NUTRITION: Healthy eating habits factor into recovery of injured workers - PAGE 4

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COVER STORY

Amid the hard commercial insurance market, buyers have adopted strategies and techniques to keep their organizations protected while minimizing cost increases. A cross section of risk managers and other insurance experts discuss the changes they've made and the successes they've achieved. **PAGE 14**

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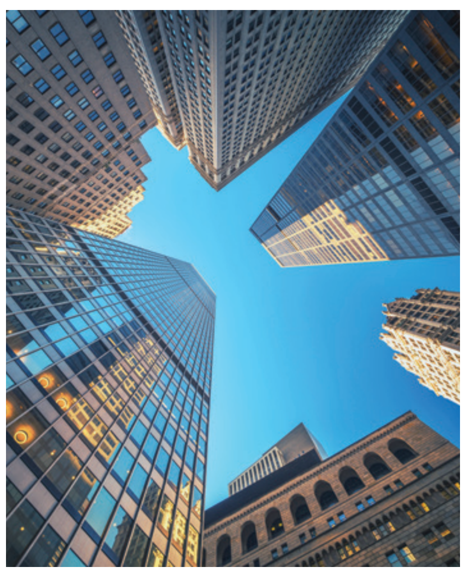

SPECIAL REPORT: CAPTIVE INSURANCE

Captive formations surged last year as new and existing owners sought alternatives as the hard market continued. Among the most active coverage areas for captives were property, commercial auto and medical stop-loss. **PAGE 24**

NEWS ANALYSIS

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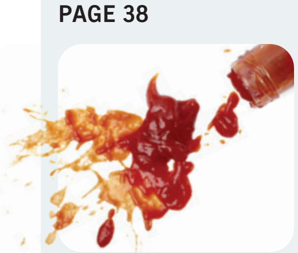

VIEW FROM THE TOP

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NEWS ANALYSIS

Healthy eating seen as aid to treating injuries

BY LOUISE ESOLA
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What an injured worker eats has become a talking point for workers compensation claims handlers as they explore the intersection of nutrition and injury recovery.

Proper nutrition "is something that we identified because if there's poor nutrition, they're not going to recover as quickly or as well, especially if they're having a surgery," said Dr. Adam Seidner, Hartford, Connecticut-based chief medical officer at Hartford Financial Services Group Inc.

The discussions over nutrition branched out from worker advocacy models in workers comp — where there's more interaction between injured workers and claims handlers on issues that may not be directly related to a claim but could affect the outcome.

"We know that proper nutrition is a key governor of health," said Dr. Teresa Bartlett, Troy, Michigan-based managing director, senior medical officer, at third-party administrator Sedgwick Claims Management Services Inc. It's especially important for the aging workforce, which already faces delayed recovery, she added.

Nutrition is "one of the key factors that determines if someone will age well, if their bones are healthy, if their muscles are healthy," she said. "We know that if you're having a surgery, just like the fact that you shouldn't be smoking because you won't recover adequately, if you're not getting proper nutrition your bones and your skin will not heal properly."

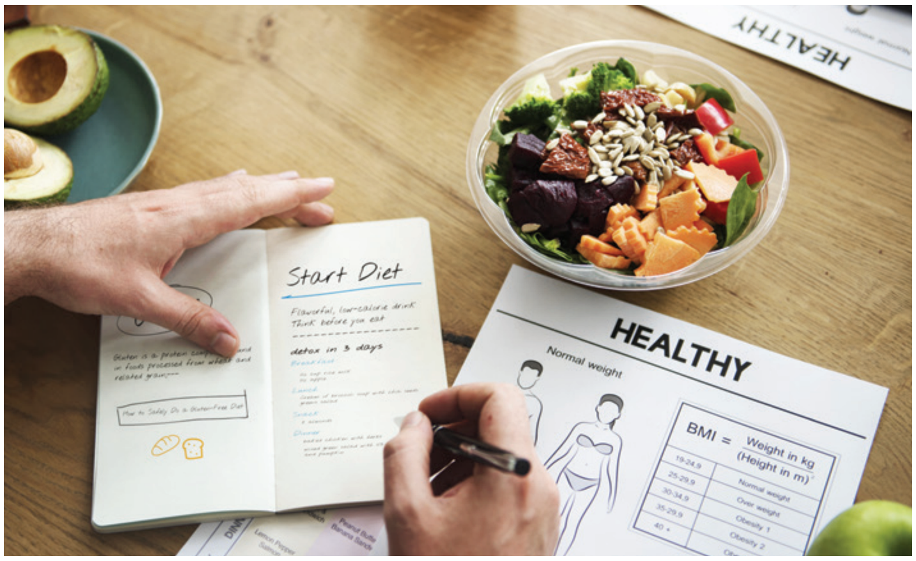
More recently, the issue of social determinants of health — how such factors as access to healthy food, income and education can affect health outcomes — has contributed to the discussion over nutrition.

"It's being looked at in a number of different ways — food insecurity, for instance," Dr. Seidner said. "Do people understand what they should be eating? (It's) not just portion control but the quality of food."

Talking about nutrition "is part of our educating them," said Linda Summerlin, Avon, Indiana-based assistant vice president of national case management services with Gallagher Bassett Insurance Services Inc., which has a handout it provides to workers and claims handlers that provides nutrition advice.

"Obesity is one comorbidity that leads to or contributes to other conditions, and good nutrition education is important for aiding in healing and just ensuring the overall well-being of the person," she said.

Gallagher Bassett's document includes a list of foods that would hinder recovery and those that would promote healing, such as proteins, which aid in building and repairing muscle, and vegetables, which contain



vitamins and minerals that can speed healing. Typically, it's when they are injured that workers are seeing such facts on nutrition and the connection to healing for the first time, Ms. Summerlin said.

Those working in the nutrition field say it's common for people to be late in understanding the role of food in recovery, and there's a growing interest in such factors as inflammation, a component of injury, and how food can help alleviate symptoms that lead to increased pain and delayed recovery.

PRICE TAG OF OBESITY IN COMP

- Consultant GlobalData in February released a report on the economic impact of obesity on employers. It found that obesity in the nonfarm, civilian workforce cost about **$425.5 billion** in 2023, including **$5.2 billion** in higher workers compensation costs and **$31.1 billion** in higher disability payments with the remainder spent on such issues as group health medical costs and absenteeism.
- A 2023 study of 719,482 employees published in the Journal of the Endocrine Society found higher annual employer costs on average of **$623** for short-term disability, **$41** for long-term disability and **$112** for workers compensation payments per employee with obesity, relative to employees with healthy weight.
- When it comes to injuries, obesity-related annual expenses per worker range from **$118** in the low-risk financial activities sector to **$1,857** in the high-risk construction sector.

The advice is to "steer clear of processed foods because processed foods tend to cause inflammation in the body … which could actually slow down or inhibit one's healing," said Melissa Eboli, a nutritionist in New York who runs her own business providing

> "Do people understand what they should be eating? (It's) not just portion control but the quality of food."
>
> Dr. Adam Seidner, Hartford

meals to those in recovery.

For comp patients it's common to talk about avoiding processed and easy-to-access fast food, especially because such high-calorie foods can lead to weight gain while a worker is in recovery — another complicating factor if the patient is not as active as he or she once was, according to Dr. Bartlett.

"When someone is off work or they're frequently in pain they eat foods that make them feel happy, or the comfort foods, and they're also moving much less than they were by going to work every day, and therefore they tend to gain weight," she said.

Irene Opoku-Acheampong, a clinical dietitian who works with patients at Atlanta-based Emory Healthcare, said a decrease in mobility causes the risk of entering "a vicious cycle" of trying to get proper nutrition when access to healthy food may be limited.

Physically, weight gain can slow recovery and increase claims costs by "deconditioning the worker," Dr. Bartlett said. "And, so, when they go back to the job there is a higher risk for more injury and illness because they've gained weight and they're not in shape. They're huffing and puffing and struggling to keep up with what they used to do every day."

Mental issues can also be at play, Ms. Opoku-Acheampong said. "If we're not eating properly, it may lead to exacerbation of depression or anxiety, or maybe even the manifestation for someone who hasn't had those symptoms or that diagnosis before," she said.

HEALING AT MACRONUTRIENT LEVEL CRUCIAL

Macronutrients, elements in foods such as protein and vitamins that help build tissue, comprise a growing field of interest in treating patients in injury or surgery recovery.

"When you injure any kind of tissue — hard tissue like bone or soft tissue muscles, tendons, ligaments, cartilage — your body needs nutrients to regrow itself," said Dr. Jason Winkelmann, a naturopathic doctor and chiropractor who treats chronic pain patients at his practice True Health Natural Pain Clinic in Arvada, Colorado.

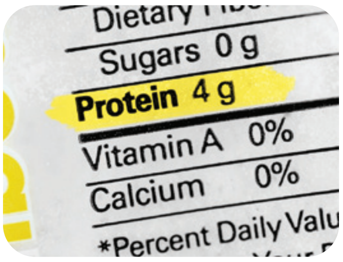
"We have really taken that (knowledge) for granted because if you break an arm, we can put a cast on it and in six weeks take the cast off and your arm is healed. We don't think about what is going on at the biochemical level to heal those tissues. It's protein, it's fat, it's vitamins and minerals that are the building blocks that your body uses from the food that you eat to heal and make new tissues when they're damaged and injured."

Nutritionist Beth Wyman, who works independently in Albany, New York, said focusing on protein alone is often helpful enough for some.

"If you've got a torn ligament and you need to be able to rebuild that tissue … you need those amino acid building blocks in protein in order to do that. And so your protein needs go up when you're trying to recover."

To add to the simplicity, New York-based nutritionist Melissa Eboli said it's the "notion of eating the color of the rainbow; so you eat a myriad of fruits and vegetables," in addition to protein.

Louise Esola



Mass shootings spur interest in coverage

BY MATTHEW LERNER
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Reuters

One person was killed and 21 were wounded in a mass shooting at the end of the Kansas City Chiefs´ Super Bowl victory parade in Kansas City, Missouri, in February.

There were 63 mass shootings in the U.S. in the first two months of 2024, according to the Gun Violence Archive.

The independent data collection and research group, which tracks gun violence incidents, collected daily data from over 7,500 law enforcement, media, government and commercial sources on incidents in which a minimum of four persons were shot.

Tracking annual data, the organization says there were 656 mass shootings in 2023, 646 in 2022, and 689 in 2021. Mass shootings jumped from 414 in 2019 to 610 in 2020.

"It does show a trend, and we are seeing that trend increase year on year," said Claire Fisher, London-based crisis management underwriter for Aspen Insurance Holdings Ltd.

The rising profile of the incidents has drawn attention to active assailant insurance, which is still relatively new, having launched roughly eight years ago, brokers and insurers say.

"You do see an increasing number of clients becoming more educated about the products that are available," said Tarique Nageer, New York-based terrorism placement advisory leader for Marsh LLC.

Active assailant insurance varies by insurer. It can cover a range of exposures, including victim compensation and support, legal liability, property damage and business interruption.

While the market remains small compared with established lines, the number of organizations that have purchased the coverage has increased by about 30% annually for the past four years, Mr. Nageer said.

The sector's relatively short data history and the different forms used make it difficult to generalize about pricing, sources said.

Renewal prices track related lines, said Justin Peterson, Atlanta-based underwriter, deadly weapons protection, for Beazley PLC.

"We are seeing about that same, mid- to high single digits," as in the stand-alone terrorism markets, he said.

Beazley offers up to $10 million of capacity in the U.S. for active assailant coverage and can access up to $30 million through Lloyd's of London, Mr. Peterson said.

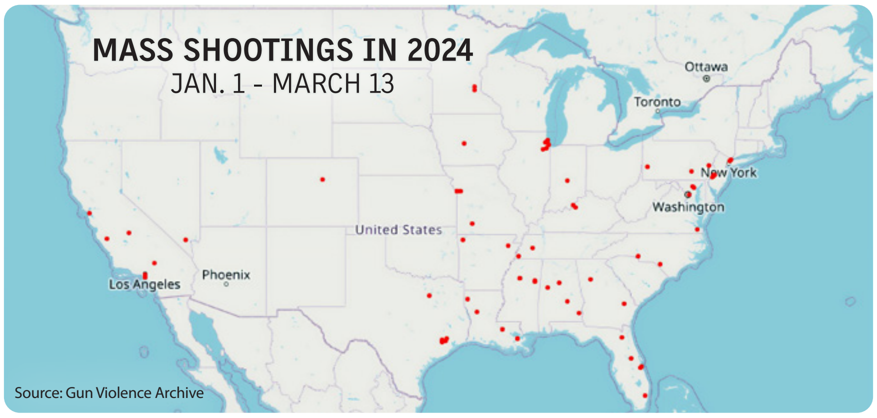
Rates are increasing in the sector on the back of increased frequency and higher court awards, said Tim Strong, London-based head of crisis management for Aspen. "We do keep seeing an increase in the frequency and severity of mass casualty events, which does need to be reflected in the underlying rates of clients," he said.

The U.S is the largest market by premiums, according to Mr. Strong.

Renewals are higher but the increases are less than in 2023, said Morgan Shrubb, Atlanta-based head of terrorism North America for Axa XL, a unit of Axa SA. Some policyholders clearly have more exposure, she added.

Exposures vary "by the class of businesses, because obviously, there are higher risks in some classes than others," Ms. Shrubb said, listing education and retail among the higher risk sectors.

"It's really everyone. We always say in the space that no one is immune from these types of events," Mr. Peterson said, adding that organizations in the education, hospitality, health care, commercial and residential real estate, retail and nonprofit sectors show the most interest in active assailant coverage.



Source: Gun Violence Archive

"It's a very broad client base. Different sectors have different motivations for buying a policy," Ms. Fisher said. A casino may have a very high daily revenue it wants to protect, while a hospital has its duty of care to patients.

More capacity is entering the market, Mr. Strong said. "We have a maximum line of $25 million, but our average line is closer to $7 million."

Services are a key part of the coverage, according to Mr. Strong. Aspen partners with a third-party security company to provide prevention training, which, depending on the size of the premium, could be online training, a seminar, or at the higher end an onsite visit with tabletop exercises and an analysis of the building to ensure there are suitable exit points and safety controls in place, he said.

Axa recently launched new active assailant wording to update its form and incorporate a wider range of services from a separate unit within the insurer charged with assembling vendors offering policyholder services, Ms. Shrubb said.

"What we're doing is offering pre-, during and post-event services," such as dark web sweeps or a security team helping mitigate exposures should there be a threat of an active assailant event at a policyholder location, Ms. Shrubb said.

"When we speak about our product, we probably spend 70% to 80% talking about the prevention and response efforts," Mr. Peterson said.

Policyholders usually renew active assailant coverage annually, Mr. Strong of Aspen said.

"It has the highest retention rate of all our product lines within this space. It does seem when clients buy into it, they do tend to stick with it," he said.

GEOGRAPHY, FREQUENCY PLAY ROLE IN ASSAILANT INSURANCE INQUIRIES

As active assailant events proliferate, particularly mass shootings in the U.S., their scope has expanded geographically, raising concerns about the threat in a wide variety of locations and broadening demand for coverage, sources say.

While urban areas are often perceived as more exposed to violent incidents, events such as the October 2023 mass shooting in a bowling alley and then a bar in Lewiston, Maine, which left 18 dead and 13 injured, show that rural areas are also vulnerable.

Inquiries for active assailant coverage tend to increase after an event, and insurers say that such interest can have a regional emphasis.

"Whenever an event happens, we see an uptick, especially in the area" of the incident, said Morgan Shrubb, Atlanta-based head of terrorism for Axa XL, a unit of Axa SA. An event in Texas, for example, could drive increased interest from brokers across the state, she said.

"We do tend to see a larger regional increase when events happen close to where they are located," said Justin Peterson, Atlanta-based underwriter, deadly weapons protection, for Beazley PLC.

Increasingly far-flung events challenge assumptions over security, he said.

"People start questioning that 'It can never happen to me' mentality," Mr. Peterson said. "That's why we start seeing a little bit of a regional uptick when we have these types of events."

"It can be a major wake up call for locals in the area where they realize this could occur at their properties, schools, universities or places of worship. This feeling of vulnerability combined with the prevalence of shootings will typically cause a spike in the demand," said Seán McCabe, an attorney in the New York office of Anderson Kill P.C. and a member of the firm's government enforcement, internal investigation and white-collar defense group.

Matthew Lerner

Alabama IVF ruling raises med mal concerns

BY CLAIRE WILKINSON
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Fertility clinics and medical professionals that provide in vitro fertilization services can expect greater scrutiny from liability insurers and potential rate hikes in the wake of February's Alabama Supreme Court embryo ruling, industry sources said.

A bill signed into law March 6 by Alabama Gov. Kay Ivey that would shield providers of IVF goods and services from civil and criminal liability offers some protections but is not a cure-all, they said.

The Feb. 16 ruling in *LePage v. Center for Reproductive Medicine*, in which the state's highest court held that "extrauterine embryos" are considered children under Alabama's Wrongful Death of a Minor Act, created legal ambiguities for IVF providers and insurers.

The case arose from a lawsuit filed by three Alabama couples whose frozen embryos were destroyed in an accident at a fertility clinic. Several clinics in Alabama put their IVF services on hold in the wake of the ruling, according to news reports.

