1 billion) for 2022, from £425 million at the beginning of 2021. Growing our presence in Lloyd's is a critical part of our overall balance sheet simplification strategy.

Q How has the business mix of policyholders changed? What lines did Aspen exit and what grew?

A Between 2018 and late 2019 we exited seven classes of business on the Lloyd's platform, including accident and health care — which really doesn't feed into the specialized insurance, reinsurance strategy — and some marine and energy lines. New business growth has been focused on specific areas, like our crisis management class of business, and credit and critical risk class of business, for example, as well as some casualty lines and our financial professional lines.

Q Is the syndicate involved with U.S. business as well as U.K. and European?

A Approximately 25% of the business written for the syndicate is U.S.-domiciled business. Our excess casualty is written out of London but is predominantly U.S. business. From a Lloyd's perspective, the U.S. has been a really important market. Lloyd's is also the largest surplus lines insurer in the U.S., and by writing through Lloyd's on a surplus lines basis the syndicate is approved to write in the U.S.

Q Do you see growth coming from Europe or the U.S., or perhaps an emerging market?

A Growth will be a mixture of U.S. and international, and some examples of that would be Australia, Canada and Europe. An example is U.S.-domiciled financial lines business that's historically been placed in the London market. That team has forged long-term relationships with both brokers and clients. We've certainly seen an increased U.S. demand for our active assailant product, which insures against mass shootings and other violent acts.

Q How has the pandemic impacted business? How have the past two years been different?

A COVID was one of those events that none of us were expecting, and we're continuing to see the effects of it. Things have certainly changed, from our client needs, how we're working as a company, how we communicate with clients and brokers, and communication with our staff. Aspen is now working in a hybrid model, but we're certainly starting to see brokers and clients have dialogues much more face-to-face than by electronic means. I think a balance of both will become the new normal going forward.

Q Discussions on environmental, social and governance topics are becoming more frequent and expansive in the insurance industry. How is Aspen approaching this?

A We recently launched our first-ever ESG report at the end of last year, and we also signed up for the United Nations Global Compact initiatives. From an underwriting perspective, we're looking at the client's approach to ESG, and if they're responsible, we will support. It's very much a collective responsibility, and by that I mean the market's got to work with these industries so that they can transition to a cleaner future.

Q How is Aspen approaching diversity, which is also a topic of growing interest and importance in the insurance industry?

A In 2019, we launched our diversity and inclusion cultural transformation project. We've created a strong governance structure around inclusion, and in 2021 we entered into some sponsorships and partnerships highlighting our commitment to increasing and promoting cultural awareness. More recently, we've just launched two employee resource groups focusing on gender and race and ethnicity, which provide platforms to our employees to engage and have dialogue on how we can continuously make Aspen a more inclusive and diverse workplace environment. It's obviously a good thing, but I think we all recognize that there is more to do in the market.



Q Our reporting has shown several quarters of insurance premium rate increases across most lines, but most recently the rates of increase appear to have slowed. What do you see on the pricing landscape?

A We continue to see favorable market conditions in a majority of our classes of business, but the momentum is slowing. We expect it to continue for a little while longer, perhaps not quite at the same pace, though, as in recent years. I think such increases are only sustainable for a certain period of time. I'd add, however, that what we've seen in recent years is not just rate but also a correctional tightening in terms and conditions that were expanded when the market was experiencing tougher conditions.

We continue to see favorable market conditions in a majority of our classes of business, but the momentum is slowing. We expect it to continue for a little while longer, perhaps not quite at the same pace, though, as in recent years.

CYBER THREATS ESCALATE WITH GLOBAL EXPOSURE

US struggles to guard against attacks on critical infrastructure by hackers operating with support from foreign governments



BY JUDY GREENWALD

jgreenwald@businessinsurance.com

The threat posed by nation states' infiltration into the United States' critical infrastructure is growing, and the federal government and private companies must do more to address the risk, experts say.

While the Biden administration has made a strong push toward helping companies with the issue, much remains to be done, they say. Meanwhile, private sector efforts to address the issue have been uneven.

Complicating the problem, boundaries between nation states and cybercriminal gangs operating within them are often permeable, with criminals sometimes operating with their governments' knowledge and even at their behest, experts say.

The Gaithersburg, Maryland-based National Institute of Standards and Technology, which has issued guidance on addressing cyber threats, has outlined 16 critical infrastructure sectors, including the defense industry, energy, food and agriculture, and health care. It also recommends steps companies can take to improve their cyber hygiene (see story, page 17).

Meanwhile, in light of a recent New Jersey court decision, insurers may be reconsidering the traditional war clause exemption in their non-cyber policies (see related story).

"Certain countries have spent years and years mapping out our infrastructure and finding the weakest links, as well as the links that have multiplier effects."

Michael Bahar,
Everglades Sutherland LLP

Nation states are the "greatest threat that's posed to the U.S. right now as a nation. I think we're ill-prepared," said Ted Theissen, Washington-based senior managing director at Ankura Consulting Group LLC and a former special agent with the FBI, where he focused on cyber-related matters.

"As geopolitical tensions increase, you should expect an increase in cybersecurity threats, particularly against infrastructure and particularly against iconic U.S. and western brands, and the threat is real and escalating," said Michael Bahar, a partner with Everglades Sutherland LLP in Washington, who is a former U.S. House Intelligence Committee staff member.

"Certain countries have spent years and years mapping out our infrastructure and finding the weakest links, as well as the links that have multiplier effects," he said, adding that so far there has been little direct activity.

Russia, China, Iran and North Korea are frequently cited by experts as targeting the U.S. infrastructure.

Experts say the Biden administration has made significant progress in addressing the issue, though some see room for improvement.

Mike McNeerney, senior vice president of security for cyber insurer Resilience Cyber Insurance Solutions, in San Francisco, said, "This is the most aggressive administration when it comes to cyber security that I've ever seen."

The Cybersecurity and Infrastructure Security Agency, part of the Department of Homeland Security, in particular, is taking a "very active role reaching out to the private sector," he said.

However, "the federal government acts most of the time as a regulator," and "is always going to be reactive," said John Bambanek, principal threat researcher at San Jose, California-based Netenrich Inc., an information technology service management company.

"What is needed is better collaboration and more open conversations" between the government and the private sector, he said.



Experts say last year's Colonial Pipeline hack by a Russia-linked cybercriminal group — in which the company was forced to shut down its entire network, the source of nearly half of the East Coast's fuel supply — was a wake-up call to companies about the risks they face.

There are "too many regulators chasing too many regulations, each with their own kind of fine-tuning," said Scott Corzine, Arlington, Virginia-based senior managing director at B. Riley Financial Advisory Services.

The government should move to a unified approach to protecting critical infrastructure rather than the current "alphabet soup" of regulators, he said.

Experts say last year's Colonial Pipeline hack by a Russia-linked cybercriminal group — in which the company was forced to shut down its entire network, the source of nearly half of the East Coast's fuel supply — was a wake-up call to companies about the risks they face.

And although it is believed the threat came from an insider, last year's thwarted

attempt to remotely put lye into Oldsmar, Florida's water treatment facility has served as a warning as well.

William Altman, principal cybersecurity consultant with San Francisco-based CyberCube Analytics Inc., said the U.S. critical infrastructure is not monolithic but rather "a patchwork of different technology and security measures."

Larger organizations that have invested heavily in cybersecurity have done a reasonable job in putting necessary controls in place, Mr. Rebholz said. But other entities, such as smaller municipalities, often don't invest heavily in cybersecurity and are inadequately protected, he said.

"One of the key challenges for companies

See CYBER page 17

Silent cyber ruling has insurers looking closer at war clause

A ruling issued by a New Jersey court that addresses the issue of "silent cyber," where cyber coverage is not explicitly covered, is expected to be influential in changing the traditional war clause exclusion in non-cyber policies.

Merck & Co. sued a Chubb Ltd. unit seeking coverage under its all-risk policy for damages sustained in the 2017 NotPetya ransomware attack, according to the Jan. 13 ruling in *Merck & Co. v. Ace American Insurance Co.* The insurer refused to provide coverage based on the policy's war clause exclusion.

The New Jersey Superior Court in Elizabeth ruled in favor of Merck agreeing that, under a reasonable understanding of the war clause exclusion, it should apply when there is a use of armed forces. A Chubb spokesman did not respond to a query as to whether it has appealed the ruling or plans to do so.

Industry observers are also awaiting



an Illinois state court ruling in a similar NotPetya-related case, *Mondelez International Inc. v. Zurich American Insurance Co.*, which was filed by the Chicago-based snack company against the Zurich Insurance Group unit.

The New Jersey ruling "is making insurers go back and take a deeper look" at the war clause, said Rajeev

Gupta, founder and chief product officer of cyber insurer Cowbell Cyber Inc. in Pleasanton, California.

"It's a very persuasive opinion of great precedential value," said Judy Selby, a partner with Kennedys Law LLP in New York. But, she added, the court adopted "a very static view of the relevant terms and the exclusions" and did not take

into account "that things change over time" and that what is considered war is different now.

"When you have a decision like this court's and there's so much money at stake, insurers are going to take a hard look at the decision" and consider its business impact, Ms. Selby said.

"I assume the carriers will be looking to introduce new exclusions going forward," said Peter A. Halprin, a partner with Pasich LLP in New York.

Michael Dion, vice president and senior analyst with Moody's Investors Service Inc. in New York, noted *Merck & Co. v. Ace American Insurance Co.* is a 2017 case, and the insurance industry has been working since then to eliminate silent cyber coverage.

"The policy language where we stand today is better defined and more limited," and the insurance industry is "much better protected," he said.

Judy Greenwald

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CRITICAL INFRASTRUCTURE SECTORS & RELATED SECTOR RISK MANAGEMENT AGENCIES

Sector risk management agencies:

Departments of Agriculture (USDA), Defense (DOD), Energy (DOE), Health and Human Services (HHS), Homeland Security (DHS), Transportation (DOT), Treasury, Environmental Protection Agency (EPA), and General Services Administration (GSA)

Chemical	DHS	Financial services	TREASURY
Commercial facilities	DHS	Food and agriculture	USDA, HHS
Communications	DHS	Government facilities	DHS, GSA
Critical manufacturing	DHS	Health care and public health	HHS
Dams	DHS	Information technology	DHS
Defense industrial base	DOD	Nuclear reactors, materials and waste	DHS
Emergency services	DHS	Transportation systems	DHS, DOT
Energy	DOE	Water and wastewater systems	EPA

Source: U.S. Government Accountability Office (GAO)

CYBER

Continued from page 15

is to recognize that almost every company at this point is a potential target,” said Joshua Larocca, New York-based senior managing director at Stroz Friedberg, an Aon PLC unit.

Security efforts in private industry often focus on information technology at the expense of operational technology, which refers to the hardware and software that operates physical processes, including power plants, oil rigs and manufacturing assembly lines.

Rotem Iram, co-founder and CEO of San Francisco-based insurtech At-Bay Inc., said that tackling cybersecurity risk requires “a lot of work” by both IT and engineering staff “to really make it a priority for the company.”

Engineers often mistakenly believe operational technology systems are safe from manipulation because there is an

“air gap,” which means the systems are not connected directly or indirectly to the internet.

