COST CONTROL: More states tap social workers to treat comp claimants - **PAGE 4**

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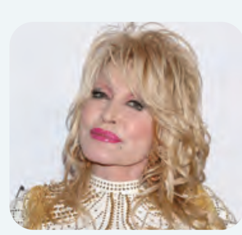

VIEW FROM THE TOP

GEOF McKERNAN

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States put social workers to task in comp

BY LOUISE ESOLA
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Several states are taking steps to address shortages of qualified mental health professionals in workers compensation by making it simpler for licensed clinical social workers to help injured workers.

California enacted a law in 2022 clearing the red tape for licensed clinical social workers to treat in the workers compensation system, and New York, after passing a law in 2020 that cleared some hurdles, is considering legislation that would modify the requirements.

Maryland lawmakers for the second year in a row are considering a bill that would allow licensed clinical social workers to treat injured workers. Under existing law, Texas allows licensed clinical social workers to assist with vocational rehabilitation.

The term social worker is often misinterpreted, which may explain why more states haven't caught on to the trend of letting them treat injured workers, experts say.

"When people think of social workers, they often think of case managers — those in child welfare or hospitals, or helping with applications for various services," said Sarah Hathaway, a Grand Rapids, Michigan-based licensed clinical social worker and director of behavioral health for Axiom Medical Consulting LLC, which provides services for the comp industry.

"We do all of that. But social work is a much broader field," she said. "We can diagnose and provide therapy. With the field approaching 200,000 nationwide, social workers are critical to improving access to treatment."

Mark Debus, Chicago-based clinical manager of behavioral health with Sedgwick Claims Management Services Inc., said the move toward permitting licensed clinical social workers to treat under workers comp makes sense, as they can manage many of the same issues typically handled by psychologists.

"Licensed clinical social workers have as much post-graduate experience as licensed psychologists in New York," he said. "They have to meet a certain level of supervised clinical expertise, basically, and direct treatment. It's similar to that of the licensed psychologist requirement."

California is another state where many of the requirements for both fields are similarly stringent, according to Marcia Schwartzman Levy, a Larchmont, New York-based licensed clinical social worker in private practice and past president of the New York chapter of the National Association of Social Workers. Both states have "some of the strictest requirements for becoming a licensed clinical social worker," she said.

AVAILABLE PROFESSIONALS

In 2020, New York began allowing licensed clinical social workers to treat injured workers. Proponents of doing so nationwide point to the availability of social workers compared with psychologists as the primary reason to make the change.

LICENSED CLINICAL SOCIAL WORKERS IN NEW YORK
27,021

LICENSED PSYCHOLOGISTS IN NEW YORK
11,533

Source: New York State Education Department

Ms. Schwartzman Levy spent much of her career working in public hospitals in New York, including as a trauma unit clinical supervisor. The connection between physical injury and mental injury has been well-established, she said, pointing to literature going back to 2001 regarding injuries and the "biopsychosocial model," a term now widely used in workers comp circles.

"I deal with bereavement, which is not just bereavement of death in the larger sense; loss of function is a form of bereavement," Ms. Schwartzman Levy said, adding that linking mental issues and physical injuries has long been a part of what licensed clinical social workers are called on to do. "The biopsychosocial model is at the core of our belief system and training," she said.

> "We can diagnose and provide therapy. With the field approaching 200,000 nationwide, social workers are critical to improving access to treatment."
>
> Sarah Hathaway,
> Axiom Medical Consulting LLC

A major difference in the professions of licensed clinical social worker and psychologist is pay. "Just look at the fee schedules," said Mr. Debus, who called social workers "underpaid."

The Centers for Medicare and Medicaid Services' fee schedules, on which many workers compensation fee schedules are based, has clinical social workers' reimbursements at 75% of what is paid to a psychologist, according to a 2021 report by the National Association of Social Workers.

Jennifer Cogbill, Frisco, Texas-based senior vice president of GB Care with Gallagher Bassett Services Inc., said many psychologists are unwilling to work at the Medicare rates, which has led to a shortage of medical professionals in the workers comp field. Licensed clinical social workers could help make services more available to injured workers, she said.

"The advantage is there is a wider network of professionals they can tap into," she said.

MOVES HELP CLOSE GAP IN MENTAL HEALTH PROVIDER SHORTAGES

Provider shortages in mental health are a major issue that extends beyond workers comp, experts say.

The Health Resources and Services Administration, which tracks available providers, says 37% of the U.S. population lives in areas with mental health provider shortages and that the country needs an additional 6,398 mental health providers to fill the gaps.

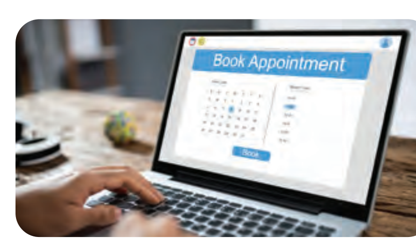
"Many people find it hard to access behavioral health treatment for a variety of reasons … (and) while the increased use of virtual services through the pandemic has been a positive shift, wait times for treatment have only worsened in many ways," said Sarah Hathaway, a Grand Rapids, Michigan-based licensed clinical social worker and director of behavioral health for Axiom Medical Consulting LLC. "Caseloads are completely full."

The shortages are what drove the policy changes in California in 2022, according to proponents.

"There's a shortage across the board, across the country in behavioral health (providers)," said Julian Roberts, Atlanta-based president and CEO of the American Association of Payers, Administrators and Networks, which supported the California bill.

"If there is an opportunity to expand access, as long as they can work within the scope of the workers compensation program, we are definitely advocates and are willing to put our resources on that expansion," he said.

Part of the cause of the shortage is that "many mental health providers — including psychiatrists, psychologists, and social workers — are reluctant to treat injured workers in the work comp system because of perceived difficulty of getting paid, which actually doesn't fit with my experience," said Les Kertay, a psychologist and senior vice president of behavioral health with Axiom Medical in Chattanooga, Tennessee.



Mr. Kertay noted "there is a problem with mental health providers being well-trained in providing psychotherapy, but by and large not having training in issues related to return to work or evaluating occupational capacities."

Louise Esola

Commercial auto insurance rates rise as outsize jury awards, inflation add up

BY MATTHEW LERNER
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The commercial auto insurance sector has been fighting a decade-long, uphill battle — achieving underwriting profitability only once in the past 10 years despite consistent rate hikes — and pressures on buyers and insurers show little sign of waning.

Rising repair and replacement costs have led to higher physical damage claims, but sources say liability losses, driven in large part by rising jury awards and so-called nuclear verdicts, pose a greater challenge.

Inflation, supply chain issues and a drought of available labor have also added to costs and lengthened repair times, triggering ancillary costs such as temporary car rental or other alternative transportation expenses.

After a profitable 2021 for commercial auto liability insurers, hopes for 2022 have faded. According to data and information gleaned from statutory filings, 2022 will likely show an industry aggregate commercial auto combined ratio above 100% — signaling an underwriting loss — according to James Auden, Chicago-based managing director of insurance at Fitch Ratings Inc. The commercial auto loss ratio is up "quite a bit," he said.

> "We are seeing social inflation on the liability side driving up loss costs and combined ratios, and insurers are responding with rate."
>
> Nick Saeger,
> Sentry Insurance

Loss cost pressures have put upward pressure on commercial insurance rates, which have been rising and continue to do so. The third quarter of 2022 marked the 45th consecutive quarter — or more than 11 years — of increased premiums for commercial auto, according to the Council of Insurance Agents and Brokers.

"We've gotten double-digit rate every quarter since 2019 mid-year," said Chris Kopser, chief underwriting officer, primary casualty, Americas, for Axa XL, a division of Axa SA. Included in Axa XL's business are large fleets with large deductibles, such as national retailers.

"The inflated cost of doing the same repairs, providing the same medical treatment, is running near or above double digits in commercial auto in most books of business," Mr. Kopser said. "What that means is unless you get that amount in your book every year, your loss ratio will get worse, because you're not getting enough premium to cover the projected losses."

Manuel Padilla, vice president, risk management and insurance, at MacAndrews & Forbes Inc., manages a fleet of executive autos that renewed in July 2022, and he is beginning his 2023 renewals process. "We expect that the rates are going to increase yet again," he said.

Mr. Padilla, who is also on the board of the Risk & Insurance Management Society Inc., said that except for 2021 "it wasn't uncommon to see 20%, 30%, 40% increases in premium," annually. He added that he is exploring the use of a captive in preparation for the upcoming renewal.

Inflation, supply chain constraints and greater use of technology have added costs to physical damage losses.

Dave Carlson, Cleveland-based U.S. auto and manufacturing practice leader for Marsh LLC, said, "The components in cars today are more costly."

For example, a bumper, formerly just a piece of steel, has "morphed" into an injection molded, integrated piece of equipment, supporting sensors, lenses, and other technology. "A bumper is much more expensive than it ever was," Mr. Carlson said.

Labor is also an issue, mirroring shortfalls in the broader economy.

Nicole McMurtry, Oak Brook, Illinois-based national transportation vertical leader at USI Insurance Services LLC, said she has fleet clients that have raised wages for diesel mechanics 50% to 75% in order to attract and keep qualified labor. "You might have the parts, but you don't have the staff to repair all the vehicles requiring service," she said.

Similarly, truck drivers are also in short supply as many older truckers retire and are not replaced or change jobs to work and drive closer to home.

Even though physical damage costs are rising, sources said increased liability costs — in the form of settlements, litigation and judgments — are by far the larger cost component and challenge faced by the commercial auto sector.

The outsize settlement numbers dwarf an increased frequency of five-figure auto repair bills, sources say.

"We are seeing social inflation on the liability side driving up loss costs and combined ratios, and insurers are responding with rate," said Nick Saeger, associate vice president of products and pricing in Stevens Point, Wisconsin, for Sentry Insurance.

In one high-profile case, a Nassau County, Florida, jury awarded damages of more than $1 billion in a 2021 wrongful death case in a crash involving a truck in *Melissa Dzion v. AJD Business Services and Kahkashan Carrier*, according to local news reports. The award included $900 million in punitive damages.

In November 2021, a jury in Texas rendered a total award of $730 million to the survivors of Toni Combest, a 73-year-old great-grandmother who was killed in a 2016 collision with an oversize cargo truck hauling a propeller for a U.S. Navy nuclear submarine.

The Combest jury awarded $480 million in compensatory damages and $250 million in punitive damages in the case, *Ramsey et al. v. Landstar Ranger Inc. et al.*

> "The inflated cost of doing the same repairs, providing the same medical treatment, is running near or above double digits in commercial auto in most books of business."
>
> Chris Kopser,
> Axa XL

In another high-profile case, a crash involving a Walmart Inc. truck and actor-comedian Tracy Morgan in June 2014 is widely believed to have cost the retailer some $100 million, according to reports.

The American Transportation Research Institute studied information on 600 cases between 2006 and 2019. In the first five years of the data studies, there were 26 cases over $1 million, and in the last five years there were nearly 300 cases. The number of verdicts over $10 million nearly doubled.

ATRI also documented that from 2010 to 2018, the size of verdicts grew 51.7% annually. Standard inflation grew 1.7% annually and health care costs increased 2.9% annually over the same period.

Mr. Kopser of Axa XL said that although such large awards exceed policy limits, they set a mark for future cases. "Today's ceiling is tomorrow's floor," he said.

He added that excess casualty limits have been substantially curtailed, with lead umbrella lines of typically $25 million now offered in smaller chunks of $15 million or $10 million, with some as small as $5 million, and that towers previously as high as $1.2 billion can only assemble $800 million. "You couldn't build a tower that big today," he said.

CATALYTIC CONVERTER THEFTS PROMPT LEGISLATION, LOSS CONTROL ACTION

A spike in catalytic converter thefts has caught the attention of the insurance sector and legislators, who are moving to take measures against the rising incidence.

Risk management efforts can also mitigate the threat and challenge potential thieves, experts say.

According to the National Insurance Crime Bureau, claims for stolen catalytic converters soared 325% to 14,433 in 2020, the most recent year for which figures are available, up dramatically from just 3,389 in 2019 and 1,298 in 2018.

Catalytic converters, which are parts of car exhaust systems, reduce harmful emissions from internal combustion engines. They are targets for theft because they use precious metals, including platinum, palladium and rhodium, in the process. Late last month, platinum was selling for nearly $1,060 an ounce, palladium for $1,770 per ounce, and rhodium for $12,350 an ounce, according to Money Metals Exchange, offering a compelling bounty for thieves.

"The presence of those metals is what drives catalytic converter thefts, as they can easily bring anywhere from $20 to $240 in recycling value depending on the amount and type of precious metal they contain," said Dale Porfilio, chief insurance officer for the Insurance Information Institute in New York.

The problem is growing and spreading.

"The frequency of these claims has increased over the past 18 months," said Kevin Shumate, Ostrander, Ohio-based vice president, U.S. loss adjusting services, at Crawford & Co. "Stealing catalytic converters has been an issue in the U.S. for some time, but thefts are on the increase in Australia, Asia and the U.K."

The popularity of larger sport utility vehicles has played into the hands of criminals.

"They often target sport utility vehicles because their ground clearance is sufficient for the thief to gain access to the converter without having to deploy a jack, and that saves time," Mr. Porfilio said.

Dave Carlson, Cleveland-based U.S auto and manufacturing practice leader for Marsh LLC, said larger vehicles also have larger converters potentially worth more. "People find it easy to take a catalytic converter. All you need basically is a hacksaw and if you have an electric device or saw you can do it in a minute," he said.

Hybrid vehicles are also targeted because the more limited frequency of the converter's use — it is only used when the gas engine is engaged — leaves the metals inside less degraded and of higher value, he said.

"Industry sources suggest that hybrid vehicles and SUVs are targeted predominantly. The Toyota Prius is ranked among the top 10 most targeted cars in the country," Mr. Shumate said.

Auto manufacturers, fleet owners and individual operators can take steps to mitigate the exposure.

"People are warned to park in secure locations, consider alarms and sensors, and to consult with their manufacturer around steps to make theft more difficult," Mr. Shumate said.

The converter itself can be altered for identification purposes, and devices such as covers and steel plates can be used to frustrate theft.

"Parking vehicles in locked garages or fenced yards is ideal. If this is not available, then leaving vehicles in well-lighted areas is recommended. Services are now available to etch the VIN onto the catalytic converter, which can help recover the part if stolen," Mr. Porfilio said.