Without legal protections for clinics, the ruling makes the storing of embryos uninsurable in Alabama, said Rob Francis, Birmingham, Alabama-based executive vice president, health care professional liability, at medical malpractice insurer ProAssurance Corp.

"The ruling essentially makes it a crime to destroy or harm a child, which equals an embryo outside the womb. We don't insure criminal acts," Mr. Francis said.

From an insurance perspective, the decision creates a lot of uncertainty, said Peter Reilly, West Chester, Pennsylvania-based practice leader and chief sales officer of Hub International Ltd.'s North American health care practice.

Alabama lawmakers moved quickly to pass legislation, now signed by Gov. Ivey, that would provide "civil and criminal immunity for death or damage to an embryo to any individual or entity when providing or receiving goods or services related to in vitro fertilization" with retroactive effect.

While insurers intend to continue to cover IVF providers, they remain concerned over how the ruling will be interpreted, Mr. Reilly said.

"There's going to be a very cautionary approach taken by the underwriters for IVF facilities and doctors, probably at least in the near term," Mr. Reilly said.

10% of U.S. women ages 15 to 44 have received fertility services

YES	NO	NO ANSWER
10%	83%	7%

Among women who have received fertility services, percent saying they received...

Fertility advice	78%
Fertility testing (self or partner)	61%
Drugs to improve ovulation	43%
Artifical insemination	14%
Surgery/drugs for tubes, endometriosis, fibroids	11%
In vitro fertilization	2%

Source: Pew Research Center

Rusty Hughes, Birmingham, Alabama-based senior vice president at CRC Group Inc. said legislation providing legal protections for IVF facilities and professionals won't necessarily make insurers more comfortable providing coverage.

"I don't think it solves the entire issue. There's one school of thought that an opportunistic carrier could come in and charge four times what we were charging to cover this exposure," he said.

The legislation is a "stop gap" and doesn't entirely mitigate the potential liability that clinics, hospitals and health care providers are facing, said Jarrett Kerr, Chicago-based senior vice president at RT ProExec Healthcare, part of RT Specialty, a unit of Ryan Specialty Holdings Inc.

"The ruling at hand is deeming that embryos created through the IVF process are now considered to be children," and the legislation doesn't change that, Mr. Kerr said.

"I could foresee potential instances where for these clinics and hospitals, liability could still be there," he said.

Fertility treatment and IVF clinics have always been considered a high-risk med mal exposure, said Paula Sullivan, Chicago-based managing director at Marsh LLC.

The Alabama Supreme Court decision has increased potential liability, and "therefore it's going to make it a more difficult and costly product to underwrite," Ms. Sullivan said.

There will be greater scrutiny, additional questions from insurers, "and probably more premium attributed," she said.

The decision "will likely create greater liability exposure for our Alabama members and result in higher indemnity payouts on their behalf," Robert White, president of The Doctors Co. and TDC Group, said in an emailed statement.

Several sources said the ruling could have ripple effects for medical professionals and IVF facilities beyond Alabama.

Since the U.S. Supreme Court decision in 2022 that overturned the *Roe vs. Wade* ruling and held there is no constitutional right to an abortion in the U.S., various states have introduced or are considering fetal personhood laws to grant rights to embryos.

The new Alabama law may solve the immediate issue by granting IVF providers immunity from civil or criminal prosecution, but sidesteps the bigger question, said Vivian Gallo, Jacksonville, Florida-based casualty coverage and claims leader for Marsh's health care practice.

"The personhood issue is still a question," Ms. Gallo said.

"Although for now the *LePage* case appears to be limited to IVF clinics operating in Alabama, other states with fetal personhood laws that recognize embryos or fetuses as persons, like Louisiana and Georgia; those with current fetal personhood ballot initiatives, like Florida; and others with abortion bans predicated on the idea that life starts at fertilization may follow suit," attorneys at Boston-based Goodwin Procter LLP said in a Feb. 23 note.

Groups representing Alabama doctors and hospitals have urged the state Supreme Court to revisit its decision.

Evolving risks of handling embryos lead to increased scrutiny of policies

Clinics and storage facilities that provide in vitro fertilization services should review their insurance coverage and take a close look at contracts in the wake of the Alabama Supreme Court ruling, experts say.

This is an evolving area of litigation, and every state is different, said Rob Francis, Birmingham, Alabama-based executive vice president, health care professional liability, at medical malpractice insurer ProAssurance Corp.

Health care providers in states with very restrictive legal language should probably contact their attorneys "to make sure that they are comfortable that their policies are covering the risk that their practice generates," Mr. Francis said.

From a risk management perspective, IVF clinics and storage facilities use some of the most sophisticated technology in the sector, said Rusty Hughes, Birmingham-based senior vice president at CRC Group Inc.

Contracts and hold-harmless agreements that determine which party is responsible for what in the event something goes wrong will likely need to be reviewed, Mr. Hughes said.

The *LePage* ruling highlights the importance of risk mitigation, first and foremost the security of facilities, said Tanner Schultz, assistant vice president at RT ProExec Healthcare, part of RT Specialty, a unit of Ryan Specialty Holdings Inc.

"Making sure there are safeguards around how these specimens are protected has become a hot-button issue and very important for clinics," Mr. Schultz said.

If specimens need to be transferred to a different clinic or state, there could potentially be increased costs, and facilities need to take extra steps to make sure those specimens are completely safe, he said.

Claire Wilkinson


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NEWS ANALYSIS

Heat-related claims rise with climate change

BY JON CAMPISI
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Rising temperatures are causing problems for workers in industries such as construction, warehousing and transportation, and heat-related workers compensation claims are increasing as a result, experts say.

As more claims are submitted, claims professionals are stepping up investigations to determine whether they are compensable.

Safety advocates, meanwhile, are urging the U.S. Occupational Safety and Health Administration to finalize a workplace safety standard that addresses the potential for heat-related injuries (see related story).

Heat-related workplace risks are expected to increase, as insurers "across the country have identified climate change as an emerging concern," said Patrick Coate, an economist with the Boca Raton, Florida-based National Council on Compensation Insurance, which is researching the connection between weather severity and increased worker injuries.

Insurers manage heat-related workers comp claims much like other injury claims, with investigations of causation and early treatment.

"When people are fatigued (from heat), they tend to not think correctly, they tend not to act correctly, and that results in injuries," said Dennis Tierney, Norwalk, Connecticut-based national director of workers compensation claims for Marsh LLC.

> "When these claims come in, we're investigating them. We're making sure they're compensable."
>
> Dennis Tierney, Marsh

Older workers or those with comorbidities may tire quicker or have a stronger heat reaction, Mr. Tierney said.

"Obviously, when these claims come in, we're investigating them. We're making sure they're compensable," he said.

Claims investigations include reviewing medications a worker is taking that could exacerbate heat issues, experts say.

Insurers must also determine whether activities prior to an injury, such as excessive alcohol consumption, could have made a worker more susceptible to heat injuries, said Joe Paduda, Plainfield, New Hampshire-based principal with Health Strategy Associates, a workers comp consultant.

If a contributing factor did precipitate an injury, though, "the reality is this happened at work," Mr. Paduda said.

"If they die of heat or they die during a heat event" it's likely it will be a considered a work injury, he said.

More frequent heat waves are raising concerns about heat-related illnesses for a wide variety of employers across the U.S.

"The severity of just about every (heat) claim seems to be going up," said Kevin O'Sadnick, St. Louis-based senior risk control manager for Safety National Casualty Corp.

Southern states tend to grapple more frequently with workplace heat illnesses and injuries as temperatures in that region increase. But experts say heat can affect employees anywhere — even indoors, such as in manufacturing facilities that lack proper climate control.

Climate change is also leading to more heat-related injuries in northern states, Mr. Tierney said.

Heat illnesses can include heat stroke, heat exhaustion, heat syncope — or dizziness and fainting — heat cramps, heat rash and rhabdomyolysis, which is a breaking down of muscle tissue. Heat stroke is the most serious and has the most potential to be fatal, according to the U.S. Centers for Disease Control and Prevention.

Instances of workplace fatalities caused by heat include an August 2023 case in which a UPS driver died from heat stroke in Texas, and another UPS driver died from what was believed to be heat stroke in June 2022 in California.

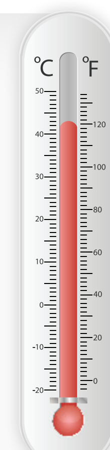
There were 36 confirmed work-related deaths due to environmental heat exposure in 2021, the most recent year for which statistics are available, according to the U.S. Bureau of Labor Statistics.

20,000

Hotter temperatures cause around 20,000 workplace injuries a year, according to the Washington Center for Equitable Growth, a nonprofit focused on economic growth.

Extreme heat:

- Increases injuries in outdoor industries such as **agriculture**, **utilities** and **construction**.
- Increases manufacturing injuries by **7%** on days above **95 degrees Fahrenheit**.
- Increases injuries not typically considered heat-related, such as those from **falls**, **struck-by hazards** and **machinery mishandling**.



Exposure to heat can have long-term effects.

It can cause workers to develop illnesses such as acute kidney disease and chronic kidney disease that could ultimately complicate workers comp claims, said David Bonauto, a research director with the Washington State Department of Labor and Industries.

Heat can increase the absorption of chemicals in a person's body, which could affect farmworkers who are exposed to pesticides, he said.

Most heat-related workers comp claims occur within the first two weeks of employment, suggesting new workers are at higher risk because they haven't yet been acclimated to the work and environment, Mr. Bonauto said.

STATES LEAD WAY ON HEAT SAFETY STANDARDS

Absent a federal heat standard, employers often look to state safety rules and other best practices to reduce heat-related work risks.

As the U.S. Occupational Safety and Health Administration continues the rulemaking process for a federal health and safety standard addressing workplace heat, five states — California, Colorado, Minnesota, Oregon and Washington — have standards, which generally call for regular water and rest breaks for workers during certain weather conditions.

In February, the American Society of Safety Professionals published a voluntary consensus heat standard for the construction and demolition industries. It offers guidance on protecting workers, explains how to acclimate them to high temperatures and offers training for employees and supervisors.

"We've got to do things like provide water, shade, train employees to ask for help," said Jeff Rush, workers compensation program manager for the California Joint Powers Insurance Authority in La Palma, California, a public risk pool. "Let's get the employee hydrated; let's do what we can to get them out of that heat environment."

Some construction companies use wearable technology as a risk mitigation tool, noted Kevin O'Sadnick, St. Louis-based senior risk control manager for Safety National Casualty Corp. The devices can monitor body heat and activity to help ensure workers don't become overheated.

Employers should involve workers in heat illness prevention efforts, said Marcy Goldstein-Gelb, co-executive director of the Somerville, Massachusetts-based National Council for Occupational Safety and Health. She suggested that employers have a health and safety committee that includes workers to identify heat-related hazards.

Jon Campisi

Cyber risks cross organizational lines

BY MATTHEW LERNER
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NEW YORK — Managing vendors and third-party contractors is a critical part of data security and regulatory compliance, experts say.

Data owners must manage contractors to the same standard as their own operations, and they should adopt an organized framework to enable such control, they said during sessions and interviews at the Professional Liability Underwriting Society's Cyber Symposium in New York last month.

"Even if you've outsourced the processing, consumption, analysis, storage or deletion of any data, it is still ultimately your customer and your liability or exposure," said David Shluger, Old Lyme, Connecticut-based head of cyber risk advisory for Axis Capital Holdings Ltd., during a panel discussion at the conference.

"If you are the data owner, you are ultimately responsible and accountable for protecting that data, even if the data is in the custody of a third party," said Ken Morrison, Hartford, Connecticut-based assistant vice president for cyber risk management at Travelers Cos. Inc.

Among the cyber-related advice USI Insurance Services LLC provides to its clients, third-party risk management, or TPRM, is "front and center," said Nadia Hoyte, New York-based national cyber practice leader at the brokerage.

"That's something that clients definitely need to be focused around," Ms. Hoyte said, adding that such exposures are leading to cyber liability insurance claims.

Michelle Chia, New York-based chief underwriting officer, cyber, for Axa XL, a unit of Axa SA, noted noncore operations are increasingly being outsourced to vendors.

"In the cyber world, we refer to outsourced vendor risk as cyber supply chain risk, which has the potential to create the next cyber tsunami if not properly managed," she said.

> "Companies must evaluate vendors and M&A targets' cyber resilience at the same level as their internal cyber controls."
>
> Michelle Chia, Axa XL

An organization's compliance with privacy rights will only be as strong as that of any party that has access to its systems or is processing its data, said Kevin E. Dolan, Philadelphia-based partner and co-chair, advisory compliance practice, for Mullen Coughlin LLC.

"It's really critical to make sure to employ the very same level of diligence with respect to any third party that's accessing or processing the data on the same level as within your organization," Mr. Dolan said.

"Companies must evaluate vendors and M&A targets' cyber resilience at the same level as their internal cyber controls," Ms. Chia said.

Documenting such standards as part of a contract should also be part of an organization's due diligence, Mr. Dolan said.

"This can be done with contracts that explicitly articulate responsibilities, service levels and the right to audit," Mr. Morrison said.

Organizations should establish policies and procedures that govern such relationships across their entire operations, said Mr. Shluger of Axis.

Having an organized framework that sets out the specific goals for regulatory compliance can help an organization avoid missteps, said R.S. Richard Jr., chief of cybersecurity, Region 2 of the Cybersecurity and Infrastructure Security Agency in New York, during the conference.

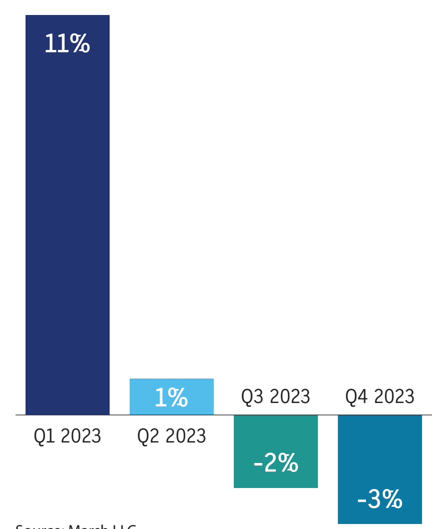
"Third-party risk management is not difficult in theory, but it might be difficult in practice. A company should begin by identifying all third parties that it engages with, or those who would have access to data and systems or provide a service the business is dependent on," he said.

Organizations should conduct an inventory of critical vendors and understand their incident response plans, said Ms. Hoyte of USI.

"If there is a cyber incident, and it begins with your vendor, do you have a good understanding of what the incident response process is that they will engage?" she said.

Compliance with data privacy regulations has grown in scope as more states move to enact such rules. California was the first to adopt such a framework in 2021, and in the three years since 13 more states have done so, with another 20 or more at some stage of legislative development, Mr. Dolan said.

2023 GLOBAL CYBER RATE CHANGE



Source: Marsh LLC

Insurance prices fall as policyholders adopt cyber controls

Cyber insurance premium renewals have swung from double-digit rate increases just a few years ago to single-digit rate decreases in the fourth quarter of 2023 as policyholders improved their cyber controls at the urging of insurers.

Meanwhile, growth in the market is spreading to the small and medium-sized enterprise sector, where business is expected to migrate to online platforms, according to a panel discussion at the Professional Liability Underwriting Society's Cyber Symposium last month in New York.

DJ Ruhlman, New York-based senior vice president at RT Specialty, a unit of Ryan Specialty Holdings Inc., called the security measures that insurers "pushed" on clients, such as multifactor authentication, "a beautiful thing."

"We pushed along that improvement with our clients," Mr. Ruhlman said, adding such controls help mitigate the severity of cyber incidents even as frequency rises.

Panelists said growth in the market had spread beyond large, complex accounts into the small and medium-sized enterprise sector.

There is "tremendous growth in SME and middle market," said Joe DePaul, New York-based chief revenue officer and chief operations officer for IronGate Cybersecurity LLC, who moderated the session.

Cyber coverage for small and medium-sized enterprises is more transactional than with larger accounts, and thus is ideal for online direct distribution, Mr. Ruhlman said. "That book is moving to a digital platform. There's going to be less brokering involved," he said.

"A lot of that business has already gone to some level of automation," said Tim Francis, West Simsbury, Connecticut-based vice president and enterprise cyber lead at Travelers Insurance Cos. Inc., adding the move has been enabled by third-party data sources.

Petra Strojilova, Philadelphia-based deputy head of Willis Towers Watson PLC's North American FINEX cyber/E&O practice, said many small- and medium-sized enterprises are first-time buyers of cyber coverage and will benefit from the associated services provided, particularly pre-incident training.