“Air gaps sometimes give you a false sense of security,” said Wade Chmielinski, staff vice president, cyber hazards, at FM Global, who is based in Cranston, Rhode Island. “They’ll think they are air gapped, but all it takes is one device plugged into something that doesn’t necessarily need a wire” to change that.

Awareness of the issue is improving, Mr. Altman said.

Insurers have long seen nation states’ potential threat, and many are already excluding coverage. “I don’t really see that changing in the foreseeable future,” Mr. Rebholz said.

Market sources say Chubb Ltd. has changed its cyber policy language to address the issue of a nation-state event. A company spokesman declined to comment.

Last year, Lloyd’s Market Association introduced four new war, cyber war and limited cyber operations exclusions for

standalone cyber insurance policies.

One exclusions states, for instance, “Notwithstanding any provision to the contrary in this insurance, this insurance does not cover any loss, damage, liability, cost or expense of any kind (together ‘loss’) directly or indirectly occasioned by, happening through or in consequence of war or a cyber operation.”

“One of the key challenges for companies is to recognize that almost every company at this point is a potential target.”

Joshua Larocca,
Stroz Friedberg

“I would hope we can be much more creative than just coming up with broader exclusionary language,” said Shannon Groeber, New York-based executive vice

INFORMATION TECHNOLOGY VS. OPERATIONAL TECHNOLOGY

IT	OT
Data and the flow of digital information	Operation of physical processes and the machinery used to carry them out

Source: Coolfire Core

president of CFC Underwriting Ltd.

The cyber insurance market still has to “find ways to refine the coverage that they really intend to provide, and I think we’re still only halfway down the road,” said Christopher Keegan, New York-based head of the cyber liability practice at Beecher Carlson, a unit of Brown & Brown Inc.

Some underwriters are trying to develop wordings that will make clear whether a cyberattack by a nation state attack is covered.

But most attacks that have taken place have been covered by the cyber insurance market and attacks not related to physical war will likely continue to be covered, he said.

John Farley, New York-based managing director of Arthur J. Gallagher & Co.’s cyber liability practice, said, “We’ve always had some exclusionary language related to war or warlike actions in our policies, both in cyber and many other lines of coverage,” but the exclusions’ scope can be negotiated.

CYBERSECURITY FRAMEWORKS CAN AID RECOVERY FROM ATTACKS

There is no guarantee a company can withstand a determined nation state’s cyberattack, but good cyber hygiene will go a long way to offer basic protection and recovery, experts say.

Many suggest adopting the cybersecurity framework recommended by the Gaithersburg, Maryland-based National Institute of Standards and Technology.

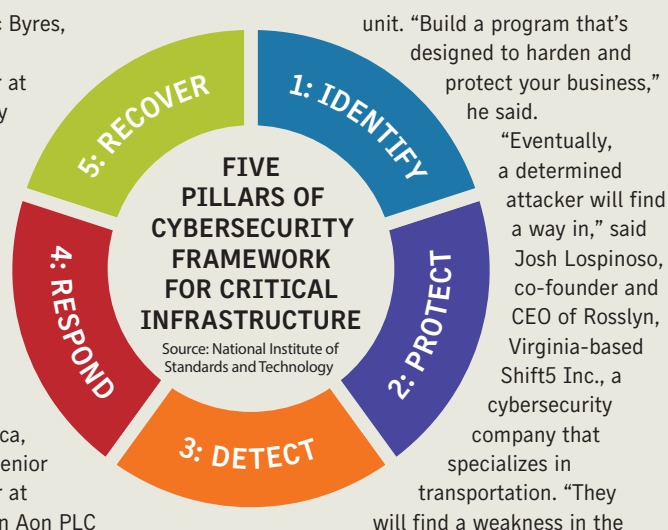
The five pillars of the NIST program are:

- Identify risk.
- Protect critical infrastructure services.
- Detect a cybersecurity event.
- Respond to an incident.
- Recover from it.

Companies should look at the NIST framework to see how it fits with their

business, said Eric Byres, founder and chief technology officer at aDolus Technology Inc., based in Victoria, British Columbia, a critical infrastructure cybersecurity company.

“You have to do basically a risk assessment,” said Joshua Larocca, New York-based senior managing director at Stroz Friedberg, an Aon PLC



armor, and then your job is to identify that intrusion as quickly as possible and remediate it.”

Mr. Larocca said the No. 1 question he gets asked is how soon a business can be up and running after an attack. The answer will be influenced by the environment it operates in and decisions made leading up to the incident, he said.

Cybersecurity plans should be regularly updated, said Michael Bahar, a partner with Everglades Sutherland LLP in Washington.

“Even if you were really buttoned up and secure two years ago, it’s time to look at it again, because people figure a way in,” he said.

Judy Greenwald



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CAPTIVE INSURANCE

Captive numbers increase as rates rise

INSIDE

▶ EXPANDING CAPTIVE COVERAGES

Captive owners are considering risks they would not have covered before the hard market. **PAGE 22**

▶ CELLS MULTIPLY

Cell captives are being used to address nontraditional risks. **PAGE 23**

▶ RANKINGS & DATA

Business Insurance's 2022 rankings of the vctop captive managers. **PAGE 25**

BY GAVIN SOUTER

gsouter@businessinsurance.com

The captive insurance sector saw increased formations and expansion of existing captives last year as companies continued to seek alternatives to the hardening commercial insurance market.

Several domiciles reported record growth in 2021, and captive managers say interest in the alternative risk transfer market is unlikely to diminish soon.

Hard-to-place lines of coverage, such as some property risks and cyber liability, are increasingly being placed in captives, experts say.

And more policyholders are considering whether directors and officers liability coverage can be funded through a captive as commercial rates continue to increase. Recent legislation in Delaware

will likely accelerate that trend, they say (see related story).

“From a captive point of view, it’s been a phenomenal year. There’s been record growth even among smaller domiciles,” said Anne Marie Towle, Carmel, Indiana-based global captive solutions leader at

See **CAPTIVES** page 21



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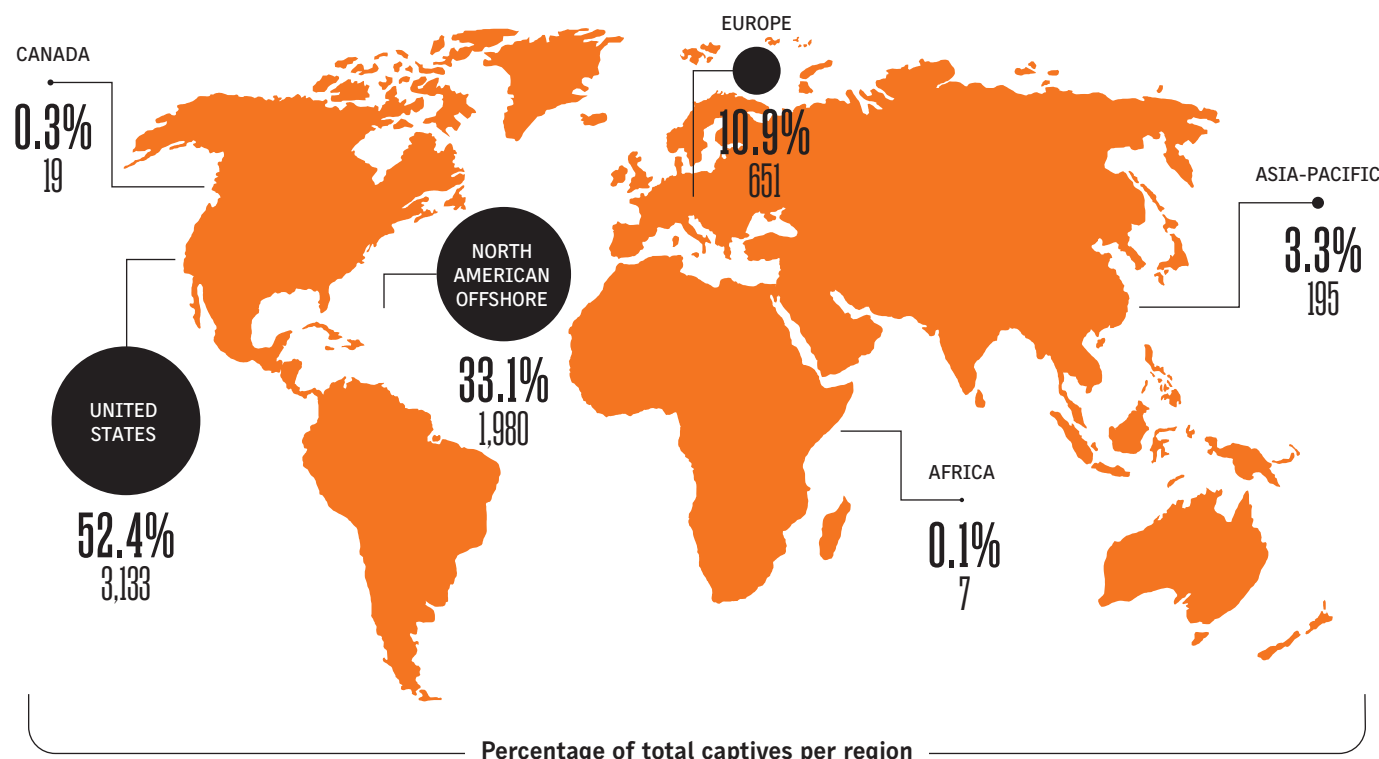
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ONSHORE/ OFFSHORE BY THE NUMBERS

There were 5,985 captives in 2021, not including microcaptives, series captives, or individual cells or cell members in protected cell companies.

Source: BI survey



Hylant Group Inc.

Total captive numbers worldwide increased by more than 100 last year, though growth and contraction varied significantly by domicile (see chart page 22).

Rising prices in the commercial insurance market have been the main driver behind the growth, Ms. Towle said.

"We are seeing a record number of formations for Aon across the various domiciles," said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont.

For each of the past two years, Aon doubled the number of captive feasibility studies it has conducted, she said.

Marsh LLC has also seen strong captive growth across all industries, said Ellen Charnley, president of Marsh Captive Solutions in Las Vegas.

"We've seen particular growth in our cell business," she said. "With the hardening market, sometimes clients have needed a

quicker solution or a specific need."

For example, companies have formed cells to handle property or cyber risks.

In addition, there has been significant growth in managing general agents forming cells to take on part of the business they are handling, Ms. Charnley said.

Different sized companies have differing experiences with the commercial insurance market, which has affected the types of captives formed, said Peter A. Kranz, Burlington, Vermont-based executive managing director and captive practice leader at Brown & Brown Inc.

Large companies were hit first with price increases, which led to increases in retaining risks in existing single-parent captives, and as rate increases spread more cell and group captives were formed by middle-market companies, he said.

Aon has also seen an increase in cell formations as more companies seek to react quickly to tough renewals, Ms. Gray said.

The process for forming a single-parent captive usually takes about six months, but a cell can be formed without a feasibility study — for example, if it's covering a single line or filling a gap in a tower of coverage — shortening the formation time to less than 30 days, she said.

Cyber

The increased interest in using captives to fund cyber liability risks is partly price driven but is also a reaction to exclusions being inserted in commercial policies, Mr. Kranz said.