Auto manufacturers, which may have hundreds or thousands of cars on a lot, are "very aware of the exposure," Mr. Carlson said, and have security protocols in place to deter theft of all types. "Theft has been an issue at large original equipment manufacturers, so they've been very in tune with theft for decades," he said.

Claims for catalytic converter thefts are often below the threshold of deductibles on the commercial coverage for large vehicle fleets, he said.

Emerging technology is also helping reduce the exposure for diesel vehicles.

Modern diesel engines in medium and heavy-duty trucks use diesel exhaust fluid to improve emissions and an aftertreatment system, which means they don't have a catalytic converter. Aftertreatment systems are made up of a diesel particulate filter and diesel oxidation catalyst, according to Larry Harlow, director of claims for Sentry Insurance in Stevens Point, Wisconsin.

"While the function of reducing emissions is the same, most aftertreatment systems don't contain the metals that make the catalytic converters so valuable," he said.

The problem has also caught the eye of legislators.

"Some states are implementing greater enforcement and tracking systems, which hopefully will inhibit this type of theft," Mr. Porfilio said.

In October 2022, New York Governor Kathy Hochul announced several actions to increase catalytic converter theft enforcement in high-theft areas by targeting unauthorized and illegal vehicle dismantlers, or "chop shops." She also signed legislation that imposes restrictions on the purchase, sale and possession of catalytic converters by vehicle dismantlers and scrap processers.

According to the National Conference of State Legislatures, 12 states enacted bills in 2021 addressing catalytic converter thefts, at least 20 states enacted 25 bills in 2022, and "the trend is likely to continue in 2023."

Matthew Lerner

NEWS ANALYSIS

D&O challenges remain for private companies as economic uncertainty continues, layoffs rise

BY JUDY GREENWALD
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NEW YORK — The economy is continuing to present significant, still unresolved, challenges for private company directors and officers, including the ongoing threat of bankruptcy, experts say.

At one time or another, private companies have had to cope with issues including inflation, labor shortages, higher interest rates and the supply chain, said Sandra Lagana, Hartford, Connecticut-based private D&O product manager for Travelers Cos. Inc. Each of these is relevant, "and a lot of uncertainty continues to exist in the economy, and this makes it especially challenging for private businesses," she said.

Ms. Lagana was among the speakers who addressed how private companies are adapting to economic conditions during a session at the Professional Liability Underwriting Society's D&O symposium in February. Speakers said that private-company D&O policyholders range from small mom-and-pop businesses to unicorns, private companies that are valued at more than $1 billion.

There are several approaches companies can take to address these issues, including by downsizing or closing operations, delaying or shying away from other avenues of growth, "and, unfortunately, you may find that some companies will look to cut corners by not updating or perhaps not following all of their policies and procedures," Ms. Lagana said.

"Certainly, some organizations will be more likely to default on loan payments and still others may be in a position where they end up having to file for bankruptcy," she said.

Often these responses are along industry lines, Ms. Lagana said. While certain businesses, such as restaurants, have shut their doors, others have restructured their supply chains by in some cases moving their manufacturing facilities closer to home or adding or changing suppliers, she said. Others have turned to technology and innovation to address economic threats, she said, warning that if these moves are not well executed, they could give rise to claims.

While the paycheck protection program has been successful, at least temporarily, in keeping businesses open, and some organizations have shut their doors without needing to file for bankruptcy, "we're not quite out of the woods yet, when it comes to bankruptcy filings," she said.

Many clients have been able to "embrace some of the trouble of the pandemic" and have turned into "pretty sophisticated" companies, said Cathy Padalino, Washington-based senior vice president at Aon PLC.

However, there have been "tremendous" restrictions to capital that have not been seen in a decade, said Gregg Glick, San Francisco-based senior vice president, private/health care division, at Allied World Insurance Co., pointing in particular to overleveraged companies in the software and health care sectors.

"Unfortunately, I do fear it's a long road ahead, with a lot more bankruptcies, shutdowns, layoffs and a contraction of capital," he said.

Discussing claims trends, session moderator Ivan J. Dolowich, co-managing partner with Kaufman Dolowich & Voluck LLP in Woodbury, New York, said while COVID-related claims have not materialized as expected, the market is now seeing claims around return-to-work and discrimination issues. There has also been a pickup in regulatory claims, as well as under the Illinois Biometric Information Privacy Act and the Telephone Consumer Protection Act, he said.

Experts weigh cyber risks, need for federal backstop

BY JUDY GREENWALD
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Having the federal government help if there is a cyber-related catastrophe is a good idea, but only if it is restricted to serving as a backstop in a situation that threatens the insurance industry's survival, said a speaker at the Professional Liability Underwriting Society's cyber symposium in February.

"We're the ones with the expertise, not those who work for the government," said Jeremy Gittler, New York-based head of cyber and technology-Americas at Axa XL, a unit of Axa SA, during a session on cyber market capacity constraints.

"We don't want a situation where they're saying … you can only deploy this much capacity, you have to get this much reinsurance," he said. "None of us want that."

"But if it is a true backstop that — after whatever number you want to pick — the government will come in and take up the rest of that so the insurance industry can survive … it's a wonderful thing."

Mr. Gittler spoke during one of several wide-ranging sessions on cyber issues.

During a session on the state of the cybermarket, Courtney Maugé, Atlanta-based senior vice president and cyber practice leader for NFP Corp., said cyber pricing is "where it needs to be to remain profitable. But we're all a little bit hesitant" because of ransomware.

"We know that we haven't seen it as much from a frequency perspective, but we do know the severity can still be there," she said.

Ms. Maugé questioned whether this lull is because "they're busy in Russia or Ukraine," and "it's all going to come back really hard."

Additional capacity coming into the market from traditional insurers as well as managing general agencies and insurtechs "is probably going to have an effect on rate," said Josh Ladeau, CEO of Hartford, Connecticut-based Trium Cyber U.S. Services, Inc. However, he said the additional capital's impact may be limited because the various players are "not all competing in the same space."

Panelists wrestled with the question of addressing war risk in cyber policies during a session on war, widespread events and systemic risk.

"Let's just own up to the fact that there could be a cyberattack that results in an impact that would be similar to a war event. And how you define that is a long road and takes a lot of thought around how you address that," said Robert Wice, underwriter, large risk errors & omissions, for the Beazley Group in Farmington, Connecticut.

"But for the sustainability of this marketplace, to ensure that we contain any sort of volatility as best we can," it is critical to get all stakeholders involved, he said.

During a session on reinsurance, Simon Welton, executive vice president at London-based cyber underwriting company Envelop Risk, said, "If there is one improvement that I see," it is "that this line of business feels a lot more collaborative across the whole value chain."

There is "a dialogue and there's a willingness to share what we can," which is "really important because we're all learning something new," he said.

Updating medical fee schedules takes balance

BY JON CAMPISI
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Medical inflation is a top concern in workers compensation this year and adjusting medical fee schedules may be one way to address rising costs, although the appetite for change is limited, comp experts say.

While some states have introduced legislation to overhaul their schedules, variations in costs among states illustrate the complexity of the issue, they say.

Forty-four states and Washington, D.C., have workers comp medical fee schedules.

While the fee schedules are intended to curb medical costs, George Furlong, chief strategy officer for Sarasota, Florida-based medical bill review company Accuro Solutions, described a balancing act.

"If you have no fee schedule your provider costs are very high," he said. "If your fee schedule is low, you're starting to lose providers."

Most fee schedules pay doctors what they would receive through private insurance or Medicare, Mr. Furlong said, and many states' fee schedules are based on Medicare (see related story).

Raji Chadarevian, executive director of actuarial research for the Boca Raton, Florida-based National Council on Compensation Insurance, co-authored a report released last month that showed that during the past decade, non-fee schedule states saw doctor fees grow at a faster rate than the national average.

"In general, non-fee schedule states tend to reimburse the same service at a relatively higher amount," Mr. Chadarevian said.

States without physician services medical fee schedules are Indiana, Iowa, Missouri, New Hampshire, New Jersey and Wisconsin. Some of these states have pharmacy, hospital and ambulatory surgery center fee schedules.

Many states have amended their fee schedules since 2019, according to a June 2022 Workers Compensation Research Institute report. Many update their fee schedules in accordance with laws that require fee schedules to be re-examined, but changes vary.

Maryland, New York, Pennsylvania and Texas had double-digit percentage increases between 2019 and 2022.

While a majority of states have fee schedules, the percentage paid compared with Medicare varied from 5% below in Massachusetts to 163% above in Nevada, the WCRI report said.

States with some of the highest provider expenses — including California, Hawaii, New York and Massachusetts — had some of the lowest fee schedule reimbursement rates in the country.

Some stakeholders are calling for change.

"I think you've got to go back to, what's the purpose of the fee schedule?" said Kent Spafford, who is a board member of the American Association of Payers, Administrators and Networks and also on the WCRI Disability and Medical Management Program Advisory Board. "Designed properly, a fee schedule should provide enough incentive for a provider to treat an injured worker with a high quality of care."

Fees for different medical services can affect injured worker outcomes, said Jason Beans, CEO and founder of Chicago-based Rising Medical Solutions, which provides medical cost containment services to comp insurers and employers.

Professional services fee schedules that get "too aggressive" in trying to keep fees low could mean fewer physicians treating comp patients, he said.

"In Illinois, it took forever to get a fee schedule, and, even when we got it, it wasn't very aggressive," Mr. Beans said of the fee schedule implemented in 2011.

Illinois lawmakers in January introduced House Bill 1548, which would void existing fee schedules after Aug. 31, 2024, and require the Workers' Compensation Commission to establish new fee schedules by Sept. 1, 2024.

It's unclear whether employers in states without schedules pay more in total costs.

In Wisconsin, where there is no fee schedule, "employees have more control over their treating physician, which might contribute to higher medical costs," said Griffin Murphy, policy analyst with the Washington-based National Academy of Social Insurance. "If employees get better treatment when they have control over their treating physician, however, higher medical costs might be offset by lower indemnity benefits and better return-to-work outcomes."

An attempt to institute fee schedules has been viewed as interfering with employer rights and causes "significant opposition," Mr. Murphy said.

Other mechanisms could work, according to Mr. Murphy, who said that with rising medical inflation, insurers charge higher comp premiums. Employers can increase workplace safety measures and lobby state legislators to heighten standards for comp claim approval, he said.

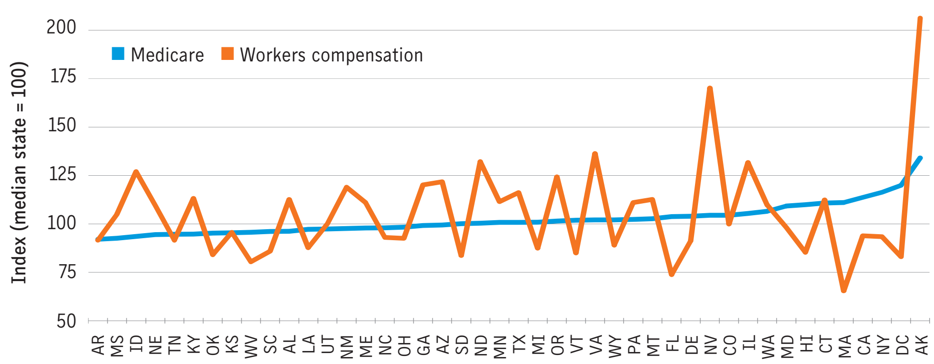
"Both of these may effectively reduce claims and thus serve as protection against increasing medical fees," he said.

Fee schedules are effective when they recognize market prices and are updated to reflect changes in medical treatment or billing practices, Mr. Chadarevian said.

Mr. Beans said "fee schedules have to be written in a way that they do not create negative incentives, to either limit access to care or to change treatment patterns … or billing patterns," he said.

WORKERS COMPENSATION FEE SCHEDULE INDEX COMPARED WITH PROVIDER EXPENSE INDEX (MARCH 2022)

Higher workers compensation rates in some states do not always correlate with higher Medicare rates, and some states with high provider expenses have some of the lowest comp medical fee schedules, according to a June 2022 report from the Workers Compensation Research Institute.



Source: Workers Compensation Research Institute (WCRI)

ESTABLISHING RATES VARIES BY STATE

States with medical fee schedules in workers compensation typically base their rates on Medicare, a reimbursement strategy that reflects problematic past systems and modern-day constraints, experts say.

Many states lack the funds to undertake the research necessary to devise fee schedules that are "meaningful for their particular state," hence the reliance on basing schedules on Medicare, said Kent Spafford, a board member of the American Association of Payers, Administrators and Networks and the Workers Compensation Research Institute's Disability and Medical Management Program Advisory Board.

Mr. Spafford said medical inflation, a top comp industry concern, should be cause for updating medical fee schedules.

Medicare, because it is subject to budgets and political maneuvering, does not necessarily change its rates based on medical inflation, he said.

Stacy Jones, senior research analyst with the California Workers' Compensation Institute, said California hasn't seen significant medical treatment fee schedule changes recently and that the "basic medical treatment fee schedule is very straightforward."

Many states' fee schedules, including California's, were historically based on the average cost of medical services but this led to problems, she said, which is why many states now base fee schedules on Medicare.

Fee schedules were historically based on "usual and customary" physician charges, but that definition created issues in many states since what providers charged and what they were actually paid for didn't always equate, Mr. Spafford said.