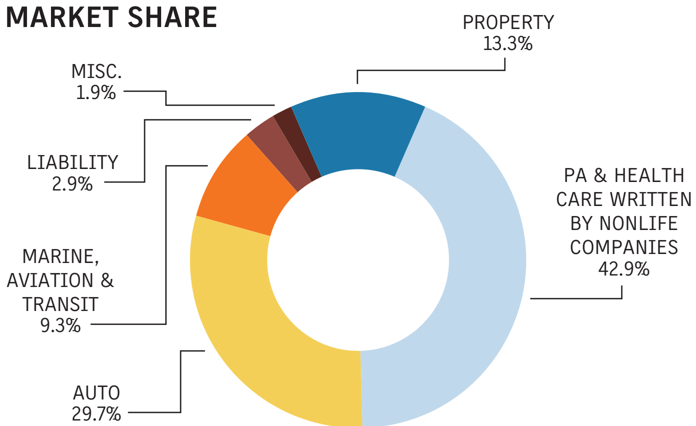
Matthew Lerner

PROFILE: TOGO

154
GLOBAL P/C MARKET RANKING

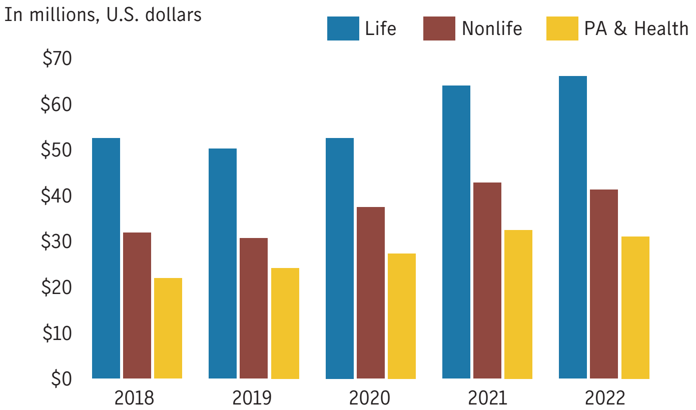
The African nation of Togo has a small nonlife market, with a relatively low level of insurance penetration at 0.5% of GDP. Excluding personal accident and health care, the market saw growth of 7.9% in 2022, with the aviation and other transport sectors doing particularly well. Further growth in the market will be dependent on continued investment in roads, bridges, electrification and other infrastructure. Constraints on the market remain the lack of a meaningful industrial base and the low level of awareness of the benefits of insurance. Many small and medium-sized enterprises tend not to take out insurance because it eats into their profit margins. There are few new risks entering the market, and observers say business tends to merely circulate among existing insurers at lower prices.

MARKET SHARE

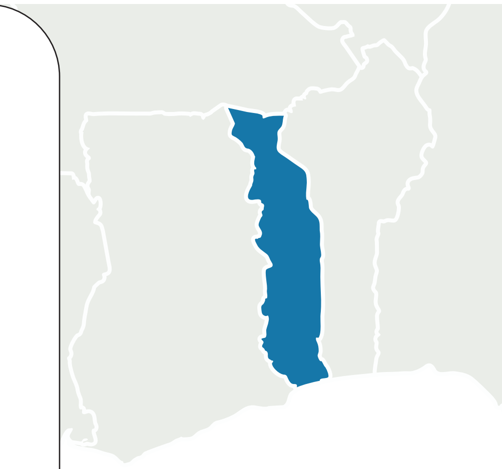


MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA

21,924

square miles

POPULATION

8.7

million

MARKET CONCENTRATION

75.4%

market share of top three insurers

2023 GDP CHANGE (PROJECTED)

5.3%

MARKET DEVELOPMENTS

Updated February 2024

- The government's National Development Plan, known as Togo Roadmap 2025, includes ambitious projects aimed at turning the country into a logistics excellence hub and world-class business center, and developing manufacturing and extractive industries. These efforts should lead to more insurable risks.
- A parametric flood insurance project is to be launched this year in three cities, including Lome, that will cover more than 700,000 inhabitants. The initiative is being co-funded by the InsuResilience Solutions Fund and developed by Axa Climate and Howden in conjunction with Togo-based Pioneers in Action for Integrated Development with the Environment.
- It was reported in June 2023 that the African Risk Capacity Group had launched a parametric flood insurance product in Togo and other African markets to help build resilience to climate-related disasters. ARC partnered with JBA Risk Management to develop the product.
- In 2023, there were five nonlife companies and seven life companies operating in the market following some consolidation. The larger regional African insurance groups operate in the market and competition is fierce. The nonlife market leader in 2022 was Sanlam Assurance (formerly SAHAM Assurance) with a market share of 35.3%, followed by SUNU Assurances and GTA Assurances.
- Conference Interafricaine des Marches d'Assurances has invited comments from interested parties on draft regulation related to digital insurance with a view to submitting the finalized recommendations to CIMA's committee of experts. No date has been set for their publication.

COMPULSORY INSURANCE

- Auto third-party liability
- Workers compensation (part of state-run social security)
- Import insurance
- Professional indemnity for insurance brokers
- Shipowners liability for marine oil pollution (financial guarantee or insurance)
- 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

NONADMITTED

Nonadmitted insurance is not permitted in Togo because the law provides that insurance must be purchased from locally licensed insurers with the exception of companies providing specialized insurance services to one or more CIMA member states, although this is subject to supervisory approval.

INTERMEDIARIES

Brokers and agents must be locally licensed to do insurance business. They are not allowed to place business with nonadmitted insurers.

MARKET PRACTICE

The application of the law forbidding nonadmitted insurance is said to be total. Coinsurance is commonly practiced in Togo, and fronting is the accepted solution to finding cover for any risks that need to be insured abroad because they exceed the capacity or technical skills of local insurers.

Rusty Reid

HIGGINBOTHAM

Rusty Reid joined Higginbotham in 1986 and became CEO in 1989 after he led the employee purchase of the Fort Worth, Texas-based brokerage. In 2009, private-equity firm Stone Point Capital LLC invested in Higginbotham, but it remains majority owned by employees. Since the investment 15 years ago, Higginbotham has grown rapidly through acquisitions and organic expansion. With its base in Texas and the Southeast and 36 specialty practices, the brokerage has about 3,100 employees and is the 21st-largest brokerage of U.S. business. Mr. Reid recently spoke with *Business Insurance* Editor Gavin Souter about Higginbotham's growth and market trends. Edited excerpts follow.

Q Over the past 15 years, you've grown the company tenfold; how much of that has been through acquisitions and how much has been organic?

A It's literally almost 50/50 and that's by design. Every firm that has joined us also grows significantly post transaction. You'll see that if we acquired $30 million in revenue in a year, our organic grew $30 million; if we acquired $50 million, we grew organic $50 million; if we acquired $100 million, we grew organically $100 million.

Q How have you managed to maintain that organic growth?

A Every one of our producers are employee owners, so they are completely aligned with the strategy of growth. And we built out some "day two" services, where we've taken the national account service model of providing both risk management and benefit administrative services and we make that available to our clients at no charge, and, more importantly, they are also available to our production staff for no charge.

So, we've kind of removed the friction if we need to deploy loss prevention services to a client to get them rehabbed so the market will applaud them again; that's automatically included.

The other thing that we've done, and this goes back to me being hired as a newbie, is we try to invest a couple of percentage points on an annual basis bringing in youth into our organization, and they are huge drivers of our organic growth.

Q Some acquisitive brokers have pulled back since interest rates started rising, but you have continued to make acquisitions. Why are you still going ahead with acquisitions?

A Even when money was free, and it's certainly not anymore, we've not ever been over-leveraged compared with our peer group. There's only one class of stock and there's only one layer of debt, and I'm kind of agnostic as to what market conditions are. You need to run a business and have a vision and an execution plan to operate regardless of external conditions.

We look at it more from a macro view and maybe the cost today is a little more, but as long as we've got the free cash flow and we've got the organic growth it's not going to change who we want to be.

Q Even though the number of acquisitions generally in the industry is down, prices still seem to be high. Is that what you've seen?

A There seems to be a common theme where you kind of have the haves and the have-nots, so there are people that have come to the realization that this is a great industry to invest behind. They say, "Hey, this opportunity's become available, I want to get in this game, and I know that to get in this game I'm going to have to pay up." So, even though the number of buyers may have shrunk, it doesn't mean that the appetite around insurance as an asset allocation has gone down at all.

The other thing is that the sellers are very picky, and rightfully so because they are monetizing their lifelong work. They care a lot about what does day two look like in their world. When you find a quality buyer and a quality seller, they're going to spend the time really figuring out what's important to one another, not only on the front end at the transactional level but also prospectively. When you lose sight of what your greatest asset is, which is the people that go up and down in the elevator every day, you're not going to be able to play long in this game.

Q You have a lot of business in the Southeast, and many people are moving to areas where you're active, but also there seems to be a change in the weather. Are you seeing significant increases in property losses?

A 2022 had a lot of claims, and the same thing happened unfortunately in 2023, and there's a shift in weather patterns. Fort Worth used to be the heart of the hail belt, and that's not the case anymore; it seems to be shifting east. That's going to drive market conditions, and all of us in our industry have to be more creative, leveraging captives, leveraging self-insured retentions, all those things. But not every client is going to be able to utilize those tools, which is even more of a reason to have things like loss prevention services available, have things like claims adjusters on staff. It takes all those things — the creativity in and around the placement and what you're going to provide from a risk management supportive perspective.

Q How do you see the market at the moment?

A I still think there are some property-related issues. In certain markets, such as executive lines, you're seeing some improvements.

In workers compensation, you're going to see improvement in states like Texas where there's been reform.

But where you might get one state under control, another state gets out of control. Transportation is a great example. Nuclear verdicts are happening everywhere and until you have some level of tort reform, you're going to continue to see that as a hot spot. But if you're working with clients that implement best practices around loss prevention and indemnification, it's a great industry and we're big in that industry. You have to figure how to get your clients all the tools and make sure they are leveraging all the tools, so they don't find themselves the victim of that nuclear verdict.

When you lose sight of what your greatest asset is, which is the people that go up and down in the elevator every day, you're not going to be able to play long in this game.

RISK MANAGERS ADAPT STRATEGIES TO ADDRESS SHIFTING MARKET DYNAMICS

Persistent price hikes across major insurance lines prompt reevaluations

Commercial insurance buyers have endured price hikes in most major coverage lines for six years, and there seems little to suggest that rates will soften anytime soon.

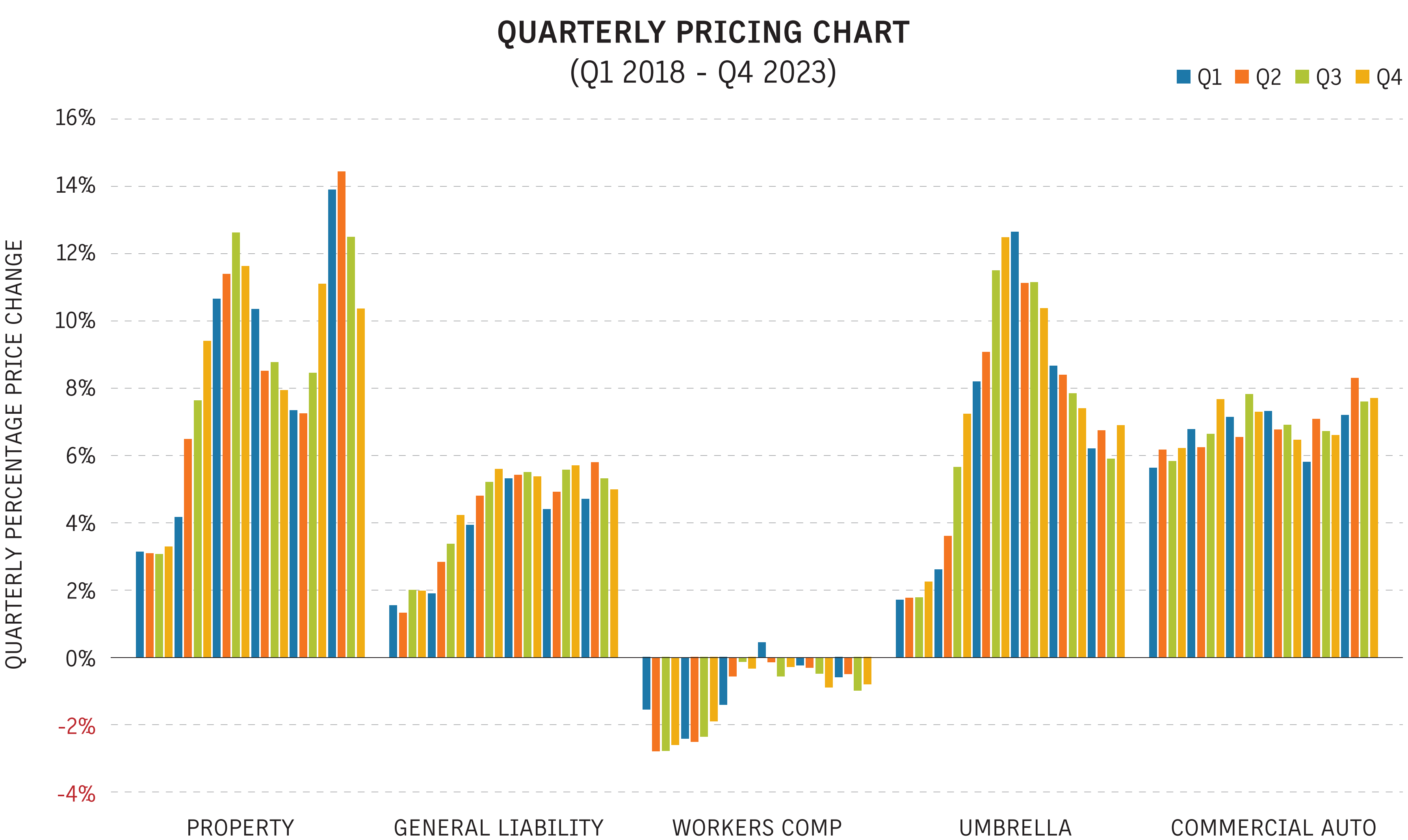
According to *Business Insurance*'s quarterly pricing chart, which aggregates major industry quarterly pricing reports, prices have risen most for property insurance coverage, with rate hikes peaking at 14.4% in the second quarter of 2023. Umbrella rates saw the second largest average increase, peaking at 12.7% in the first quarter of 2021; followed by commercial auto, peaking at 8.3% in the second quarter of 2023; and general liability, which peaked at 5.8% in the same quarter. The interactive pricing chart is available at businessinsurance.com.

Some specialty lines, such as public company directors and officers liability insurance, have recently seen decreases, but overall the trend has been toward higher rates.

The only major line to show consistent decreases over the past six years was workers compensation, but the fall in rates was modest — the biggest decline was 2.8% in the 2018 second quarter — and employers still faced challenges with issues such as loss control and return-to-work strategies.

As buyers have adapted to the prolonged hard market, they have adopted new strategies and techniques to help their organizations remain comprehensively protected while minimizing cost increases. *Business Insurance* spoke with experienced risk managers and other insurance experts to learn more about the changes they have made to their programs and the successes they achieved.

Gavin Souter



Sources: CIAB, Marsh, Ivans and MarketScout

Remarketing program produced cost savings, broadened cover options

Creating choices and opportunities has helped Vicinity Energy navigate the extended hard commercial insurance market, said Rachel Thuerk, the company's Boston-based director of risk management.

Rachel Thuerk

The first thing Ms. Thuerk did when she joined Vicinity four years ago was to market the program, which brought in more insurers and choices for Vicinity, resulting in lower premiums.

"That took the price down almost immediately within one renewal cycle," Ms. Thuerk said. "We went from being considered ahead of the market to being consistently at or below the market for renewal rates."

The process was "tremendously time-consuming," according to Ms. Thuerk, but it paid off. "Between changing brokers and marketing the program, we wound up saving about 20% in between the 2020 program and the 2021 program," she said.

Energy can be "a particularly challenging" sector for insurance, and the hard market cycle began in 2017, running a "very long" seven years, Ms. Thuerk said.

The program's property retentions have remained unchanged, and its liability retentions have seen "modest to moderate" increases depending on specific line of coverage, she said.

"We went from being considered ahead of the market to being consistently at or below the market for renewal rates."

Ms. Thuerk also looked to risk control engineering and plant surveys, taking an eyes-on approach by attending five to seven engineering audits each year at Vicinity's power generation plants.

"I go to every one, and I climb on every boiler, and that gives me so much insight into what's going on with the plants, what really needs to be highlighted," said Ms. Thuerk, who has a degree in mechanical engineering.

"Positioning ourselves aggressively as caring about constant improvement on risk reduction has been tremendous in terms of getting more markets engaged and limiting the premium spikes that some others are seeing," Ms. Thuerk said.

The company, meanwhile, is taking strategic steps to change its exposure profile by reducing its use of fossil fuels.

"Vicinity is transitioning away from fossil fuels, which makes us a more attractive risk because the energy underwriters are under a lot of pressure to reduce their exposure, particularly to coal," Ms. Thuerk said.

Matthew Lerner

Data-based approach made underwriters comfortable with risks

Early preparation and taking a data-driven approach enabled Kilroy Realty Corp. to successfully manage the hard market at its March 1 property renewal.

"It takes some intense strategizing to put yourself in the best position to come out with a renewal that you can say you're happy with," said Scott Ritto, senior vice president of risk management at Kilroy in Los Angeles.

Scott Ritto

As a predominantly West Coast-focused real estate investment trust, Kilroy is heavily exposed to earthquake risk, said Mr. Ritto, who is also president of the Los Angeles chapter of the Risk & Insurance Management Society Inc.

Kilroy worked with Marsh LLC to analyze its assets and improve its data quality ahead of its property renewal, checking to make sure secondary building characteristics, such as construction type, were correct, he said.