"When all these things happen, you have an unfunded risk, so you have to look at how to finance it and say, 'Are we going to use our balance sheet or are we going to use a captive,'" he said.

Placing cyber risks in a captive can also help a company formalize its risk management process for the exposure, Ms.

Charnley said.

Concerns over the much larger deductibles some policyholders in areas such as cyber and D&O are having to take are also leading to more formations, said Martin Eveleigh, chairman of Atlas Insurance Management, a Charlotte, North Carolina-based unit of Risk Strategies Co.

"I'm at the beginning of a feasibility study where deductibles are \$2.5 million on one line and \$5 million on another. When you are faced with that, it makes sense to look at how you finance that risk," he said.

Risks that have traditionally been placed in captives are also generating new formations, Mr. Eveleigh said.

"We have seen a lot of inquiries for medical malpractice captives as well as transportation," he said.

Both lines have seen increases, in many

See **CAPTIVES** page 22

DELAWARE LAW CHANGE SPARKS INTEREST IN PLACING D&O RISKS IN CAPTIVES

The directors and officers liability insurance market has seen some of the highest rate increases since the commercial market began hardening about four years ago, which has generated more interest in trying to use captive insurers to fund the risk.

Recent changes to Delaware's corporate law are expected to intensify that interest as it explicitly states that captives can be used to cover Side A D&O risks.

Prior to SB 203 being signed into law last month, Delaware and most other states did not allow companies to indemnify directors and officers for certain types of lawsuits, including derivative lawsuits filed by shareholders alleging misconduct by company officials. Instead, corporations bought Side A D&O coverage from commercial insurers to protect their directors

and officers from such suits.

The revised law allows captives in any domicile to provide Side A D&O coverage for Delaware corporations. More than 50% of publicly traded companies are incorporated in Delaware.

A handful of other states have language in their corporate laws that imply that Side A can be offered via a captive, but none specifically state that captives can be used, said Steve Kinion, director of Delaware's Bureau of Captive & Financial Insurance Products.

Captive managers say the Delaware law needs to be examined and compared with corporate laws in other states, but it is potentially helpful.

Some corporations may still have bylaws that bar Side A risks being covered in a captive, but the change in Delaware is a good development,

said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont. "It's certainly an area that has been of significant concern to companies."

"If all it does is cause a little bit more competition in the D&O market, then that's a good thing," said Ellen Charnley, president of Marsh Captive Solutions in Las Vegas. "We'll see how it plays out."

Already, some companies facing difficulty securing coverage have used cell captives to cover D&O risks, she said.

"There's a little bit more arm's length than with simply forming a single-parent captive," Ms. Charnley said. But the use of cells to cover D&O risks has not been tested in court, she said.

Side A was a challenging risk to put in captives and there was often insufficient premium in other D&O coverages to

prompt much interest, said Peter A. Kranz, Burlington, Vermont-based executive managing director and captive practice leader at Brown & Brown Inc.

The Delaware legislation is helpful for the captive sector, but questions remain, he said.

"One is, are your independent directors going to be OK with purchasing the insurance from a captive?" he said. Directors may have concerns over the long-term stability of a captive compared with a commercial insurer. "You have to get them comfortable," Mr. Kranz said.

In addition, companies incorporated in Delaware but headquartered elsewhere will have to determine which state's corporate law governs their D&O insurance purchasing. "I don't think we know that yet," Mr. Kranz said.

Gavin Souter

COUNTING CAPTIVES

Ranked by number of captive licenses at year-end 2021

Rank	Domicile	2021	2020
1	Bermuda	670 ¹	680
2	Cayman Islands	661	652
3	Vermont	620	589
4	Utah	384	396
5	Delaware	313	288
6	North Carolina	257	250
7	Barbados	253	226 ²
8	Hawaii	251	242
9	Luxembourg	192	199
9	Guernsey	192	188 ²
11	South Carolina	183	175
12	Nevada	161	166
13	Tennessee	153	145 ²
14	Arizona	149	131
15	Nevis	122	116
16	District of Columbia	112	106
17	Montana	102	115 ²
18	Isle of Man	99	102 ²
19	Singapore	84	80
20	Anguilla	77	94 ²
21	Turks & Caicos Islands	71	70
22	Dublin	68	67
23	Labuan	63	55
24	Alabama	57	53
24	Georgia	57	56
26	Texas	54	41 ²
27	Missouri	52	51
28	British Virgin Islands	49	52
29	Connecticut	44	22
30	New York	40 ¹	40 ^{2,3}
31	Kentucky	34	45
32	Sweden	31	37
33	Switzerland	25 ³	25
34	Michigan	24 ¹	26
35	Federated States of Micronesia	23	23
35	St. Lucia	23	26 ²
37	Bahamas	21	22
38	New Jersey	20	20
39	British Columbia	19	21
40	Puerto Rico	18 ¹	18 ¹
41	South Dakota	16	15
42	Arkansas	14	12
43	Oklahoma	13	13
44	Gibraltar	10	10
45	New Zealand	9 ¹	11 ¹
45	Germany	9	9
47	Denmark	8	8
47	Liechtenstein	8	8
49	Malta	7	16
49	Curacao	7	7
49	Egypt	7	7
52	Ohio	6	7
52	Colorado	6	6
52	Panama	6 ³	6 ³
55	Vanuatu	5	5
56	Hong Kong	4	4
56	Nebraska	4	4
58	Guam	3	3
58	Maine	3	3
60	Illinois	2	3
60	Jersey	2	3
60	U.S. Virgin Islands	2	3 ²
60	Dubai	2 ¹	2
60	Mauritius	2	2
65	Kansas	1	1
65	West Virginia	1	1
TOTAL		5,985	5,879 ²

¹ BI estimate. ² Restated. ³ From website.
Source: BI survey

cases where loss experience has been good, Mr. Eveleigh said.

Microcaptives

One area of the market that has seen less activity is the microcaptive or 831(b) captive sector, managers say.

The IRS has four court victories against owners of 831(b) captives that it says do not qualify as insurance for tax purposes and has announced that it is increasing resources to pursue alleged tax abuses related to 831(b)s.

Atlas has formed few 831(b) captives over the past two years and some owners have stopped using existing 831(b)s, Mr. Eveleigh said. "They seem to have a certain life span anyway as people retire or sell their businesses."

Abusive 831(b) transactions are still an issue, though, Mr. Kranz said. "There are still folks out there that are not setting them up quite the right way," he said. "We as an industry need to focus on ensuring that we do things the right way, which I think the majority of us do."

Another negative development for captives over the past year was the passage of legislation in Washington that added a 2% premium tax on captives insuring risks located in the state.

Captive managers say the industry is concerned that other states may follow Washington's lead, but the move has not yet significantly affected the market.

The law increased costs for some captives, but it has not deterred companies from forming captives, Ms. Gray of Aon said.

Looking ahead, captives are expected to make increased use of data.

Data analytics are being used increasingly to support decisions to move risks into captives, said Ms. Towle of Hylant.

"CFOs understand managing the cost of risk and are really looking at alternatives, so you need data to drive the discussion," she said.

For example, risk managers can use data to justify using captives to obtain wider coverage for cyber or pandemic-related risks than is available in the commercial market, Ms. Towle said.

Captives can also enhance companies' so-called ESG strategies.

Using captives to cover environmental, social and governance risks is attracting interest and will likely grow, said Ms. Charnley of Marsh.

"Simply the existence of a captive provides good governance for funding risks retained," she said.

Having an entity to retain risks that has its own board of directors and regulatory oversight arguably provides better governance than if risks are retained on a balance sheet, Ms. Charnley said.

The trend of more captive formations is expected to continue as commercial rates keep rising in many lines and the higher pricing levels are maintained even in lines in which rate hikes are easing.

"From a trending perspective, we are expecting to have even more captives licensed in 2022 than we did in 2021," Ms. Gray said.

"The pipeline continues to be filled with new opportunities, and I think the interest is going to continue for quite some time," Mr. Eveleigh said.

Owners expand use of captives as insurance choices narrow

BY GAVIN SOUTER

gsouter@businessinsurance.com

MIAMI — The hard commercial insurance market has led to a significant expansion of captive use over the past several years with owners increasingly using the vehicles to cover risks that were previously excluded, captive experts say.

Potentially catastrophic exposures are increasingly being covered through captives, and owners with favorable loss experiences are diverting more liability premiums into captives, they say.

As the market hardens in areas such as cyber and property catastrophe risks, captive owners are considering risks that previously they would not have covered in a captive, said Steve Gibson, president of Dealer Management Group, an Indialantic, Florida-based group captive for the automotive sector.

He was speaking during a session at *Business Insurance's* World Captive Forum, which was held in Miami last month.

"Traditionally we always thought that cat is verboten inside a captive, you should never put cat in a captive, and yet it's becoming that we have to move in that direction because the market is in such disarray," he said.

For example, car dealers in South Florida that have more than \$100 million in inventory have few insurers willing to



take on the risk, so they are increasingly looking at captives, Mr. Gibson said.

And the exposures that captives take on are increasing, said Carmel, Indiana-based Anne Marie Towle, global captive solutions leader at Hylant Group Inc.

"People would evaluate their captive from the perspective of 'let's just take the primary layer and finance it,' but today that primary layer could be a very large number," she said.

As a result, captive owners are structuring their captive coverage in other ways, such as providing a layer of excess coverage or using quota shares to take a percentage of a layer, Ms. Towle said.

When premiums are higher for certain lines of coverage a captive can make more sense, said Catherine Dorrien, a senior vice president at Marsh LLC's captive management unit in Atlanta, during another session at the conference.

For example, a policyholder that used to be charged \$500,000 but is now being charged \$3 million for a \$5 million limit on an excess buffer layer would be able

to use the premium to fund coverage through a captive over the long term.

"With a captive I can fund that \$3 million a year and then build up underwriting income and therefore surplus over time," she said.

John Deere, the brand name for Deere & Co. in Moline, Illinois, recently expanded the use of its Vermont-domiciled captive to include trade credit risk, said Aileen Krehbiel, manager, captive insurance programs, at the machinery manufacturer.

The coverage protects John Deere from nonpayment by dealers.

"We looked at the premiums we were paying, the claims history that we had in this space, and it just didn't make sense anymore to have those policies in the commercial market," Ms. Krehbiel said.

General Motors Co. has taken on numerous additional risks in its captive since it was established in Bermuda in 1981, said Alan G. Gier, global director, corporate risk management and insurance, for the Detroit-based auto manufacturer.

As natural catastrophe losses have accelerated, it has taken on climate-related risks in the captive, such as coverage for dealer inventory, he said.

"We were able to be very selective in the dealers we took on so if we took two in Texas, we wanted four in Nebraska or somewhere that didn't have as much exposure," he said.

Cells give owners more options to cover nontraditional risks, create profit centers

BY CLAIRE WILKINSON

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Interest in cell captives is growing rapidly as more organizations look to these facilities to fund nontraditional risks, experts say.

Cell captives are seeing “tremendous growth” to write different lines of coverage, said Nick Frost, president of Davies Captive Management, part of Davies Group Ltd.

He was speaking during a session at *Business Insurance's* World Captive Forum, which was held in Miami last month.

Organizations are using cell captives to write property risks and also to access reinsurance markets, said Mr. Frost.