Jon Campisi

PROFILE: SAUDI ARABIA

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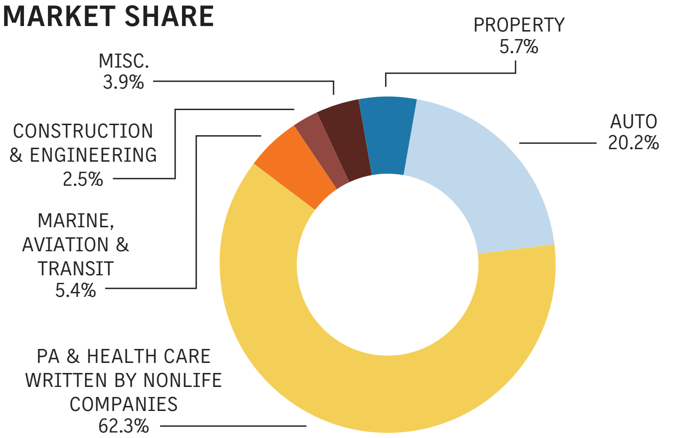
GLOBAL P/C MARKET RANKING

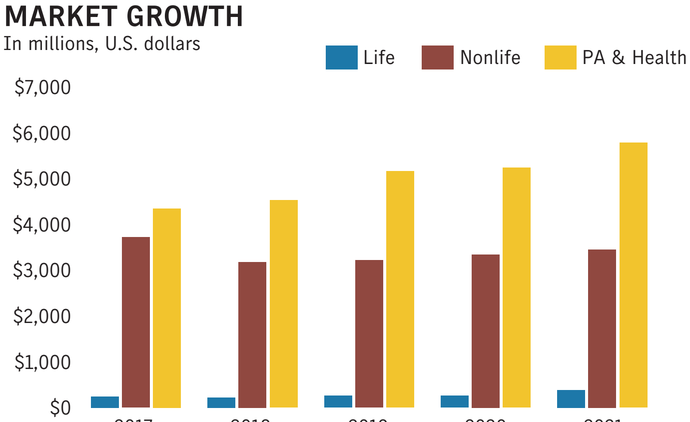
Before the enactment of the Cooperative Insurance Companies Control Law of 2003, the Saudi insurance market was largely unregulated, and insurance had no formal legal status. The market went through an initial transition phase as insurance companies were licensed and supervised in a stricter regulatory environment. The second phase of development involved regulatory reform, including the issuance of anti-money laundering, reinsurance, broking, actuarial work, outsourcing and risk management regulations. The current phase of development involves establishing and encouraging best practices in crucial areas such as underwriting and claims handling. Saudi Central Bank, the market regulator, has pursued a strategy to encourage consolidation. To date there have been six mergers, while two companies have exited the market. There are effectively 25 companies in the market today; all but two write nonlife business.

MARKET SHARE

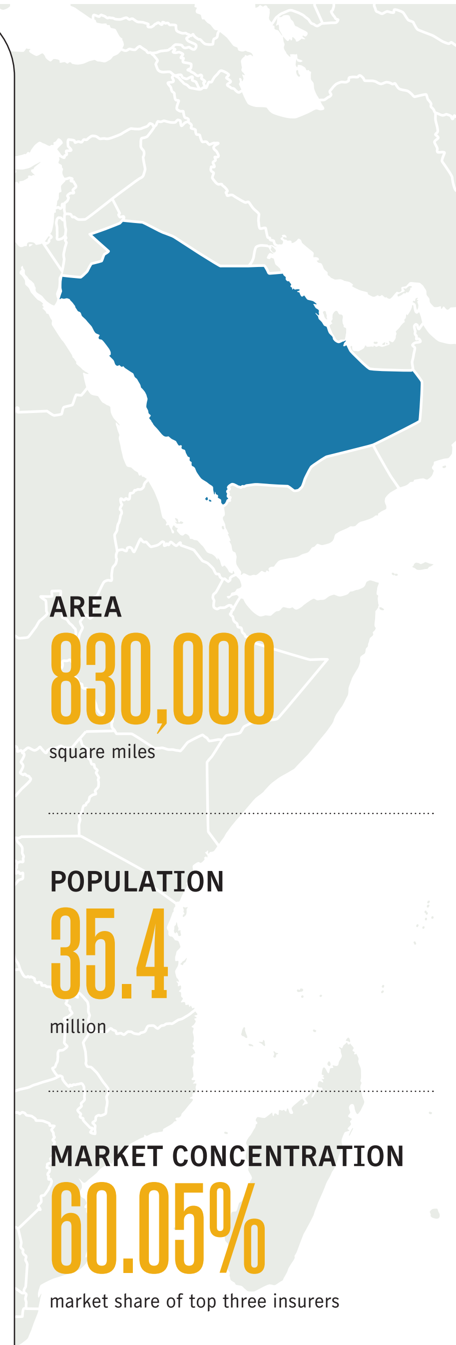


MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA

830,000

square miles

POPULATION

35.4

million

MARKET CONCENTRATION

60.05%

market share of top three insurers

2023 GDP CHANGE (PROJECTED)

2.6%

MARKET DEVELOPMENTS

Updated January 2023

- Even prior to the outbreak of the COVID-19 pandemic, progress toward achieving the key performance metrics of the government's long-term economic strategy, "Vision 2030," had significantly stalled. It had been hoped that Vision 2030 would provide the impetus to diversify and grow the economy and, as a result, the insurance sector. The pandemic put further pressure on the economy, which, with previous poor results in auto and medical insurance — the two largest market sectors — severely threated insurance companies. Despite the recent recovery in global oil prices and Saudi finances, further market consolidation looks highly likely.
- As a result of the poor auto experience and ongoing adverse medical business, the solvency position of several companies remains compromised. The Saudi Central Bank (SAMA) took steps to force several players in the market to improve their capital position. Two companies left the market, and others have found it difficult to survive due to how the market is currently structured, regulated and operated.
- SAMA released a circular on Oct. 26, 2022, requiring a mandatory reinsurance cession to the local market. The requirement is for the local insurance market to have a mandatory cession of at least 20% of all reinsurance treaties — proportional and nonproportional. This will increase to 25% in 2024 and 30% in 2025.
- The latest version of the Cooperative Insurance Companies Control Law, issued by SAMA on Sept. 1, 2021, states that the minimum share capital of any insurance or reinsurance company within Saudi Arabia shall be SAR 300mn ($80 million).
- SAMA announced on Nov. 14, 2021, that it had approved a new insurance product designed to provide coverage of driverless vehicles and related risks.

COMPULSORY INSURANCE

- Auto third-party bodily injury and property damage insurance
- Workers compensation (state scheme)
- Professional indemnity for brokers, reinsurance brokers, insurance agencies, actuaries, loss assessors/adjusters, claims settlement/third-party administrators, insurance advisers and insurance aggregators
- Liability of air carriers and aircraft operators for third-party property damage or injury to third parties on the ground, as well as injury to passengers and damage to baggage or goods being transported
- Shipowners liability for marine oil pollution (financial guarantee or insurance)

NONADMITTED

By law insurers must be locally licensed to carry on insurance business in Saudi Arabia. The regulations refer solely to licensed insurance companies and intermediaries and make no mention of insurance buyers. This is generally interpreted to mean that insurers can issue policies from abroad if approached by a buyer, but unlicensed insurers may not solicit business.

INTERMEDIARIES

Brokers and agents are required to be authorized to do insurance business and can place business only with insurers licensed to operate in Saudi Arabia, with some exceptions.

MARKET PRACTICE

Little nonadmitted insurance is practiced in Saudi Arabia. Companies can seek written permission to place business in a nonadmitted market in cases where no local coverage can be sourced.

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

Lockton, former exec trade accusations

■ Lockton Cos. LLC and a former executive who recently joined rival Alliant Insurance Services Inc. are embroiled in legal disputes in California and Missouri centering on gender discrimination allegations and a four-year noncompete requirement.

Sallie Giblin, who joined Alliant as an executive vice president late last year, filed a bias suit against Lockton in December and in January filed a motion to dismiss the brokerage's noncompete suit against her, which was filed in November.

Ms. Giblin joined Lockton in 2006. In 2016 she became a member of the executive committee of the brokerage's Pacific Series unit, became a Lockton partner in 2017 and was named president of the San Diego office in 2018.

In her suit, *Sallie Giblin v. Lockton Cos. LLC – Pacific Series*, filed in California's Superior Court in Los Angeles in December, Ms. Giblin alleges that as a leader at Lockton she was subject to gender discrimination and retaliation by other executives at the brokerage.

In addition, she argues that Lockton's noncompete agreements are unenforceable and that her dispute with the brokerage should be heard in California.

Among other things, Ms. Giblin alleges that Lockton is a "raucous boys' club" where some executives engage in inappropriate behavior and men are promoted to the detriment of women.

In addition, she alleges that her accounts were insufficiently staffed after she intervened to prevent the hiring of two producers with a history of sexual harassment, she was excluded from various executive committee decisions and activities, and she was unfairly blamed for the poor performance and morale of the Pacific Series unit's employee benefits division.

In September 2022, Ms. Giblin was removed from the executive committee. She resigned from Lockton on Nov. 29 and took a position as an executive vice president at Alliant.

On Nov. 30, Lockton sued Ms. Giblin in federal court in Kansas City, Missouri, where the company is headquartered, saying it was seeking to prevent her taking confidential information to Alliant.

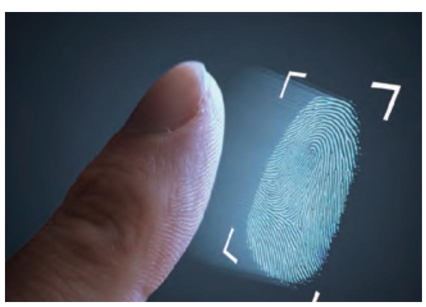
The suit, *Lockton Cos. LLC – Pacific Series v. Sallie F. Giblin*, alleges that she refused to honor a required 30-day notice period and made claims of unfair treatment and discrimination against Lockton "as leverage to obtain a release from her commitment not to solicit Lockton customers and other restrictions." Lockton imposes a four-year restrictive noncompete on partners.

Lockton alleges that Ms. Giblin created "a toxic work environment" after her promotion and had previously sought to leave the brokerage.

In the lawsuit, Lockton says Ms. Giblin was an "owner, Producer Member and Producer Partner" of Lockton rather than an employee and had access to sensitive competitive information and customer accounts.

Among other things, the suit seeks an injunction barring Ms. Giblin from taking Lockton clients, prospective clients and staff until December 2026.

A Jan. 31 filing by Ms. Giblin seeking to dismiss Lockton's suit, characterizes it as "speculative" and asserts that "Lockton has not alleged that any employees or clients were improperly solicited by Giblin or have been lost due to wrongful conduct."



BIPA ruling could have major impact

■ The Illinois Supreme Court ruled Feb. 17 in a divided opinion that employers violated the Illinois Biometric Information Privacy Act each time they collected fingerprints from an employee and disclosed that biometric information without the employee's consent.

The 4-3 ruling in *Latrina Cothron v. White Castle System Inc.* followed the unanimous Feb. 2 decision in *Tims vs. Black Horse Carriers Inc.*, in which the state high court ruled that claims under BIPA are governed by a five-year, rather than a one-year, statute of limitations.

Illinois is the only state that permits a private right of action in biometric cases. The 2008 law enables plaintiffs to be awarded $1,000 for each negligent violation, or $5,000 for each intentional or reckless violation.

Ms. Cothron, a manager of a White Castle restaurant in Illinois, stated in her complaint that shortly after her employment began in 2004, the company introduced a system that required employees to scan their fingerprints to access their pay stubs and computers. She argued that a new claim accrued each time she scanned her fingerprints and White Castle sent her biometric data to a third-party.

White Castle argued that claims accrue only once, when the biometric data is initially collected or disclosed, and said class-wide damages could total more than $17 billion.

The minority opinion stated that the state high court ruling "will lead to consequences that the legislature could not have intended" and the majority's interpretation "renders compliance with the Act especially burdensome for employers."

Attorney's FMLA case reinstated

■ A federal appeals court reinstated a Family and Medical Leave Act lawsuit filed by an attorney who was terminated when she sought unpaid leave to care for her 2-year old son, who had a history of respiratory illness and was experiencing COVID-19-like symptoms.

Polina Milman, an attorney with Southfield, Michigan-based Fieger & Fieger P.C., worked from home for four days in March 2020, then requested unpaid leave because her son's condition was not improving, according to the ruling by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Polina Milman v. Fieger & Fieger P.C. et al.* Her job was terminated.

Ms. Milman filed suit in U.S. District Court in Detroit alleging her termination violated the FMLA and state law. The district court granted the firm's motion to dismiss the case on the basis Ms. Milman had failed to state a claim under the FMLA.

The case was unanimously reinstated by a three-judge appeals court panel, which remanded the case for further proceedings.

The complaint's allegations, the ruling said, "make clear that when faced with a pandemic involving a novel respiratory illness (COVID-19), concurrent recognition by federal and state executive orders and a rising number of COVID-19 cases, Milman believed that her symptomatic two-year old son — who had a history of hospitalization for respiratory issues … may have contracted the illness. Faced with these facts, Milman made a request for unpaid leave to care for her son, a hallmark FMLA claim."

DOCKET

CONTRACTOR CHARGED WITH MANSLAUGHTER

A Vail, Colorado, construction contractor has been charged with felony manslaughter after a worker died in a trench collapse in 2021, the U.S. Department of Labor announced. The Occupational Safety and Health Administration cited Peter Dillon, owner of now-defunct A4S LLC, after a worker installing residential sewer pipes suffered fatal injuries when the trench he was working in caved in. The collapse resulted from deteriorating conditions at the project, which A4S could have prevented by using legally required trench protection systems, the DOL said.

FEDERAL COURT SEEKS STATE COVID RULING

The 9th U.S. Circuit Court of Appeals in San Francisco asked the California Supreme Court to consider whether a virus exclusion in Napa Valley restaurant The French Laundry's coverage is unenforceable under state law. In one of the first COVID-19 business interruption cases filed, the Yountville-based restaurant, its sister restaurant Bouchon Bistro, and its chef and owner Tom Keller filed suit in March 2020 against a Hartford Financial Services Inc. unit in connection with its pandemic-related closures.

FIRM PLEADS GUILTY AFTER WORKER KILLED

An Alabama plastics manufacturer agreed to pay $242,928 in restitution and also reimburse funeral expenses to the estate of a 45-year-old worker who died in August 2017 after being pulled into the moving rollers of a plastics extrusion machine at a plant in Helena, Alabama. ABC Polymer Industries LLC pleaded guilty to a willful violation of workplace safety requirements in federal court in Birmingham. Occupational Safety and Health Administration inspectors said the company failed to provide machine guarding measures and lacked safety procedures to shut down or isolate stored energy.

Geof McKernan, CEO of NSM Insurance Group, co-founded the company as a retail brokerage in 1990. Since then, it has developed into a specialty managing general agent offering programs ranging from professional liability for architects and engineers to pet insurance. Last year, the Conshohocken, Pennsylvania-based company was sold by its prior owner White Mountains Insurance Group Ltd. to Carlyle Group Inc. in a deal that valued it at $1.78 billion. Mr. McKernan recently spoke with *Business Insurance* Editor Gavin Souter about how the investment affects NSM's strategy and the state of the specialty insurance market. Edited excerpts follow.