When the updated data was run through models, it showed a 42% decrease on the average annual losses for those properties, demonstrating on a scientific basis that its buildings would fare better in a large earthquake, Mr. Ritto said.

See **RISK MANAGERS** on page 16

One of the benefits of data analytics is that insurers can feel more comfortable with the capacity or the pricing they offer, "because we should not have as many losses that would impact them," he said.

The data also indicated Kilroy could reevaluate how much earthquake coverage it needed and buy less limit, he said.

"It takes some intense strategizing to put yourself in the best position to come out with a renewal that you can say you're happy with."

"If you're able to look at that (data) and say, 'OK, maybe we don't need as much limit as we bought before,' that has a big impact," Mr. Ritto said. Another benefit is that "it could bring other carriers into the mix," generating more competition, he said.

Alternatives such as captives and parametric programs have gained popularity in the hard market, and risk professionals should consider them, but parametrics, which are based on triggers such as quake intensity rather than actual losses, can be problematic for a REIT, Mr. Ritto said.

"If we get a windfall, or capital, and we don't have damages that income becomes an issue for us to manage and could potentially challenge a REIT status," he said.

Claire Wilkinson

Price increases put risk mitigation efforts under the spotlight

Strong risk management practices and collaboration skills are helping risk professionals successfully navigate the hard market, said Patrick Sterling, vice president of legendary people at Texas Roadhouse in Louisville, Kentucky.


Patrick Sterling

"We always think about what we can do in advance so we don't need to tap into our insurance," said Mr. Sterling, who served as 2022 president of the Risk & Insurance Management Society Inc.

Restaurant businesses are susceptible to supply chain disruptions, inflation, increased litigation, cyber threats, safety issues and staff retention challenges.

"The hard market really emphasizes the impact of all these risks and our ability to recover financially," he said.

Scenario planning, where companies run tabletop exercises to test their business continuity in response to a particular threat such as a ransomware attack, is playing a growing role in mitigating risk, Mr. Sterling said.

It's critical that risk professionals take a "hard look" at their portfolio risk and ensure they have the correct asset values, he said.

Taking the time to understand their insurance policies is also important, Mr. Sterling said.

"A lot of times terms may have changed. There may be new verbiage in there. You've got to make sure you work closely with your broker partners and that you're paying attention to all those details," he said.

Restaurant risk managers are using insurance more creatively, Mr. Sterling said. Some are opting to self-insure rather than purchase coverage at a higher cost, depending on the organization's risk profile and tolerance.

"We always think about what we can do in advance so we don't need to tap into our insurance."

"At that point, having a conservative balance sheet is really important so you have enough money in the bank when the crisis strikes," Mr. Sterling said.

Alternative risk financing, such as single parent or group captives and risk pools, increasingly are being considered. "Everybody wants to get information on how to get a captive started and how they can add value," he said.

But some companies may still choose to purchase insurance even if it costs more, based on their risk appetite, Mr. Sterling said. "That's always an option, but that's where your long-term carrier relationships are really important," he said.

The best way to navigate the hard market is to build strong risk management practices and partner with business leaders across the organization, Mr. Sterling said.

"Risk managers that are effective, realize that this is a team sport," he said.

Claire Wilkinson

Alternative vehicles tapped to ease burden of higher retentions

The challenging insurance market for buyers has created change, said Chris Lang, New York-based global placement leader, U.S. and Canada, for Marsh LLC.

More risk retention by clients is a direct consequence of the extended firm market, and it takes many forms. At a basic level, policyholders are taking higher deductibles and higher retentions, but they are also using captives or alternative structures, such as multiyear structured insurance programs or integrated programs that blend different coverages to achieve savings, Mr. Lang said.


Chris Lang

Parametric coverage, which is insurance triggered by a specific data point, such as wind speed or rainfall amount, is another tool gaining traction in the hard market.

"We're having a parametric conversation in every renewal strategy meeting. We'll have that conversation with just about every significant client," Mr. Lang said.

The use of parametric coverage, although still limited compared with traditional indemnity insurance, has increased "exponentially" among clients in the hard market, he said. One typical use is to fill in wind and other types of deductibles that have risen.

Submissions have also changed, with brokers and policyholders ensuring they are ready to answer increasingly granular questions from insurers about particular risks, Mr. Lang said. "Underwriters are asking specific questions to address certain exposures, so your submissions are more robust," he said.

There are more data and technology tools available to help answer those questions and provide information, although they add time to the process, he said.

"It takes longer to get to that well-informed decision before you bind coverage," Mr. Lang said.

"On the larger, more sophisticated end, the biggest accounts, it's almost time to begin the renewal process right after you renew to get the longest running start. You almost never put the file down," he said.

"We're having a parametric conversation in every renewal strategy meeting. We'll have that conversation with just about every significant client."

While submissions have been refined to carry more information and answer more potential questions, insurers "have gotten better at communicating the need for rate, the need for rate adequacy and for a capital return," Mr. Lang said, helping to smooth negotiations in a challenging market.

Matthew Lerner

Early reporting helps curb university's workers comp claims

While workers compensation hasn't seen volatile conditions that other insurance lines have experienced over the past six years, risk managers remain concerned about trends such as an aging workforce, rising treatment costs and overall employee health.

Courtney Davis Curtis, Chicago-based assistant vice president, risk management and resilience, planning for the University of Chicago, likens the school's campus to a small city, employing about 25,000 workers in such areas as administration, health care, public safety, faculty, research, printing press operations, student work-study and maintenance.


Courtney Davis Curtis

"As soon as an employee is injured, we like to be notified of that immediately, get the necessary paperwork completed and put our insurer on notice."

Workers comp claims come from common sources such as slips, trips and falls and strains that come with heavy lifting but also from less common sources such as accidental needle pricks among workers in the university's research hospital. The school also has to address the risk of infectious disease, which is more pronounced since the COVID-19 pandemic.

An effective way to control costs overall has been the university's early reporting model, a strategy that grew out of studying claims activity and outcomes, Ms. Davis Curtis said.

"It's the information that we've gleaned from many, many years of historical data to manage and monitor the different (injury and treatment) trends that we see," she said.

"As soon as an employee is injured, we like to be notified of that immediately, get the necessary paperwork completed and put our insurer on notice. That's helpful from a couple of regards. It's ensuring that your employee gets the treatment and the care that they need, and if an investigation is needed we'll be able to get on top of that."

Return to work strategies can be a challenge, Ms. Davis Curtis said, as narrow job

See **RISK MANAGERS** on page 18

classifications and department budget constraints make offering light duty difficult.

Such programs "can be pretty challenging to implement at any of the higher education environments," she said. "Many institutions are relatively decentralized … from a budget or financial perspective."

To prevent claims, the risk management department regularly meets with other departments, such as human resources, to implement safety and employee wellness strategies, she said.

"We're pretty holistic in our approach and as comprehensive as necessary to come together as partners to find and identify solutions," she said.

Louise Esola

Cybersecurity vital as hackers target gaming sector

Doubling down on cybersecurity, evaluating multiyear programs and selling their risk to insurers are some of the strategies that can help casino risk professionals manage rising insurance costs.

Cyberattacks are a top concern for the entertainment sector and organizations are focused on eliminating or reducing cyber risks, said Mark Habersack, executive director of risk management at Resorts World Las Vegas.

Mark Habersack

Ransomware attacks at MGM Resorts International and Caesars Entertainment Inc. last year highlighted the threat to the casino industry which collects substantial data through its player programs, vendors, contractors, employees and guests, he said.

"Security is the No. 1 priority because of what a cyberattack costs companies and the reputational risks that go along with it," Mr. Habersack said.

Opened in 2021, Resorts World's modern technology, employee training, multifactor authentication and multifaceted software systems have helped its cyber insurance program, he said.

Affecting various lines of coverage, Nevada Assembly Bill 398, signed into law last year, requires insurers to offer coverage for defense costs outside the limits of liability policies. Resorts World used multiyear policies to manage the change, Mr. Habersack said.

"We went back on certain lines of coverage, we canceled coverages, and we wrote coverages for a two-year program, starting Oct. 1, hoping that our legislature when it comes back in two years, will come to their senses," he said.

Resorts World also renewed its property program for a two-year term. "That actually saved us a little bit more money," Mr. Habersack said. "Obviously, the flip side is if the market goes completely the other way, becomes a very soft market, you could end up paying more."

> "Security is the No. 1 priority because of what a cyberattack costs companies and the reputational risks that go along with it."

Higher deductibles are another option, but "it's important to determine what your risk comfort level is," Mr. Habersack said. Resorts World has a $250,000 deductible on its liability insurance program and $500,000 on property and considered increasing them many times in the past three years, he said.

"The problem when you go up, it's extremely difficult to go back down, so you've got to be careful if you're going to raise it, and then when you raise it, how much savings does that really equate to?" he said.

The best way to control costs is to "sell yourself," Mr. Habersack said. "We bring the carriers out, do tours, get them to understand why we're a much better risk than any other property on the Strip," he said.

Claire Wilkinson

Captives strengthen ties with insurers, differentiate risks

The hard market has prompted risk managers to explore alternative risk transfer solutions, such as using captive insurers and data analysis to deaden the blow of skyrocketing premiums, said Kevin Bates, group head of risk and insurance for Australian construction company Lendlease Corp. in Sydney, and a Risk & Insurance Management Society Inc. board director.

Kevin Bates

"We get better at enhancing our risk management practices when the market is hard," he said.

Deploying captives demonstrates a company's knowledge of its own risks and shows insurers a willingness to "put some skin in the game," Mr. Bates said.

"You want to differentiate your risk and want to show that you know your risk, so you actually get better at knowing and understanding your data set and what it means," he said.

Using a captive as a primary layer of coverage can forge a stronger relationship with an insurer and can also be useful for providing certain levels of excess coverage, he said.

"I deploy my captive generously throughout my program in risks that I'm prepared to demonstrate and evidence to the insurance market that they can trust because I trust them, and it's my own money," Mr. Bates said.

In addition, captives can be used strategically throughout a coverage tower, he said.

"If you've got a particular layer that is so expensive compared to what's below it, and what's above it, you can deploy your captive there. So, it's ventilated capacity that you can do a more affordable rate," he said.

Seeking guidance from and maintaining good rapport with an insurance broker are also crucial during a hard market, Mr. Bates said.

> "We get better at enhancing our risk management practices when the market is hard."

"Relationships with brokers and insurers are very important. Don't underestimate the broker's role, as they are really key to differentiating the risk and they have a lot of relationships with the insurers, so they can take a big portfolio and focus on loss prevention and loss control," he said.

Obtaining multiyear policies is also a viable option if the rate is good, Mr. Bates said.

Shane Dilworth

Accurate valuations create more stability over the long term

Risk managers should "keep their foot on the gas" when it comes to valuing their risk, continue to gather data on their facilities, and find long-term solutions to deal with premium rates that have skyrocketed, say brokers at USI Insurance Services LLC.

Insurers and brokers have emphasized for the past several years that property values should be updated to take into account replacement cost inflation.

"We're a lot closer than we ever have been to adequate valuations," said Jeff Buyze, Orlando, Florida-based national property practice leader at USI. "Although it's still topical, I don't see that as being the large gap that it was when we started the hard market."

Supply chain pressures and inflation have eased, Mr. Buyze said.

If policyholders continue to update valuations regularly and gather location data, they will improve their risk profiles, he said.

Jeff Buyze

Douglas O´Brien

"If you're consistent with how you value your assets and your personal property while continuing to gather key underwriting data points, the hard market will become less of an issue going forward," Mr. Buyze said.

Policyholders should also retain more risks, be flexible about the use of instruments such as indemnity agreements, obtain fronted reinsurance capacity and deploy the surplus in their captives to continue adapting to the hard market, he said.

While captives may not be a suitable option for every business, "they're a very viable long-term solution to reduce the volatility in the market," Mr. Buyze said.

Group captives can secure long-term rate stability for commercial policyholders and some provide excess capacity with fixed rates, said Douglas O'Brien, New York-based national practice division manager, casualty and alternative risk, at USI.

Mr. O'Brien said the rating methodology hasn't changed really more than half a point since 2018. So, we've put a lot of clients into a group captive solution, because of that inherent long-term rate stability."

Policyholders should also consider a multi-year program that offers a fixed rate for a specified period, he said.

> "When you bundle primary casualty and umbrella excess casualty, you get an inherent discount. When you add in things like property, or maybe some executive protection lines, you're getting even more of a discount."

In addition, bundling various coverage lines with the same insurers is a "one-stop shopping approach" that achieves "economies of scale" through discounts, Mr. O'Brien said.

"When you bundle primary casualty and umbrella excess casualty, you get an inherent discount. When you add in things like property, or maybe some executive protection lines, you're getting even more of a discount," he said.

Both brokers also stressed the importance of risk managers regularly meeting with underwriters to differentiate their risks compared with their peers.

Shane Dilworth

ORIGAMI RISK

RISK MANAGEMENT TECHNOLOGY SURVEY

BUSINESS INSURANCE®

BUSINESS INSURANCE®

RISK MANAGEMENT TECHNOLOGY SURVEY

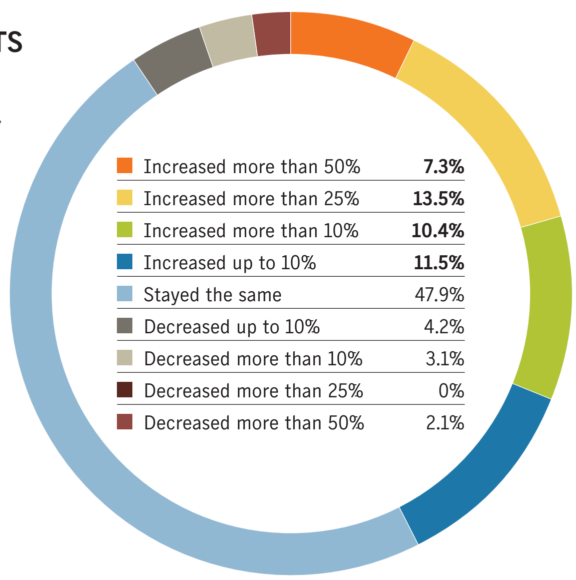
The average annual expenditure on risk management information systems technology is **$192,320**, including solutions bundled with other insurance products and services, according to the 2024 *Business Insurance* online RMIS survey. About 43% of respondents said they have seen increases in their RMIS technology spending, and the average spent on RMIS is 18.4% of a company's total technology expenditure.

This year's survey was conducted between Jan. 24 and Feb. 15. The results are based on responses from 128 respondents who indicated they are corporate insurance buyers/users and involved in their organization's risk management purchase decisions. The base used is the total answering each question.

Source: *BI* Survey

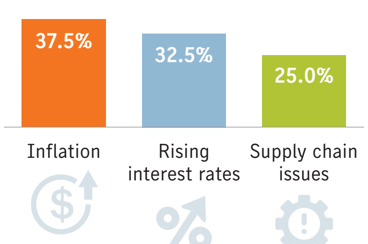
TECHNOLOGY INVESTMENTS

42.7% of respondents to this year's survey reported increases in technology spending, and 47.9% said spending stayed the same.



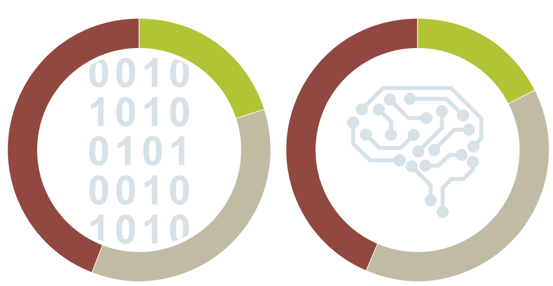
Increased more than 50%	**7.3%**
Increased more than 25%	**13.5%**
Increased more than 10%	**10.4%**
Increased up to 10%	**11.5%**
Stayed the same	47.9%
Decreased up to 10%	4.2%
Decreased more than 10%	3.1%
Decreased more than 25%	0%
Decreased more than 50%	2.1%

The **top three** reasons cited for technology spending increases were inflation, rising interest rates and supply chain issues.



20.2% of respondents said they use big data, while **17.6%** use artificial intelligence in their risk modeling.

	Big data risk modeling	AI risk modeling
Yes	**20.2%**	**17.6%**
No, but planning to	35.8%	38.9%
No	44.0%	43.5%



TOP RMIS FUNCTIONALITIES

Claims management	54.3%
Incident reporting	30.4%
Claims administration	27.2%
Enterprise risk management	19.6%
Policy management	17.4%
Contract/vendor management	15.2%
Renewals/data collection	15.2%
Loss control/safety analysis	13.0%
Asset management	12.0%
Captive/pool management	10.9%
Risk financing	10.9%
OSHA compliance	9.8%
Benchmarking	8.7%
Premium allocation and calculation	8.7%
Litigation management	6.5%
Insurer ratings	5.4%
Other	1.1%
Not sure	1.1%

28% of respondents, compared with **21.2%** last year, said their providers added new functionalities to their RMIS technology platform at additional cost.