Between 2020 and 2021, Marsh LLC's sponsored cell facilities saw an almost 50% growth in cell formations, said Donna Weber, head of pooling and protected cell company strategy at Marsh LLC.

There is high demand in the U.S. as well

as globally for cells, Ms. Weber said.

“While we're seeing traditional cells set up for what would be single parent risks, we're also seeing a lot of these more nontraditional cells,” Ms. Weber said.

Some 20% of the new cells Marsh set up last year wrote Side A directors and officers liability coverage.

In other nontraditional uses, 25% of new cells in Marsh's D.C. facility were set up for managing general agents and underwriters, and 30% of new cells were set up to help facilitate insurance-linked securities, Ms. Weber said.

One of the primary motivations for forming cells is to write third-party business and as a profit motivator, to retain profits, Ms. Weber said. Cells are also set up for “unique situational needs” that may go away in a year or two years as the markets change, she said.

Rich Serina, director of risk at Canon USA Inc., said the company chose a protected cell captive structure, initially



to finance the third-party risks of its equipment leasing business.

Canon leases out large pieces of equipment to lessees such as printers and scanners.

Because the loss ratio was very low on the machines leased, Canon decided to

form a captive to reinsure 15% of the third-party risk via a fronting arrangement with an insurer, Mr. Serina said.

“That was the nontraditional way we got into the business,” but it took years to get to that point, Mr. Serina said.

The company first completed a feasibility study to consider the viability and structure of the protected cell captive structure versus a single parent captive, and then worked to gain the buy-in of corporate leaders in the decision-making process.

The first risk the corporation put into its captive needed to be something it was confident would be highly profitable, said Steven Himmelstein, vice president, legal, Canon USA. That success would “pave the way for other things,” he said.

Canon last year added medical stop loss coverage to its captive and is now exploring writing other risks in its captive, such as voluntary benefits, and life and disability business.



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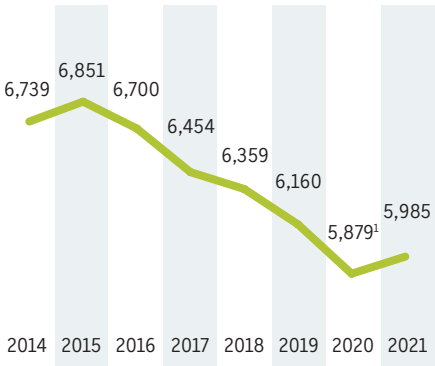
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RANKINGS OF CAPTIVE DOMICILES & CAPTIVE MANAGERS

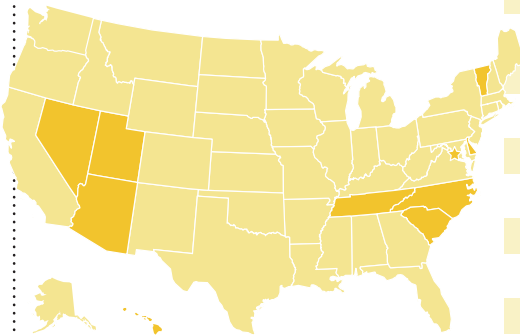
TOTAL CAPTIVES WORLDWIDE



¹ Restated.
Source: BI survey

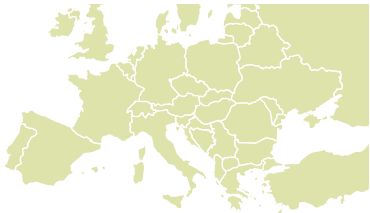
TOP U.S. CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2021



Rank	Domicile	2021	2020
1	Vermont	620	589
2	Utah	384	396
3	Delaware	313	288
4	North Carolina	257	250
5	Hawaii	251	242
6	South Carolina	183	175
7	Nevada	161	166
8	Tennessee	153	145 ¹
9	Arizona	149	131
10	District of Columbia	112	106

¹ Restated.
Source: BI survey



TOP EUROPEAN CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2021

Rank	Domicile	2021	2020
1	Luxembourg	192	199
1	Guernsey	192	188 ¹
3	Isle of Man	99	102 ¹
4	Dublin	68	67
5	Sweden	31	37

¹ Restated.
Source: BI survey

TOP 10 CAPTIVE MANAGERS

Ranked by the number of captives managed worldwide in 2021

Rank	Company	2021 total captives ¹	CAPTIVE TYPES			2021 captive premium volume ²	Domiciles	Total staff	Officers
			Captives	831(b) microcaptives	Protected/ segregated cell companies [Individual cells]				
1	Marsh Captive Solutions	1,501	1,415	28	58 [271]	\$67,667,682,963	49	487	Ellen Charnley, president
2	Aon Captive & Insurance Management	990	918	16	56 [322]	\$45,624,612,357	51	550	John English, CEO
3	Artex Risk Solutions Inc.	822	638	138	46 [1,345]	\$15,730,000,000	34	575	Peter Mullen, CEO
4	Strategic Risk Solutions Inc.	427	342	—	85 [472]	\$7,919,000,000	33	209	Brady Young, president-CEO
5	WTW, Global Captive Practice ³	339	304	11	24 [59]	\$7,101,000,000	32	216	Peter Carter, CEO
6	Risk Strategies Co. Captives ⁴	223	36	172	15 [626]	\$883,942,000	18	88	John Mina, CEO
7	Davies Captive Management	176	159	1	16 [275]	N/A	21	38	Nicholas Dove, chairman; Nicholas Frost, president
8	USA Risk Group	122	102	—	20 [38]	\$1,500,000,000	11	26	Paul Macey, president
9	Brown & Brown Inc. ⁵	101	87	—	14 [51]	\$6,303,822,000	20	39	Pete Kranz, executive managing director-captive practice leader; Matthew Takamine, executive managing director-captive operations leader
10	Innovative Captive Strategies/ Global Captive Management	94	75	—	19 [65]	\$775,929,966	9	26	Tom Stewart, president

¹ Includes all licensed insurance entities managed at year-end 2021. ² Premium volume includes total gross volume of captives managed by the company or on its behalf. ³ Formerly Willis Towers Watson PLC Global Captive Practice. ⁴ Includes Atlas Insurance Management, Oxford Risk Management Group and Risk Management Advisors. ⁵ Formerly Beecher Carlson Insurance Services LLC. Source: BI survey

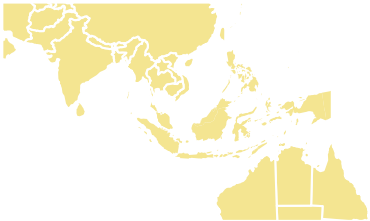


TOP NORTH AMERICAN OFFSHORE CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2021

Rank	Domicile	2021	2020
1	Bermuda	670 ¹	680
2	Cayman Islands	661	652
3	Barbados	253	226 ²
4	Nevis	122	116
5	Anguilla	77	94 ²

¹ BI estimate. ² Restated.
Source: BI survey

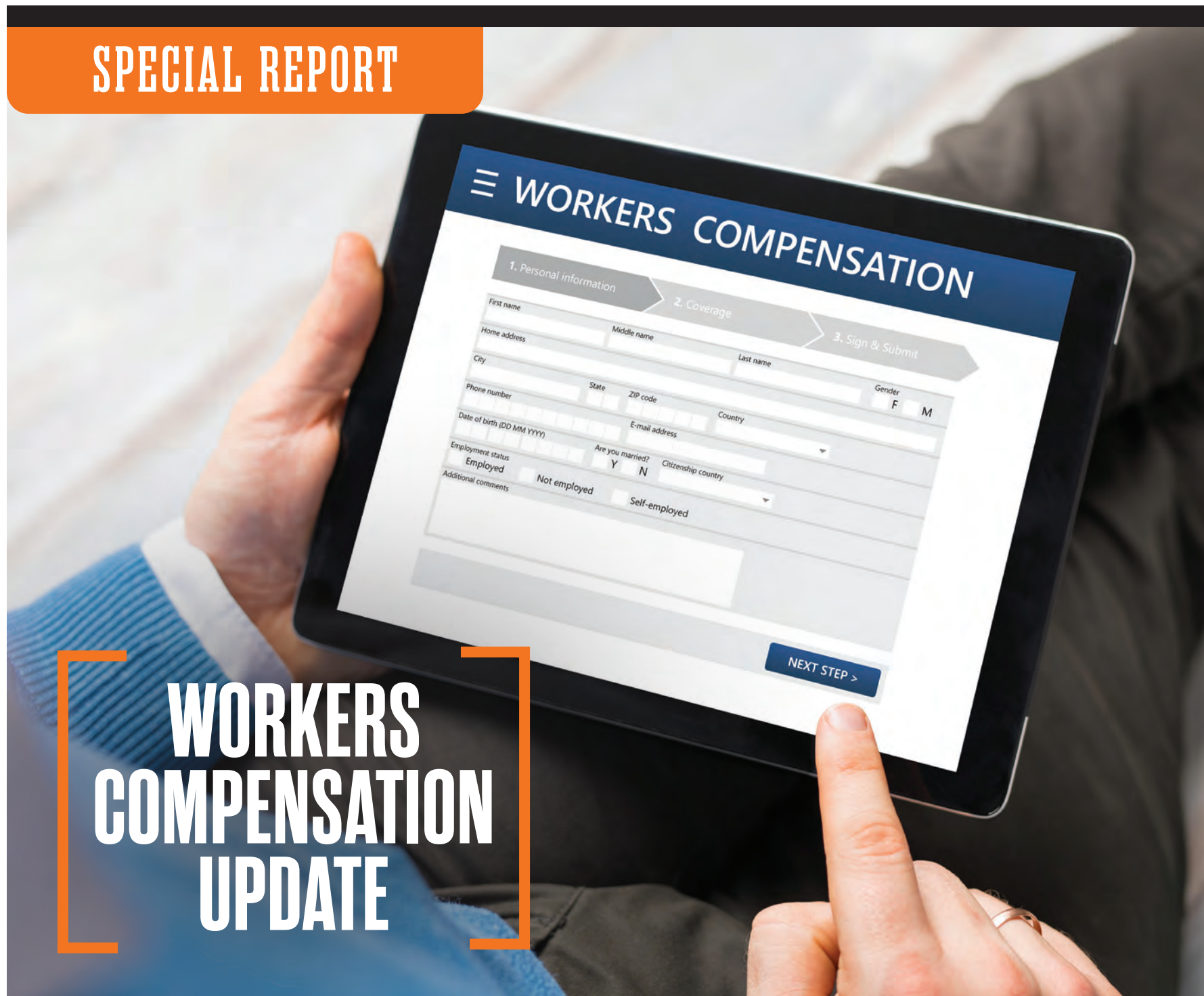


TOP ASIA-PACIFIC CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2021

Rank	Domicile	2021	2020
1	Singapore	84	80
2	Labuan	63	55
3	Federated States of Micronesia	23	23
4	New Zealand	9 ¹	11
5	Vanuatu	5	5

¹ Restated.
Source: BI survey



WORKERS COMPENSATION UPDATE

Presumption push has comp sector on edge

BY LOUISE ESOLA

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INSIDE

COMP LITIGATION ROUNDUP

Rulings from across the country — in cases involving injuries, illnesses and deaths — explore the boundaries of the workplace and compensability. **PAGE 29**

COMBATING ILLNESS STOICISM

The pandemic has shown the need for paid sick leave policies that require employees with symptoms of infectious disease to stay home. **PAGE 30**

The COVID-19 omicron variant appears to be waning and several states have lifted their mask mandates, but legislators have spent the early part of the year eyeing pandemic-related workers compensation legislation.