Geof McKernan

NSM INSURANCE GROUP

Q What does the Carlyle deal mean for NSM?

A It means we're able to continue to grow the business organically as well as invest in people, IT and acquisitions. Then we're going to continue to grow the business not only through internal growth but through acquiring specific industry niches, and we can also acquire more significantly higher EBITA businesses.

Q About how many acquisitions have you made over the years?

A We've made over 25 acquisitions over the last 32 years.

Q Obviously, we're in a different era in terms of interest rates, etc. What difference will that make to your growth ambitions and your acquisitions?

A It's not going to slow us down at all. Carlyle is a large private-equity firm, and we have both the cash and the appetite to keep growing, and we will. We will buy businesses prudently and we'll continue to be aggressive with businesses that we want to acquire.

Q Have you seen much change in valuations over the past year?

A We've seen some valuations come down and we've definitely seen a slowdown in what's coming to market. It's also put some of our competitors on the sidelines.

Q You have operations in London as well. Do you see opportunities for growth there?

A Very much so. We're very bullish on growing in the U.K. and also in Western Europe.

Q Most insurance buyers would say it's still a difficult market. How would you characterize the market from your specialty point of view?

A This is the hardest insurance market I've seen in 40 years, and it continues to be that. Obviously, capacity is at a premium, and what we strive to do is use capacity prudently and partner up with quality insurance carriers. You want carriers that are with you in the short term as well as the long term, and that's important to us.

Q Are there any areas of the market that you see as being more difficult than others?

A The property cat business is probably the hardest market anybody's seen, and it continues to be hard, especially in areas like California and Florida. Commercial trucking is still a hard market. Professional liability in certain areas can be hard where the capacity is less available. Carriers want to be in business to make money, so they use capacity where they get the best return. We understand that.

Q We've just seen a very difficult reinsurance renewal. Did that affect your programs?

A It affected us in property cat in that it didn't allow us to get as much capacity as we would have liked, but, because we have so many different programs, we can also pivot and focus more on other things where there isn't a capacity constraint.

Q As you say, you are looking to expand. Where do you see opportunities?

A I'm agnostic to the niche. I look for opportunities that are sustainable and renewable, whether it be in professional liability, commercial auto or other areas like warranty.

Q What's your experience been in finding the expertise for your various programs?

A There's been a lot of musical chairs around people. We go after strong talent — talent is our No. 1 investment — and we'll continue to do so. We also have a very, very strong internship program that's over 12 years old, so we grow a lot of our talent ourselves and that's done phenomenally well for us.

Q Looking ahead, how do you see the market panning out over the next 12 to 18 months?

A I think it will remain a hard market; things aren't changing. You have to remember that, on a worldwide basis, carriers have not done great, so they are looking to get their returns back because of wildfires, hurricanes, floods and all the geopolitical risks. So, that all affects the capacity, and I don't think the market's going to go soft anytime soon.

Q It's been this way for some time, so how long do you see it going on for?

A It'll continue because they just haven't had the returns they would want, and that's caused prices to increase, period.

Q Do you see signs of more capacity coming in?

A Inklings of it, but we'll have to wait until after the summer to see what's really happening. The reinsurance renewals were really tough for a lot of insurers, and I don't think that's eased off yet, so we're going to have to wait and see and get through hurricane season.

Q What else do you see happening in the market?

A The business is going to go into the carriers that can innovate, the MGAs that continue to innovate and provide product. You've got to provide more than just the price: It's product, service, having a response time that's really quick, and having an easy way to do business. So, we've invested a lot in technology so our customers can come to us whether it's six o'clock in the morning or 10 o'clock at night. We think that's critical going forward.

This is the hardest insurance market I've seen in 40 years, and it continues to be that. Obviously, capacity is at a premium, and what we strive to do is use capacity prudently and partner up with quality insurance carriers.

COVER STORY

BIODIVERSITY RISKS A GROWING CONCERN FOR BUSINESSES

Insurers respond with coverages to help restore natural ecosystems, protect companies and communities

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

Environmental, social and governance risks such as climate change and diversity, equity and inclusion have become central concerns for some organizations, but businesses and insurers are also starting to pay closer attention to other ESG-related issues such as biodiversity and nature-related risks as regulatory frameworks evolve.

Development of insurance coverages that can help restore natural ecosystems and protect the businesses and communities that depend on them is in an early stage but likely to grow, experts say.

More sophisticated risk management organizations that lead on managing climate risk tend to be the ones that are starting to think about biodiversity and nature risks and supporting reporting frameworks, said Amy Barnes, London-based head of climate and sustainability strategy at Marsh LLC.

"The agenda around nature is going to evolve, and we know that a number of sectors are maybe not quite ready for that."

Suzanne Scatliffe, Axa XL

Some industry sectors, such as agriculture, are more exposed than others, Ms. Barnes said. "We then get into food and beverage and further up the supply chain," and the focus extends far beyond that as well, she said.

But "many clients aren't really thinking about nature, and it's not on their immediate horizon of things to map," she said.

Risk management focus

Momentum is shifting, however.

In September the Taskforce on Nature-related Financial Disclosures, a market-led initiative funded by several governments, the United Nations and philanthropic grants, is expected to release final recommendations for its risk management and disclosure framework that companies can use to report nature-related risks.

Like the Taskforce on Climate-related Financial Disclosures, the TNFD framework could lead to businesses being required to make biodiversity risk disclosures, experts say. The recommendations will be voluntary, but many countries and regulators are mandating climate-risk disclosure in line with the TCFD, and sources say TNFD is likely to take the same trajectory.

ESG standards are having a significant effect on the energy and construction sectors because they are so resource-based and resource-driven, "whether it's the environmental impact of hydropower projects on rivers, the impact of mining operations around tailings and coal, or oil and gas projects and distribution," said Darren Tasker, Toronto-based head of energy and construction at Allianz Global Corporate & Specialty SE, a unit of Allianz SE.

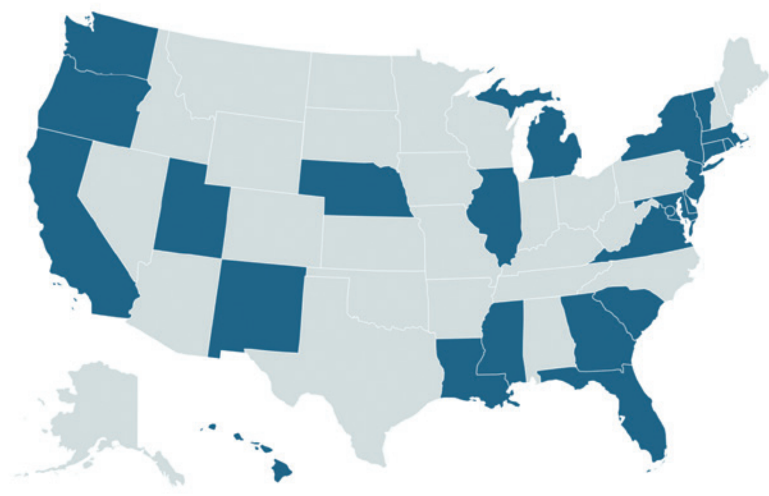
Insurers have traditionally been on the back foot when defending their positions on these topics, but now they're trying to help policyholders operate in as environmentally and socially conscious ways as possible, Mr. Tasker said. Capacity remains challenging, though, for ESG-sensitive projects, he said.

Water is an underappreciated risk, and evolving climate regulations and the development of the TNFD point to growing reputational and regulatory risks in this area, said Suzanne Scatliffe, London-based global sustainability director at Axa XL, a unit of Axa SA.

"The agenda around nature is going to evolve, and we know that a number of sectors are maybe not quite ready for that," Ms. Scatliffe said.

STATE ACTION ON BIODIVERSITY

Some 23 states and the District of Columbia considered legislation in 2022 to increase biodiversity protections, such as strengthening goals to conserve at least 30% of the U.S. land and oceans by 2030, otherwise known as 30x30.



Source: National Caucus of Environmental Legislators

Many businesses are at the risk identification stage, and that will evolve into risk mitigation and then "how do we more explicitly incentivize and reward clients that are following good water practices," she said.

Insurers and brokers are navigating uncertain risks and exposures.

For example, Aon PLC is the lead broker for the Klamath River restoration project that involves the removal of four hydroelectric dams to help restore the river's basin in California and Oregon.

While the insurance coverage was secured before ESG concerns became prominent, there are many social aspects that could be affected by the project, said Matthew Davis, Bend, Oregon-based growth operations leader at Aon.

Various risk scenarios had to be considered, including how the project would affect Native Americans and others in the local community, as well as the potential risk of dam removal, the impact on fish or other habitats, and the risk of wildfire, which is inherent in remote regions of California and Oregon, Mr. Davis said.

Opportunities and risks

Competing risk management priorities and cost concerns remain a challenge to the nascent market for nature-based insurance coverages and services, but policyholder interest is gradually increasing, experts say.

Nature-related risks are more difficult to measure than climate risks in some ways.

"With climate everything can be effectively unitized into carbon or carbon

See **BIODIVERSITY** page 17

Captives hold promise for organizations to better manage their ESG risks

MIAMI — Captive insurers can help organizations better manage their environmental, social and governance-related risks and achieve their ESG goals, experts say.

Captive insurers are playing a growing role in helping companies influence the social aspects of ESG, said Adriana Scherzinger, Chicago-based vice president, head of captive sales and execution, U.S. national accounts and middle market, at Zurich North America.

She was speaking last month during a panel discussion at the World Captive Forum in Miami, which is sponsored by *Business Insurance*.

COVID-19 created social, economic and political shocks that have led stakeholders to take a closer look at how businesses manage human capital and related risks, Ms. Scherzinger said.

Hard market conditions have also limited capacity for certain risks, prompting a greater interest in captives, she said.

COVID-19 led to a realization that it's difficult or impossible for most organizations to manage business risk without managing people risk, said Alan Buckley, New York-based partner at Mercer LLC, a consulting unit of Marsh & McLennan Cos. Inc.

BUSINESS INSURANCE WORLD CAPTIVE FORUM

Having a diverse set of people from different backgrounds at the table strengthened the COVID response, Mr. Buckley said. Businesses face such a wide spectrum of risks that "it's impossible for any individual or area of an organization to provide all-encompassing advice," he said.

Many companies used the same committee they convened to manage the COVID-19 crisis to handle the effect of the war in Ukraine, he said.

The use of captives to write employee benefits risks used to be about saving costs, said Brian Quinn, founding director of Bermuda-based Granite Management Ltd.

"Now, it's about looking at these social factors and how can we use that tool to expand that out and give more equity, more diversity and provide the same level of benefits on a global basis," Mr. Quinn said.

On the property/casualty side, captives are becoming more important as a business resilience tool, he said.

Captives can fund organizations' risks up front so that their local businesses can keep running as if they have insurance, because insurers cannot provide insurance anymore, he said.

During the Ukraine war, insurers excluded coverages for the area, withdrawing confiscation endorsements in policies, said Santiago Garcia, Nashville, Tennessee-based senior director-global risk management & insurance at Brink's Inc.

In response, Brink's used its captive to write confiscation coverage, Mr. Garcia said. The captive also plays a critical role in the company's ESG strategy, he said.

Brink's core business is cash-in-transit and secure logistics, he said. "We move product from one place to the other. We're using vehicles that produce significant amounts of CO2. These are large, heavy-armored vehicles, and that's a significant impact for the environment," he said.

In the past few years, the company has changed its business model, to use half-armored smaller vehicles to serve customers faster, thereby reducing emissions and maintenance costs, he said.

The captive also plays a key role in the social aspect of its business, Mr. Garcia said.

In remote areas, such as in Colombia, Brink's may use helicopters to transport cash and insurers decline the risk, so the captive helps provide that capacity, he said.

By enabling cash to be delivered to people in areas with few banks, the captive is helping improve socioeconomic inclusion and supporting the economy, he said.

Claire Wilkinson

BIODIVERSITY

Continued from page 15

equivalent. Nature is much more complex with many inputs and variables," Ms. Barnes said.

Insurance policies that protect nature-based systems may carry extra premiums, which few stakeholders are willing to pay, the Geneva Association said in a report issued in November.

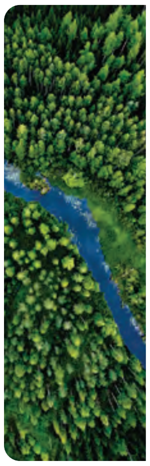
Energy efficiency, water conservation, solar installations and the resilience of buildings to withstand climate risks are part of the information risk managers can provide to insurers to demonstrate why they are a better risk, said Scott Ritto, vice president of risk management at Kilroy Realty Corp. in Los Angeles.

"This is a big reason why our loss ratio is 5% or less over the last 10 years," Mr. Ritto said.

Wes Rimes, Birmingham, Alabama-based vice president and head of sales and distribution at Zurich Resilience Solutions, a unit of Zurich Insurance Group Ltd., said concerns about nearby habitats and waterways have come up in discussions with several large auto manufacturers that were about to build extensions to their facilities and needed help in assessing the impacts.

Many inquiries around biodiversity come from organizations in coastal locations, Mr. Rimes said.

Last month Zurich launched a climate advisory service with South Pole, a carbon finance consultancy based in Zurich. "It's really about helping businesses understand the other side of the coin and how their operations are impacting the environment, through carbon sequestration, carbon accounting, and helping them develop carbon credit strategies," he said.



NATURE AND THE ECONOMY

- Biodiversity loss and ecosystem collapse is viewed as one of the **fastest-deteriorating global risks** over the next decade, according to the World Economic Forum's 2023 Global Risks Report.
- **More than half of global GDP** — some $44 trillion of economic value generation — is moderately or highly dependent on nature.
- **Construction**, **agriculture**, and **food and beverage** are the largest highly nature-dependent industries.
- **China** ($2.7 trillion), the **EU** ($2.4 trillion) and the **U.S.** ($2.1 trillion) have the highest absolute economic value in nature-dependent industries.
- **Pollination**, **water quality** and **disease control** are three examples of the services an ecosystem can provide.

Source: World Economic Forum, Global Risks Report 2023 and The New Nature Economy Report, 2020

Parametric structures are playing a growing role in policies that pay out when hurricane wind speeds reach a certain level, allowing for repair and restoration of coral reefs, and these types of covers could be extended to other ecosystems such as mangroves, experts say.

