CYBER DISCLOSURES: Proposed SEC rules raise concerns - PAGE 4

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MAY 2022

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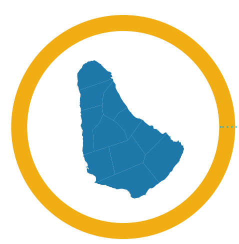

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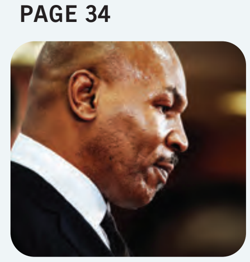

## VIEW FROM THE TOP

### LISA DAVIS

Lisa Davis joined Canopius USA, a unit of Lloyd's insurer Canopius Group Ltd., as president and chief underwriting officer in September 2020. Ms. Davis became CEO, U.S. & Bermuda, in February and is based in Charlotte, North Carolina. She discusses the specialty insurer's growth plans, its strategy to create a strong, multiplatform approach to serving the U.S. market, and its management of its cyber exposure. **PAGE 16**

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NEWS ANALYSIS

# Feds outline broad cyber disclosures

BY JUDY GREENWALD
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Proposed U.S. Securities and Exchange Commission cybersecurity rules would provide some much-needed standardization for companies seeking to determine how much and when to reveal cyber-related intrusions to their investors, experts say.

It is unclear what impact the rules would have on cyber or directors and officers liability rates.

Also, some contend that a provision in the proposed rules that states companies must reveal cyber events within four business days of learning of a "material" incident is unduly vague and as it stands would be difficult to comply with (see related story).

In addition to reporting incidents, the proposal would require publicly held companies to disclose their cybersecurity policies and report on their board's cybersecurity expertise, among other provisions.

In issuing the proposal, SEC Chair Gary Gensler said in a statement that companies and investors would benefit if cybersecurity information "were required in a consistent, comparable, and decision-useful manner."

The proposed cybersecurity rules join other recent SEC proposals focusing on special purpose acquisition companies and disclosure of climate-related risks, among others.

"There was a certain air of inevitability" to the cyber proposal, said Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC. It had been more than 10 years since the agency first addressed the issue, he said.

The SEC's Division of Corporation Finance issued interpretive guidance concerning cybersecurity obligations in 2011, then issued additional guidance to reinforce and expand upon it in 2018.

Shannon Groeber, New York-based executive vice president of CFC Underwriting Ltd., said, "We like to see a step toward more prescriptive guidance" as to what companies should be disclosing.

> "It puts this issue, certainly, closer to the top of the risk issues for all public companies, not just technology companies or financial institutions, which probably have the most exposures."
>
> Andrew Doherty,
> USI Insurance Services LLC

Compliance with the proposal would be somewhat onerous, however, said Andrew Doherty, New York-based national executive and professional risk solutions practice leader for USI Insurance Services LLC.

"Companies will have to revisit their rules and governance structure" and look at their board's cybersecurity experience, he said. "It puts this issue, certainly, closer to the top of the risk issues for all public companies, not just technology companies or financial institutions, which probably have the most exposures."

Ms. Groeber described the proposed requirement to report the board's cybersecurity expertise as positive. It elevates recognition of the issue to the board level, a direction in which some companies have already moved, she said.

Experts say publicly held companies' readiness for the proposal varies.

Some companies are probably making these disclosures already, even if they are not necessarily doing so in their SEC filings or in the exact form the agency may ultimately require, said Matthew McLellan, Washington-based managing director and D&O product leader for Marsh LLC.

There are companies that have been "investing in cyber security for a long time," and large financial institutions are likely to be ready as well as other large, publicly held companies, said Joshua Gold, a shareholder with Anderson Kill P.C. in New York.

But other companies might not "fully appreciate how bad the risk environment is right now" and have not made it a top priority, he said.

Observers say the regulation could have implications for both cyber and D&O policies, although these are difficult to determine at this point.

"Cyber insurance in particular is in a constant state of evolution, so it'll be interesting to see how insurers adjust their language" in response to the proposed rules, said policyholder attorney James S. Carter, a partner with BlankRome LLP in Washington.

Its effect on the cyber market remains to be seen, as the proposal adds more complexity to information sharing, Ms. Groeber said.

"If we discover large numbers of companies are not complying, it puts them at risk of being subject to further restrictions of capacity or coverage terms, but it also provides a baseline measure to make sure they're being protected," she said.

Ms. Groeber added that "there could be a very short knee-jerk reaction" in the market while the proposed controls are implemented.

D&O insurers have concerns about covering cyber claims, particularly regarding their obligation to provide coverage for investigatory and regulatory expenses, Mr. Gold said. "I think we'll see more fights, and probably tougher fights," on this issue.

Meanwhile, there is a fear that the proposed rules would "create sort of a roadmap" for plaintiffs attorneys, who will look at what companies have said about board oversight, seize on subsequent incidents and charge that the board either made misrepresentations or was not fulfilling its oversight obligations, Mr. LaCroix said.

## PROPOSED SEC CYBERSECURITY RULES

The proposed U.S. Securities and Exchange Commission cybersecurity rules would require companies to report material incidents on a Form 8-K and provide periodic disclosure on issues including:

- Policies and procedures to identify and manage cybersecurity risks.
- Management's role in implementing cybersecurity policies and procedures.
- The board of directors' cybersecurity expertise and oversight.
- Updates on previously reported material cybersecurity incidents.

Source: U.S. Securities and Exchange Commission

## AMBIGUITY IN PROPOSED RULES RAISES CONCERNS

Although the final wording of the U.S. Securities and Exchange Commission's proposed cybersecurity rules has not been determined, a provision that would require publicly traded companies to disclose information about "material" cybersecurity incidents within four business days has some experts worried.

For starters, the term "material" is ambiguous, they say.

"It's not really clear what is definitively material versus what is not," aside from situations such as when ransomware shuts a company down and its data is exfiltrated, said Tara Bodden, general counsel and head of claims at insurtech At-Bay Inc. in San Francisco.

"There's not a lot of runway when you demand an organization tell you whether or not an incident was material," which can take several weeks or even months to determine, said John Farley, New York-based managing director of Arthur J. Gallagher & Co.'s cyber liability practice. "This is a really tough mandate to meet," he said.

Robert Rosenzweig, New York-based national cyber risk practice leader and commercial New York metro regional leader at Risk Strategies Co., said, "Beyond the ability to respond in that timely a fashion, there certainly is an argument for many reasons as to why going public with something that quickly could have ramifications" on the business and the investigation, particularly if the attack is still ongoing.

Mr. Farley said the proposal would also require reporting if there were a series of undisclosed incidents that were not necessarily material individually but become so in the aggregate. How does a company determine when that is the case? he asked.

"There will be those gray areas that need to be sorted out," he said.

*Judy Greenwald*

# Rising interest rates could boost insurers

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federalreserve.gov

Federal Reserve Chairman Jerome Powell spoke in March after the conclusion of a two-day meeting of the policy-setting Federal Open Market Committee in Washington. The Fed is expected to increase interest rates multiple times this year.

Commercial insurers could see higher investment income and changes in exposures because of recent and projected U.S. interest rate hikes aimed at curbing inflation.

Whether the monetary policies have the desired effect on the economy also remains to be seen as policymakers move forward with plans that appear directionally in sync but indicate some differences.

The U.S Federal Reserve Bank's Federal Open Market Committee on March 16 increased the target range for the federal funds rate by a quarter percentage point to 0.25% to 0.5% and said it "anticipates that ongoing increases in the target range will be appropriate," with one committee member dissenting and supporting a half-point rise.

> "Rate hikes mean profitability will increase on the asset side because we are mostly invested in bonds."
>
> Ludovic Subran, Allianz SE

Roland Eisenhuth, economist and assistant vice president of policy, research and international in Chicago for the American Property Casualty Insurance Association, said higher interest rates will have a profound impact on the overall economy, "and this action could also impact the property/casualty insurance industry wherever it is linked to the broader economy."