	2024	2023
Added general functionalities at no cost	33.3%	37.4%
Added general functionalities at additional cost	**28.0%**	**21.2%**
Added COVID-19-specific capabilities at no cost	15.1%	7.1%
Added COVID-19-specific capabilities at additional cost	5.4%	1.9%
Did not add new functionalities	22.6%	22.2%

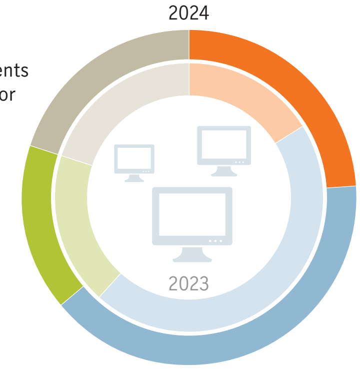
Top 5 things respondents using RMIS said they like about their company's current RMIS technology software/platform:

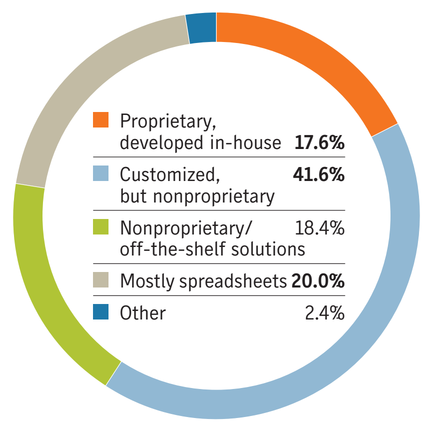
Simple to use/user friendly	47.6%
Single point of reference for tracking, repository and data extraction	46.4%
Customizable for special/specific needs	41.7%
Adaptable/flexible for growing/future needs	41.7%
Accessible online/web-based	41.7%

RMIS USAGE

The survey found **64%** of respondents identify themselves as moderate or heavy users of RMIS technology.

	2024	2023	2022
Heavy user	**24.0%**	16.2%	16.7%
Moderate	**40.0%**	45.5%	34.6%
Light	16.0%	18.4%	30.2%
Not a user	20.0%	19.9%	18.5%

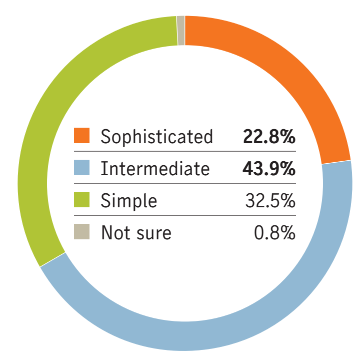




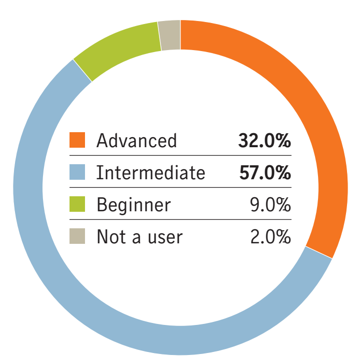
Proprietary, developed in-house	**17.6%**
Customized, but nonproprietary	**41.6%**
Nonproprietary/ off-the-shelf solutions	18.4%
Mostly spreadsheets	**20.0%**
Other	2.4%

Almost **60%** of respondents' systems are customized, while **20%** are still using spreadsheets.

About **two-thirds** of respondents described their organization's RMIS as intermediate or sophisticated.



Sophisticated	**22.8%**
Intermediate	**43.9%**
Simple	32.5%
Not sure	0.8%



Advanced	**32.0%**
Intermediate	**57.0%**
Beginner	9.0%
Not a user	2.0%

Of those whose companies use RMIS technology, **89%** described themselves as intermediate or advanced users.

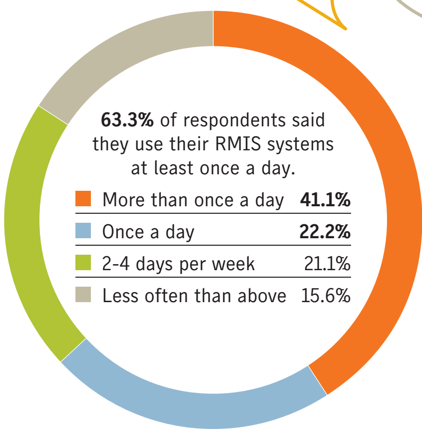
The average time companies have been using RMIS technology is **7.7 years**.

More than 15 years	8.8%
10-15 years	14.2%
6-9 years	22.0%
3-5 years	33.0%
1-2 years	8.8%
Less than a year	4.4%
Not sure	8.8%

ACTIVITIES AND TASKS

Activities and tasks users can handle today with RMIS software/technology that they previously were unable to perform:

- **45.3%** Improve risk analysis, risk assessments; quantify risks
- **41.9%** Produce detailed internal reports
- **37.2%** Capture and analyze risk data
- **34.9%** Workers compensation claims management and monitoring
- **32.6%** Share information across organization
- **30.2%** Risk and insurance management
- **29.1%** Risk data analysis/risk data mining/modeling/forecasting/monitoring
- **25.6%** Establish/improve overall in-house risk data/capturing capabilities
- **19.8%** Insurance management (track changes, limits, coverage, etc.)
- **18.6%** Establish benchmarks and metrics
- **7.0%** None of the above
- **4.7%** Other



63.3% of respondents said they use their RMIS systems at least once a day.

More than once a day	**41.1%**
Once a day	**22.2%**
2-4 days per week	21.1%
Less often than above	15.6%

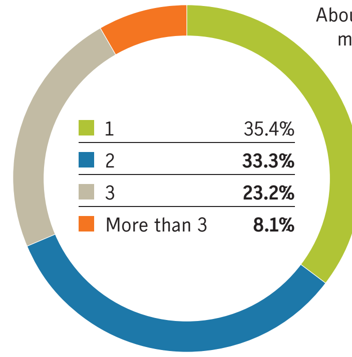
RMIS PROVIDERS

Of those using RMIS, **more than half** use technology/platform from an independent RMIS or specialty technology provider, while the percentage of those using technology from their brokers has nearly doubled, from **14.6%** last year to **28.1%** this year.

	2024	2023
Independent RMIS/specialty technology provider	**52.1%**	65.0%
Third-party administrator	36.5%	32.0%
Insurer	29.2%	25.2%
Broker	**28.1%**	**14.6%**
Other	10.4%	8.7%
Not sure	4.2%	2.9%

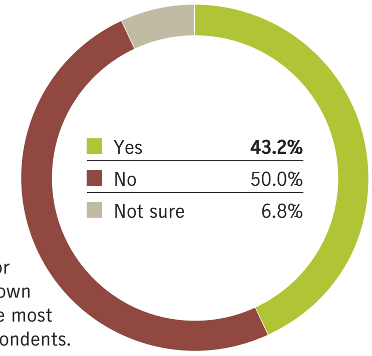
Nearly a third of respondents use solutions from Origami Risk LLC, while **11.5%** use their own in-house systems.

Provider	Percent using
Origami Risk LLC	**31.3%**
ESIS Inc.'s Global RiskAdvantage	13.5%
Riskonnect Inc.'s Riskonnect ClearSight/Ventiv Riskconsole	12.5%
American International Group Inc.'s IntelliRisk	11.5%
APP Technologies LLC's Cloud Claims and other solutions	11.5%
Gallagher Bassett Services Inc.'s Luminos	11.5%
Proprietary system developed in-house	**11.5%**
Helmsman Management Services LLC's RISKTRAC	10.4%
Sedgwick Claims Management Services Inc.'s viaONE	10.4%
CCMSI Holdings Inc.'s iCE	9.4%
Spear Technologies' (formerly Insurium) SpearSuite	9.4%
WTW's Intelligence Central	9.4%
Zurich Insurance Group Ltd.'s RiskIntelligence	9.4%
CorVel Corp.'s Care MC Edge or Cogency IQ	8.3%
Crawford Risk Sciences Group Inc.'s/Broadspire's DMITRI	8.3%
Insurity LLC's Sure Suites and other solutions	8.3%
Ebix Inc.'s RiskEnvision	7.3%
Sedgwick Claims Management Services Inc.'s JURIS	7.3%
DXC Technology Co.'s Assure Claims (formerly RISKMASTER)	6.3%
PCIS Inc.'s ClaimsVISION and CompVISION	5.2%
RiskTrak International's RiskTrak	5.2%
The Hartford's TREO	4.2%
The Travelers Cos. Inc.'s eCARMA	4.2%
Other	16.7%
None of the above	7.3%



About **65%** of respondents use more than one RMIS technology software/platform.

1	35.4%
2	**33.3%**
3	**23.2%**
More than 3	**8.1%**

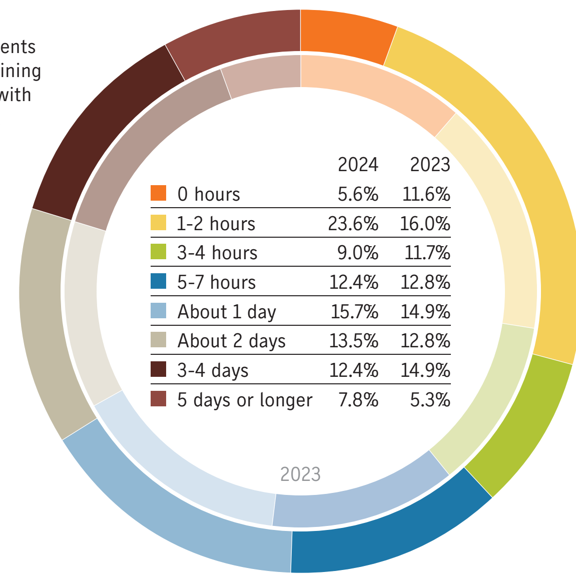


Yes	**43.2%**
No	50.0%
Not sure	6.8%

43.2% of respondents use outside technology platforms/apps/solutions for risk management in addition to their own company's RMIS. LineSlip Solutions is the most mentioned outside vendor used by respondents.

TRAINING

On average, respondents spent **15.2 hours** training in RMIS, compared with **13.5 hours** last year.

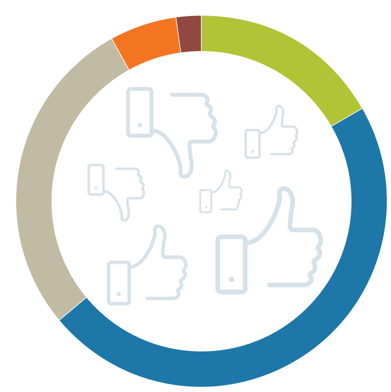


	2024	2023
0 hours	5.6%	11.6%
1-2 hours	23.6%	16.0%
3-4 hours	9.0%	11.7%
5-7 hours	12.4%	12.8%
About 1 day	15.7%	14.9%
About 2 days	13.5%	12.8%
3-4 days	12.4%	14.9%
5 days or longer	7.8%	5.3%

LEVEL OF SATISFACTION

64.1% of survey respondents are either extremely satisfied or satisfied with their current RMIS.

Extremely satisfied	**16.9%**
Satisfied	**47.2%**
Neither satisfied nor dissatisfied	28.1%
Dissatisfied	5.6%
Extremely dissatisfied	2.2%



About 60% said they are not considering changing their RMIS in the next 12 to 24 months.

Yes	21.3%
No	**59.6%**
Not sure	19.1%

23.3% of respondents said their company hired a RMIS consultant to assist with choosing and implementing their RMIS technology.

Yes	**23.3%**
No	57.8%
Not sure	18.9%

Exclusions bar BIPA class-action defense

A federal judge in Illinois sided with a Hanover Insurance Group unit in finding two exclusions in a policy relieve it from defending a condiment maker against a suit alleging violations of the state's Biometric Information Privacy Act.

The federal judge in *Citizens Insurance Co. of America v. Mullins Food Products Inc. et al.*, granted Citizens' request to reconsider a July 31 ruling denying the insurer's summary judgment motion.

The judge concluded exclusions in a policy issued to Broadview, Illinois-based Mullins could be interpreted to bar coverage for alleged BIPA violations.

One exclusion related to the recording and distribution of material or information in violation of law and the other to the access or disclosure of confidential or personal information.

In reconsidering the earlier ruling, the judge was persuaded by the Illinois Court of Appeals' December 2023 decision in *Nat'l Fire Ins. Co. of Hartford & Cont'l Ins. Co. v. Visual Pak Co. Inc.* In that case, a panel found that language in exclusions identical to those in Mullins' policy from Citizens could bar coverage for alleged violations of BIPA.

Citizens sued Mullins and Ricardo Galan in 2022, seeking a court's determination that it was not obligated to cover a proposed class action filed by Mr. Galan in February 2018.

Mr. Galan said in his state court lawsuit that he worked at Mullins from August 2016 until July 2019 and was required to use biometric identifiers, such as fingerprints and handprints, to track time. According to Mr. Galan, Mullins allegedly disseminated that information in violation of BIPA.

COVID suit remains with tribal court

The 9th U.S. Circuit Court of Appeals ruled that a tribal court in Washington state has jurisdiction over a dispute concerning coverage for business and tax revenue losses stemming from the COVID-19 pandemic.

A three-judge panel wrote in *Lexington Insurance Co. v. Cindy Smith et al.* that the Suquamish Tribal Court had jurisdiction over the tribe's breach of contract claim because the programs offered by insurers were tailored to and offered exclusively to Native American tribes.

The panel also said that under an exception in the U.S. Supreme Court's 1981 ruling in *Montana v. United States*, the tribe has sovereign authority over consensual relationships with nonmembers on reservation lands.

Beginning in 2015, the Suquamish Tribe obtained policies from Lexington and other insurers that provided coverage for almost $242 million worth of real property and $50 million worth of personal property, as well as $98 million in coverage for business interruption losses. The policies were offered under the Tribal Party Insurance Program, court records show.

The tribe and the Port Madison Reservation sued Lexington and a number of other insurers in Suquamish Tribal Court after the denial of its claim for business and tax revenue losses stemming from government shutdown orders implemented in March 2020 in response to the COVID-19 pandemic. The tribal court denied the insurers' motion to dismiss the suit, and the decision was upheld by the Suquamish Tribal Court of Appeals.

The insurers then filed suit in federal court in Seattle in December 2021, seeking a determination that the tribal court lacked jurisdiction. The parties filed competing motions for summary judgment, and the court agreed with the tribe that its court had jurisdiction over the dispute.

Attorney's letter not damages claim

A plaintiffs lawyer's 2016 letter informing a company of potential herbicide injury suits was not a "claim for damages" that Zurich American Insurance Co. could use to escape its coverage obligations, the Delaware Supreme Court ruled.

The justices held in *Zurich American Insurance Co. et al. v. Syngenta Crop Protection LLC* that the letter, which was sent in the year prior to Syngenta policies with Zurich going into effect, did not constitute a claim for damages because it did not identify potential plaintiffs or demand payment for damages caused by the herbicide paraquat.

Zurich provided claims made commercial general liability and umbrella policies to Wilmington, Delaware-based Syngenta from 2017 to 2020.

In January 2016, Stephen Tillery of Korein Tillery LLC sent a letter to Syngenta informing it that the firm had started retaining clients who allegedly developed Parkinson's disease as a result of exposure to paraquat. Between September 2017 and April 2019, several lawsuits were filed against Syngenta by individuals claiming they developed the disease after being exposed to the herbicide.

Syngenta informed Zurich about the suits in November 2017, and the insurer initially agreed to defend the company against the litigation subject to a reservation of rights. Syngenta provided the insurer with a copy of the letter from Mr. Tillery in June 2018.

In February 2019, Zurich sued Syngenta, saying Mr. Tillery's letter constituted a claim that occurred before the policies it issued. Syngenta filed a counterclaim for bad faith.

A trial court judge awarded summary judgment to Syngenta after finding that the letter was not a claim for damages that occurred prior to Zurich's coverage.

The judge also agreed with Zurich that Syngenta failed to state a claim for bad faith.

CNA unit loses pollution ruling

A divided Oregon appeals court ruled a CNA Financial Corp. unit cannot seek contributions from other insurers for defense costs arising from disputes over the cleanup of the Portland Harbor Superfund site, saying a separate settlement barred its claim.

The two-judge majority said in *Continental Casualty Co. v. Argonaut Insurance Co. et al.* that a trial court judge erred when rejecting dismissal bids lodged by Liberty Mutual Holdings Co.'s Employers Insurance Co. of Wausau and American International Group Inc.'s Insurance Co. of the State of Pennsylvania.

The Oregon Court of Appeals in Salem concluded that an $8.5 million settlement between Employers and policyholders Schnitzer Steel Industries Inc. and MMGL Corp., formerly Schnitzer Investment Corp., was an environmental claim under the Oregon Environmental Cleanup Assistance Act that barred Continental Casualty Co. from seeking contribution from other insurers.

Schnitzer and MMGL dismantled ships and recycled scrap metal at a site on the banks of the Willamette River.

DOCKET

JAMES RIVER SUES TO CLOSE SALE

James River Group Holdings Ltd. sued Fleming Intermediate Holdings , a portfolio company of private-equity sponsor Altamont Capital Management LP, to require it to complete the $277 million acquisition of JRG Reinsurance Co. Ltd., which was announced in November. The suit was filed in the Supreme Court, New York County, Commercial Division. James River said it took all contractually required steps to complete the deal, but that just hours prior to the closing, Fleming claimed it had no obligation to complete the deal and did not attend the scheduled closing call. Fleming subsequently demanded material changes to the agreed-upon transaction terms, James River said.