"Since parametric insurance pays out based on an understanding of hazard characteristics, it allows us to extend insurance coverage to non-traditional assets like ecosystems such as coral reefs," said Sarah Conway, head of the ecosystem resilience practice and director in the disaster risk finance and parametrics unit in the climate and resilience hub at Willis Towers Watson PLC, who is based in St-Malo, France.

While these structures typically have been used in emerging economies, they can also be applied in more developed countries, she said.

In November, WTW and the Nature Conservancy announced a coral reef policy in the U.S. The policy, backed by Munich Re, provides Hawaii with up to $2 million in payouts for reef restoration if tropical storm winds reach 57 miles per hour.

Traditional energy, power and gas companies have been "bread-and-butter" buyers of parametric coverages to manage weather volatility and variability in customer demand due to fluctuating temperatures, said Martin Malinow, New York-based founder and CEO of Parameter Climate Inc.

Renewable energy sector demand is also growing, Mr. Malinow said. "We're seeing a lot more demand for risk transfer products that are indexed to solar irradiance, to wind speed, and to the precipitation or river flow for hydropower," he said.

Businesses may also be able to tap into existing coverages in the traditional commercial insurance market.

Many specialist environmental insurance policies embraced natural resource damage as a covered event early on, said Bill Pritchard, president of Beacon Hill Associates, a Charlottesville, Virginia-based wholesale broker and program administrator division of Specialty Program Group.

"Environmental policies cover cleanup, and cleanup of a constituent or hazardous material is triggered by the environmental regulation for the presence of that material. Most, but not all, environmental policies define natural resource damages as part of cleanup," Mr. Pritchard said.

In a hard market, and as ESG risks grow, captive insurers can also help companies manage risks (see story, page 15).

Reputational risk

Activists and investors are increasingly scrutinizing businesses' operations, how they affect biodiversity loss and could disrupt societies, experts say.

Insurers and brokers, too, face potential reputational risks if they participate in ESG-sensitive agriculture, construction or other projects that disrupt natural habitats and local communities.

Last month a complaint was filed against Marsh LLC by Inclusive Development International, an Asheville, North Carolina-based non-governmental organization, along with various human rights and environmental organizations, alleging the brokerage violated international guidelines for responsible business conduct by serving as insurance broker for the East African Crude Oil Pipeline project.

The complaint alleges improper land acquisition processes, inadequate consultation with affected communities, threats to natural resources and irreversible harm to local ecosystems.

Marsh declined to comment on the complaint, citing its policy of not confirming the identity of clients.

Courts are already considering cases against businesses in relation to liability for biodiversity loss, pointing to increasing legal risk, some attorneys say (see related story).

Regulatory changes could prompt biodiversity litigation

Businesses face an expanding range of lawsuits related to environmental, social and governance issues, and cases alleging liability for biodiversity loss could gain traction as regulatory and disclosure frameworks evolve, experts say.

Biodiversity lawsuits are a fraction of the number of climate-related cases filed to date, said Nigel Brook, London-based partner at Clyde & Co. LLP. "It's very early days. In Europe, the main source of biodiversity cases has been about supply chains," he said.

This trend could take off when the European Union Corporate Sustainability Due Diligence Directive takes effect later this year and EU nations implement the measure in their national laws, he said.

A securities class action lawsuit filed in November 2022 in U.S. District Court in Greenbelt, Maryland, against Enviva Inc., a company that produces wood pellets, is an example of a biodiversity-related suit, said Zaneta Sedilekova, London-based associate at Clyde & Co.

While the case concerns alleged misrepresentation of the environmental sustainability of wood pellets, investors contend Enviva's inventories of hardwood trees were incorrect and that "inventories of hardwood trees are decreasing, replaced by less expensive pine seedlings and negatively impacting forest biodiversity," Ms. Sedilekova said.

In these types of cases the biodiversity impact is often in a different venue, but the case is brought in a jurisdiction where "the legal system is sophisticated enough to deal with things like proof, evidence, causation, but also damages, and in the U.S. that is a big thing," Ms. Sedilekova said.

A 2021 case, for example, against the French supermarket chain Casino Group alleged that the company's due diligence plans failed to detail the environmental and human rights harm caused by the supply of cattle from deforested areas to its Brazilian subsidiary.

Whereas the EU has a statutory framework, at least in draft form, that sets out how claimants might pursue claims related to environmental harm, in the U.S. this is happening at the Securities and Exchange Commission enforcement level and the private securities plaintiffs level, said William Passannante, a shareholder with Anderson Kill P.C. in New York.

"In the U.S., so far we've got a differing approach to how those liabilities might increase. ... It's just an acknowledgment that there are new types of disclosure obligations that can form and potentially (lead to) materially misleading statements," Mr. Passannante said.

Because these securities claims are novel, "they're likely to be expensive" and generate directors and officers coverage litigation, he said.

Claire Wilkinson

Captives grow as property, cyber rates rise

INSIDE

BY GAVIN SOUTER
gsouter@businessinsurance.com

The increased interest in captive formations and greater use of existing captive insurers seen in 2022 will likely continue through 2023, experts say.

Owners are using captives more as commercial insurance rates for lines such as property and cyber liability have soared over the past two years and insurers have pulled back available limits.

Increasingly, owners are using captives to fill in gaps in higher layers of programs rather than just using the vehicles to fund deductibles and lower layers of coverage, captive managers say.

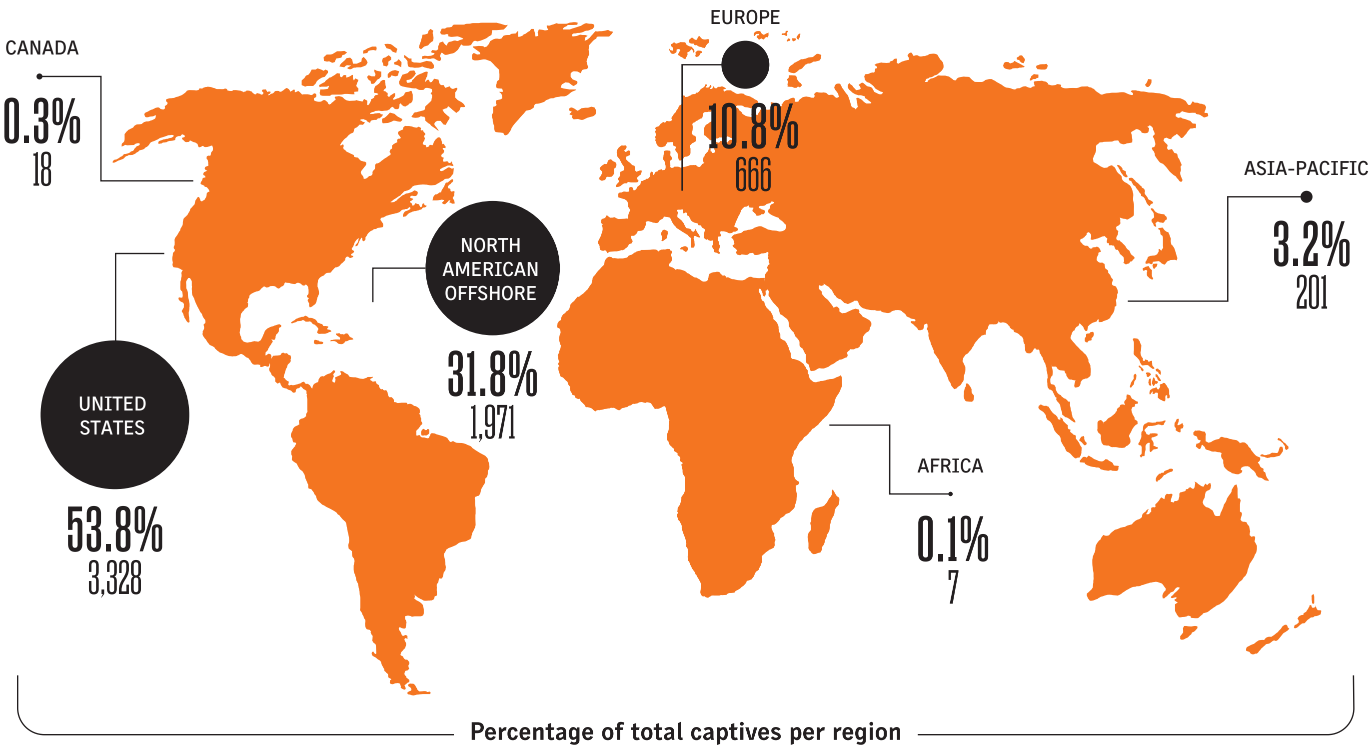
The total number of captives worldwide increased by about 2% last year to 6,191. Of the largest U.S. domiciles, all but one of the Top 10 reported a net increase in captives. In Europe, Asia-Pacific and North American offshore domiciles results were mixed (see charts page 25).

"It's been very busy in terms of captive utilization as well as new formations, so we are still licensing captives like crazy," said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont.

ONSHORE/ OFFSHORE BY THE NUMBERS

There were 6,191 captives in 2022, not including microcaptives, series captives or individual cells of cell members in protected cell companies.

Source: *BI* survey



Percentage of total captives per region

Captive growth has continued to be robust, and the growth has been across industries, risks covered and domiciles, said Jason Palmer, head of U.S. captive management at Willis Towers Watson PLC in Burlington.

"It's really across the board, rather than it being specific to one sector of the business," he said.

The trend is likely to continue, said Peter Kranz, senior vice president at Alliant Services Inc. in Burlington.

"The insurance market is fundamentally changing, with traditional markets backing further away from risk," he said, resulting in premium credits for captives retaining that risk.

Sharply rising property rates have led to more companies using captives.

In some cases, policyholders are using captives to obtain coverage that is difficult to find in the commercial market, Ms. Gray said. For example, one policyholder formed a captive to cover wildfire risk and obtained a rating for the captive so it could fulfill its debt covenants.

"That's an example of unique ways a captive can help address different risks within an organization," she said.

Owners are using captives to fund rising property deductibles and covering layers in excess towers, where capacity is restricted or too expensive, across a broad range of property risks, Mr. Palmer said.

"It's the entirety of the marketplace rather than being specifically for windstorm or flood or other types of property risk," he said.

See **CAPTIVES** page 21

Owners are using captives to take a quota share cover or a layer higher up a program, said Anne Marie Towle, Carmel, Indiana-based CEO global captive solutions at Hylant Group Inc.

"People are taking on more risk and utilizing their surplus, if it's an existing captive, or, if they're setting up a new one, deploying capital in a more meaningful manner, because otherwise some of these layers might be cost prohibitive," Ms. Towle said.

Cyber

Cyber liability is another area where owners are adding risks to their captives in response to hikes in commercial rates.

Marsh saw a more than 50% increase in cyber premiums placed in captives over the past two years, said Ellen Charnley, president of Marsh Captive Solutions in Las Vegas.

Captives are being used to fund cyber deductibles, establish policy language for primary coverage that insurers follow in excess layers, to fill out capacity in excess layers of programs through quota share arrangements, and at the top of towers to complete limits that parent companies are seeking, Mr. Palmer said.

"We are seeing it all over the placement and you don't often see that with captive lines of coverage," he said.

Organizations that need to use a large panel of cyber insurers can use a captive to fill in coverage excluded by some of the insurers, such as ransomware losses, Mr. Kranz said.

"For example, you throw your captive in, and the captive writes the full coverage and just cedes back to the market everything but ransomware," he said.

Liability

In 2022, captive owners also added more casualty risks, where rate increases were often more moderate, but coverage remained comparatively expensive, to reduce their total cost of risk by retaining more, Ms. Gray of Aon said.

More owners are using captives to cover auto liability risks as the commercial auto insurance market remains challenging for buyers, Ms. Charnley said. In addition, Marsh set up several risk retention groups over the past year to address auto liability risks, she said.

Other areas of captive premium growth include life insurance, voluntary benefits and medical stop loss coverage, where the reinsurance market has been difficult, Ms. Charnley said.

Captives are also being used to cover supply chain risks, such as by offering coverage to vendors and suppliers or by taking on higher layers of supply chain-related risks, Ms. Towle said.

Some captive managers said that owners are also looking to use existing or new captives to cover directors and officers liability risks.

Some states have laws barring companies from retaining the risk, but last year Delaware changed its corporate law to allow Delaware corporations to buy Side A D&O cover from captives. More than 50% of publicly traded companies are incorporated in Delaware.

D&O rates have come down significantly since the law came into force, deterring many owners from moving out of the commercial market, several managers said.

But there has been interest in covering D&O, others said.

The change in the Delaware law sparked significant interest, said Mr. Kranz of Alliant. Some company directors, though, remain wary of moving from paying a premium to a D&O insurer to using a company-owned captive. Keeping the risk could potentially open them up to further claims from shareholders if a significant loss occurs, he said.

"It's a great change in the law and there are potential benefits from it, but I think there was a rush to it and then a pause to understand the ramifications," he said.

Marsh set up a protected cell facility in Delaware for companies that wanted to use a captive structure to cover D&O risks at "arm's length" from the directors and officers covered, which has generated interest from owners, Ms. Charnley said.

"We've had people set up cells, but it takes time because it's a huge decision because they have to be fully funded," Ms. Charnley said.

Onshore/offshore

The years-long trend of more companies establishing captives in domestic U.S. domiciles, which have proliferated over the past two decades, continues.

In particular, companies are increasingly forming captives in their home states to minimize the potential for being charged self-procurement premium taxes, Mr. Palmer said. Some states impose those taxes on nonadmitted insurance coverage.

U.S. companies that don't have international operations have little reason to select an offshore domicile because the costs of dealing with international jurisdictions are often higher, Ms. Towle said.

But while some offshore domiciles are reporting lower numbers of captives, some are still seeing substantial premium growth because of the business they are writing. For example, Marsh is seeing significant premium growth in offshore domiciles with life insurance captives, such as Bermuda, Ms. Charnley said.

"The premium volume indicates what people are doing with their captives, and it indicates the strength of the market," she said.