Since state lawmakers went back to work in January, more than a dozen pieces of new or revived pieces of legislation have been filed, and more are expected, legal experts say.

“COVID-19 presumption legislation continues to be a hot topic for workers compensation,” said Laura Kersey, executive director, regulatory and legislative analysis, for the Boca Raton, Florida-based National Council on Compensation Insurance. “Several states that enacted COVID-19 workers compensation presumption legislation in 2020 and 2021 are considering legislation

to extend those presumptions to a later date and/or expand those presumptions to additional workers.”

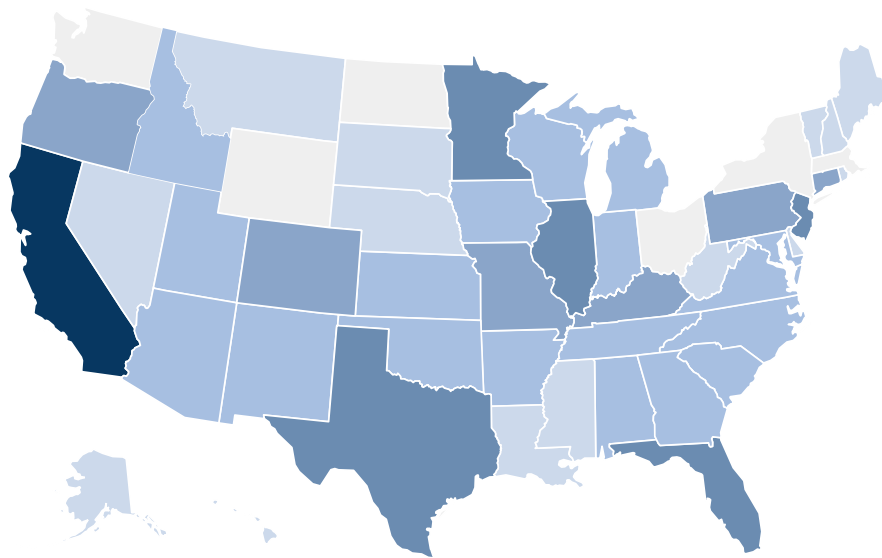
NCCI’s analysis of recent activity, which highlights bills presented in nearly a dozen states, shows legislation that would expand presumptions beyond COVID-19 to other infectious diseases is trending again. Two states — California and Florida — have introduced such legislation

WORKERS COMPENSATION COVID-19 CLAIMS SINCE 2020

Differences in presumptions of compensability, governmental closures, and the handling of the economy are some of the factors that have contributed to the observed differences across jurisdictions.

CLAIM COUNT RANGES

- Greater than 6,000
- 3,000-6,000
- 1,600-3,000
- 500-1,600
- Less than 500
- Excluded



Source: National Council on Compensation Insurance

this year, after the 2021 legislative season saw nearly a dozen similar bills introduced throughout the U.S., according to Ms. Kersey.

Another trend concerns vaccine injuries. Lawmakers in at least six states have presented bills that would explicitly state that any adverse reaction from a mandated vaccine would be compensable in workers comp.

Of immediate concern, however, are the presumptions.

"In spite of the fact that omicron is literally everywhere, even among the fully vaccinated, many states are seeking to extend their COVID presumptions. I real-

ly don't see how anyone could show their work puts them at greater risk given how widespread the disease is, but that does not stop legislatures from charging ahead with these bills," said Mark Walls, Chicago-based vice president of client engagement at Safety National Casualty Corp.

Steve Bennett, Washington-based assistant vice president for workers compensation programs and counsel for the American Property Casualty Insurance Association, said the expansion of comp coverage for other communicable diseases by presumption, in particular, would hurt the industry.

"It is extremely difficult to run a no-fault

system when you are going to cover injuries when there is no proof it happened in the workplace," Mr. Bennett said. "To keep (the workers comp industry) healthy and balanced and financially stable you need proof that the actual injury took place in the workplace."

Most, if not all, of the COVID-19 presumptions are rebuttable, meaning if an employer can prove the worker contracted the virus elsewhere the presumption is void. In Illinois, where a presumption has been in place since 2020, employers need only cast doubt on the worker having gotten sick at work.

Rich Lenkov, capital member and head

"In spite of the fact that omicron is literally everywhere, even among the fully vaccinated, many states are seeking to extend their COVID presumptions."

Mark Walls, Safety National Casualty Corp.

of the workers compensation practice at Bryce Downey & Lenkov LLC in Chicago, said that at the time the presumption bill became law in Illinois he expected plenty of litigation, but that hasn't materialized.

There were two cases statewide, and the courts upheld the presumption, he said.

Claims for COVID-19 have had minimal impact on the comp industry. Ratings agencies, including NCCI, reported average claim costs stood at \$7,800 throughout the pandemic. Most of the claims have had no medical component, meaning that in most cases insurers have paid for quarantine time-off for workers to recover.

Expanding legislation beyond COVID-19 is a concern, legal experts say.

See **PRESUMPTION** page 28

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SPECIAL REPORT

PRESUMPTION

Continued from page 27

“There is definitely the risk of expanding this one disease into other diseases and state governing bodies expanding compensability of conditions,” Mr. Lenkov said.

“What we learned from COVID is that governing bodies will bend over backwards to find a condition compensable even though science and common sense dictate that it’s difficult to prove that it was related to work,” he said.

Jeff Adelson, a partner with the Newport Beach, California, firm Adelson McLean P.C., said a case in California — *See’s Candies, Inc. v. Superior Court* — could have far-reaching implications for

“It is extremely difficult to run a no-fault system when you are going to cover injuries when there is no proof it happened in the workplace.”

Steve Bennett, American Property Casualty Insurance Association



comp. At the heart of the case is a woman suing her employer, See’s Candies, after she allegedly caught COVID-19 at work and gave it to her husband, who died. In December an appeals court in California allowed the suit to proceed after See’s Candies argued exclusive remedy barred the lawsuit.

“In California it could become case law,” Mr.

Adelson said. “The judge is looking at it as a tort liability yet is not considering the comp implications,” especially with a presumption in place that a worker was infected at work.

Employers should be “worried about broadening of the presumption,” he said, adding, “that presumption could spill over to a *See’s* case scenario.”

COVID-19 CLAIMS

Ten workers compensation bureaus joined forces to study COVID-19 claims since 2020. They found:

80,000

There have been 80,000 claims in 45 states.

\$7,800

The claims cost an average of \$7,800.

\$630M

Incurred losses have totaled \$630 million.

Source: National Council on Compensation Insurance, January 2022

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Rulings focus on compensability boundaries

BY SHERRI OKAMOTO

Moving into 2022, courts continue to explore the boundaries of compensability for injuries. From sinkholes and COVID-19 to car accidents and influenza, courts have started off the new year addressing a variety of scenarios, with diverse outcomes.

California

Just before Christmas, California's 2nd District Court of Appeal in Los Angeles issued *See's Candies Inc. v. Superior Court (Ek)*, allowing a widow to pursue a claim against her employer because her allegedly unsafe workplace led to her infecting her husband with COVID-19.

Matilde Ek had worked for See's Candies, and she contracted COVID-19 in March 2020. Her husband, Arturo Ek, provided care for her while she was ill and subsequently became sick himself. He died in April 2020.

Ms. Ek sued her employer, asserting See's failed to implement appropriate safety measures to mitigate its employees' exposure to the novel coronavirus, even though it knew or should have known its acts would increase the risk that workers would be infected and carry the virus home, where they could infect their families.

See's filed a demurrer arguing that the lawsuit was precluded by the derivative injury rule, a theory that the exclusive remedy of a workers compensation recovery applies to all claims that are collateral to or derivative of a compensable injury.

The trial court overruled the demurrer, and the Court of Appeal affirmed, ruling that even if Ms. Ek's contraction of a virus was a cognizable injury subject to coverage under the workers comp system, viral transmission does not depend upon any injury to the transmitting party. In such a situation, the court said, the employee "is merely the conduit of a toxin or pathogen," and so Mr. Ek's injuries were not collateral to, nor derivative of, Ms. Ek's COVID-19 infection.

Oregon

In February, the Oregon Court of Appeals in Salem addressed another case involving a different infectious virus. In *In the Matter of Rogers*, the court revived a bus driver's claim for benefits based on her contraction of the flu.

Tri-County Metropolitan Transportation employee Diane Rogers fell ill in February 2019 and was hospitalized for 10 days with an influenza-A infection.

An administrative law judge denied Ms. Rogers' claim, and the Workers' Compensation Board affirmed. But the Court of Appeals reversed, finding that Ms. Rogers met her burden to establish medical



causation by a preponderance of the evidence through expert medical testimony, as it was evident her expert regarded her work environment as a greater risk of exposure to flu than her brief potential exposures in her off-work environment.

On the flip side, the same Court of Appeals denied a claim for benefits filed by a worker who was injured while taking a walk as part of her participation in her employer's wellness program.

In *the Matter of the Compensation of Watt*, filed in January, held that the worker's risk of being injured by a fall during an off-premises walk was a "neutral risk" — one that was not employment-related or personal to Lori Watt.

An injury resulting from a neutral risk is compensable when the conditions of employment put a claimant in a position to be injured, but since it was Ms. Watt's personal choice to take the walk, which itself was not an employment duty or incidental to the job, the court said her accident had no connection to her employment.

Delaware

Walking off the employment premises also was not compensable for a judicial assistant in Delaware in *Browning v. State*.

In January, the Delaware Supreme Court in Wilmington upheld a denial of benefits to Kim Browning for her injuries from falling into a sinkhole while walking from a parking spot on a public street toward the state courthouse where she worked.

The court found that Ms. Browning was outside the course of her employment when she fell, as it was beyond the courthouse property line and she had not been instructed to park in any particular place to access her workplace.

Pennsylvania

Being off the employer's property was not a bar to a recovery for a worker in Pennsylvania. In a January decision in *Henderson v. WP Ventures (WCAB)*, the Commonwealth Court of Pennsylvania in Harrisburg ruled that Stanley Henderson was entitled to benefits for his injuries from a fall he suffered while he was heading out to have a cigarette and get food.

The court found that Mr. Henderson's actions fell within the parameters of the personal comfort doctrine, which "embraces intervals of leisure within regular hours of the working day" and recognizes that "momentary departures from the work routine do not remove an employee from the course of his employment."

Since allowing an employee "to administer to his personal comfort better enables him to perform his job," the court said breaks to attend to personal comforts are considered to be in furtherance of the employer's business. The court therefore concluded that Mr. Henderson remained within the course of his employment when he was injured.

New Jersey

In January, the Supreme Court of New Jersey in Trenton ruled that a librarian was entitled to benefits for her injuries from an accident after she had left the building where she worked.

Diane Lapsley worked for the Township of Sparta at a public library. She had been heading to her car when she was struck by a snowplow being operated by another township employee.