Potential increases in investment yields from higher interest rates could help offset any downward pressure on stock valuations, Mr. Eisenhuth said.

Higher interest rates, however, could also reduce demand, leading people to buy fewer cars or homes, which could slow the growth of exposures for property/casualty insurers.

Ludovic Subran, chief economist for Allianz SE in Munich, sees potential opportunity for insurers in the interest rate hikes.

The rising rates might present "good opportunity to reinvest portions of portfolios" at higher yields, he said.

"This is quite positive, as rate hikes mean profitability will increase on the asset side because we are mostly invested in bonds," Mr. Subran said of commercial insurers.

Raising interest rates to curb inflation also benefits insurers chafing under claims inflation, driven by elements such as higher building material costs, he said. The property/casualty industry will "welcome" the rate hikes to help curb claims inflation, he said.

The Allianz "base scenario" includes six rate hikes this year, the first of which has taken place, and three next year, Mr. Subran said.

Swiss Reinsurance Co. Ltd. in April raised its Fed Funds forecast to six rate hikes this year from four, for a total of 200 basis points, implying potential 50 basis-point hikes at some of the Fed's meetings. In addition, Swiss Re expects the Bank of England to hike rates five times rather than four and for the European Central Bank "to likely exit from negative interest rates by the year end."

"Inflation rising further from already high levels will likely see major central banks raising interest rates faster and more forcefully," the reinsurer said in revising its forecast.

Michel Léonard, chief economist for the Insurance Information Institute in New York, said the Fed is looking to end the year at about 4.3% inflation, down from current levels nearer to 8%. "We have a very clear direction. We know inflation will come down and growth will come down. That's very clear and useful," he said.

Indicators such as the futures markets for shipping containers show slowing demand, Mr. Léonard said. Trading in these futures markets "gives us a sense of where it's going to be and there is light at the end of the tunnel when looking at futures for container rates, and the worst is behind us."

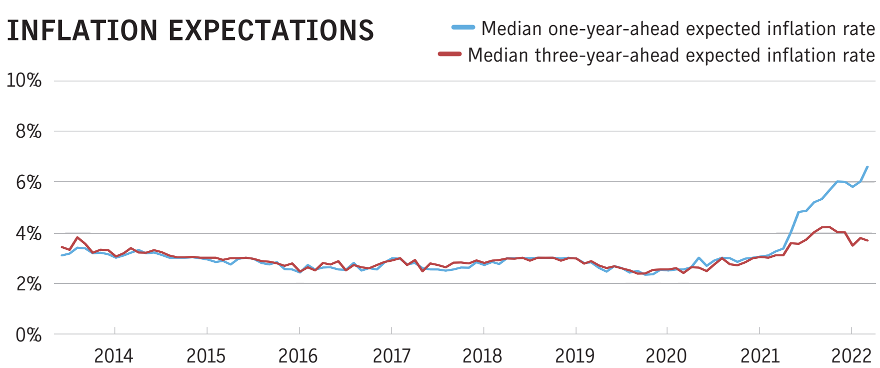
Although the III sees the U.S inflation rate reaching Fed targets, Mr. Léonard said it may take into the first or second quarter of next year rather than by year's end. "Our view is Fed numbers are feasible, but quite fast and steep. The question is how fast this happens."

Federal Reserve Bank of New York President John C. Williams, who also serves as the vice chairman and a permanent member of the Federal Open Market Committee, said in recent public comments that faced with rising inflation but otherwise strong economies, the Fed and other central banks have been moving away from the "extraordinarily accommodative" stances they took in early 2020. The Bank of England began raising rates in December, followed by the Bank of Canada in March.

Other Federal Reserve officials have advocated a range of policy alternatives differing slightly along the way. On March 18, two days after the Fed's initial quarter-point hike, Federal Reserve Bank of St. Louis President Jim Bullard issued a statement explaining his dissenting vote in which he called for a half-point hike.

"In my view, raising the target range to 0.5% to 0.75% and implementing a plan for reducing the size of the Fed's balance sheet would have been more appropriate actions," the statement said.

**INFLATION EXPECTATIONS**




Source: Federal Reserve Bank of New York Survey of Consumer Expectations

## SUPPLY CHAIN SHORTAGES, STRONG DEMAND DRIVE CURRENT INFLATION

While raising interest rates has long been used as the remedy for rising inflation, some experts warn that policymakers must tread carefully.

The causes of today's inflation are not the same as those from the past, they say.

"The inflation we have now is different. It's not driven by the same drivers," like oil prices in the 1970s, said Michel Léonard, chief economist for the Insurance Information Institute in New York.

Today, U.S. inflation is driven by supply chain shortages and very strong demand in some sectors, such as pre-owned autos. "It's an inflation driven by an economy that's recovering and that's doing well," Mr. Léonard said. "Will increasing intertest rates have the desired impact on the scale desired?"

For instance, "what's raising interest rates going to do to supply chain delays? Not much," he said.

"If we believe that tightening monetary policy could solve the supply chain crisis in China, this is, of course, wrong," said Ludovic Subran, chief economist for Allianz SE in Munich. He also sees some strength in the U.S economy, partially because of the stimulus payments during the COVID-19 pandemic.

The Federal Reserve's desire to "come out big" and control the political narrative of the situation, must also be carefully managed, Mr. Subran said. Taking too heavy a hand could risk recessionary conditions.

"The Fed as the lender of last resort for the U.S. and the world" has increased its prominence and makes crafting monetary policy more complicated, he said.

*Matthew Lerner*

NEWS ANALYSIS

# War in Ukraine prompts exclusions in European M&A insurance market

**BY CLAIRE WILKINSON**
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Mergers and acquisitions insurance buyers have seen exclusions added on policies since the invasion of Ukraine and the imposition of international sanctions on Russia and Belarus, but whether the conflict will affect insurance prices remains unclear.

Pricing, which jumped due to a surge of M&A deals in the fourth quarter of 2021, was up in the first quarter of this year from the year-earlier period but down from the fourth-quarter high, experts said.

Issues like the war tend to affect coverage rather than price, said Emily Maier, partner and senior vice president, national group leader of M&A insurance, at Woodruff Sawyer & Co., who is based in Austin, Texas.

"The issue is always the precise nature of coverage that is or isn't provided" under representations and warranties policies, Ms. Maier said.

In the fourth quarter of last year, insurers didn't have the resources to deal with the increased demand for coverage, said Craig Schioppo, Melville, New York-based global head of transactional risk at Marsh Specialty.

"Since then, prices have peeled back a bit, by 10% or 20% since December," Mr. Schioppo said.

If there's tangential exposure on a deal that makes the risk of loss higher, it may affect pricing or terms, said Jay Rittberg, managing principal at Euclid Transactional LLC in New York.

"Sometimes there are indirect impacts of war that might increase the loss profile of a business, and we might use terms, conditions, retentions and other things," Mr. Rittberg said.

The conflict has probably added an element of caution to the market, said Rowan Bamford, London-based president of Liberty Global Transaction Solutions, a unit of U.S. insurer Liberty Mutual Insurance Co.

"We've seen some capital constraints caused by the rapid growth last year of the class. Certain reinsurers got concerned about over-aggregation and told insurers and MGAs to control their line usage better and write less business," he said.

> "Sometimes there are indirect impacts of war that might increase the loss profile of a business, and we might use terms, conditions, retentions and other things."
>
> Jay Rittberg,
> Euclid Transactional LLC

A heightened level of claims activity in the last couple of years also lent support to last year's pricing levels. "Carriers are making sure they've got rate adequacy on their book," he said.

On a global basis, marketwide pricing was up 10% in the first quarter versus the first quarter of 2021, Mr. Bamford said.

In the U.S. market, so far there doesn't appear to have been much of a pricing impact from the Russia-Ukraine conflict, said Scott Pegram, head of Americas at Liberty Global Transaction Solutions in New York.

"Any changes that we have seen, it would be hard for us as a market to understand if that is related to or impacted by the conflict," he said.