COUNTING CAPTIVES

Ranked by number of captive licenses at year-end 2022

Rank	Domicile	2022	2021
1	Bermuda	660[1]	670[1]
2	Cayman Islands	650[2]	661
3	Vermont	639	620
4	Utah	419	386[3]
5	Delaware	330	313
6	Barbados	315	308[3]
7	North Carolina	294	257
8	Hawaii	255	250[3]
9	South Carolina	205	183
10	Guernsey	201	192
11	Luxembourg	195[2]	192
12	Arizona	162	149
13	Nevada	155	161
14	Tennessee	150	148[3]
15	District of Columbia	113	112
16	Nevis	102	122
17	Montana	101	102
18	Isle of Man	98	99
19	Singapore	82	84
20	Texas	73	54
21	Turks & Caicos Islands	71	71
22	Labuan	67	63
23	Dublin	66	68
24	Anguilla	62	78[3]
25	Connecticut	57	44
26	Georgia	56	57
27	Missouri	54	52
28	Alabama	51	57
29	Oklahoma	47	45[3]
30	British Virgin Islands	46	49
31	New York	38[2]	40[2]
32	Kentucky	32	34
33	Sweden	29[2]	31
34	Federated States of Micronesia	25	23
35	Switzerland	24[2]	25[2]
35	Michigan	24	24
37	St. Lucia	20	23
37	New Jersey	20[1]	20
39	British Columbia	18	19
39	Puerto Rico	18[1]	18[1]
41	Arkansas	15	14
42	South Dakota	14	16
42	Bahamas	14	14[3]
44	Malta	11	10[3]
45	Gibraltar	10	10
46	New Zealand	9[1]	9[1]
46	Germany	9	9
48	Liechtenstein	8	8
49	Denmark	7	8
49	Egypt	7[1]	7[1]
49	Ohio	7	6
52	Colorado	6	6
52	Panama	6[2]	6[2]
52	Norway	6	6
55	Curaçao	5	7
55	Vanuatu	5	5
57	Hong Kong	4	4
57	Nebraska	4	4
57	Dubai	4	4[3]
60	Maine	3	3
60	Guam	3	3
62	U.S. Virgin Islands	2	3[3]
62	Illinois	2	2
62	Mauritius	2	2
62	Jersey	2[1]	2[1]
66	Kansas	1	1
66	West Virginia	1	1
	TOTAL	6,191	6,074[3]

[1] *BI* estimate [2] From website [3] Restated
Source: *BI* survey

Captive owners turning to larger group of reinsurers

Captive owners, like commercial insurers, face an increasingly difficult reinsurance market as rates rise sharply and capacity shrinks.

To dampen the effect of the hard market, captives are having to use a larger panel of reinsurers and adopt other strategies, experts say.

Commercial reinsurers have suffered significant losses over the past year, which led to a hardening market for cedents, including captives, said Michael Woodroffe, president of Kirkway International Ltd., a Bermuda-based reinsurance brokerage.

Catastrophe reinsurance rates rose 30% at year-end renewals and retrocessional reinsurance rates rose 50%, he said last month during a session of the World Captive Forum, which is sponsored by *Business Insurance*.

In the difficult market, captive owners are having to use more reinsurers on their programs, said Anne Marie Towle, Carmel, Indiana-based CEO global captive solutions at Hylant Group Inc.

"If you had two or three partners in the past, you might have five, six or seven on your slip or even more. So, there are some of those pain points still coming through on reinsurance capacity, and I think that will continue this year," she said.

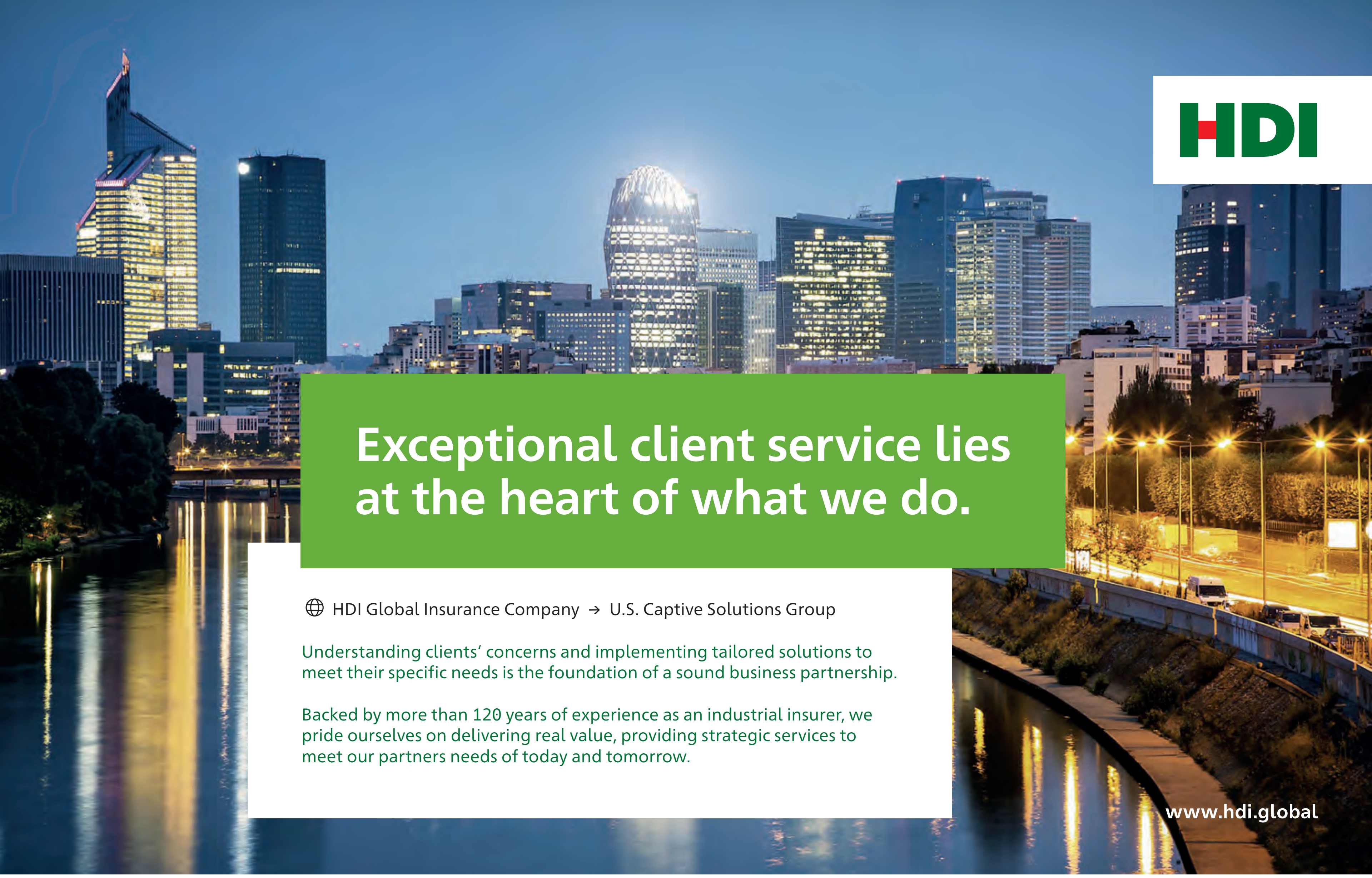
The tightening reinsurance market for captives is also resulting in less available capacity for more complex structures, such as integrated aggregate reinsurance that covers multiple lines of business, said Peter Kranz, senior vice president at Alliant Services Inc. in Burlington, Vermont.

"We can still do some of these integrated programs, but if it needs a $30 million limit, you might have to find three reinsurers at $10 million or two at $15 million in order to put that together," Mr. Kranz said.

Captive owners can use various strategies to manage the difficult reinsurance market, Mr. Woodroffe said. For example, start-up captives can stagger premium payments over the year or look for a mid-year adjustment, based on the amount of business written.

Captives should also adopt realistic limits, he said. "If you are a small captive, don't be the Travelers; you don't need $1 million for cyber, $100,000 might be just fine," he said.

Gavin Souter



Supreme Court abortion ruling complicates medical malpractice insurance environment

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

MIAMI — Medical professionals and their insurers face an evolving medical liability landscape following the U.S. Supreme Court abortion decision last year, but captives may be able to help organizations handle the risks, an attorney, a risk manager and an underwriter said.

The June 24, 2022, ruling in *Dobbs v. Jackson Women's Health Organization* — which overturned the 50-year-old *Roe v. Wade* decision and held there is no constitutional right to an abortion in the United States — can potentially create criminal liability in cases that previously would have been considered medical negligence, creating some gray areas in medical malpractice coverage, they said.

Health care providers who don't routinely perform abortions, such as emergency room physicians, could face medical malpractice suits if they perform the procedure for other medical reasons in states where abortion is banned, they said during a panel session last month at the World Captive Forum, which is sponsored by *Business Insurance*.

The *Dobbs* decision raises questions not only about medical malpractice liability but also about professional criminality, said Lainie Dornecker, Miami-based head of health care at Bowhead Specialty Underwriters Inc.

"These doctors can be subject to scenarios where they may be subject to jail time," she said.

"We are talking about the criminalization of medicine and the criminalization of abortion in this country," said Lori Semlies, New York-based attorney at law, Wilson Elser Moskowitz Edelman & Dicker LLP.

Changing legal and risk landscape

Federal statutes are subject to interpretation, which creates uncertainty and makes it difficult to assess the risk of medical liability, Ms. Semlies said.

In its 1973 *Roe v. Wade* ruling, the U.S. Supreme Court held that a woman could have an abortion up to 24 to 28 weeks, when a fetus becomes viable, Ms. Semlies said. Viability is subject to interpretation, she said.

After Dobbs, the issue will be decided under state laws, which are evolving and creating further uncertainty, she said. Some states have a complete abortion ban, some ban abortion after a specified point in the pregnancy, and others require a waiting period, she said.

Some federal laws, though, may still apply to abortion. Under the federal Emergency Medical Treatment and Active Labor Act, hospitals cannot refuse to provide medical care unless patients are deemed stable and must screen patients who are experiencing an emergency medical condition, she said.

> "We are talking about the criminalization of medicine and the criminalization of abortion in this country."
>
> Lori Semlies, Wilson Elser Moskowitz Edelman & Dicker LLP

Guidance issued by the U.S. Department of Health and Human Services has provided some assurance to health care providers in emergency settings that they can put a mother's life first, but EMTALA "is a defense, not an immunity," Ms. Semlies said.

Any medical professional who interacts with pregnant mothers is potentially exposed, said Eric J. Gardzina, Nashville, Tennessee-based senior vice president, risk management, at Ob Hospitalist Group, which employs more than 1,300 obstetrician-gynecologists in 37 states under 250 hospital contracts.

OB-GYNS, emergency department physicians and pharmacists are clearly at risk, but other medical professionals such as technicians, in vitro fertilization providers, oncologists, facilitators and vendors could also be exposed, he said.

Insurance responds

Medical malpractice underwriters have always considered how a risk may look depending on the state where the risk is based, Ms. Dornecker said.

This doesn't change the underwriting process or create a new level of risk, she said. "We're always ready to speak to different risks," she said.

When a situation arises, how a facility manages the aftermath when a lawsuit and criminal action are brought is a key underwriting question, she said.

Policy language may be ambiguous under certain circumstances, Ms. Dornecker said. While criminal acts are excluded for med mal coverage, some policies may cover seizures of documents or sublimit cover for defense of a criminal action or defense of a licensing procedure, she said. "We are seeing affirmative exclusions, and we're also seeing affirmative enhancements coming out," she said.

Captive insurers can provide certainty to employees by offering greater flexibility in policy design and claims control for an organization, the panelists said.

By using a captive, organizations have the flexibility to design programs that fit their needs, Mr. Gardzina said.

Captives may provide more robust coverage, such as full limits for defense of disciplinary/regulatory proceedings and broader coverage for fines and penalties, for example.

Managing risk

Organizations should communicate changes in state laws to their employees on a regular basis so they feel supported and understand what they can or can't do, Mr. Gardzina said.

Ob Hospitalist Group decided to defend its employees through the process, with "corporate dollars or whatever it takes," he said.

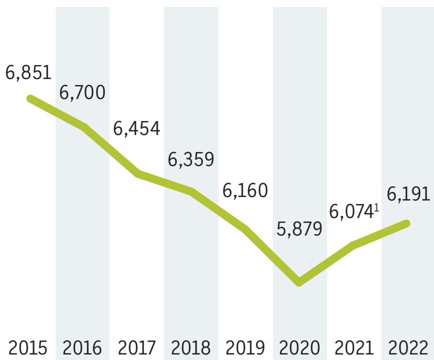
Employers also need to be concerned about the emotional toll navigating varied state restrictions will take on their employees, especially for medical professionals who practice in more than one state, Mr. Gardzina said. Aside from malpractice problems, there's a concern that some employees may decide to leave the profession, he said.

Loss of license is another concern. "Our focus is to tell them to practice medicine, to make sure they use their medical decision-making process which they have and then just document the heck out of it," he said.

The panel was moderated by Gavin Souter, editor of Business Insurance.