In *Lapsley v. Township of Sparta*, the court said that an accident that happens while a worker is going to or coming from work arises out of and in the course of employment if the injury takes place on the employer's premises. The court said that Mrs. Lapsley was entitled to benefits because the accident happened in a parking lot controlled by the township.

While it was undisputed that the township did not own the lot, the court said the township's act of plowing the lot "visibly demonstrated" its control over it, and the township had to have been aware that a library employee would use the lot directly abutting the library.

Texas

A Texas court ruled similarly when it said an employer faces potential liability for a nurse's death after she was struck by a car. In January, the Court of Appeals for the 14th District of Texas in Houston granted en banc reconsideration of

HNMC Inc. v. Chan.

Leny Rey Chan was working for the Houston Northwest Medical Center when she was hit by a motorist as she crossed a public roadway between the hospital building and the hospital's fenced parking lot.

The Court of Appeals explained that, generally, a property owner has no duty to ensure the safety of a person who leaves the property and suffers injury on an adjacent public roadway. However, a premises owner assumes a duty of care if it creates the dangerous condition; agrees or contracts to make safe a known, dangerous condition of real property; assumes actual control over the adjacent property; or knows about but fails to warn of an obscured danger on land directly appurtenant to the premises owner's land.

A majority found the hospital had a duty to use reasonable care and avoid foreseeable injuries to others by instructing pedestrians, such as Mrs. Chan, not to cross the street at a mid-block location outside the hospital exit, where the vehicle entrance/exit to the fenced parking lot was located.

Colorado

In a contrasting ruling, the Colorado Court of Appeals in Denver in January ruled that an employer did not have potential liability for a tree trimmer's injuries from a car accident while traveling to a doctor's appointment for an alleged work-related injury.

After James Salazar told his employer that he had hurt his back, his employer gave him a list of doctors from whom he could seek treatment. Mr. Salazar made his selection, and was hurt in a car accident while traveling to his initial appointment.

In its decision for *Salazar v. ICAO*, the Court of Appeals said an employer is responsible for the direct and natural consequences that flow from a compensable injury, but proof of causation is a threshold requirement that an injured employee must establish by a preponderance of the evidence before any compensation is awarded.

Thus, the court said, injuries sustained while traveling to or from covered medical care for a compensable injury may be compensable, but the initial injury must be compensable before a claimant can recover benefits for the travel-related injuries.

Sean Goodbody of Withers, Seidman, Rice, Mueller, Goodbody, who represented Mr. Salazar, said an appeal is pending. He will argue that Mr. Salazar's injuries from the accident should be compensable because he would not have been traveling if not for the employer's control over his medical treatment for the reported work injury.

Sherri Okamoto is a legal reporter at WorkCompCentral, a sister publication of Business Insurance.

American illness stoicism: The case for paid sick leave policies



Chuck Kable is the chief legal and human resources officer for The Woodlands, Texas-based Axiom Medical Consulting LLC. He can be reached at chuck.kable@axiomllc.com.

For decades, a silent “epidemic” has claimed hundreds of billions of dollars annually from businesses across the United States, and as the workers compensation industry and safety professionals navigate nuances brought on by COVID-19, addressing this problem could help solve workplace issues caused by the pandemic.

In 2019 alone, illness-related lost productivity cost businesses \$575 billion. Unlike COVID-19, the flu or tuberculosis, this huge cost is not related to a specific disease. This is an “epidemic of behavior.” The lack of sick time availability combined with presenteeism has created what I call “American illness stoicism,” the evolution of presenteeism into a tragic flaw — creating perhaps the longest ignored enterprise value destroyer ever encountered by U.S. business.

It’s a tragic flaw that continues to be violently exposed during the coronavirus pandemic.

Only now, after the development of workers comp changes intended to create coverage for illnesses acquired at work and various state OSHA and federal OSHA actions, are more businesses beginning to think about and take steps to mitigate illness in the workplace.

Let me explain American illness stoicism. Think about a scale. On one side, the hypochondriac, on the other, the stoic. The hypochondriac is viewed as an exaggerator, seeking treatment or care for any reason or no reason. The stoic ignores illness and does not actively seek treatment. In the United States, the hypochondriac is viewed as weak, while the stoic is viewed as strong. This has particular application in the workplace. Based on these perceptions of weakness and strength, U.S. workers have grown to believe that showing up sick is required if one is seeking job security and/or promotion. Meanwhile, the “weak” who fall on the bottom half of the scale, whether legitimately ill or not, are coupled with hypochondriacs — creating a lack of job security.

American illness stoicism is the belief that in order to succeed or get ahead, one must always ignore illness and show up. If businesses are interested in mitigating hundreds of billions of dollars annually of lost enterprise value, they must start by directly addressing this problem.

During the H1N1 influenza outbreak in 2009, sick workers infected at least an additional seven million people. Some experts suggest that properly utilized paid sick leave benefits could reduce influenza



in the United States by as much as 6%. More specifically, a worker sick with the flu in the workplace will infect 1.8 of every 10 co-workers. The social impact of such an outcome is measurable and meaningful.

Additionally, the lack of paid sick leave policies during the H1N1 outbreak is estimated to have caused 1,500 additional deaths. When one considers the lack of paid sick leave by race, ethnicity, income and health status, paid sick leave can easily be categorized as a health disparity that can be remedied. There is ample evidence that sick leave benefits increase job stability, employee retention and productivity, and mental and physical health, while decreasing errors in work and on-the-job accidents. Independent of regulatory changes, one can just imagine how the effective use of paid sick leave policies could have reduced workplace transmissions during the COVID-19 pandemic.

Increased regulatory changes are on the rise, however. COVID-19 has resulted in some states creating a requirement that would classify the illness as a covered workplace injury, presuming the virus was acquired in the workplace. Health care employers are required to comply with a litany of OSHA rules for infection control, which could become permanent following the adoption of an emergency temporary standard throughout the latter half of 2021. Such workers are also required to be vaccinated, per rules put in place by the Centers for Medicare & Medicaid Services and approved by the U.S. Supreme Court in January.

Meanwhile, other businesses should also expect OSHA to eventually address infection control in certain at-risk industries, including meatpacking, travel and perhaps education, to name a few. Ultimately, however, the best example of why businesses should care is embodied in the so-called

Great Resignation, in which millions of workers are reported to have quit their jobs during the pandemic. Take steps now to shore up and engage your team or else risk losing them, and perhaps your business.

In order to mitigate the hundreds of billions of dollars in lost productivity, and simultaneously execute on new regulations, businesses must ensure the right policy structure and days off policies are in place, engage in grassroots campaigns to address corporate culture and walk the walk. COVID-19 shined a light on the need for some form of infectious disease preparedness policies. These policies should be appropriately tailored to address the steps that will be taken to ensure a workplace free from the unreasonable risk of infection.

Along with testing, industrial hygiene and personal protective equipment protocols, employers should augment the policies with a paid sick leave component that requires employees to stay home with any sign or symptom of infectious disease. Such a change will be hard to swallow for our American illness stoics, but it is essential for employers to lead by example and demonstrate, through words and actions, that staying home is not just allowed, it is required in order to appropriately protect the business from the unreasonable risk of workplace infection, and appropriately protect the workforce from work acquired illness.

Ultimately, the decision to implement or not implement a workplace infection preparedness and sick leave policy will be made by the workforce. The prudent employer will not wait for the next pandemic, or epidemic. If the Great Resignation has taught us anything, it’s that the environment we work in is even more important than who we work for.

Clara, Nationwide team to provide AI in comp

■ Clara Analytics Inc. announced Nationwide Mutual Insurance Co. will use its artificial intelligence technology for a program aimed at workers compensation claims operations.

Columbus, Ohio-based Nationwide will implement Clara's Triage and Treatment programs, which use AI and advanced machine learning to provide claims management professionals with insights on resolving claims.

Santa Clara, California-based Clara's technology seeks to validate low-risk claims early in the claims process and distinguishes higher-risk cases that may be causes for concern.

The company's Triage program provides services to monitor complex claims throughout their life cycle by taking on new information as soon as it becomes available, then presenting insights to adjusters on risk factors for each claim, according to a Clara statement.

Aon product designed for midsized banks

■ Aon PLC said it is introducing a product for midsized banks that combines coverages for cyber, crime and professional liability in one policy.

FI CyberCrime Plus, which is focused on banks with balance sheet assets of \$10 billion to \$100 billion, anticipates limits of \$25 million to \$35 million, according to the broker.

The blended policy is designed for banks to manage their operation risks with a single insurance purchase, Aon said in a statement.

It provides protection against network security breaches, data leakage, business interruption, system failure, ransomware, internal and external fraud, and customer litigation, the statement said.

Mosaic, Transverse offering cyber cover

■ Mosaic Insurance Holdings Ltd. said it has partnered with Princeton, New Jersey-based Transverse Insurance Group LLC to offer \$20 million in cybersecurity capacity in the U.S. market.

Transverse is a hybrid fronting insurer that serves the program, managing general agency and reinsurance markets.

Bermuda-based Mosaic said in a statement that the strategic partnership is an expansion of the syndicated program it introduced in December. The program is designed to attract capital from commercial insurers to write complex specialty risks in regional markets worldwide.



Hartford, Swiss Re join on coverage for global clients

■ Hartford Financial Services Group Inc. has partnered with Swiss Re Corporate Solutions, part of Swiss Reinsurance Co. Ltd., to expand its network of global insurers and coverage options for its multinational clients.

In countries where The Hartford uses Swiss Re's network of insurers to offer property coverage, Swiss Re Corporate Solutions' globally standardized property policy — One Form — will be available.

One Form is embedded in the Pulse technology platform, which automates local policy issuance, Swiss Re Corporate Solutions said in a statement.

The partnership is intended to complement The Hartford's global insurer network, which provides coverage through local and regional insurance partners, Sara Gibbs, head of The Hartford's global insurer network, said in the statement.

RPS partners on management liability cover

■ Risk Placement Services, a unit of Arthur J. Gallagher & Co., said it has partnered with Fortegra Specialty Insurance Co. to offer management liability coverage for private companies.

The coverage, which is available online,

provides directors and officers, employment practices and fiduciary liability coverages in a single policy, Rolling Meadows, Illinois-based RPS said in a statement. Limits of up to \$2 million for D&O, \$2 million for EPL and \$2 million for fiduciary liability are available with a \$4 million policy aggregate.

Private companies that have been in operation for 18 months, with less than \$250 million in revenue and fewer than 300 full-time employees, are eligible for coverage.

Ryan Specialty MGU adds builders risk capacity

■ Technical Risk Underwriters, a Ryan Specialty Group managing general underwriter focused on construction, said it has secured \$100 million of wood frame builders risk capacity.

Austin, Texas-based TRU said in a statement that the capacity is offered in addition to its \$150 million of construction builders risk capacity and \$100 million of critical flood, earthquake and/or named windstorm capacity.

Gradient AI, Spear team up on claims

■ Software provider Gradient AI and Spear Technologies announced that Gradient's automated solutions technology will be integrated with Spear's property and casualty claims management system SpearClaims.

SpearClaims is a multiline claims administration system that handles claims from multijurisdiction workers compensation, commercial, personal, auto, property and homeowners insurance.