ENERGY COMPANY GRANTED NEW TRIAL

A Pennsylvania court ruled that a waste-to-energy company is entitled to a new trial in a case in which a jury awarded an injured worker $6.3 million. The Pennsylvania Superior Court, in *D'Amico v. Covanta Holding Corp.*, reversed a trial court decision denying a motion for a new trial filed by Covanta. The case involves a December 2017 incident in which welder Justin D'Amico was injured when a catwalk fell from a forklift and landed on him.

AGENCY LOSES APPEAL OF $1 MILLION VERDICT

The Supreme Court of Montana unanimously affirmed a $1 million verdict against an insurance agency that failed to obtain additional insurance for a general contractor on behalf of a subcontractor. The five justices said in *TCF Enterprises Inc. et al. v. Rames Inc.* that the trial court correctly found that Big Sky, Montana-based Rames, formerly known as Central Insurance Agency, breached its duty of care to the general contractor by not procuring coverage for it as part of a contract with C&H Engineering and Surveying Inc.

SPECIAL REPORT

Property rate hikes drive captive boom

INSIDE

BY GAVIN SOUTER
gsouter@businessinsurance.com

Captive formations continued to surge last year as new and existing owners turned to alternative risk transfer vehicles to navigate rising commercial insurance market rates.

Property insurance pricing was one of the principal drivers behind captive growth, as average property rates increased by double digits throughout 2023, and rising health care costs and claims led to more interest in medical stop-loss captives.

Commercial auto risks, a long-time staple for captives, were also increasingly covered in the alternative sector as the years-long trend of higher premiums continued, captive managers say.

Captive ownership also diversified, with more managing general agents forming captives, often through protected cell structures, to participate in the risk portfolios they manage.

In addition, there were shifts among captive domiciles, with Bermuda, the leading domicile for decades and the cradle of the modern captive industry, being overtaken by two of its rivals (see story page 27).

Property

Concerns over rising property insurance rates continued to spur many captive formations in 2023, said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont.

"We're seeing some stability in terms of the property market rates, but they're still high, they haven't come down," she said.

In many cases, policyholders formed protected cell companies to adapt their programs to the changing market, said Ellen Charnley, president of Marsh Captive Solutions in Las Vegas.

Property policyholders often choose cells to fix problems they encounter in the commercial market, she said.

"Companies are sometimes looking to set up a vehicle quickly to retain risk in a structured way and slot it into their property structure to fill a gap or plug a hole," Ms. Charnley said.

Using a captive also helps alleviate capacity problems because policyholders can use captives to directly access reinsurers, although there is little difference in price between insurers and reinsurers, said Barry White, Annapolis, Maryland-based executive vice president, sales advisory and analytics, at Artex Risk Solutions Inc., the captive management unit of Arthur J. Gallagher & Co.

"It's more to do with accessing newer capacity and to broaden the world where they can go to get some coverage," he said.

Property risks also can be covered on a quota share basis in a captive to build more capacity, said Michael O'Malley, managing director at Concord, Massachusetts-based Strategic Risk Solutions Inc.

"Mature captives that have built their balance sheet over time are now looking at property because it's the problem coverage line," he said.

Owners usually must have a well-capitalized captive to cover property risks because regulators generally require higher capital ratios for property compared with general liability or workers comp, Mr. White said.

To make a significant change from commercial market pricing, though, captives need to offer a substantial limit, said Jason Palmer, Burlington-based head of U.S. captive management at Willis Towers Watson PLC.

"If you're not talking $5 million and

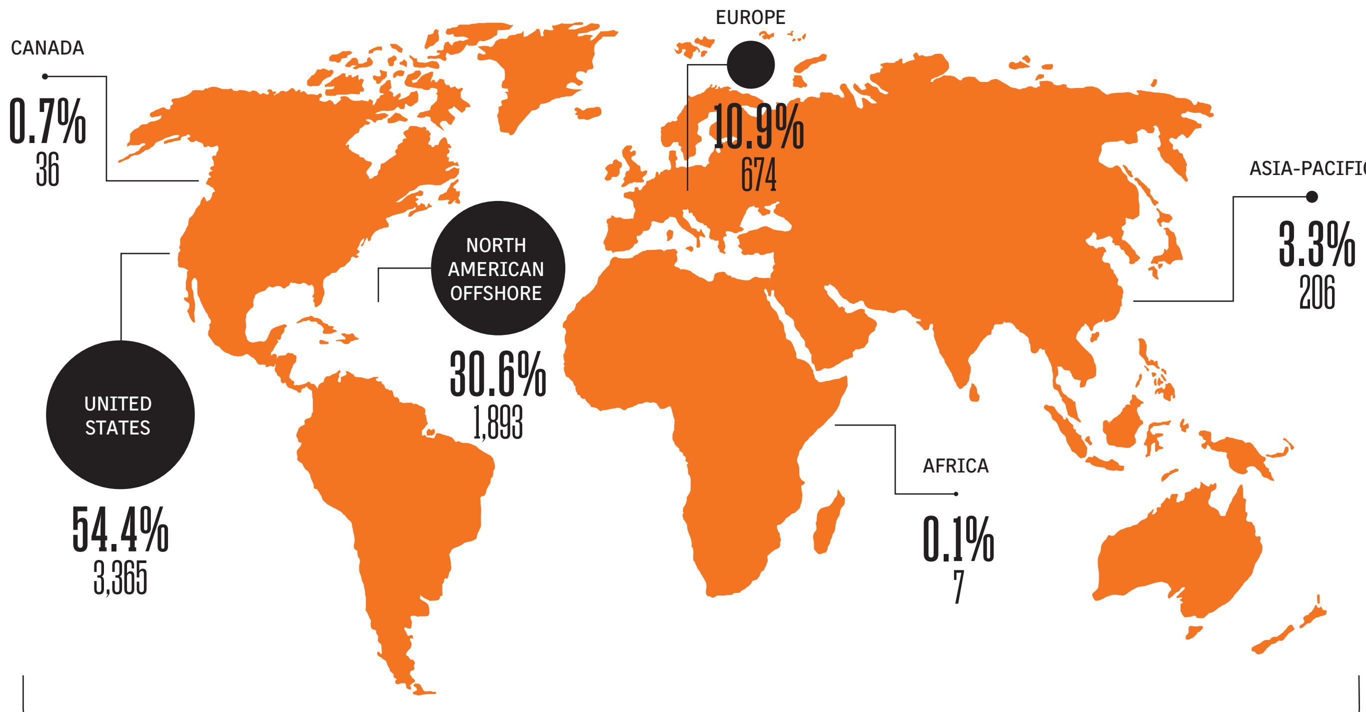
ONSHORE/ OFFSHORE

BY THE NUMBERS

There were 6,181* captives in 2023, not including microcaptives, series captives or individual cells of cell members in protected cell companies.

*Revised due to formula errors

Source: *BI* survey



Percentage of total captives per region

above, you're probably not making any sort of dent in your commercial market placement," Mr. Palmer said.

Established captives may have already accumulated sufficient levels of capital to write the limits, but for new captives "that's the hard part," he said.

Other considerations for policyholders include whether a property policy needs to be fronted, which can involve significant fees and collateral, and whether the captive can issue a policy directly, said Mr. White. Banks often include insurance rating conditions in loan covenants that necessitate fronted coverage.

Medical

There is also increased interest in covering medical stop-loss risk through captives to address higher pressures in the health care sector "and really using that to diversify the captive's portfolio and risk," said Mr. Palmer of WTW.

Again, captive owners can use the vehicles to directly access reinsurance markets for medical stop-loss coverage, Mr. White said.

"That's where there can be, and historically has been, some pricing differential," he said.

International employee benefits risks are increasingly being placed in captives as owners seek flexibility in structuring the programs and to diversify their risk base, said Ms. Gray of Aon.

While benefits have been placed in existing captives for several years, some

See **CAPTIVES** page 27

companies are establishing benefits captives, Mr. White said.

"What I have seen in the last year for the first time is companies actually considering establishing a captive purely for benefits as a first line," he said.

Auto

While auto liability risks have long been covered through captive insurers, there is heightened interest in covering trucking risk through captives because of the difficult commercial market, Mr. O'Malley said.

"Clients are getting frustrated when their positive loss experience and investments in telematics are not reflected in their ability to get what they consider a reasonable proposal on a fully insured basis," he said.

In addition, increased deductibles imposed by insurers have led to a requirement for more collateral to be posted by policyholders, Mr. O'Malley said.

"What we've been doing on a few structures is they pay a premium to the captive, they contribute capital to the captive, and then the funds in the captive are used to offset the collateral," he said.

Cyber

Some captives are also increasing coverage for cyber liability risks, even though commercial cyber rates have stabilized over the past year, said Ms. Charnley of Marsh.

Marsh, the world's largest captive manager (see chart page 31), saw a 30% increase in cyber premiums in captives it manages, Ms. Charnley said.

"Cyber continues to be one of those risks that can be quite volatile in the commercial market, so while it perhaps is softening a little bit right now, risk managers tend to be a little bit wary about what's around the corner," she said.

Having a captive can help companies build reserves to prepare for potential market changes, Ms. Charnley said.

Some owners remain interested in using their captives to directly access reinsurance for their cyber risks, but demand has eased with the stabilization of rates, said Ms. Gray of Aon.

Cyber MGAs and insurtechs have also formed captives over the past couple of years, said Mr. O'Malley of SRS.

They use the captives to create capacity and participate as a risk taker in the coverages they offer, he said.

"They're really surprised in terms of how quick you can get to market with a captive," he said.

Property MGAs are forming captives, to participate in the risks and to show their partner insurers that they have confidence in their portfolios, Mr. White said.

The outlook for 2024 remains strong for captive formations, captive managers say.

"We are still seeing a lot of opportunities in the marketplace; there are still a lot of captive feasibility studies going on; there are still formations going on, so the industry appears to be very robust," Mr. Palmer said.

The pipeline for cell captives remains particularly strong as companies of various sizes seek ways to quickly establish captives, Ms. Charnley said.

VERMONT RISES TO WORLD'S TOP CAPTIVE DOMICILE

The number of U.S. captive domiciles has more than doubled over the past 25 years and the number of captives they house has multiplied several times over, but it was only last year that a domestic domicile became the world's largest.

Vermont, which in 1981 was among the first states to pass captive legislation, last year overtook long-time leader Bermuda and the Cayman Islands, to become the world's largest captive domicile with 659 captives (see chart).

The Green Mountain State has long led the ranks of domestic captive domiciles and other states have looked to it as an example of a successful domicile. Last summer, when Bermuda released its 2022 captive numbers, it became clear that the domicile had slipped behind Vermont and Cayman, and for 2023 Vermont moved ahead of both its offshore rivals. Bermuda has not yet disclosed its captive total for 2023, but it is not expected to report a significant increase.

Most of the growth in captives last year was in the United States, said Nancy Gray, regional managing director-Americas at Aon PLC in Burlington, Vermont.

"There's no financial benefit in terms of going offshore as opposed to onshore and it's much easier to sell it internally when you are forming a captive in the U.S.," she said.

In addition, onshore domiciles have expanded the risks they allow captives to cover, said Michael O'Malley, managing director at Concord, Massachusetts-based Strategic Risk Solutions Inc.

"The onshore domiciles have become more comfortable with entrepreneurial-type risk," Mr. O'Malley said.

Also, many U.S. captive owners elect to be taxed as a U.S. entity, and offshore captives require more administrative filings, he said.

Other factors affecting offshore domiciles include changes in business practices since the COVID-19 pandemic, captive managers said.

"People themselves are just working longer, and to give away two or three days of their time to go to a board meeting is challenging," said Barry White, Annapolis, Maryland-based executive vice president, sales advisory and analytics, at Artex Risk Solutions Inc., the captive management unit of Arthur J. Gallagher & Co.

Still, Bermuda and Cayman continue to attract interest due to the skillsets available in the domiciles, he said.

Marsh saw growth in Bermuda last year but more of the formations were entities for commercial insurance companies rather than single parent captives, said Ellen Charnley, president of Marsh Captive Solutions in Las Vegas. "The domicile has pivoted toward that area for some time," she said.

Marsh also formed several captives in Alberta, which approved captive legislation in 2022. Alberta is home to many large companies that see benefits in choosing their home province to establish a captive, Ms. Charnley said.

Several domiciles also saw significant increases in captive cells last year. Tennessee, which has 522 individual cells, said the smaller structures are attractive ways for companies to start using alternative risk financing structures.

"Increasingly, these smaller lines of insurance are becoming an extremely popular vehicle for companies looking to reduce portions of their insurance expenditures," a spokesman for the Tennessee Department of Commerce and Insurance said in an email.

While most domestic domiciles reported growth last year, Nevada and Delaware reported drops.

The IRS's continued investigation of 831(b) captives, and its run of successful court wins against 831(b) owners it alleges were not using the captives for insurance has led some owners to shut down microcaptives. The IRS has also proposed new regulations regarding 831(b) captives.

More than 50 captives closed in Nevada last year.

"The captives' closings were being done as a proactive reaction to the IRS proposed regulation regarding 831(b) captives," Nick J. Stosic, deputy commissioner in the state's department of insurance, said in an email.

Delaware did not respond to a request for comment.

Gavin Souter

COUNTING CAPTIVES

Ranked by number of captives licensed at year-end 2023

Rank	Domicile	2023	2022
1	Vermont	659	639
2	Cayman Islands	658[1]	642[1]
3	Bermuda	633[2]	633[1,3]
4	Utah	439	412[3]
5	North Carolina	311	294
6	Delaware	289	319[3]
7	Barbados	267	261[3]
8	Hawaii	263	255
9	South Carolina	221	209[3]
10	Guernsey	199[1]	203[1,3]
11	Luxembourg	195	195
12	Arizona	176	162
13	Tennessee	162	150
14	District of Columbia	120	113
15	Montana	100	101
15	Nevada	100	155
17	Isle of Man	98	99[3]
18	Nevis	94	102
19	Singapore	87	82
20	Texas	79	72[3]
21	Turks & Caicos Islands	74	71
22	Labuan	67	67
23	Dublin	63	66
24	Georgia	57[2]	56
25	Oklahoma	56	45[3]
26	Missouri	55	54
27	Alabama	54	51
28	Anguilla	53[1]	62
28	Connecticut	53	45[3]
30	British Virgin Islands	45	46
31	New York	37[2]	39[1,3]
32	Kentucky	32	32
33	Sweden	28	29
34	Michigan	26	24
35	Federated States of Micronesia	25	25
36	Switzerland	24[1]	24[1]
37	Saint Lucia	23	20
38	New Jersey	20[2]	20[2]
38	Puerto Rico	20[2]	20[1,3]
40	British Columbia	19	18
41	Alberta	17[1]	1[1]
42	Arkansas	16	15
43	South Dakota	15	14
44	France	14	10[2]
45	Bahamas	13	13[3]
46	Malta	11[2]	11
47	Gibraltar	10	10
48	Germany	9	9
49	Ohio	8	7
50	Egypt	7[2]	7[2]
50	Liechtenstein	7	8
52	Colorado	6	6
52	Curaçao	6	7[3]
52	Denmark	6	7
52	New Zealand	6[2]	9[2]
52	Norway	6	6
52	Panama	6[1]	6[1]
58	Dubai	5	4[2]
58	Vanuatu	5	5
60	Hong Kong	4	4
60	Nebraska	4	4
62	Guam	3	3
62	Maine	3	3
64	Australia	2[1]	2[1]
64	Illinois	2	2
64	Italy	2[2]	0[2]
64	Jersey	2[2]	2[2]
64	Mauritius	2	2
69	Kansas	1	1
69	U.S. Virgin Islands	1	2
69	West Virginia	1	1
	TOTAL	6,181*	6,093[3]*

[1]From website [2]*BI* estimate [3]Restated *Revised due to formula errors
Source: *BI* survey

Captive owners face tough talks with fronting insurers over collateral

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

SCOTTSDALE, Arizona — Captive owners should ensure they provide accurate data and be ready to compromise on collateral to maximize their rate negotiations with fronting insurers, experts say.

While insurers often impose steep collateral requirements when captives are formed, they usually relax the conditions as the captives build capital, they say.

But all captive owners using fronts should be prepared to demonstrate the strength of the resources behind the vehicles, including reinsurance, they say.

The experts were speaking last month during a panel session at the Captive Insurance Companies Association 2024 International Conference in Scottsdale, which attracted 659 attendees from 44 states and 43 offshore and international domiciles.

It's a partnership between the captive owner and fronting insurer, said Courtney Claflin, Denver-based head of insurance at Fluid Truck Inc., an on-demand truck rental company.

With collateral negotiations, "they want more, we want less," Mr. Claflin said.

"Ultimately, at the end of the day, the front name is on the paper. We're kind of hog-tied. We're going to have to do close to what they want to do. That's fair, but sometimes what they want is exorbitant," he said.

Switching fronts is an option if they want too much money, he said.

Collateral is often posted through letters of credit, trusts or funds withheld arrangements.

Collateral is typically the biggest sticking point in the fronting process, said Jason Tyng, Chicago-based lead of the U.S. captive solutions group at HDI Global Insurance Co., part of HDI Global SE.

"In your mind you're going, 'I'm putting up all this money, for what? For you to hold it,'" but "the reason is there is a risk involved for us as a fronting carrier," he said.