RANKINGS OF CAPTIVE DOMICILES & CAPTIVE MANAGERS

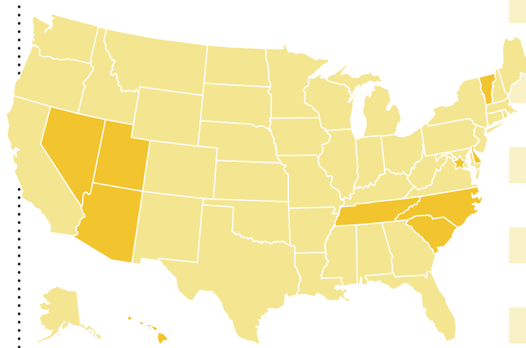
TOTAL CAPTIVES WORLDWIDE



[1] Restated
Source: *BI* survey

TOP U.S. CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2022



Rank	Domicile	2022	2021
1	Vermont	639	620
2	Utah	419	386[1]
3	Delaware	330	313
4	North Carolina	294	257
5	Hawaii	255	250[1]
6	South Carolina	205	183
7	Arizona	162	149
8	Nevada	155	161
9	Tennessee	150	148[1]
10	District of Columbia	113	112

[1] Restated
Source: *BI* survey

TOP 10 CAPTIVE MANAGERS

Ranked by the number of captives managed worldwide in 2022

			CAPTIVE TYPES						
Rank	Company	2022 total captives[1]	Captives	831(b) microcaptives	Protected/ segregated cell companies [individual cells]	2022 captive premium volume[2]	Domiciles	Total staff	Officers
1	Marsh Captive Solutions	1,567	1,403	39	125 [316]	$69,962,771,927	54	497	Ellen Charnley, president
2	Aon Captive & Insurance Management	987	900	15	72 [443]	$54,559,000,000	48	553	John English, CEO
3	Artex Risk Solutions Inc.	831	693	90	48 [1,363]	$17,350,000,000	35	632	Peter Mullen, CEO
4	Strategic Risk Solutions Inc.	491	405	—	86 [560]	$7,236,000,000	33	234	Brady Young, president-CEO
5	WTW, Captive & Insurance Management Solutions	336	291	16	29 [69]	$20,668,000,000	35	225	Peter Carter, CEO
6	Risk Strategies Co. Captives[3]	230	30	187	13 [279]	$925,286,952	18	91	John Mina, CEO
7	Davies Captive Management	186	169	1	16 [285]	$2,500,000,000	23	40	Nicholas Dove, chairman; Nicholas Frost, president
8	Brown & Brown Inc.	106	91	—	15 [20]	$6,826,896,000	20	41	Matthew Takamine, executive managing director
9	USA Risk Group	97	83	—	14 [36]	$1,900,000,000	11	25	Paul Macey, president
10	Innovative Captive Strategies	88	70	—	18 [49]	$828,923,097	9	28	Stephani Manning, president

[1] Includes all licensed entities managed at year-end 2022 [2] Premium volume includes total gross volume for captives managed by the company or on its behalf.
[3] Includes Atlas Captives, Oxford and Risk Management Advisors
Source: *BI* survey

TOP EUROPEAN CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2022

Rank	Domicile	2022	2021
1	Guernsey	201	192
2	Luxembourg	195[1]	192
3	Isle of Man	98	99
4	Dublin	66	68
5	Sweden	29[1]	31

[1] From website
Source: *BI* survey

TOP NORTH AMERICAN OFFSHORE CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2022

Rank	Domicile	2022	2021
1	Bermuda	660[1]	670[1]
2	Cayman Islands	650[2]	661
3	Barbados	315	308[3]
4	Nevis	102	122
5	Turks & Caicos Islands	71	71

[1] *BI* estimate [2] From website [3] Restated
Source: *BI* survey

TOP ASIA-PACIFIC CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2022

Rank	Domicile	2022	2021
1	Singapore	82	84
2	Labuan	67	63
3	Federated States of Micronesia	25	23
4	New Zealand	9[1]	9[1]
5	Vanuatu	5	5

[1] *BI* estimate
Source: *BI* survey

MARKET PULSE

PRODUCTS & SERVICES

Travelers launches online construction platform

■ Travelers Cos. Inc. launched an online platform offering information on workplace safety and productivity to construction companies.

The Travelers innovation network for construction offers construction companies access to information about technology and provides guidance on mitigating employee and business exposures, a Travelers statement said.

Construction customers can receive discounts on certain products and services offered through the platform.

Worksite services offered through the platform include exposure assessment, site monitoring, vibration risk analysis, water loss detection and virtual job site capture. Employee-related services include online training, a web-based learning platform, worker background checks, virtual ergonomic consultations and wearable technologies. Business-related services offered include project management, project safety management and equipment management.

The platform provides access to services from a variety of companies, including Procore, Triax, Monnit, IntelliCorp and OpenSpace.

Berkley partners on workplace violence cover

■ Berkley Program Specialists, a unit of W.R. Berkley Corp., said it has partnered with New York-based Semsee Corp., an online quoting platform, to offer workplace violence coverage and related services.

The coverage provides a $100,000 aggregate limit for business income and various services, including crisis management, public relations, mental health counseling for guests and employees, and site security.

It also covers biohazard clean-up, burial and reward expenses, temporary location, temporary employee and travel expenses.

An educational portal with tools to help businesses pre-loss is also provided.

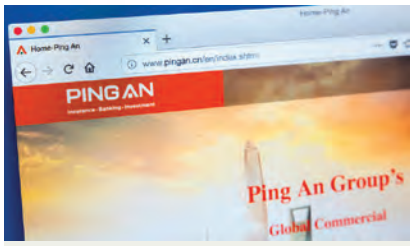
Insurtech, Chaucer link on trade secrets cover

■ Crown Jewel Insurance and Lloyd's of London insurer Chaucer Insurance Group PLC launched a policy covering corporate trade secrets.

The policy, Crown Jewel Protector, covers losses from industrial espionage or leaks by insiders, up to the "pre-agreed fair market value of the trade secret," the companies said in a statement. Crown Jewel expects to have $25 million in capacity available, a spokesman said.

The coverage also includes legal and forensic support after a loss.

Crown Jewel is a Miami-based company affiliated with New York-based managing general underwriter Balance Partners LLC. Chaucer is the lead underwriter for the policy, and the program is brokered by Acrisure LLC's London-based wholesale unit.



Chinese insurer unveils ocean carbon sink policy

■ Ping An Property & Casualty Insurance Co. of China Ltd. launched an ocean carbon sink index policy in Dalian, China.

The policy pays out when specific changes in the marine environment damage local species and lead to a weakening of carbon sink.

The policy provides 400,000 RMB ($58,681) of coverage across 8,866.67 square meters of kelp, shellfish and algae, Ping An said.

Payouts can be used for post-disaster marine species rescue to restore the carbon sink resource and for ecological protection and restoration.

"The index insurance enhances ocean carbon sequestration capacity by encouraging fishing to protect and repair marine ecosystems. It also enables carbon sink indicators of marine aquaculture to be listed and traded," increasing the income of fishermen, Ping An said in a statement.

The ocean is the earth's largest carbon sink and can absorb around 2 billion tons of carbon dioxide a year from the atmosphere, Ping An said. Marine disasters such as typhoons, abnormal sea temperatures and algae blooms could compromise the carbon sequestration capacity of the ocean, and hinder progress toward carbon neutrality.

As of November 2022, Ping An P&C had provided over $25.53 trillion in green insurance coverage to promote green development, according to the statement.

Coalition targets large buyers for cyber

■ Cyber liability managing general agent Coalition Inc. said it has expanded the scope of its targeted customers to include organizations with up to $5 billion in annual revenue.

The San Francisco-based MGA, which recently launched its own insurance unit and also offers cyber loss prevention services, previously offered coverage to organizations with up to $1 billion in revenue.

It continues to offer $15 million in policy limits.

Berkley adds liability policy for investment advisers

■ Berkley Financial Specialists, a W.R. Berkley Corp. unit, has added a management liability product for investment advisers.

Berkley said AdviserGuard is a blended policy that covers management liability, employment practices liability, professional liability, fiduciary liability and registered fund liability.

Up to $10 million in limits, on a per claim basis, is available under the program, said Edward Mongon, assistant vice president, financial institutions underwriter specialists, asset management product leader.

WTW offering excess cyber liability facility

■ Willis Towers Watson PLC launched an excess cyber liability facility providing up to $50 million in capacity.

The facility, known as CyXS, is backed by a panel of Lloyd's of London insurers and is available to global clients of WTW that purchase excess layer cyber programs.

Capacity is deployed by two lead insurers on behalf of all the facility insurers and available anywhere on the insurance program, WTW said.

Coverage is available on a "follow form" basis with tailored excess layer policy wording, including a proprietary excess attachment provision.

There is also an option to purchase a reinstatement of limit for primary layer coverage at a pre-agreed additional premium percentage, WTW said.

DEALS & MOVES

Amwins buys specialist energy and marine broker

Amwins Global Risks, the international unit of specialty broker Amwins Group Inc., said it has acquired Roberts Armytage & Partners Ltd., a London-based specialist energy and marine broker.

Terms of the transaction were not disclosed.

The acquisition will help Amwins build out its global energy practice spanning upstream, midstream, liability, power, downstream and renewables, Nate Mathis, CEO of Amwins Global Risks, said in a statement.

AssuredPartners buys Michigan broker

AssuredPartners Inc. said it has acquired Lakeside Insurance Agency of Clinton Township, Michigan.

Terms of the transaction were not disclosed.

Lakeside, which specializes in auto dealerships, will remain under the leadership of principals Therese Uthes and Clare Catalano. The broker's website shows 15 employees.

Brookfield Reinsurance to purchase Argo

Brookfield Asset Management's reinsurance unit agreed to take Bermuda-based specialty insurer Argo Group private in a $1.1 billion deal.

The unit, Bermuda-based Brookfield Reinsurance, said it will offer a $30 a share cash payment to shareholders of Argo, representing a premium of about 7% to the stock's last close before the deal was announced, after the merger is completed in the second half of this year (Reuters).

PCF acquires broker based in Louisiana

PCF Insurance Services said it has acquired Oak Point Risk Advisors, based in Thibodaux, Louisiana.

Terms of the transaction were not disclosed.

Oak Point specializes in commercial insurance for the maritime, oil and gas, and construction industries, PCF said in a statement.

The brokerage's website shows 12 employees.

Peter C. Foy, founder, chairman and CEO of PCF, said in a statement that Oak Point has "a unique and deep understanding of the risks businesses along the Gulf Coast face."

COMMENTARY

Market changes have lasting impact

It's tempting to view insurance pricing cycles as simply the natural consequence of supply and demand: Prices rise as capacity retreats and decline when the prospect of higher profits attracts it back, with little else changing.

As the hardening insurance market is now in its fifth year, though, some changes appear to be happening that will likely be permanent rather than temporary. That should not be a surprise.

Past hard markets have seen some dramatic, lasting shifts in the way commercial insurance is conducted. Famously, in the mid-1980s when the liability market dried up and the cover of Time magazine proclaimed "Sorry, America Your Insurance Has Been Canceled," sharp minds in the sector got together with large corporate insurance buyers to build alternative excess liability insurance companies.

In the early 1990s, after Hurricane Andrew blew through the balance sheets of several reinsurers, eight new highly capitalized reinsurers were formed, and the modern Bermuda property cat market was born. Reinsurance was also a concern after the 9/11 terrorist attacks, so the federal government got into the business of backstopping the insurance sector and continues to do so.

Gavin Souter
EDITOR

It took a longer gestation period, but after Hurricane Katrina struck in 2005, the insurance-linked securities market finally came into its own, transforming the retrocessional reinsurance market and bringing previously untapped sources of capital into the hazard risk-bearing business.

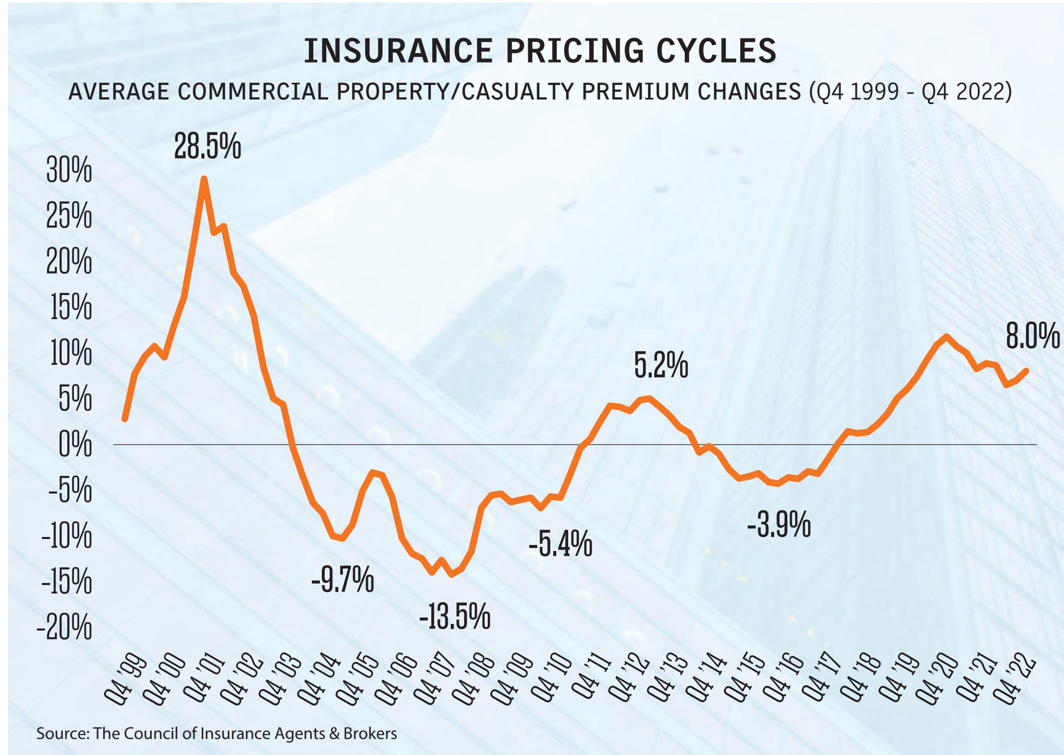
This time around, changes appear to be less obvious, partly because the innovations of past hard markets strengthened the foundations of the business and also we don't yet have the benefit of hindsight, but nonetheless things are moving.

For example, as we've reported in this and past issues, in addition to paying higher premiums, policyholders are having to take significantly higher retentions and are finding that they cannot buy all the coverage they need.

To address the problem, companies with captives are making far more extensive use of the alternative risk transfer vehicles to fund layers throughout their programs. Things can easily change, and captive owners can return to the commercial market as cycles change, but there seems to be a lasting shift in what insurers are prepared to offer.

Another alternative market that is being extended is the ILS sector, which has expanded beyond property risks and is now tentatively covering cyber liability exposures. If the efforts are successful a much larger amount of cyber capacity could become available, and insurers and reinsurers would finally be able to offer broad, substantive coverage for a wide range of cyber risks rather than the limited coverage that's available today.

It's too early to tell whether these or several other changes will have a lasting effect on the market, but it's fair to say that when prices flatten or even fall, buyers' expectations will have shifted and it's the sellers that respond to those changes that will be the most successful.



Source: The Council of Insurance Agents & Brokers

VIEWPOINT

Abortion ruling alters risks

BY CLAIRE WILKINSON
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The U.S. Supreme Court decision to overturn Roe v. Wade has been in place for less than a year and already it's clear the liability environment for medical professionals and their insurers is far from straightforward and in some ways is becoming more complicated.

The June 24, 2022, ruling in *Dobbs v. Jackson Women's Health Organization* overturned the 50-year-old *Roe v. Wade* decision and held there is no constitutional right to an abortion in the United States.