Lloyd's syndicate, Marsh offer activist cover

■ Volante Lloyd's Syndicate 1699, managed by Asta Managing Agency Ltd., and Marsh LLC have developed a coverage for listed companies in the United Kingdom facing shareholder activist activity.

Available to companies operating across all sectors with a market capitalization of between \$5 million and \$10 billion, the shareholder activist protection insurance will provide limits of between \$1 million and \$6 million.

The policy will cover the costs a company incurs to defend against a shareholder activist campaign, including fees related to the appointment of legal, consulting and communications specialists, and any proxy costs.

Rollout in the European Union is planned for the second quarter.

DEALS & MOVES

Brown & Brown to buy Lloyd's wholesale broker

Brown & Brown Inc. said it has agreed to acquire the operating companies of Lloyd's of London broker BDB Ltd.

Terms of the deal, which is expected to close in the second quarter, were not disclosed and are subject to closing conditions.

Formed in 1993, BDB is a wholesale brokerage with a managing general agency platform. It has operations in London, Belgium and Italy.

Risk Strategies acquires Pennsylvania retail broker

Risk Strategies Co., the trade name for RSC Insurance Brokerage Inc., said it has acquired retail broker Joyce Insurance Group.

Terms of the deal were not disclosed. Headquartered in Pittston, Pennsylvania, Joyce Insurance Group also has offices in Old Forge, Nanticoke and Allentown, Pennsylvania, and specializes in municipalities, schools, excavators, transit authorities and public works-related companies.

The deal includes associated firms Joyce Jackman Bell and Joyce Haggerty Bell.

NFP buys medical stop loss company

NFP Corp. said it has acquired a South Carolina-based medical stop loss company and its self-funded group captive business.

Terms of the transaction were not disclosed.

NFP said in a statement its acquisition of Spartanburg, South Carolina-based East Coast Underwriters LLC and Blue Ridge Captive Solutions PCC Inc. enhances its medical stop loss and self-funded group captive business.

Aaron Wilkie, president of both East Coast Underwriters and Blue Ridge Captive Solutions, will join NFP as managing director.

Gallagher makes UK acquisition

Arthur J. Gallagher & Co. said it has acquired Devitt Insurance Services Ltd. in the United Kingdom.

Terms of the transaction were not disclosed.

Romford, England-based Devitt is a privately owned property/casualty insurance broker focusing on coverages for motorcycles and motorhomes and serves approximately 130,000 customers.

Captives solve tough problems

It took awhile for the hardening commercial insurance market to have a knock-on effect in the captive sector, but the sharp increases in rates over the past three to four years resulted in an increase in captive formations last year after five years of declines.

The tried and tested alternative risk transfer vehicles that many large companies have had in their risk management tool kits for decades are proving useful resources as they seek to retain more of their exposures. Smaller companies are also taking advantage of captives of all types, often for the first time, as they react to price hikes and capacity shortages.

As we report in stories beginning on page 19, commercial policyholders can pivot quickly during renewals, with some establishing new cell captives in a matter of weeks to soften the impact of more restrictive underwriting.

None of this should surprise insurers or policyholders as captive formation trends have long since reflected commercial market pricing cycles. And insurers imposing unjustified price

increases should not be surprised if policyholders don't forget how they were treated during the hard market when prices inevitably soften.

What's different this time around is the scope of the risks being placed in captives. While auto liability, general liability, workers compensation and some property coverages have been placed in captives for years, only a few years ago captive owners were extremely wary of taking on catastrophe-related risks, including cyber liability.

Captive managers and regulators report that an increasing number

of captives are being used to cover such risks. Evidently, policyholders feel more comfortable taking on a portion of the exposures and confident that they can obtain additional protection through quota shares or captive reinsurance.

In another development, Delaware has changed its corporate law to allow captives to provide Side A directors and officers liability coverage to companies incorporated in the state. While the details still need to be worked out, the move could add another option for hard-pressed policyholders that previously had to buy commercial insurance to cover the exposure.

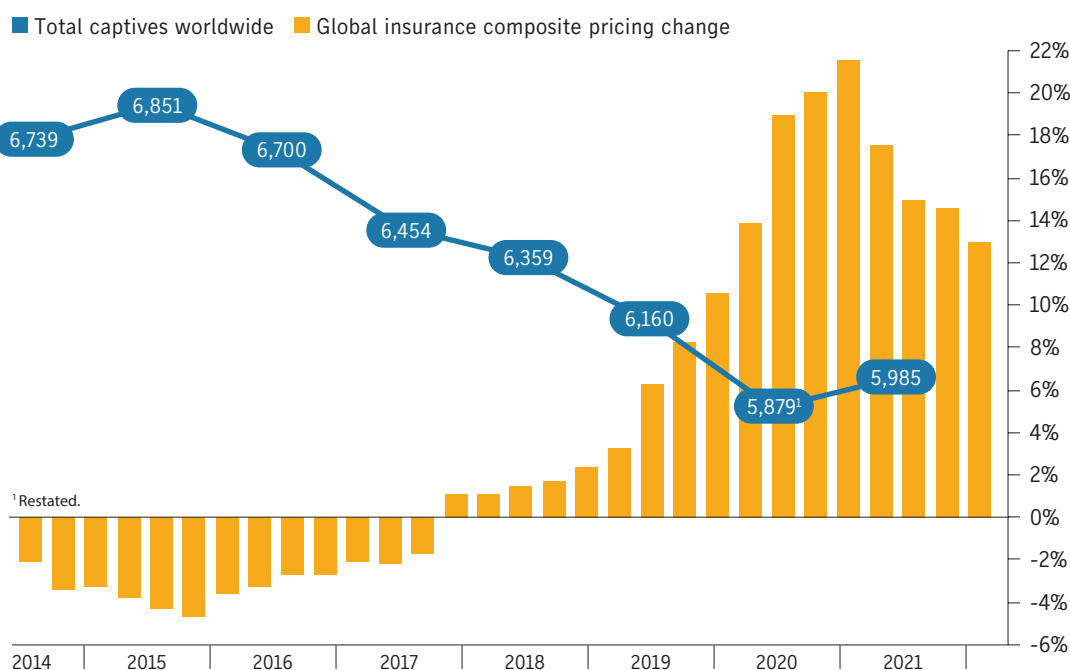
The outlook is not all rosy for the captive sector, though. The IRS' continued pursuit of abusive 831(b) microcaptives can't be ignored, and the details in all the cases the government has won in court over the past four years show just how creative some captive owners can get with the tax-efficient structures. While it's easy to dismiss the cases as only being a concern for small entities that try to use captives for estate planning purposes, the IRS has a long history of battling captive owners of all sizes, and any legal victory it scores will likely invigorate its efforts.

Despite concerns over 831(b)s, the captive sector continues to offer alternatives to buyers and help them navigate a tough environment. Careful expansion of captive use has the potential to energize risk managers, too.



Gavin Souter
EDITOR

TOTAL CAPTIVES WORLDWIDE VS. GLOBAL INSURANCE COMPOSITE PRICING CHANGE



Sources: BI survey; Marsh Ltd.

VIEWPOINT

Putting a value on property

BY CLAIRE WILKINSON

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Commercial property policyholders are being asked to ensure their reported values are accurate. This is not a surprising development. Brokers and risk managers for several years have reported that valuations were coming under increasing scrutiny. But now there is a laser focus on the issue.

As we report on page 6, recent losses, such as the partial collapse of the Champlain Towers South condominium building in Surfside, Florida, in June 2021, have heightened market concerns about underinsured properties. The winter storm and freeze that hit Texas and large swaths of the U.S. a year ago also led to a substantial volume of property claims for insurers. Consecutive years of above-average losses from natural catastrophes have been costly. Some \$120 billion of the \$280 billion in losses caused by natural disasters in 2021 were insured, according to Munich Re, and the U.S. recorded the largest share of insured losses at \$85 billion.

With these levels of claims, it's understandable that insurers, as part and parcel of their overall return to underwriting discipline that has accompanied the hardening market, would focus on values. After all, it's in the wake of an extreme weather event or a fire or other disaster when the adequacy, or not, of values comes into full view and insurers find out whether their predicted potential loss has been understated and whether they collected enough premium. For policyholders, finding out that their values were inaccurate after a loss may result in their being underinsured and not being made whole.

So why not report values accurately? A couple of different explanations come up. While policyholders

may not intentionally underreport values, they may have trouble fully understanding their risks, especially after the financial effect of the pandemic and as many have reshaped their businesses to survive. Inflation, currently running at 7.5%, is also playing a role. Supply chain issues are causing shortages and delays, which are driving construction costs higher. In the event of a total property loss under these conditions, the cost to replace damaged property with material of comparable kind and quality is going to be higher — something that many property owners may not have factored in. Finally, it takes time for practices perhaps considered acceptable in a soft insurance market to get resolved. Historically, some policyholders may have looked to place their business with as low a valuation as insurers would accept in order to get as cheap a rate as possible, and as rates and premiums started to rise, some may have understated values to cut their insurance costs. That approach is clearly not going to fly any more.

Logic would suggest that accurate values make sense for everyone. A few years back, I was talking to a risk manager in New York who made the point that when companies understate their values, those that do report to value pay the price because they are effectively subsidizing the market. Policyholders also have an obligation to report their values as accurately as possible. Representing their risk transparently to insurers should be part of any sound risk management program.

Unfortunately, after several years of rate increases and tightening terms and conditions, businesses may find the additional substantiations that insurers are requiring on valuations hard to stomach. Recent losses suggest there is a disconnect in the market on this issue, and risk managers, brokers and insurers need to work together to connect the dots.

Where the buck might stop: Broker liability for lack of coverage on live-event COVID-19 cancellations



Brent A. Turman (top) and Ross Angus Williams are partners at the law firm Bell Nunnally in Dallas. Mr. Turman can be reached at bturman@bellnunnally.com and Mr. Williams can be reached at rwilliams@bellnunnally.com.

CCOVID-19 hit few businesses as hard as the live events industry, especially in the early days of the pandemic. While music groups, comedians and other touring acts often suffered significant financial losses, there may be remedies available if their professional advisers failed to secure adequate insurance coverage. The law may provide an avenue for recovery from insurance brokers that cater to the entertainment industry yet failed to secure coverage, as recent litigation alleges.

Legal framework.

Depending on the state where an insurance broker, manager or potential policyholder is based, the broker may owe its client one or more fiduciary duties. In general terms, that would mean a broker would be required to put its client's interests above its own interests and always act in good faith and in whatever way is best for the client.

Even if a broker does not owe a fiduciary duty, it must be mindful of whether communications with a potential policyholder could result in legal liability. For example, a broker's action or inaction could result in claims of professional negligence or breach of contract.

Complacency

Before the public ever heard of COVID-19, companies seeking insurance often received communicable disease coverage as a default, unless it was specifically excluded. Often, brokers could ensure that the coverage was included by the insurer as a value-added or sweetener provided at no extra charge to policyholders — such as businesses in the events and live entertainment industry — that could be affected by shutdowns related to communicable disease. Insurers thought that the risk was sufficiently remote that extending the coverage at no extra cost or as a matter of course was non-controversial. Simpler times indeed.

While insurers rarely provided coverage without question or exclusions, if a policyholder had this specific coverage, it had an avenue through which it could seek financial recovery in the event of losses after a disease outbreak.