Meanwhile, deal volume has declined in Europe in the wake of the conflict, but deal and submission flow in the U.S. still appears to be strong, experts said.

William Monat, Chicago-based global head of transactional liability at Mosaic Insurance Holdings Ltd., said U.S. deals are still moving forward and getting done.

"There is more impact on the international cross-border deals. When you look at U.S. domestic deals it depends on whether that business has international touch points, such as on the supply chain, operations, counterparty credit risk," Mr. Monat said.

There is no material effect on U.S. deals with a fully domestic supply chain, operations and sales, he said.

Euclid is seeing "minimal impact" so far on how much business it is signing up, Mr. Rittberg said.

"There's more of an impact on deal closings, but people are still agreeing to buy and sell companies," he said.

Larry Shapiro, San Francisco-based managing director and representations and warranties insurance team leader at Alliant Insurance Services Inc., said deals involving targets with operations in the region or a connection to the conflict may be on hold.

"We had one buyer that had operations and employees in the region and they slowed the deal down just to evacuate their personnel. But other than that, I haven't seen a direct impact on deal flow," he said.

It's too early to tell whether there will be a significant effect on deal volume, said Randi Mason, co-head of the corporate practice at law firm Morrison Cohen LLP in New York.

"Deal volume is still quite high. It's not at the same pace that it was in the last quarter of 2021, but the first quarter is never as busy as the fourth quarter," Ms. Mason said.

## INSURERS LIMITING EXPOSURES

Exclusions added to representations and warranties insurance policies will limit insurers' exposure to the Russia-Ukraine conflict, experts say.

If a target being acquired has exposure to the conflict — a known political exposure — transactional risk insurers will exclude it, said Larry Shapiro, San Francisco-based managing director and representations and warranties insurance team leader at Alliant Insurance Services Inc.

Insurers have responded with either a broad exclusion of any exposure related to Russia, Ukraine or Belarus, or with a more tailored response in which they would still expect to exclude a related exposure but only if it's applicable, he said.

William Monat, Chicago-based global head of transactional liability at Mosaic Insurance Holdings Ltd., said insurers are concerned about underwriting to the exposure and underwriting to make sure they are not covering any known exposure.

Jay Rittberg, managing principal at Euclid Transactional LLC in New York, said if there is any Russia-Ukraine exposure at the submissions stage the insurer would "broadly exclude operations, sales or dealings with counterparties in those countries."

If there is no connection at the submissions stage, it will continue to evaluate the deal during the diligence process and may exclude then if it sees something, he said.

"We don't have a blanket exclusion currently because if you're looking at a company that grows grapes in the Midwest, you probably don't need an exclusion like this," Mr. Rittberg said.

The situation is evolving and it's important for buyers to do their diligence and understand what operations, sales, suppliers and other relationships may exist in Russia, Ukraine and Belarus, said Randi Mason, co-head of the corporate practice at law firm Morrison Cohen LLP in New York.

*Claire Wilkinson*

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## event schedule

### BREAK OUT AWARDS
JUNE 7 | NEW YORK CITY
JUNE 22 | CHICAGO
JUNE 30 | LOS ANGELES

### LONG-TERM CARE CONFERENCE
JULY 21 | CHICAGO

### DIVERSITY & INCLUSION CONFERENCE
AUGUST 10-11* | CHICAGO

### INNOVATION AWARDS
SEPTEMBER 13 | NEW YORK CITY

**NOMINATIONS** MAR. 22 - MAY 13

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

**NOMINATIONS** MAY 3 - JUNE 27

### CYBER SECURITY WEBINAR
SEPTEMBER 28 | VIRTUAL

### CANNABIS & HEMP CONFERENCE
OCTOBER 20 | CHICAGO

### WOMEN TO WATCH AWARDS & CONFERENCE (EMEA)
NOVEMBER 10 | LONDON

**NOMINATIONS** JUNE 7 - AUG. 1

### WOMEN TO WATCH AWARDS & CONFERENCE (US)
NOVEMBER 30 - DECEMBER 1 | NEW YORK CITY

**NOMINATIONS** JUNE 7 - AUG. 1

### WORLD CAPTIVE FORUM 2023
FEBRUARY 1-3, 2023 | MIAMI

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# Positive drug tests increase for drivers

**BY DANIELLE LING**
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Rising drug positivity rates among truck drivers and other transportation workers are raising safety concerns.

And while some other employers are relaxing drug policies in response to the shifting social and legal landscape on cannabis and a nationwide labor shortage, the transportation industry can't do that, because the U.S. Department of Transportation requires companies to test those who drive for a living.

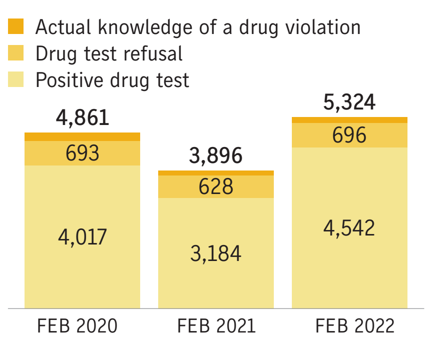
For those working in the transportation industry, the 2021 drug positivity rate was 2.2%, higher than in 2017, and in line with an overall rise in positive drug tests for all workers, according to data released in March by Quest Diagnostics Inc., which provides drug screening for employers nationwide.

For those in safety sensitive positions, pre-employment positivity increased 9.5% from 2017 to 2021, while post-accident positivity increased 41.9%. In 2021, post-accident positivity was higher when compared with pre-employment positivity, according to Barry Sample, Seneca, South Carolina-based senior science consultant for Quest Diagnostics. He called the findings "of concern" for a federally mandated, safety-sensitive workforce, most of which he says are those in the trucking industry.

"What is a little bit novel is looking at marijuana and cocaine," he said, stating that in the case of marijuana, the positivity rates on post-accident versus pre-employment was just under a 4% difference — meaning drivers are possibly testing negative in pre-employment but positive post-accident.

The difference between post-accident positivity testing increasing at a greater rate than pre-employment testing was driven by higher positivity on post-accident tests for marijuana, cocaine and

**DRUG VIOLATIONS REPORTED TO CLEARINGHOUSE**




Source: U.S. Department of Transportation

semi-synthetic opiates, Mr. Sample said.

"By 2021, that difference increased five-fold," he said. "Correlation doesn't equal causation, but it certainly raises, at least in my mind, a level of concern that somebody who uses these drugs is more likely to be involved in an accident and have higher positivity rates."

Overall, after five years of steady declines for drivers, marijuana increased 8.9%, amphetamines increased 7.8%, and cocaine increased 5.0%.

The Federal Motor Vehicle Carrier Safety Administration also reported a rise in positive drug tests. Its monthly Drug and Alcohol Clearinghouse report from February documented a rise in truck driver violations with CBD, marijuana and cocaine.

Since the Clearinghouse took effect in Jan. 2020, marijuana was increasingly the most prominently used substance, with 58,904 positive results, FMCSA reported. The surprise second — increasing in positivity in 2021 after five years of steady declines — was cocaine, with 16,218 positives. Meth accounted for the third highest cause of positive tests at 9,940.

Since 2017, 10 states have legalized the recreational use of marijuana, bringing the total number to 18 states.

"The increase in marijuana positivity is a concern," said National Safety Council's Katie Mueller, who is the Yukon, Oklahoma-based senior program manager of the organization's impairment practice, especially given recent renewed efforts in Congress on legalization.

The U.S. House of Representatives has passed a bill to federally legalize marijuana, but the measure is expected to be challenged in the Senate. Medical marijuana, legal in 39 states and D.C., is also problematic because it gives workers the impression that they are cleared to use it with a medical card, experts say.

"We are seeing the trend of some employers choosing to either take marijuana out of their drug testing panel or not disqualifying individuals from having a positive marijuana result from employment," she said.

These practices outside of the safety-sensitive workforce could have implications for federally mandated employers in screening potential employees, Ms. Mueller said.

"We definitely want to understand the risks that can be caused by not knowing the background of an individual you may be putting into a safety-sensitive position," she said.