The key is for captive owners to negotiate the most beneficial outcome for their captive from a collateral perspective, Mr. Tyng said.

"Nobody's going to get mad if we get more than we need, but that's kind of part of the negotiation process," he said.

Fronting carriers are trying to protect their risk in the early years of the captive, said Glen Stapleton, New Orleans-based national sales account executive in the specialty markets division at PMA Cos. Inc., a unit of Old Republic General Insurance Group.

Once the captive is up and running "it's somewhat self-sustaining because it builds surplus for doing well," he said.

"We typically want to unwind as quickly as possible back to the owners, and that's typically a four- to six-year process. I've seen collateral returns as early as the third year. It really just depends on the coverage line and the tail of exposures," Mr. Stapleton said.

Negotiations over collateral often become onerous when the captive is newer, but it depends on the captive's initial capital, Mr. Tyng said.

"If you're starting with just the minimum requirements, you're going to see a whole lot higher collateral requirement than you would if you over-capitalized the captive from the beginning," he said.

The captive rating by the fronting insurer is important, said Adriana Scherzinger, Chicago-based head of single-parent captives and alternative risk solutions at Zurich North America, who moderated the session.

"The reason why we also ask for financial statements is we rate each and every captive," she said.

Some captives also buy retrocessional reinsurance, so "the solvency of the captive is based on who is behind this captive and who is the retrocessionaire of the captive," she said.

It's critical for fronting insurers to have the full picture on how the program is structured and who's behind it, she said.

Aggregating data, such as five-plus years of premium and loss history and exposures, in advance of presenting the company to be considered by a particular front is key, Mr. Stapleton said.

"Often, we will receive loss data that might be 100 days or older. … You will get dinged heavily if information is not updated," he said.

The data should be organized in a way that fronting insurers can manipulate easily, Mr. Tyng said. "If you're sending stuff in PDF form, it's very difficult for us to put it in a spreadsheet or into a model.

"Those things make the whole process a lot quicker because we've got teams of people that eat, sleep and breathe Excel," he said.

"Rate negotiation is all about great collaboration," Ms. Scherzinger said.

CAPTIVE DEMAND GROWS AMID COMMERCIAL MARKET CHALLENGES

The captive insurance industry is seeing further growth as businesses look to retain more risk in response to challenging commercial market conditions, according to a panel of industry leaders.

They were speaking last month during a session at the Captive Insurance Companies Association 2024 International Conference.

"We continue to see greater demand for captives as an alternative risk financing structure to help solve problems," said Ryan Gustafson, Chicago-based head of captive solutions at American International Group Inc.

Captives are agile, nimble, and able to solve problems in unique ways that sometimes traditional insurers aren't able to do as quickly, Mr. Gustafson said.

The property market is driving captive growth amid 24 consecutive quarters of global insurance pricing increases, he said.

"The cost structure has changed for a lot of clients, driving the need to look at some sort of a new or alternative solution in conjunction with your traditional risk transfer program," he said.

Casualty insurance is and will continue to be in a hard market, said Dawn Hiestand, Chicago-based executive vice president and head of group captives for Zurich North America.

Members of group captives "want to be able to have some stability and be rewarded for their actual risk management practices, as well as their focus on loss containment," Ms. Hiestand said.

That will become increasingly important as the casualty market continues to experience increased rates quarter over quarter, just like property, she said.

The captive industry has never failed to rise to the occasion and innovate whatever the challenge of the moment happens to be, said Brian First, Hartford, Connecticut-based president of Arch Insurance Group, North America.

Captives provide a "win-win scenario," because insurers share the risk with their customers, Mr. First said.

"That puts you on the same side of the table and makes you long-term thinkers. You're both pursuing a profit together," he said.

A growing number of domiciles in the U.S., Canada and elsewhere are adopting captive legislation amid a more favorable regulatory environment, Mr. Gustafson said.

"What I hear from our clients and brokers is that regulators are really working hand in glove with them, promoting, helping start up captives and enabling it as a strategic tool," he said.

Education around captives has also increased, he said.

Companies are looking to captive consultants, managers and fronting carriers to help them add cyber, property and other coverages experiencing volatile pricing to their captive structures, Ms. Hiestand said.

"One of the challenges will be how does my company continue to provide the insurance that's needed and minimize our risks," she said.

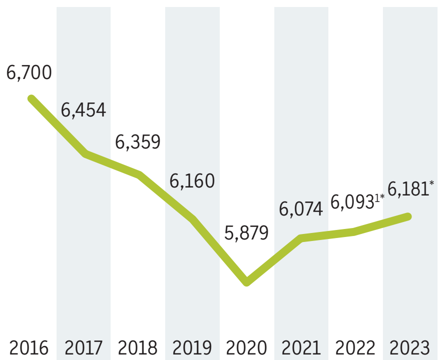
The talent shortage is a concern as captive growth continues, Mr. First said, noting Arch sees 10% to 20% year-over-year growth in its own captive business, he said.

"We still have an industry that requires a lot of brain power. You can't just automate or AI this and have it work," he said.

Claire Wilkinson

RANKINGS OF CAPTIVE DOMICILES & CAPTIVE MANAGERS

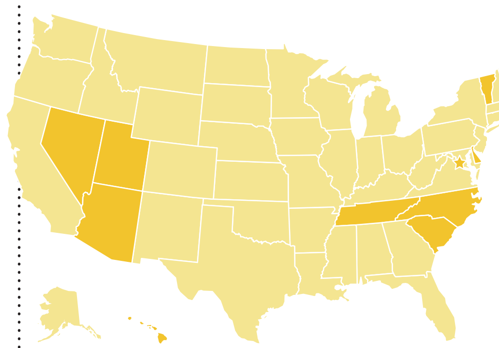
TOTAL CAPTIVES WORLDWIDE



[1]Restated *Revised due to formula errors
Source: *BI* survey

TOP U.S. CAPTIVE DOMICILES

Ranked by number of captives licensed at year-end 2023



Rank	Domicile	2023	2022
1	Vermont	659	639
2	Utah	439	412[1]
3	North Carolina	311	294
4	Delaware	289	319[1]
5	Hawaii	263	255
6	South Carolina	221	209[1]
7	Arizona	176	162
8	Tennessee	162	150
9	District of Columbia	120	113
10	Nevada	100	155

[1]Restated
Source: *BI* survey

TOP 10 CAPTIVE MANAGERS

Ranked by the number of captives managed worldwide in 2023

Rank	Company	2023 total captives*	CAPTIVE TYPES: Captives	CAPTIVE TYPES: 831(b) microcaptives	CAPTIVE TYPES: Protected/ segregated cell companies [individual cells]	2023 captive premium volume**	Domiciles	Total staff	Officers
1	Marsh Captive Solutions	1,588	1,410	42	136 [309]	$73,000,000,000	56	600	Ellen Charnley, president
2	Aon Captive & Insurance Management	1,004	910	14	80 [478]	$65,222,645,064	48	553	John English, CEO
3	Artex Risk Solutions Inc.	855	715	90	50 [1,374]	$19,085,000,000	32	687	Peter Mullen, CEO
4	Strategic Risk Solutions Inc.	604	495	—	109 [675]	NA	37	286	Brady Young, CEO
5	Accession Risk Management Group (Atlas Captives, Oxford and Risk Management Advisors)[1]	576	60	508	8 [470]	$866,000,000	18	124	John Mina, CEO
6	WTW, Captive & Insurance Management Solutions	316	279	9	28 [83]	$10,485,000,000	35	227	Peter Carter, CEO
7	Risk Services LLC	244	63	178	3 [186]	$715,000,000	10	53	Michael Rogers, chairman-CEO
8	Davies Captive Management	206	188	1	17 [300]	NA	22	50	Nicholas Dove, chairman; Nicholas Frost, president
9	Brown & Brown Inc.	131	112	—	19 [23]	$8,345,111,000	20	45	Matthew Takamine, executive managing director
10	Hylant Group Inc., dba Hylant Global Captive Solutions	100	96	—	4 [32]	$950,000,000	22	29	Anne Marie Towle, CEO

*Includes all licensed entities managed at year-end 2023. **Premium volume includes total gross volume for captives managed by the company or on its behalf. [1]Formerly Risk Strategies Co. Captives.
Source: *BI* survey

TOP EUROPEAN CAPTIVE DOMICILES

Ranked by number of captives licensed at year-end 2023

Rank	Domicile	2023	2022
1	Guernsey	199[1]	203[1,2]
2	Luxembourg	195	195
3	Isle of Man	98	99[2]
4	Dublin	63	66
5	Sweden	28	29

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

TOP NORTH AMERICAN OFFSHORE CAPTIVE DOMICILES

Ranked by number of captives licensed at year-end 2023

Rank	Domicile	2023	2022
1	Cayman Islands	658[1]	642[1]
2	Bermuda	633[2]	633[1,3]
3	Barbados	267	261[3]
4	Nevis	94	102
5	Turks & Caicos Islands	74	71

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

TOP ASIA-PACIFIC CAPTIVE DOMICILES

Ranked by number of captives licensed at year-end 2023

Rank	Domicile	2023	2022
1	Singapore	87	82
2	Labuan	67	67
3	Federated States of Micronesia	25	25
4	New Zealand	6[1]	9[1]
5	Vanuatu	5	5

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

PRODUCTS & SERVICES

Falvey introduces commercial output policy

■ Falvey Insurance Group Inc. has introduced a commercial output insurance policy with up to $10 million in limits.

The policy bundles commercial property and inland marine coverage, Falvey said in a statement.

Coverage includes property in transit, electronic data processing, contractors equipment and business interruption.

Targeted policyholders include light manufacturers, assemblers, contractors, dealers, distributors, processing facilities, warehouse operators and wholesalers, Falvey said.

RT Specialty adds cyber liability cover

■ RT Specialty, a unit of Ryan Specialty Holdings Inc., said it has added cyber liability coverage to its RT Connector online platform.

Cyber liability joins the general liability, property, commercial package, excess liability and workers compensation lines of commercial cover currently offered on RT Connector, an RT statement said.

Limits up to $3 million are available for first- and third-party coverages against exposures including ransomware and cybercrime, according to an email from a company spokeswoman.

The coverage is targeted at businesses with annual revenue up to $100 million.

Other management and professional liability products are expected to launch in the coming months, the statement said.

Mosaic launches coverage for asset managers

■ Bermuda-based Mosaic Insurance Holdings Ltd. launched a range of financial and professional coverages for asset managers, funds and associated directors with up to $25 million in limits.

The policies offer coverage for crime, cyber liability, professional liability, directors and officers liability, and investment management insurance.

Policyholders can choose blended or standalone limits, and separate fund D&O wording is also available, Mosaic said in a statement.

Neptune offering excess flood cover

■ Neptune Flood Inc., which provides private flood insurance, said it has launched excess flood coverage for commercial, condominium and residential properties.

Limits of up to $4 million are available, in excess of the $500,000 commercial limit offered by the National Flood Insurance Program.

NFIP limits have not been modified in more than 25 years, during which time the average U.S. house price has more than doubled, Neptune said.

Business owners can also add business interruption and building replacement cost coverage, which are not currently available through the NFIP.

Coalition provides credits for cyber control use

■ Coalition Inc. said it would offer premium credits to customers that use its managed detection and response cyber security tool.

Businesses that use Coalition MDR are eligible for up to a 12.5% premium credit on cyber insurance policies provided by Coalition, the managing general agent said in a statement.

The offer is also available to businesses that use CrowdStrike Falcon Complete, SentinelOne Vigilance Respond or Vigilance Respond Pro managed detection systems, the statement said.

The managed detection and response tool is designed to help prevent and detect incidents as well as help lower response times to cyber incidents, the statement said.

Resilience offers tech E&O coverage

■ Resilience Cyber Insurance Solutions LLC said it will offer technology errors and omissions cover with $10 million in limits to U.S. organizations with between $300 million and $10 billion in annual revenue.

San Francisco-based Resilience, which also offers cyber liability insurance, will offer the coverage on a primary and excess basis, the managing general agent said in a statement.

Intact Insurance Specialty is Resilience's principal capacity provider.

Marsh launches excess D&O facility

■ Marsh Ltd. launched an excess directors and officers liability facility providing up to $40 million in limits to U.S. policyholders and $75 million to others.

Marsh said the D&O Echo facility can attach anywhere above $25 million.

Clients also have the option of pre-purchasing a reinstatement of the limit or locking in a price for the future purchase of a reinstatement that can be accessed if limits are eroded by claims.

The brokerage said the program is underwritten by insurers at Lloyd's of London.

Stephanie Manson, U.K. management liability leader at Marsh Specialty in London, said, "D&O Echo provides clients globally with substantial capacity without being over-exposed to a single insurer, which helps limit the risks of market volatility and provides enhanced excess cover beyond what is available in the standard open market."

Vantage offers US primary casualty capacity

■ Vantage Group Holdings Ltd. said it will begin writing U.S. primary casualty insurance on a nonadmitted basis, offering limits of $2 million per occurrence and $4 million in aggregate.

New York-based Stephen DiMarco, who joined Vantage from Markel Group Inc. in October, leads the insurer's primary casualty business.

Vantage, which was formed in Bermuda in 2020, already offers excess casualty coverage in the United States and Bermuda.

WTW adds cyber cover for international clients

■ Willis Towers Watson PLC launched a cyber coverage facility for international clients headquartered outside the U.S. and Great Britain.

The International CyCore Facility covers malicious acts, non-malicious acts and technical failures. The coverage provides cyber incident response costs, including legal advice, IT forensics, data and cyber restoration, and crisis communication costs, as well as business interruption cover, WTW said in a statement.

Limits are available up to $20 million in primary coverage with a single lead insurer. Coverage is backed by a panel of Lloyd's of London syndicates, the statement said.

DEALS & MOVES

BRP announces sale of unit to Amwins

BRP Group Inc., parent company of brokerage Baldwin Risk Partners LLC, announced the sale of its wholesale brokerage unit.

Trevor Baldwin, CEO of Tampa, Florida-based BRP Group, said on a fourth-quarter earnings call that BRP had agreed to sell its wholesale brokerage platform, Connected Risk Solutions, to Amwins Group Inc.

Connected Risk Solutions was formed in January 2020 via BRP Group's acquisition of Highland Risk Services, LLC

The transaction is expected to generate cash proceeds of $59 million.

Aon buys auto fleet risk management tech

Aon PLC said it has acquired the technology assets and intellectual property of London-based digital managing general agent Humn.ai Ltd.

Terms of the deal were not disclosed.

Humn.ai's platform uses driver and other data to help inform auto fleet risk management and commercial auto insurance operations.

Hub purchases Michigan agencies

Hub International Ltd. acquired Midland, Michigan-based A.S. Arbury and Sons Inc., which does business as Arbury Insurance Agency, and Michelle L. Everett Inc., which does business as Michigan Insurance Associates.

Terms of the transaction were not disclosed.

Arbury Insurance Agency and Michigan Insurance Associates, with about 25 staff, provide commercial and personal lines coverage and employee benefits services.

Oakbridge buys agency focused on large-fleet risk

Oakbridge Insurance Agency LLC said it has acquired The Hart Hawks Group, a Greenville, South Carolina-based agency that specializes in large fleet risk management.

The Hart Hawks Group will maintain its offices in Chattanooga, Tennessee, Greenville and Kennesaw, Georgia.

OPINIONS

COMMENTARY

Healthy diet forms core of recovery

Claims professionals have done much to restrain workers comp costs over the past several years. Early reporting of claims, return-to-work programs, building safety cultures, closely monitoring prescriptions, and various other strategies have been implemented to slow the increase in costs.

But as workers compensation claims costs continue to rise, many in the industry are looking for other ways to pare back expenses. As we report on page 4, an offshoot of another comp claims strategy — the promotion of the so-called workers advocacy model, where companies take a more empathetic approach to comp claims — has led to growing interest in improving the eating habits of injured workers to help them recover speedily.