The client's best interests were served by securing such coverage, but where a risk is perceived as remote, a broker can get complacent and lose sight of what it ought to be doing.

Everything changed at the turn of the New Year in 2020 after it was reported that a coronavirus outbreak in China could breach the United States' borders.



The insurance industry ended its practice of automatically offering communicable disease coverage to potential policyholders and made the strategic decision to not offer communicable disease coverage, even if a potential insured requested it.

Companies that did not obtain coverage prior to early 2020 were left in a vulnerable position, but sometimes it wasn't their fault. At times, they did the right thing by engaging a broker that knew their business, knew the live entertainment insurance industry standard practice of having insurance coverage in place about six months before an event, knew that a communicable disease shutdown could result in a total loss for a client, but the broker simply failed to follow through.

Potential liability for brokers

Among others, touring entertainment acts could have claims against their broker if they found themselves without communicable disease coverage for live events canceled within a certain time frame.

By way of example, consider the following scenario: A touring act or its manager hires a broker to secure insurance coverage for a live event to take place in April 2020, just after the mid-March shutdowns started. The broker would or should have known that, based on standard practice in the live events insurance industry, communicable disease and other event insurance coverage should be in place by around October 2019 or roughly six months before the scheduled event. The broker fails to secure communicable disease coverage by October 2019. Three months later, on Jan. 1, 2020, the broker still has not secured the communicable disease coverage and the insurance industry withdraws the coverage offering.

In such a case, the broker could be exposed to claims by the touring act. The act's manager may also have claims, especially if it was entitled to a percentage or commission from the act's revenue and the broker knew of the manager's existence. Often, the broker would have been hired by the manager.

Depending on the jurisdiction, the terms of the engagement and other factors, the potential claims may include

breach of fiduciary duty, professional negligence and/or breach of contract, among other things. The broker likely has errors and omissions insurance against the risk of such claims.

Case in Point: Motley Crue. One 2021 lawsuit explores some of the legal concepts at play in such a matter. The management team for the rock group sued its insurance broker for allegedly failing to timely obtain the proper insurance coverage for a 2020 stadium tour. According to the suit, the managers say they used an insurance brokerage that held itself out as having expertise in the industry. In October 2019, the managers instructed the broker, which had acted for the managers in the past, to obtain tour cancellation insurance for lost commissions due to any postponements or cancellations of the upcoming tour. In the months that followed, the managers say they sent the broker a copy of the tour contract, exchanged emails about tour details and reiterated their request to obtain coverage. The broker never indicated there were issues in obtaining coverage, according to the suit. Unfortunately, on March 9, 2020, the managers learned that the broker did not obtain the insurance.

Two days later, the World Health Organization declared a pandemic, and we all know what happened after that. The lawsuit alleges the broker was liable for professional negligence by breaching its duty to act with reasonable diligence and promptness to obtain a requested insurance policy. The managers also claim the broker breached a verbal contract to obtain the insurance. In the lawsuit, the managers seek over \$10 million, for commissions they say they lost because the broker did not obtain the insurance.

The case is ongoing, and the broker denies liability. But the plausibility of such claims is not reasonably in question, as a general legal matter.

Don't stop believing

Those in the live events industry that suffered big losses due to COVID-19 cancellations should consider consulting legal counsel to evaluate all recovery options before chalking it up to a loss and moving on.



"My first specialty experience came when I moved to Bermuda in 2008, where I wrote a variety of specialty reinsurance lines including agriculture, space, medical malpractice, workers compensation and mortgage business."

UP CLOSE

Rachael Wallington

NEW JOB TITLE: London-based head of specialty reinsurance, MS Amlin Ltd.

PREVIOUS POSITION: London-based lead underwriter, MS Amlin.

OUTLOOK FOR THE INDUSTRY: Overall, I believe it's positive. There have been and continue to be significant changes made in response to consecutive years of challenging results for the industry. It is important we maintain increased levels of discipline across all lines, and if we can collectively achieve this, then the market will be in a far more sustainable position than five years ago.

GOALS FOR YOUR NEW POSITION: I'm excited about the new role and I already have some clear priorities. I want to build out the specialty reinsurance portfolio for MS Amlin in London, which is currently primarily focused on agriculture and terrorism. I will be focused on growing these well-established portfolios, continuing to enhance profitability, as well as expanding other lines of business. The opportunities are there, and I'm keen to go after them.

CHALLENGES FACING THE INDUSTRY: Many lines are under increased scrutiny given challenging recent results throughout the industry. The industry must resist the temptation to offset reductions in these classes, with unwarranted growth in other specialty lines which have produced superior results. After all, it is often not possible to simply scale a profitable account without an adverse impact on profitability.

FIRST EXPERIENCE: I have been in the industry since 2005 when I was a pricing actuary at Alea in London. My first specialty experience came when I moved to Bermuda in 2008, where I wrote a variety of specialty reinsurance lines including agriculture, space, medical malpractice, workers compensation and mortgage business.

ADVICE FOR A NEWCOMER: Question everything and look to expose yourself to as many lines of business as possible. Our industry provides ample opportunities for those willing to put the effort in, persevere and keep an open mind. Our business is a people business, and I encourage any new joiner to put their hand up for every opportunity to get out and see clients and brokers. Travel is one of the best rewards in our global industry, and it is the most effective way to build longstanding relationships across the world.

DREAM JOB: Growing up, my dream was always to work with animals, particularly within a charitable organization.

COLLEGE MAJOR: Mathematics with actuarial science, University of Southampton.

LOOKING FORWARD TO: Helping the development of new staff is a passion, and my immediate focus is to attract and foster new talent. Success here will empower me to spend more time managing my portfolio and working with leadership to align the book within the wider reinsurance portfolio.

FAVORITE MEAL: The five years I spent working in Singapore helped broaden my palate and exposed me to the rich and diverse cuisines of the countries I had the great opportunity to visit. My favorite meal is a Thai green chicken curry, served on a bed of coconut rice.

HOBBIES: Cycling, yoga, dance, swimming and running with my dog, Colby.

FAVORITE TV SHOW: I'm a sucker for a good box set. I'm currently working my way through "Squid Game," but my favorite would still have to be "Game of Thrones."

ON A SATURDAY AFTERNOON: My perfect Saturday afternoon would involve spending time with my 2-year-old daughter, followed by a quick trip to my local gym for a yoga/dance class (while my husband babysits).

ON THE MOVE



Beazley PLC hired **Russ Cohen** as head of U.S. cyber services, overseeing risk management and incident response functions in the United States.

He will be based in Philadelphia. Mr. Cohen was formerly vice president, cyber services, at Chubb Ltd.



Woodruff Sawyer & Co. named former Aon PLC cyber risk leader **Keeley Sidow** as cyber practice director for the San Francisco-based brokerage. Ms. Sidow

spent nine years at Aon and was most recently West region leader, errors and omissions and cyber broking.



Lockton Cos. Inc. hired former Marsh LLC broker **Andy Conti** as senior vice president, complex casualty. Previously, Chicago-based Mr. Conti spent 17

years at Marsh, where he was most recently multinational growth and industry leader-U.S.



NFP Corp. named **Courtney Mauge** as a senior vice president and cyber practice leader. Atlanta-based Ms. Mauge began her career as an attorney and previously worked

at Aon PLC and Willis Towers Watson PLC before she joined Marsh LLC in 2020.



Willis Towers Watson PLC appointed **Tony Owen** to lead its construction practice in the Southwest region within its risk and broking business. Mr. Owen,

based in Los Angeles, was previously head of construction brokerage for the West region at Aon PLC.



Zurich North America named former Chubb Ltd. executive **Kate Bernay** head of general and developing industries for its U.S. middle-market unit. Ms. Bernay,

based in New York, was most recently vice president, New York region underwriting manager, at Chubb Ltd.

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Health insurer has forgetful mom's back

This could be the mother of all mom-brain moments.

A Minnesota woman relayed in a TikTok video that has gone viral: She had been celebrating her son's birthday on the wrong day — for two years — an oopsy she discovered when her pediatrician informed her that her health insurer wouldn't cover a visit.

As the mom of four relayed to Fox News, Emily Vondrachek recently brought her 3-year-old, Henry, to a pediatrician's office visit. Soon after, the receptionist called saying the insurance company wouldn't cover the visit since the birthdate they had on file for Henry did not match the one on file with the doctor's office.

Instead of "digging" for Henry's birth certificate, she looked at her social media and noticed that for the past two years she had shared photos on the wrong day.

City workers fight 'surveillance creep'

The New Orleans Fire Fighters Association and other labor advocates are raising concerns after the city government used its \$40 million street-corner crime camera network to contest a workers compensation claim and justify the termination of three city employees, according to the Lens newspaper.

The New Orleans Fire Department obtained footage while investigating a comp claim from a firefighter who said he was injured in June 2020. The department denied the claim and fired the firefighter, as well as another firefighter who had corroborated part of the claimant's tale.

Labor unions protested what they called "surveillance creep," which they described as using a surveillance system introduced for one reason, such as deterring violent crime, to keep tabs on the city's workforce.



RUMOR FINALLY LAID TO BREAST



Dolly Parton's breasts have been the butt of celebrity body parts jokes for decades. And whether they are insured is among them, a rumor and speculation started by the country music legend herself.

The truth is: They are not insured, as Ms. Parton revealed on a recent episode of "Today With Hoda and Jenna," as reported by Entertainment Tonight.

"Well, it's not true about that," Ms. Parton said. "Years ago, was it Betty Grable or one of the great, famous stars that was famous also for her legs, and at that time I said, 'Well, maybe I should get my boobs insured, since I'm famous for them.' But it was just a joke. I didn't do that."

The topic came up when the show hosts mentioned that Heidi Klum was recently in the news for having her legs insured for \$2 million. "By the way," Ms. Parton said on the show in response to Ms. Klum's insurance news, "you can get new boobs, but you can't get new legs."

Raising a glass to insurance ads

The insurance industry has something to say "cheers" about: It's advertising more than beer companies on sports programming.

According to the New York Post, which examined the current surge in insurance advertising, the "beer commercials that once flooded sports programs are almost nonexistent."



As reported: In 2021, roughly 15,560 beer commercials aired on television, compared with a staggering 104,270 insurance ads. Across the big four broadcast networks, as well as ESPN, CNN, MSNBC and Fox News, insurance ads jumped from 71,000 minutes of commercial airings in 2016 to 109,297 minutes in 2021 — a 52.3% increase, according to iSpot, a company that measures the brand impact of TV advertising.



Work from home unpleasantness

Charged with enforcing sanitation in the workplace, the Occupational Safety and Health Administration likely has no plans to inspect home office conditions during the pandemic — and that might be a good thing for telecommuters who recently admitted doing work from the toilet.

Home contractor website CraftJack surveyed 1,255 Americans who transitioned from being office workers to remote and found that many are "getting a little too comfortable working from home."

Highlights of the study include that 60% of pandemic-era telecommuters admit to working from the toilet at least one time a week, two out of three workers have attended virtual meetings without brushing their teeth, 88% work in their pajamas, 84% work barefoot and 16% have worked naked.

People also admit to wearing less makeup (92%), washing hair less frequently (52%), or washing their hands less often after going to the bathroom (34%).



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