Brian Hammer, Durant, Iowa-based safety advisor to the American Society of Safety Professionals and fleet consultant at Nationwide Mutual Insurance Company, said the FMCSA Drug and Alcohol Clearinghouse rules that took effect two years ago documenting positive drug tests have contributed to hiring challenges amid a major labor shortage in the trucking industry.

Acceptance of marijuana use among the general population makes it harder to attract and retain workers in safety-sensitive functions, he said.

"With the Clearinghouse, it's pretty hard to hide a positive drug test — three years ago, that wasn't the case," Mr. Hammer said. "But today it is, and it makes it stricter for trucking companies to hire."

On several fronts, the evolving methods, perceptions and rules on marijuana use and drug testing can be understandably confusing for workers, Mr. Hammer concedes.

To advise employers on these issues, Ms. Mueller said NSC has gathered perceptions from companies and found employees need more clarity on their company policy around marijuana use.

"We encourage employers to establish those policies and communicate them clearly to their employees," she said.

## TRUCKING GROUPS, DRIVERS ASSOCIATION CLASH OVER PUSH TO ADD HAIR TESTING

As employers grapple with the surge in both regulatory drug testing requirements and drug positivity rates in the federally regulated safety-sensitive workforce, there has been a push to expand drug testing modalities for truck drivers.

The American Trucking Association, the Alliance for Driver Safety & Security and other trucking groups have proposed adding hair testing to the Federal Motor Vehicle Carrier Safety Administration program, aided by a proposed congressional mandate to "accelerate" this initiative within the U.S. Department of Health and Human Services.

"Hair offers the advantage. While it may not be good for post-accident or reasonable suspicion tests, it is a very good test at detecting a pattern of repetitive use," said Barry Sample, Seneca, South Carolina-based senior science consultant for Quest Diagnostics Inc.

"In many ways, it's a lifestyle test," he said, appropriate for pre-employment, return-to-duty, follow-up or random types of tests. "It doesn't tell you what you did recently, but it certainly can help inform what somebody has a pattern of doing."

Some trucking companies have already adopted this testing method, according to Mr. Sample, who said companies believe that testing detects and deters drug use by employees.

The Owner-Operator Independent Drivers Association, which represents small-business truckers and professional truck drivers and has over 150,000 members, opposes the proposition. In its response to a notice from the FMCSA on proposed guidelines for federal workplace drug testing programs, OOIDA opposed the addition of hair testing.

Todd Spencer, president and CEO of OOIDA said some of the key issues with hair testing include false-positive results for certain drugs and compromised results due to environmental conditions and variances in hair types.

Mr. Spencer said the addition of hair testing to the mandatory guidelines would also burden truckers already overwhelmed with "volumes of regulations."

*Danielle Ling*


ABOUT 8,500 people attended Riskworld, the Risk & Insurance Management Society Inc.'s annual conference, in San Francisco last month. It was RIMS' first live annual conference since 2019. The 2020 conference, which was to take place in Denver, was canceled due to the COVID-19 pandemic and the 2021 conference slated for Chicago was converted into a virtual meeting. Risk managers and insurance professionals attended sessions and held in-person meetings to discuss topics ranging from market conditions and political risk to cyber liability and climate change. Following is some of *Business Insurance*'s coverage of the conference. More coverage from RIMS is available at businessinsurance.com.

## APPEAL OF GLOBAL INSURANCE PROGRAMS GROWS

**SAN FRANCISCO** — Risk managers need to keep track of an organization's international exposures as a growing number of U.S.-based businesses expand their facilities and operations globally.

Demand for global insurance programs is accelerating as a broad range of businesses, from middle-market to larger multinationals, turn to them to manage their exposures across multiple countries.

Multinational companies are navigating a complex global risk environment coming out of the pandemic, and for many a global program may make sense, said experts interviewed at the Risk & Insurance Management Society Inc.'s Riskworld conference in San Francisco last month.

Businesses are looking for every edge they can find to manage costs, create efficiency and ensure consistency in the way their operations are protected, and a global program provides that opportunity, said David Rahr, global leader of multinational at Marsh LLC, who is based in Chicago.

"Think about what risk managers are facing today. (A few) years ago, COVID didn't exist; now the political issues in Ukraine and Russia have presented themselves. The risk landscape has changed dramatically," Mr. Rahr said.

On top of this, risk managers are facing 17 straight quarters of rate increases, he said.

A growing number of middle-market businesses have international activities and operations, said Alfred Bergbauer, New York-based head of captives, multinational, programs and TPA services at the Hartford Financial Services Group Inc.

For example, a business defined as small in the U.S. that is buying a businessowners policy from The Hartford could have 30 manufacturing plants overseas, Mr. Bergbauer said.

"As we work with producers to talk with companies about their operations and how best to protect their income statement, cash flow and balance sheet, we're finding a large number are underinsured or improperly insured when it comes to foreign programs," he said.

More companies are going global every year, which is increasing demand for different types of coverage, said Andy Zoller, Dallas-based head of international programs for U.S. national accounts and middle markets at Zurich North America.

A regional business in the U.S. could have customers that are outside the U.S. and "might need an exporters policy, or they may travel for a seminar and need a kidnap and ransom policy," Mr. Zoller said.

"We've seen an increasing shift in the number of global cyber programs, D&O programs, the professional programs, where more local offices are being requested to have certificates for local insurance in those lines than they have in the past and more countries are offering those coverages," he said.

> "Think about what risk managers are facing today. (A few) years ago, COVID didn't exist; now the political issues in Ukraine and Russia have presented themselves."
>
> David Rahr, Marsh LLC

In the past year, Zurich has added around 10 to 15 local cyber coverage wordings globally in response to customer demand. "We're up to 30 countries now where we can offer local cyber wordings," Mr. Zoller said.

William Porter, head of international programs for the Americas at Swiss Re Corporate Solutions in New York, said most of its U.S.-based clients are buying global programs in which all their coverage needs throughout the world are rolled up.

Such programs are typically structured with a master policy issued in the U.S. that sits over the worldwide risks for a particular company, and individual local policies issued in the various countries in which it does business.

Laws and regulations vary by country as to which exposures should be covered by a local insurer licensed to conduct business in a particular country, as do tax requirements.

About 90% of Swiss Re Corporate Solutions' portfolio in the international program sector is property risks and in the last few years it has seen increasing demand for casualty, financial lines, and directors and officers liability coverage, Mr. Porter said.

Many multinationals use their captive insurers alongside their global program, said Brian McNamara, Bermuda-based head of global fronting at Allianz Global Corporate & Specialty SE, a unit of Allianz.

"Captives have become increasingly more popular simply because there is a lack of capacity in certain areas and then the effective rate increases on certain lines of business have driven more companies to either increase utilization of the captive they've got or form a new captive or cell captive to deal with that," Mr. McNamara said.

Financial lines, errors and omissions, directors and officers liability and cyber liability have been among the most popular lines of business for multinational captives, he said.

Risk managers should evaluate all the options when looking at how to manage their international exposures, said Lori Seidenberg, New York-based global director, real assets insurance risk management, at Blackrock Inc.

"We looked at how we could consolidate programs and leverage our market share and our spend. What we found was the best step we could do and what could benefit the individual countries was to have more regional policies," Ms. Seidenberg said.

Finding an insurer willing to do a global program was hard because so many countries have local requirements, she said.

"We also found that from a premium perspective we weren't doing any one specific region justice, so consolidating from a regional perspective was very beneficial for us," Ms. Seidenberg said.

As Blackrock's renewals come up in countries outside the U.S., the markets, terms and conditions are starting to look more like U.S.-based forms and the pricing is more like a hard U.S. market, she said.

"The more my other regions come up for renewal, the more they are looking like a challenging U.S. market," Ms. Seidenberg said.

*Claire Wilkinson*

# BUILDING DATA BREACH RESPONSE PLANS REQUIRES TEAMWORK

**SAN FRANCISCO** — With the increase in cybercrime over the past two years, risk managers should work with leaders throughout their organizations to develop breach response plans and train all employees, a risk manager said.