Gavin Souter
EDITOR

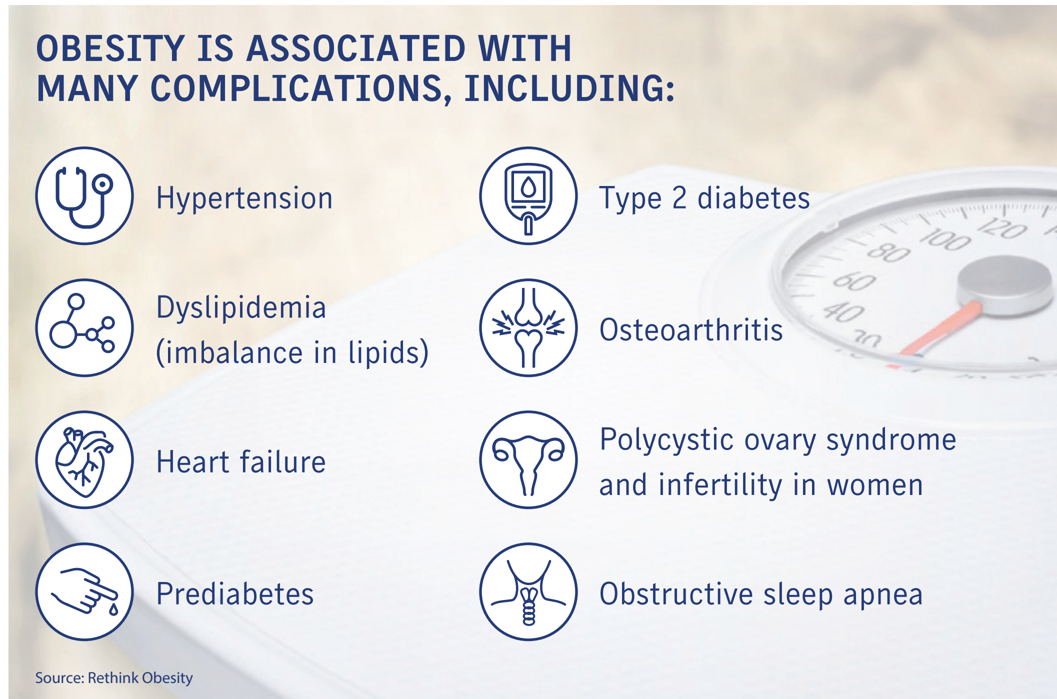
Obesity has long been recognized as a comorbidity that complicates comp claims and directly increases costs. But better nutrition does more than reduce the likelihood of a difficult claim; it can promote healing and make workers more physically resilient, medical experts say. And recent studies have suggested that avoiding ultra-processed foods can also improve brain health, possibly putting workers in a better frame of mind to deal with their injuries.

Assessing the nutritional value of what you eat, though, can be a moving target as researchers come up with new findings or look at studies from a different angle — remember when red wine was bad for you, then good for you and then bad for you again, depending on whether you were concerned about heart disease or cancer? But there is plenty of advice, such as the benefit of eating plenty of fruit and vegetables and going easy on certain fats, that has widespread support among nutritionists.

Communicating that advice to injured workers can start before they suffer an accident by providing nutritious food in work environments and literature on what makes up a healthy diet. Employers can also proactively promote healthy eating to injured workers and support them with meal plans and dietary guidelines.

Some employers may want to go even further and provide financial incentives such as gift cards to health food stores or vouchers that can only be redeemed for nutritious food, in the hope that the initial expense is more than compensated for by a reduction in claims costs and the benefit of getting injured workers back to work more quickly.

Encouraging injured employees to eat healthy, though, requires subtlety and respect for boundaries. Cultural and religious dietary restrictions clearly must be considered, as well as unrelated medical conditions. More than that, though, diet is a personal choice, and it's one thing for an employer to offer helpful advice and another for a manager to badger a worker into eating or not eating certain types of food. You can lead a worker to the salad bar, but you can't make him eat.



Source: Rethink Obesity

VIEWPOINT

Risk managers adapt

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

After six years of rate increases, restricted capacity and narrower terms and conditions in most major lines of coverage, it wouldn't be unreasonable to think that risk managers might have exhausted all available options when it comes to restructuring their insurance programs. But as reported in this month's cover story, nothing could be further from the truth.

The conversations with brokers and with risk managers across the energy, entertainment, higher education, hospitality and real estate sectors indicate that even with the prolonged hard market risk professionals still have many paths they can explore, and they are doing just that. Their comments mirror broader discussions heard during calls, at conventions and in webinars across the industry. They also point to just how creative and resourceful risk professionals are.

Faced with evolving risks such as cyberattacks, extreme weather events, a changing climate and other business disruptions, retaining more risk is the new normal for many, with higher deductibles and retentions frequently in play. Depending on a company's risk tolerance, this approach can help manage the impact of higher insurance costs, but there is a lot more going on.

Captives, long a response by companies to the underwriting cycle, continue to grow in terms of number of formations and the lines of commercial coverage they write. Such is their impact that these risk vehicles are no longer considered an alternative market but mainstream. Organizations that have captives are deploying them across their insurance programs in primary and excess layers and regard them as part of the risk management toolbox through any market cycle.

Parametric coverages, based on a pre-defined condition such as wind speed or temperature, are adding capacity and plugging gaps, providing fast payouts for various risks and exposures. While it doesn't work for every business, parametric coverage is another avenue for risk professionals to explore, especially for risks they can't adequately transfer in the traditional market.

Then there are multiyear programs. Several of the risk managers we interviewed said they had renewed a multiyear program within the past year. If the market softens, the multiyear bet might not pay off, but with property rate hikes slowing but not falling it looks like multiyear programs will remain on the table for now.

Greater use of data underlies many renewal discussions. Better data quality gives risk managers a strategic advantage and informs their decisions about how much coverage to buy and whether they can change limits. Gathering key data points about their organization's exposures and claims history is also helping them monitor risks more effectively and tell their story more accurately in submissions to insurers. And telling that story is essential. As much as a hard market might be viewed as a seller's market, with buyers on the receiving end of insurers' terms, it shouldn't be forgotten that organizations have something to sell, too. The more they can differentiate themselves from their peers and showcase the quality of their risk profiles to insurers, the better results organizations will be able to obtain.

On this latter point, risk management professionals have a crucial role to play. Reaching across organizational lines to involve their peers in engineering, information technology and other disciplines in the risk management process means they can get a handle on risks sooner and better mitigate their impacts. Collaboration and building partnerships is what risk management is all about. That will outlive whatever the next market cycle throws at them.

Reps and warranties insurance market poised for growth

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Recent market signals have deal-makers optimistic that there will be an upswing in mergers and acquisitions activity this year. In turn, the market for representations and warranties insurance, also known as warranty & indemnity insurance outside of North America, is likely to intensify.

Reps and warranties insurance, which originated in the U.S., has become increasingly prevalent across the globe. Specifically, practitioners in the United States, Canada, Australia and New Zealand have adopted the product as a mainstay in their respective M&A markets. Market data in these regions supports the conclusion that reps and warranties insurance is becoming the predominant source of recovery for transaction-related risk. According to a 2023 survey of North American legal practitioners conducted by Bloomberg Law, an average of 42% of M&A deals worked on by the survey respondents in the prior year involved a party covered by a reps and warranties insurance policy. In addition to the increased use of reps and warranties insurance in the M&A sector, the coverage has shown a remarkable degree of resilience in recent years, with various insurers adjusting their policies, pricing and exclusions to better align with their business partners and remain competitive in an ever-changing economic market, all while continuing to pay out sizable claims to policyholders.

In recent years, the coverage has also gained significant traction in emerging markets in Asia, Latin America and Africa. While there are still certain obstacles that may hinder the widespread adoption of reps and warranties insurance in these markets, efforts to address these challenges and increased market penetration seem poised to unlock the benefits of the coverage on a larger scale.

Obstacles

The coverage is based on the representations and warranties structure common to jurisdictions such as the U.S., United Kingdom, Canada, Australia and New Zealand. The product is structured to reflect these jurisdictions' practices and styles in allocating risks related to the target business between the deal parties through statements and disclosures in the purchase agreement. As the product gains traction in emerging markets, insurers appear to be investing substantial resources to expand their coverage into these markets and adapt it to how purchase agreements operate in a wider variety of jurisdictions. For example, insurers including Mosaic Insurance Holdings Ltd., RiskPoint Underwriting Inc., and Volante Global opened Singapore offices in recent years, with a view to expanding their transactional insurance coverage into Asia.

There are certain obstacles, though, that may hinder the product's widespread adoption in these emerging markets:

- Compared with mature markets such as the U.S., U.K. and Australia, reps and warranties insurance remains a relatively new concept in emerging markets. The deal participants in these markets have limited exposure to the product and its benefits in M&A transactions and have little claims data available to demonstrate the financial benefits of purchasing such a policy.
- Because the reps and warranties insurance industry in the emerging markets is still developing, deal participants sometimes do not have experience with complex insurance products and may prefer a more conservative and better understood risk management tool such as indemnities or escrows.
- Despite the product's increasing popularity, the available reps and warranties underwriting capacity in emerging markets remains relatively limited, and there is not sufficient competition among insurers to drive down the price of the product.
- In some regions, M&A activity is skewed toward certain industry sectors, such as energy and infrastructure, that the reps and warranties insurance industry traditionally avoids due to the inherent complexities, risks and uncertainties associated with these sectors.

As more insurers expand their coverage into emerging markets and gain familiarity with a wider range of industry sectors, potential buyers of the product may see more competition and better pricing. With increased market penetration, insurers and brokers will have better understanding of the needs and characteristics of the emerging markets. The knowledge and training brought by insurers and brokers into the emerging markets can help raise the awareness about the product and increase the use of the product in these markets.

Growth expectations

Respondents to the survey used in developing the Norton Rose Fulbright 2024 M&A Report see a strong likelihood of broad adoption of reps and warranties insurance in their M&A transactions this year. Approximately 61% of the respondents expect to see the use of the coverage either "increase somewhat" or "increase significantly" around the world. As discussed above, there still exists a wide variety of emerging markets where the coverage has not had the same level of growth and exposure as mature markets. However, data from the report suggests that certain emerging markets, such as East Asia, South Asia, Southeast Asia and Africa, are poised for the greatest growth in 2024, with the Middle East and Latin America also expected to see notable increases in usage this year.

In addition to the projected upward growth of reps and warranties coverage into new markets, certain industry sectors are expected to see an increased use of the coverage. According to the NRF report, in which respondents were asked to pick the top three industries of expected increase of reps and warranties insurance usage, energy and infrastructure stands out, with 50% of respondents selecting it as their top choice, followed by the technology sector, with 47% of respondents placing it among the top three. There also appears to be significant optimism regarding increased use in life sciences/health care, natural resources and financial institutions, cited by 37%, 36% and 30% of respondents, respectively. Overall, despite the obstacles presented, respondents see the reps and warranties industry as primed for continued growth in the coming years.

PEOPLE

> “The outlook for the industry is positive. The insurance industry is old but ever changing and adapting. The market and our physical environment are changing — the risks we face are evolving, but I’m also positive this will lead to innovative and creative solutions.”

UP CLOSE

Ann Chai

NEW JOB TITLE: Schaumburg, Illinois-based chief risk officer, Zurich North America

PREVIOUS POSITION: Schaumburg, Illinois-based head of finance-middle market, Zurich North America

OUTLOOK FOR THE INDUSTRY: The outlook for the industry is positive. The insurance industry is old but ever changing and adapting. The market and our physical environment are changing — the risks we face are evolving, but I’m also positive this will lead to innovative and creative solutions.

GOALS FOR YOUR NEW POSITION: My primary goal is to help Zurich manage its risks. Similar to our customers and other large corporations, Zurich’s ability to navigate through its risk landscape enables better and more stable results.

CHALLENGES FACING THE INDUSTRY: Volatility, which stems from various sources such as natural catastrophes, societal changes and emerging risks. Managing and adapting to these less predictable factors requires a proactive approach to ensure the industry remains resilient and responsive to evolving circumstances.

FIRST EXPERIENCE: Actuarial analyst right after finishing university. I was responsible for rate filings for the D&O product. It was not the most exciting or glamorous job, but it did give me insight into how insurance is regulated.

ADVICE FOR A NEWCOMER: Don’t focus solely on your specific area of practice. Be curious and explore different aspects of the insurance business beyond just actuarial, claims or finance. Really learn about the business, our customers, our products and the risks involved.

DREAM JOB: Artist or a gardener. The idea of having a tangible creative output and a nonlinear path to success really appeals to me.

COLLEGE MAJOR: I majored in financial mathematics and economics. I enjoyed studying various ways in which fairly dense mathematical concepts drive our financial and economic systems.

LOOKING FORWARD TO: Learning. This role is very broad, and I can actively engage and be involved in many different areas. I look forward to leveraging my technical background in actuarial science and performance management and applying it to various risk challenges.

FAVORITE MEAL: Congee. It is an Asian rice porridge that’s so comforting. It can be made sweet by adding fruits and nuts or savory with eggs and vegetables. Delicious for breakfast, lunch or dinner.

HOBBIES: I love to play tennis. It is a great way to spend time with family and friends. It is an addictive combination of sport, problem-solving and heartbreak. When I’m alone, I recharge with painting. I find the iterations meditative.

FAVORITE TV SHOW: One of my favorite TV shows is “Schitt’s Creek.” I love that the show is an optimistic portrayal of finding growth and happiness in the most surprising of circumstances.

ON A SATURDAY AFTERNOON: On a Saturday afternoon, I enjoy spending time with my family, especially outdoors, where we can get some fresh air, move our bodies and get away from our screens.

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ON THE MOVE

Aon PLC named Chicago-based **Lori Goltermann** CEO of regions. Ms. Goltermann will continue as chief client officer and CEO global enterprise clients. She was one of the 2016 *Business Insurance* Women to Watch.

AssuredPartners Inc. appointed **Hank Dominioni** agency and platform president for the Northeast region. He succeeds Mike Ross, who was named regional president for the Great Lakes region. Previously, Mr. Dominioni was Northeast division executive at Hartford Financial Services Group Inc. He is based in Hartford, Connecticut.

Willis Towers Watson PLC named Boston-based **Lynda Gammons** head of claims closure solutions in its corporate risks and broking, North America, division. Previously, Ms. Gammons was a managing director and enterprise sales leader at Marsh LLC.

Marsh & McLennan Cos. Inc. named **David Liston** chief commercial officer, U.S. and Canada. He succeeds Susan Potter, who was appointed president of the U.S. and Canada region for Mercer LLC. Mr. Liston, based in New York, previously was U.S. and Canada corporate segment leader at Marsh LLC.

EPIC Insurance Brokers & Consultants appointed New York-based **Jim Romanelli** executive vice president. Previously, Mr. Romanelli was senior vice president, New York City branch manager and territory officer at CNA Financial Corp.

CompSource Mutual Insurance Co. named **Trey Ingram** CEO. He replaces Jason Clark, who left his role as CEO in 2023. Mr. Clark was named chief administrative officer of Paycom Payroll LLC in December. Mr. Ingram most recently was CEO of Momentum AI.

Florida top spring travel destination

The annual list by travel insurer Allianz Partners USA reveals the top travel destinations this spring, based on 3.4 million itineraries. In order, they are Orlando, Florida; Phoenix; Las Vegas; New York; Fort Lauderdale, Florida; Los Angeles; Miami; Tampa, Florida; Salt Lake City; and Fort Meyers, Florida.

Conversely, if one wanted to avoid crowds this spring break, one could use the report as a places-to-avoid list when booking. Or head out of the country, as 76% of the itineraries are for domestic travel.

Of Americans booking travel outside of the U.S., 90% of the getaways were for warmer, tropical destinations, with Mexico's Cancun No. 1 and San Jose del Cabo No. 2.

The realities of copyright law

In the ongoing war of humans v. artificial intelligence, the latter took a hit by the U.S. Copyright Office, which filed court documents saying it believes art created by AI cannot be protected by copyright.

"Precedent confirms the human-authorship requirement," the government agency said in a filing with an appeals court in Washington — the latest proceeding over whether an AI-generated work of art called "A Recent Entrance To Paradise" can be protected. A lower court ruled in favor of the U.S. Copyright Office, which has refused to issue copyrights to materials not created by humans.

"Since the Nineteenth Century, the Supreme Court has recognized human creativity as the touchstone of authorship. Other circuit courts have rejected efforts to claim copyright in works allegedly authored by nonhumans. And the Copyright Office, in turn, has consistently stated its agreement with these views," the document states.

Tree-tossing champ's injury claim felled by telltale evidence

A woman who claimed injuries from a car crash left her disabled was caught winning a Christmas-tree throwing competition one year later, and thus a court in Ireland dismissed her insurance claim.

The photo, which shows an athletic Kamila Grabska mid-throw on one foot and reaching forward as a five-foot spruce goes airborne, resulted in the court dismissing her $824,000 injury claim, according to The Independent newspaper.

Ms. Grabska claimed back and neck injuries from a car crash in 2017 prevented her from working and playing with her children, and she had sued an insurer alleging that her injuries put a stop to her normal life for over five years, according to the article.

The photo, taken in 2018 and featured in national media, proved otherwise, a judge ruled.

Don't cry over spilled ketchup

Heinz Arabia has introduced a ketchup insurance policy, offering compensation for dining mishaps — an "innovative solution is changing the game for ketchup lovers," according to BNNBreaking.com.

As described by the news network, the world's first ketchup insurance covers a spectrum of incidents, from stains on fabrics to splatters on pets, and offers compensation and rewards for unfortunate and messy condiment mishaps — insuring for 57 different kinds of claims, to be exact.

The company's chief of marketing says that despite frequent accidents, a significant majority of Heinz ketchup lovers consider the product's enjoyment worth the occasional spill, and thus the company wants to make it worth their while — and laundry duties.

Disney called villain over maintenance

When it comes to providing tools and equipment to maintenance workers, Disney's hotels are Scrooge-y, according to a class-action lawsuit.

More than 100 current and former employees of its Disneyland hotels allege the entertainment giant required maintenance workers at its hotels to provide their own tools and equipment, according to SFGate.com, which reported that under California law, employers must pay at least twice the minimum wage if they require workers to bring their own tools to the job.

"Mr. Torres and so many others are told to cover the expense of tools used on behalf of Disney who flouts the law and refuses to pay its workers what they're due. Disney is a massive company," plaintiff's attorney Ron Zambrano of West Coast Employment Lawyers said in a statement. "They know the law. But just like their character Uncle Scrooge, they choose to be cheap."

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