Since then, various state laws related to abortion have gone into effect, and numerous legislatures around the country continue to introduce bills. More than a dozen states have a complete abortion ban, some ban abortion after a specified point in the pregnancy, and some require a waiting period. There are also states where abortion remains legal while courts decide whether bans can take effect.

The uncertain and evolving legal environment leaves doctors, nurses and many other medical professionals — those on whom women depend for their medical expertise and to provide a standard of care — in a precarious position.

The implications for abortion providers are clear — if they are providing services in a state where abortions are banned, they are breaking the law. For other medical providers, though, such as OBGYNs and emergency department physicians, the legal and liability environment is murky.

The risks should not be underestimated. Doctors and other practitioners that perform nonroutine or emergency abortions — for example to preserve the lives of mothers — potentially could face jail time, fines and/or loss of their medical licenses in some states, if courts disagree with their assessment of the medical necessity of the procedure. We'll have to wait for cases to go to trial to know for sure. Meanwhile, health care providers and their employers face the prospect of criminal actions and lawsuits.

As we report on page 23, medical malpractice insurers are trying to make sense of the shifting legal landscape, and gray areas or gaps in coverage are emerging. For example, some policies may cover seizures of documents, or provide sublimits for defense of a criminal action or defense of a licensing procedure. Some policies have affirmative exclusions, while others expand coverage.

How this uncertain situation takes the medical profession and medical malpractice insurance coverage forward remains to be seen. Since 1973, when the *Roe v. Wade* decision came down, advances in diagnostics and technology have led to transformative changes in health care. Consider the surgeries that are now performed with robotic assistance and the many diagnoses that can be made at much earlier stages, all of which have helped improve patient care and medical outcomes.

Still, medical malpractice claims have been growing in frequency and severity in recent years, as various factors such as abuse and neglect claims, COVID-19, so-called nuclear jury awards, and the staffing crisis continue to impact the health care sector.

Through all of this, and as the fallout from the *Dobbs* ruling evolves, the need for effective risk management plans and adequate insurance coverage has never been greater. As medical professionals make crucial medical decisions amid shifting state laws, it's critical that hospitals and medical practices support their employees and remain focused on mitigating risk. Med mal insurers, too, need to figure out a way to partner with their policyholders and to provide sustainable coverage that can adapt to changing risks.

Federal proposal to restrict noncompetes could have far-reaching effect on employers

Eric Meyer is a partner at law firm FisherBroyles LLP in Philadelphia. He can be reached at Eric.Meyer@fisherbroyles.com.

On Jan. 5, the Federal Trade Commission proposed a new rule prohibiting employers from imposing noncompetes on their workers. When I first shared the news on LinkedIn, someone commented, "Yeah, bold move FTC …"

And I thought, "Bold move is wearing seersucker before Memorial Day. This is mind-blowingly huge!"

Indeed, more than 11,000 people so far have officially commented on the FTC's website on the proposed rule. The comment period closes March 20.

Unfortunately, I don't have a crystal ball, so I don't know what the final rule will say, let alone whether it will hold up to judicial scrutiny.

I will focus primarily on how the FTC's proposal could affect employers if it is implemented as drafted. I'll also highlight one alternative pending in Congress: the Workforce Mobility Act.

What is the FTC doing?

The FTC's proposed rule would generally prohibit employers from using noncompete clauses. Specifically, it would make it illegal for any employer — regardless of size — to enter into or attempt to enter into a noncompete with a "worker." Worker means a "natural person" who works, whether paid or unpaid, for an employer. This includes employees, independent contractors, externs, interns, volunteers, apprentices or sole proprietors who provide a service to a client or customer.

A worker does not include a franchisee in a franchisee-franchisor relationship but does include a natural person who works for the franchisee or franchisor. Noncompete clauses between franchisors and franchisees would remain subject to federal antitrust law and other applicable laws.

But existing noncompetes are safe, right? Wrong!

An employer that entered into a noncompete clause with a worker before the compliance date must rescind it no later than 180 days after the final rule's publication, which will be the compliance date.

The FTC has prepared model language for employers to communicate the rescission to workers. An employer may also use different language, provided that the notice communicates to the worker that the noncompete clause is no longer in effect and may not be enforced against the worker.

By default, the proposed rule does not ban other types of employment restrictions, such as nonsolicitation and nondisclosure agreements. Still, those agreements could be subject to the rule

if they are so broad in scope that they function as noncompetes.

The FTC provides these examples of potentially de facto noncompete clauses:

- A nondisclosure agreement between an employer and a worker that is written so broadly that it effectively precludes the worker from working in the same field after the conclusion of the worker's employment with the employer.
- A contractual term between an employer and a worker that requires the worker to pay the employer or a third-party entity for training costs if the worker's employment terminates within a specified time period, where the required payment is not reasonably related to the costs the employer incurred for training the worker.

Also, the proposed rule will not apply to a noncompete clause that is entered into by a person selling a business entity or otherwise disposing of all of their ownership interest in the business entity, or by a person who is selling all or substantially all of a business entity's operating assets, when the person restricted by the noncompete clause is an owner, member, or partner holding at least a 25% ownership interest in the business entity.

A possible alternative in Congress

Last month, a bipartisan group of U.S. Senators reintroduced the Workforce Mobility Act to limit the use of noncompete agreements.

According to a statement by the group, the legislation would:

- Narrow the use of noncompete agreements to include only necessary instances of a dissolution of a partnership or the sale of a business.
- Require employers to make their employees aware of the limitation on noncompetes. The bill further authorizes the Department of Labor to do the same.
- Require the FTC and the DOL to submit a report to Congress on any enforcement actions taken.

Unlike the FTC's proposed rule, the Workforce Mobility Act affords victims a private right of action in federal court to recover actual damages and any attorneys fees and costs incurred. No pre-dispute arbitration agreement or pre-dispute joint-action waiver would apply.

In contrast to the FTC's proposal, the Workforce Mobility Act would not affect existing noncompete agreements. They would remain intact, subject to state law governing their enforceability.

How should businesses prepare?

Neither the Workforce Mobility Act nor the FTC's proposed rule supersedes any state statute, regulation, order or interpretation that is at least as protective as the proposed rule.

California, North Dakota and Oklahoma already ban noncompetes.

Companies doing business elsewhere don't have to start tearing up existing noncompete agreements because the FTC proposal is still a "proposal" and not a final rule. Likewise, the Workforce Mobility Act has to overcome many hurdles before crossing President Biden's desk for signature.

But courts evaluating the enforcement of noncompete agreements generally expect them to serve legitimate business purposes. And, even then, most courts consider the breadth of the agreement both temporally and geographically.

For example, the odds are much better that a court will enforce a six-month noncompete, with a 25-mile radius, against a member of the C-suite than it will a worldwide, three-year noncompete against a person whose job is to clean the C-suite.

Companies should consider suitable alternatives such as nonsolicitation agreements, to protect goodwill with customers and current employees, and nondisclosure agreements to protect against misappropriation of trade secrets and confidential information, which still allow former employees the opportunity to earn a living in their chosen profession.

PEOPLE

“The complexity, magnitude and interconnectedness of global risks continue to amplify, putting pressure on client financial and operational performance.”

UP CLOSE

Carol Murphy

NEW JOB TITLE: Chicago-based executive vice president and casualty leader, Hub International Ltd.

PREVIOUS POSITION: Chicago-based chief client officer and loss portfolio transactions leader, national casualty practice, Aon Commercial Risk Solutions

OUTLOOK FOR THE INDUSTRY: The complexity, magnitude and interconnectedness of global risks continue to amplify, putting pressure on client financial and operational performance.

GOALS FOR YOUR NEW POSITION: Working within Hub’s agile, boundaryless culture and platform built around client industry expertise, we will continue to build and scale the best talent and resources for client global casualty risk solutions to maximize profitability, vitality and resilience for both our existing and new large customers.

CHALLENGES FACING THE INDUSTRY: While inflation has improved recently, the high level of interest rates pressures both clients with long-tail liabilities as well as insurers with huge reserves against those liabilities. Medical cost inflation is persistently high, even when overall inflation is not, due to advancements in medicine and medical technologies as well as supply-chain and staffing challenges and impacts not only workers compensation claims but also liability.

FIRST EXPERIENCE: As a college intern between my junior and senior years of college, I had a fantastic summer internship in Travelers’ environmental and toxic tort claims department.

ADVICE FOR A NEWCOMER: The advice I received at Johnson & Higgins early in my career was to consider yourself an employee of the customer rather than the brokerage and always seek to serve the customers’ best interests.

DREAM JOB: An explorer and photographer for National Geographic.

COLLEGE MAJOR: Economics

LOOKING FORWARD TO: Innovating to create better solutions around customer needs at a company dedicated to investing in those solutions in a holistic and “boundaryless” way.

FAVORITE MEAL: Fresh authentic Mexican food such as ceviche.

FAVORITE BOOK: Every several years, I revisit Anne Morrow Lindbergh’s “Gift from the Sea,” which helps me regain perspective.

HOBBIES: Traveling and exploring new places and cultures is my passion. In addition, I love gardening, hiking, cooking, photography, art, boating, skiing and recently golf.

FAVORITE TV SHOW: I don’t watch much TV, so I’m always late to the best shows and end up binge-watching. Currently, I’m watching “Peaky Blinders.”

ON A SATURDAY AFTERNOON: Outdoor activities, weather permitting, as well as art and craft projects, fixing up my house and art fairs, live-music shows with friends.

ON THE MOVE

Aon PLC named **Jennifer Rutecky**, former senior vice president and strategic advisory and analytics practice leader at Lockton Cos. LLC, as Atlanta market leader. She replaces Rachel Perry, who last year was named chief innovation officer, North America, for Aon’s commercial risk solutions business.

Thomas H. Lee Partners LP, a Boston-based private-equity firm, named **John Haley** an executive partner. Mr. Haley stepped down as CEO of Willis Towers Watson PLC in 2021 after the broker’s proposed merger with Aon PLC was called off. He had planned to retire after the merger.

Willis Towers Watson PLC hired **Twane Duckworth** and **Tamika Puckett** to co-lead its public entity practice. Mr. Duckworth was previously managing director, risk management, for the city of Garland, Texas. Ms. Puckett had been global client advocate, director-new business for WTW.

Liberty Mutual Insurance Co. named **Marc Orloff** president of its global risk solutions North America, middle-market business, replacing Garth Pepper, who retired. Mr. Orloff had been president of field operations and marketing for GRS North America at the insurer.

Newfront Insurance Inc. has recruited former Marsh LLC executive **Phil Huffman** as market leader for greater Pittsburgh. Mr. Huffman was previously senior vice president and Pittsburgh growth leader at Marsh.

Texas Mutual Insurance Co. named Chief Operating Officer **Jeanette Ward** president and CEO. Ms. Ward replaces retiring president and CEO Rich Gergasko at the Austin-based workers compensation insurer. Ms. Ward was named one of *Business Insurance*’s Women to Watch in 2018.

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Convenience store lands in murky water

A convenience store worker took convenience to a new level when he used a mop to clean the floor and then the inside of a microwave used by patrons.

The incident at a 7-Eleven store in Malaysia was made public on Twitter in a four-photo post that got 2.2 million views and was retweeted 14,300 times, according to MSN.

The employee, working in an outlet in Kampung Attap, Kuala Lumpur, has since been suspended and 7-Eleven issued an official statement offering "sincerest apologies for the actions of one of our employees who failed to comply with our strict sanitation protocols."

"This is a clear violation and does not reflect the high standards we strive to maintain in all of our stores," the company said.

Jake moves in on sketch chatter

Just prior to Super Bowl commercial madness, lighting up social media was a "Saturday Night Live" sketch that spoofed State Farm's promise to always be there for homeowners, "24/7."

The sketch features a creepy, unhinged Jake, played by SNL host Michael B. Jordan, who arrives at an insured's home to assist with a clogged toilet claim and never leaves.

Cue horror movie theme music, a dark living room and Jake. "Even if you do find cheaper coverage, we'll just match it," Jake tells the husband.

The sketch has been the subject of lighthearted tweeting by at least one State Farm competitor: The Geico Gecko, who tweeted, "We've got a different idea about 24/7 customer service."

Even the Jake from State Farm account had some fun with it: "Like he said, we're always there (laugh till you cry emoji)."

DOLLY PARTON GIVES STRAIGHT TALK ON PHONY CBD CLAIMS

CBD gummies for "severe and critical" pain relief? Sorry, but Dolly Parton — country music legend, actress, businesswoman and dedicated philanthropist — isn't rolling with it.

In a post shared to her Instagram account, Ms. Parton shut down claims that she endorses questionable marijuana-based CBD and ketogenic products, amid outcry from fans.

As has been widely reported, social media advertisements have been claiming the benefits of Dolly Parton-branded CBD and keto gummies to relieve joint pain, sleepless nights and even "reverse dementia."

"Dolly Parton is not affiliated with, has not endorsed, and is not associated with any keto or CBD gummy product. She's more the cake, cookie, and cornbread type," the post, which was signed "Team Dolly," read. (She has recently partnered with Duncan Hines for a line of cake products.)

Failed audition turns into lawsuit

A failed former "American Idol" contestant claims she was working for the show every night and day while auditioning and deserves to be paid in accordance with California wage and hour laws.

Normandy Vamos, who made headlines for her high-pitched voice, is taking the lead in a class action against the production companies behind the show, claiming she and others should have been paid as employees as they waited to audition, according to several media outlets.

"American Idol's producers seem to feel they can break labor laws and exploit ambitious young performers simply because they may be eager for a shot at becoming the next Jennifer Hudson or Carrie Underwood," Ms. Vamos' attorney, Chantal Payton, said in a statement, accessed by Fox News.

Costco customer bulks up battery suit

A Florida Costco Wholesale customer is seeking class-action status in a lawsuit against the warehouse store over its reneging on its "Free Replacement Policy" for defective car batteries, claiming the store charges consumers anyway.

As reported by the South Florida Sun Sentinel, lead plaintiff John Skrandel said he purchased one of the retailer's Interstate Batteries believing he would get a free one if it died within 36 or 42 months. But instead of receiving a free replacement battery, Costco credited Mr. Skrandel and other customers for the amount they originally paid and then required them to pay the difference for a new battery, according to the newspaper.

If certified as a class action, the class would include all battery customers from Sept. 1, 2014, to Dec. 31, 2019. As reported, Costco changed its labels in late 2019 from "Free Replacement" to "Limited Warranty Replacement."