"As a risk manager, you have to partner with the right people in your organization," said Jenny Novoa, senior director of risk management and safety at Gap Inc. in San Francisco.

She was speaking last month during a session of Riskworld, the Risk & Insurance Management Society Inc.'s annual conference in San Francisco.

Ms. Novoa said she works closely on cyber risk with Gap's chief information security officer and chief privacy officer, who do regular audits of the company's vendors, including cloud data storage vendors, from a cybersecurity perspective.

Internal access to data also needs to be carefully vetted, with restrictions imposed at an individual level. For example, Ms. Novoa has claims reporting staff who need access to the company's HR systems, but she does not need access to the system, she said.

Jenny Novoa

"My team has to have specialized training every year because they have access to the HR database. You have to have that process in place," Ms. Novoa said.

Training of all staff on data security issues is also important because any employee can allow criminals access to a corporate system by clicking on a link in an email, she said.

In addition, organizations should hold regular events, such as a cybersecurity month, to maintain awareness of the issue, Ms. Novoa said.

"Your employees can hurt you, so you want to make sure that it's front of mind for them," she said.

C-suite executives and their assistants should have specialized training because they are often the targets of attacks, Ms. Novoa said.

In addition, organizations should have separate response plans for data breaches and ransomware attacks, to ensure the right response team is in place for each type of event. "You have to make sure you have the people in the room," Ms. Novoa said.

Gap does an annual table-top ransomware exercise with its senior executives that is led by an outside consultant. It plays out scenarios in which executives have to make decisions on whether to pay a ransom demand. "It's very important to have a specialized plan," Ms. Novoa said.

To mitigate losses, organizations should also prioritize their IT systems and decide which ones have to be replaced immediately and which ones do not. "Services to recover backups are expensive, depending on the level of service you require," Ms. Novoa said.

In addition, organizations should identify breach response vendors — including law firms, credit-monitoring services, call centers, public relations and crisis management service providers, and ransomware negotiation firms — and have them pre-approved by insurers, she said.

And organizations should build a relationship with their local FBI office. "They are there to assist you," Ms. Novoa said.

*Gavin Souter*


# RISK MANAGERS CAN HELP MITIGATE CLIMATE RISKS

**SAN FRANCISCO** — Business recovery plans and enterprise risk management programs are among the strategies that can help risk managers tackle climate risks, experts say.

Retreating from climate risk isn't an option because "people are always going to vacation where the earth moves and wind blows," said Jennifer Pack, director of risk management at Hyatt Hotels Corp., which has a portfolio of more than 1,100 hotels and resorts in 70 countries.

Hyatt's risk management focus is on making sure its hotels are protected properly and they have sound business recovery plans, Ms. Pack said during a session at the Risk & Insurance Management Society Inc.'s Riskworld conference in San Francisco last month.

It sends engineers out regularly to test the construction of hotel properties to make sure they can withstand hurricanes and floods, she said. "We don't want guests worrying about the roof or walls flying off," she said.

Ahead of hurricane season it also contacts its hotels to make sure they are ready and are testing their emergency preparedness plans and conducting drills.

Businesses can mitigate the effects of wildfires by building defensible space around properties and having sound business continuity plans, said Michael Lubben, director, global risk management, at Henry Crown and Co./CCI.

For example, designing a golf course around a high-end resort helped mitigate the impact of the Thomas wildfire in 2018 on one of the company's properties in California. As a result, there was no direct fire loss to the resort, though it did suffer losses due to soot and heat, Mr. Lubben said.

It can be hard to get operations to buy into business continuity plans, but it "pays dividends for us," he said. In addition to having buffers, it's important to ensure that facilities have a plan if the fire spreads, such as proper storage of combustible and inflammable materials, he said.

Climate change risk management is increasingly becoming part of organizations' enterprise risk management programs, Mr. Lubben said. Listing climate change on its risk register has brought visibility to the risk to Henry Crown's board and senior management, he said.

"When they're making strategic decisions about acquisitions, for instance … we can start to think about where a target company is located and how climate change will affect those facilities we are purchasing," he said.

When it comes to insurance, retaining a larger portion of the risk through self-insured retentions and using a captive insurer may help mitigate the impact of climate risks, the risk managers said.

In Hurricane Maria, the retentions in Hyatt's property insurance program were so high that there was no insurable loss to the program for its Florida properties, Ms. Pack said.

"If you work with underwriters that don't really like the risk the first thing is to take a higher retention," Mr. Lubben said. "Sometimes that helps."

*Claire Wilkinson*

# TECHNOLOGY SOLUTIONS CAN HELP CLOSE GAP ON RISK

**SAN FRANCISCO** — The laundry room in the home of Richard La Gala, vice president, risk control services innovation, for insurer Sompo International, flooded 12 times in 20 years — an issue that was mitigated by installing leak detection sensors, he said.

Two factors are driving innovation in risk management in business: losses and the widespread personal adoption of technology to improve lives, according to Mr. La Gala, during a session on innovation in risk management at Riskworld, the Risk & Insurance Management Society Inc.'s annual conference in San Francisco last month.

"The reason we are seeing a lot of applications in the commercial space is because of what we are seeing in the personal space," Mr. La Gala said.

Emerging technologies can help companies mitigate both property and people risks. These include "smart buildings" that can detect water leaks, wearables that can correct ergonomics, sensors that can detect dangerous chemical leaks, and applications to track fleet driver behaviors.

"Look at your losses and see what's there," Mr. La Gala said.

Mr. La Gala said some issues, such as proving return on investment to company executives, can be managed by partnering with insurers, who can help vet programs and devices and create pilot and test programs to help gather data that shows how losses are mitigated with technologies.

Angelica Caldevilla, risk manager for Kawasaki Motors Corp., U.S.A., said a noticeable increase in frequency and severity of vehicle accidents among traveling sales staff spurred the company to pilot an application that tracked a driver's speed and road behaviors, which were then used to provide additional training or, in some cases, rewards.

"We were trying to think of a way to get ahead of these issues and be proactive," she said. "We wanted to reduce distracted driving. People are talking and texting while driving."

Some of the challenges in bringing the app to drivers' phones included privacy issues, she said.

Mr. La Gala said that's where working with vetted technology companies can help — most have legal advice and guidelines for technology.

*Louise Esola*

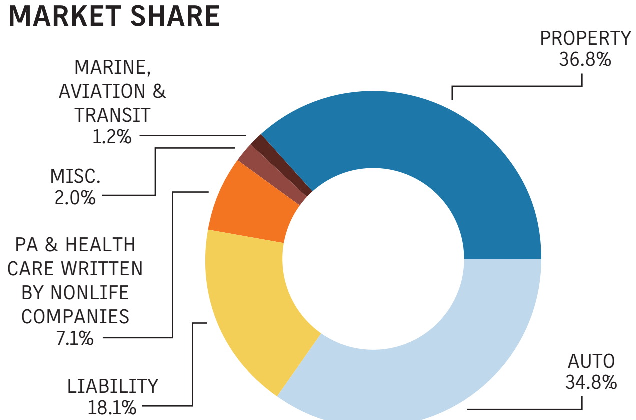
# PROFILE: BARBADOS

## 101

GLOBAL P/C MARKET RANKING

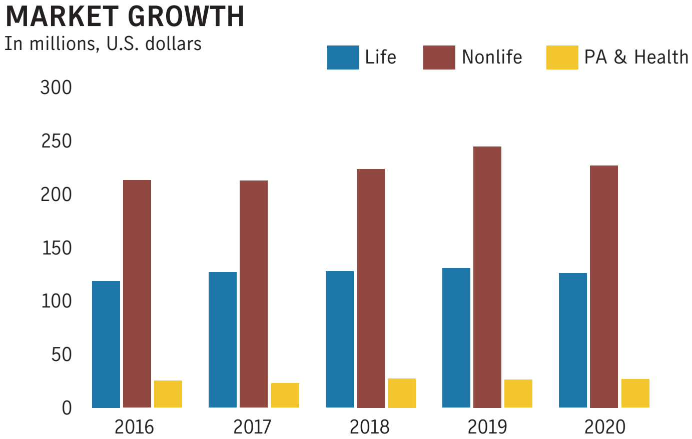
The Barbados insurance market in 2020 ranked 101st globally in property/casualty premiums, trailing larger Caribbean island states Jamaica (83rd) and the Bahamas (88th) but ahead of the U.S .Virgin Islands (107th) and Antigua and Barbuda (130th). Growth in 2019 of 9.6% in premiums was the highest since 2013. 2020 saw a contraction in nonlife premiums of 6.97% to BBD 453.7 million ($248.4 million), but the market proved resilient in terms of profitability despite the decline. Although there were claims in Barbados from the eruption of La Soufriere volcano in Saint Vincent in April 2021 and the passage of Hurricane Elsa in July 2021, neither event caused major market losses. Mergers and acquisitions in recent years are expected to strengthen the market in Barbados.

### MARKET SHARE

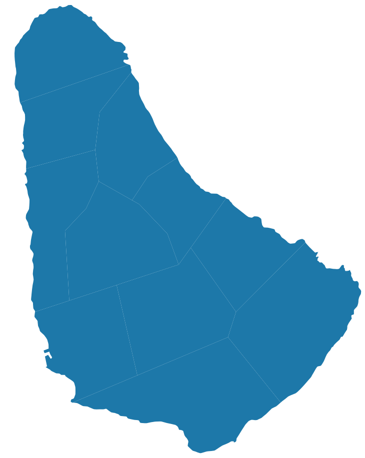



### MARKET GROWTH

In millions, U.S. dollars




Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



### AREA

166

square miles

### POPULATION

302,674

### MARKET CONCENTRATION

55%+

More than 55% (estimated) market share of top four insurers

### 2022 GDP CHANGE (PROJECTED)

8.5%

### MARKET DEVELOPMENTS

Updated April 2022

- Following a GDP contraction of almost 18% in 2020, the expected recovery in 2021 of around 10% was affected by a surge in COVID-19 cases during the first quarter, then the onset of the Delta variant of the virus. Continued restrictions on global travel were a key factor in preventing an economic return to pre-pandemic levels.
- Despite a contraction of 6.6% in premiums written by property/casualty insurers in 2020, with the small marine aviation and transit sector the most seriously affected in percentage terms — showing a drop of 25.7% — the market proved resilient in terms of profitability. The absence of losses from natural perils and the positive effects on property and auto loss ratios of reduced economic activity and traffic, respectively, enabled the market to show an underwriting profit for the first time in at least five years, while pre-tax profits were also at their highest level over that period.
- September 2021 saw the announcement of Bermudian Coralisle Group's acquisition of Massy United, one of the market leaders. Once known as Colonial Group, CG was primarily focused on personal insurance in the Eastern Caribbean.
- In December 2019 the acquisition of local insurer Trident by ANSA McAL (Barbados) Ltd., part of the same Trinidadian parent group as the insurer Tatil, was confirmed. Although somewhat delayed by the pandemic, all of the necessary regulatory approvals were completed by May 2021. The Barbadian company's operations merged with those of Brydens Insurance, Tatil's branch in Barbados, under the Trident brand.

### COMPULSORY INSURANCE

- Auto third-party bodily injury and property damage
- Workers compensation (state scheme)
- Professional indemnity for insurance brokers
- Professional indemnity for companies that provide corporate services or trust services for profit
- Shipowners liability for marine oil pollution (financial guarantee or insurance)
- Tour operators and travel agents — a bond, professional indemnity insurance or other financial guarantee

### NONADMITTED

Nonadmitted insurance is not permitted in Barbados because the law provides that insurance must be purchased from locally registered insurers, with the exception that use of non-registered insurers may be permitted by the Financial Services Commission if it is satisfied that similar protection at comparable cost is not available through a registered insurer.

### INTERMEDIARIES

Local brokers or agents must be registered to do insurance business. They are not permitted to place business with nonadmitted insurers, except where the regulator is satisfied that similar protection at comparable cost is not available through a registered insurer.

### MARKET PRACTICE

While some major projects and commercial organizations are insured directly offshore, fronting is a more common approach, though insurers are increasingly reluctant to engage in this without taking a retention for their own account.


## Lakers can proceed with COVID suit

■ A federal district court has ruled that the Los Angeles Lakers can proceed with COVID-19-related property damage and bad faith claims against a Chubb Ltd. unit, although it reiterated its earlier ruling dismissing the NBA team's business interruption claim.

In August, the U.S. District Court in Los Angeles had dismissed the Lakers' COVID-19-related business interruption litigation against Chubb unit Federal Insurance Co., in which it alleged that the virus' presence at the Staples Center and the surrounding transportation stations physically altered the property. The court called these "merely legal conclusions couched as factual allegations" and said the team had failed to support its conclusion that the virus' presence constituted "direct physical loss or damage."

The team had more success with a first amended complaint, filed with the court in October, that alleged the same previously dismissed claims but with additional factual allegations.

The Lakers contended the virus caused physical alterations to covered properties when it "landed on, and adhered to, surfaces such as fabric seats, elevator buttons and air ducts, causing a physical and chemical reaction that transformed the surfaces into vectors of viral spread called fomites," the March ruling said.

The ruling said that as a result, the team upgraded its properties to include "new air filters; touchless light switches, toilets, and sinks; sleeves or coatings for high-touch surfaces; and plexiglass dividers," contending the properties were not usable until those upgrades were completed.

"The Lakers alleged both the Covered Properties were physically altered, and that those alterations caused detrimental economic impact. Accordingly, Lakers stated a claim, here, for declaratory judgment and breach of contract as to the Policy's Property Damage clause," the court said in permitting the litigation to proceed.

The court also ruled the Lakers can proceed with their bad faith claim with respect to the property damage.

## Court reverses, rules for Target

■ In an unusual move, a federal district court reversed its 2021 decision and ruled that Target Corp. can recover from Chubb Ltd. units the settlements it paid to banks in connection with a 2013 data breach under its general liability policy.

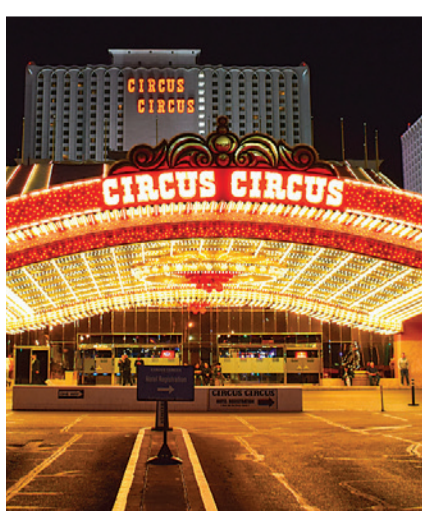
The U.S. District Court in St. Paul said it reconsidered its February 2021 ruling in *Target Corp. v. ACE American Insurance Co. et al.* after Target filed a motion to alter or amend the judgment.

The Minneapolis-based retailer was the target of a computer breach that exposed the payment card information of some 110 million customers in December 2013.

It filed suit against Chubb Ltd. units in federal district court in St. Paul in November 2019, charging they improperly refused to indemnify it for part of the costs it incurred in connection with the data breach.

The suit asked to recoup up to the $74 million in costs that Target incurred, but the court found that the company could not demonstrate "loss of use" in connection with the inoperability of the payment cards.

In its reversal, the court cited a 2010 ruling by the 8th U.S. Circuit Court of Appeals in St. Louis in *Eyeblaster Inc. v. Federal Insurance Co.* that it found "factually analogous" to the Target case and that the retailer had met the "loss of use" requirement. It vacated its previous ruling, denied the insurers' motion for summary judgment, and ruled that Target has coverage under its policies.




## AIG, FM prevail in COVID cases

■ Federal appeals courts affirmed lower court rulings in favor of American International Group Inc. and FM Global units in COVID-19-related business interruption litigation filed by a Las Vegas casino and a Baltimore real estate development and entertainment operating company, respectively.

Plaintiff Circus Circus LV LP, a 2.8 million-square-foot casino in Las Vegas, unsuccessfully appealed a ruling by the U.S. District Court in Las Vegas in business interruption litigation filed against AIG unit AIG Specialty Insurance Co., according to the ruling by the 9th U.S. Circuit Court of Appeals in San Francisco in *Circus Circus LV, LP v. AIG Specialty Insurance Co.*

"The district court correctly held that Circus Circus does not plausibly allege that it suffered direct physical damage to its property under terms of the Policy," the ruling said.

"Despite Circus Circus's allegation that the COVID-19 virus was present on its premises, it has not identified any direct physical damage to its property caused by the virus which led to the casino's closure," the ruling said.

The 4th U.S. Circuit Court of Appeals in Richmond, Virginia, issued a one-paragraph decision in upholding a ruling by the U.S. District Court in Baltimore in favor of FM Global unit Affiliated FM Insurance Co. in litigation filed by Baltimore-based Cordish Cos. Inc. in *Cordish Cos. Inc. v. Affiliated FM Insurance Co.*

"We have reviewed the record and find no reversible error," the ruling said.

## Brooklyn Nets settle discrimination suit

■ A discrimination lawsuit filed against the Brooklyn Nets basketball team by two former team attendants has been settled for an undisclosed amount.

Edward Bolden Jr. and Juwan Williams sued the NBA team in U.S. District Court in Brooklyn in November, according to the complaint in *Edward Bolden, Jr. and Juwan Williams vs. Brooklyn Nets, LLC.*

In their lawsuit, the plaintiffs, who are black, charged that despite "great efforts" to secure full-time jobs with the Nets they were told by their white supervisor that neither would progress beyond their team attendant positions, although he had mentored other, non-Black team attendants.

They also said they expressed opinions about police brutality, and the supervisor expressed his disagreement on the issue.

The supervisor terminated them in November 2020 without providing a reason, according to the complaint. A team official later told them that the supervisor had said they were "lazy" or unable to follow directions, the complaint said.

Their lawsuit charged the team with race discrimination and retaliation under federal, state and New York City law.

The team denied the charges in a response filed in February.

In a letter to the court, plaintiff attorney Edward Cerasia II, of Cerasia Law LLC in New York, said the parties had agreed to settle the case and were "in the process of finalizing the settlement papers."

## DOCKET

### COURT GREENLIGHTS BIOMETRIC LAWSUIT

A federal district court in Chicago refused to dismiss a putative class-action lawsuit that charges Ralph Lauren Corp. Inc. with violating the Illinois Biometric Information Privacy Act. Genesis Martinez, who was an employee of the Ralph Lauren facility in Aurora, Illinois, from May 2018 to August 2019, filed suit against New York-based Ralph Lauren, charging it violated BIPA by scanning, collecting, storing and using employees' fingerprints and biometric information for its timekeeping system, without proper written consent or making the required disclosures, according to the ruling in *Genesis Martinez v. Ralph Lauren Corp. Inc.*

### SYNAGOGUE LOSES COVID APPEAL

The 8th U.S. Circuit Court of Appeals in St. Louis affirmed a lower court's dismissal of a COVID-19-related business interruption lawsuit filed by a St. Louis synagogue. The appeals court's two-page ruling in *United Hebrew Congregation of St. Louis v. Selective Insurance Co. of America, a New Jersey Corp.*, cited its decision in *Oral Surgeons, PC v. Cincinnati Insurance Co.* in affirming the dismissal of the litigation filed by the synagogue. In its complaint, the synagogue had cited the loss of "revenue gaining activities" due to the stay-at-home orders issued by the St. Louis County Director of Public Health.

### SOLARWINDS CASE MOVES FORWARD

A Texas federal court largely refused to dismiss directors and officers securities litigation filed against SolarWinds Corp. in connection with a December 2020 cybersecurity breach. The lead plaintiff in the litigation is the New York City District Council of Carpenters Pension Fund, which filed suit against SolarWinds, its officers and two securities companies, according to the ruling by the U.S. District Court in Austin.

# Lisa Davis

## CEO, U.S. & BERMUDA, CANOPIUS

Lisa Davis joined Canopius USA, a unit of Lloyd's insurer Canopius Group Ltd., as president and chief underwriting officer in September 2020 with a vision to build on the strengths of its U.S. operations and Lloyd's syndicate to create a multiplatform approach to serving the U.S. specialty insurance market. She became CEO, U.S. & Bermuda, in February. Ms. Davis, based in Charlotte, North Carolina, spoke with *Business Insurance* Deputy Editor Claire Wilkinson, about Canopius' strategy in the U.S. and its plans for future growth. Edited excerpts follow.

Q&A

**Q What is Canopius looking to do in the U.S.?**

**A** In the U.S., we're looking to build out a specialty platform that allows our underwriters to be able to access our syndicate paper, our company (excess and surplus lines) paper, and then also admitted paper with our partnership with Samsung Fire and Marine Insurance. So we've been quietly, as we like to call it, building out this specialty-type groove over the past several years that allows us to offer a unique flavor by being able to write business across a variety of different papers, different lines, different classes.

**Q It's almost 18 months since you joined Canopius. How is it going?**

**A** It's going well. We doubled our gross written premium in 2020 and 2021 in the U.S. and Bermuda. At the end of 2020, gross written premium was $200 million, and at the end of 2021 it grew to $400 million. We've also shored up our infrastructure and expanded our talent over the past 12 to 18 months because our people are our most important asset. Having the paper and the platform is important, but you've got to have the people to be able to deliver on that. We have around 70 employees in the U.S., up from about 49 when I joined, and we are looking to add another 20-plus this year. We want to add underwriters, but we're also looking to shore up our operational side. We hired a chief operating officer and a chief financial officer in 2021, and this year I'm going to bring on a chief underwriting officer. We currently have offices in New York and Chicago, but we also have people in Atlanta, Charlotte and San Francisco. In the future, I would like to see maybe three or four office footprints.

**Q What lines of business is Canopius writing in the U.S.?**

**A** The main lines of business that we write in the U.S. are property, auto physical damage and motor truck cargo, surety, ocean marine, management professional lines, cyber and some general liability.

We're seeing growth across the board, but the majority of the growth is coming from management professional lines, cyber, auto physical damage and motor truck cargo. We've recently reduced our wind exposure and are no longer writing wind exposure in U.S. property binders, so that has decreased our overall premium in the property line of business. The past five years have been tough from a cat perspective, and with climate change and other forces we were struggling to find a way to do that and deliver shareholder value. The biggest lines of business in the U.S. are auto physical damage and management professional lines which make up almost half of the U.S. book.

**Q How much surplus lines business does Canopius write?**

**A** About half of our business is completely surplus lines, written on our E&S company paper and the other half of our business is written primarily on Lloyd's paper, which I think of more as standard market but specialty business. There is surplus lines business in that Lloyd's book. So, the actual split is probably about 60% surplus lines, 40% more standard/admitted/non-E&S type business.

**Q Canopius recently signed an agreement with Samsung Fire and Marine Insurance to write U.S. admitted business on its paper. How's that going?**

**A** It's going well. We are writing management professional lines and our ocean marine business on Samsung's A++ paper. Almost 90% of our ocean marine business and about 60% to 70% of our management professional lines business will be written on Samsung paper this year. We will be adding another line of business, hopefully within the next 30 to 60 days, and we'll continue to look to add other lines of business as well.

**Q Are there any plans for Canopius to become an admitted insurer in its own right?**

**A** We don't have any plans at this point to get our own admitted paper. Right now we're looking to utilize our partner Samsung's paper. Samsung is a strategic investor in the organization, with a 19% stake.

**Q How do the nonadmitted and admitted businesses work together?**

**A** Our nonadmitted book is primarily a delegated book of business. The difference is that our nonadmitted book is primarily delegated through MGAs at this time and then our open market book is the main book on an admitted basis.

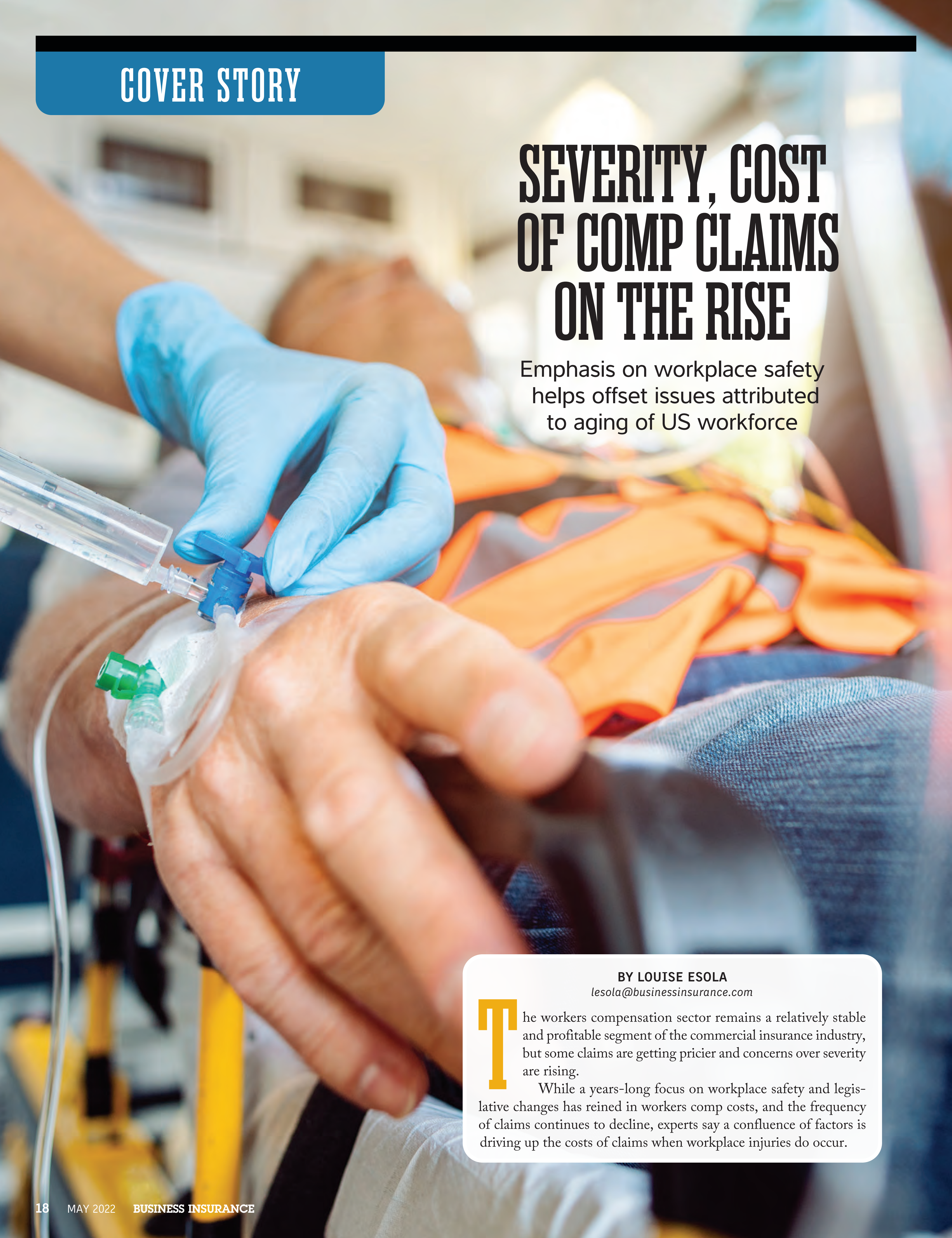
**Q Are you writing any construction business?**

**A** We started writing a little bit of construction just this year, a month ago. We are looking at potentially doing something in the construction space but nothing official at this point in time. I don't know that we'll go into the liability side, but we may look at some of the short-tail lines on the construction side.

**Q How about cyber? Are you looking to grow that line of business?**

**A** The business itself will grow, but it will grow by rate, not so much by exposure. We are managing our cyber exposure and making sure that we're as comfortable as we think we are with the exposure that we have. We implemented a new strategy this time last year on cyber where we reduced our limits, took higher excess positions and tried to get ourselves out of ransomware and some of the things we're seeing. We haven't changed our position on that within the last year.

We're seeing growth across the board, but the majority of the growth is coming from management professional lines, cyber, auto physical damage and motor truck cargo.



# SEVERITY, COST OF COMP CLAIMS ON THE RISE

## Emphasis on workplace safety helps offset issues attributed to aging of US workforce

**BY LOUISE ESOLA**
*lesola@businessinsurance.com*

The workers compensation sector remains a relatively stable and profitable segment of the commercial insurance industry, but some claims are getting pricier and concerns over severity are rising.

While a years-long focus on workplace safety and legislative changes has reined in workers comp costs, and the frequency of claims continues to decline, experts say a confluence of factors is driving up the costs of claims when workplace injuries do occur.

"The severity trend has been pretty steady," said Jason Beans, CEO of Chicago-based Rising Medical Solutions LLC, a company that provides medical cost containment services.

The aging workforce, medical inflation spurred in part by expensive medical technology, and rising wages, which lead to higher indemnity costs, are among the reasons claims severity is increasing, according to experts. Catastrophic injury severity is also a factor, albeit a smaller concern as debilitating events are rare (see story, page 20).

The changing workforce — from older workers who take longer to recover to less-experienced workers who get injured more often — and rising medical costs, stemming in part from medical inflation, treatment innovations and hospital consolidations, were pegged as top concerns for the workers comp sector in a survey this year of 100 insurance executives by the Boca Raton, Florida-based National Council on Compensation Insurance.

"The bottom line is we are always watching severity," said Donna Glenn, NCCI's chief actuary, who said other factors in comp could offset the steady increase (See story, page 20).

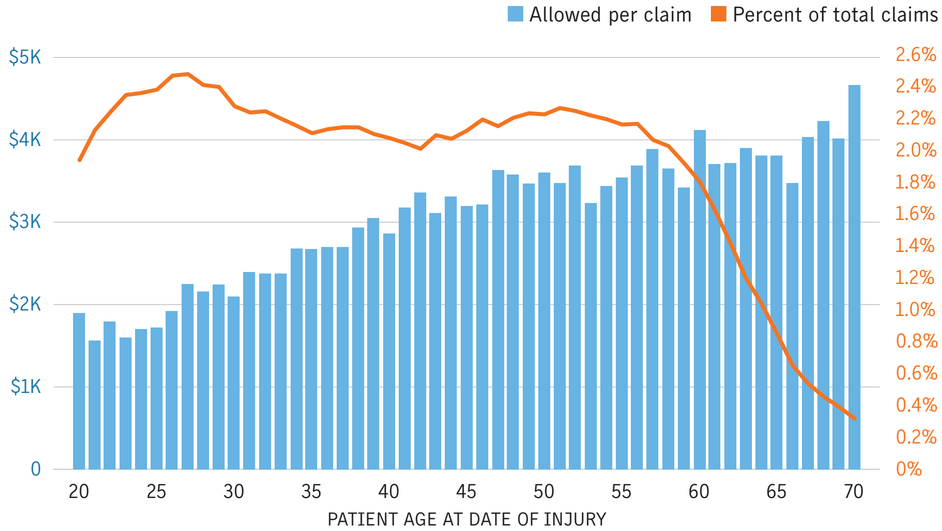
The Cambridge, Massachusetts-based Workers' Compensation Research Institute has also kept tabs on the increase in spending per claim. "Is it medical inflation? Is it the aging workforce? Is it comorbidities? Yes, to everything," said Ramona Tanabe, executive vice president.

Complicating the issue, she said, is that "every state has a reason for increases." WCRI releases annual reports on 18 states, representing data from more than half of comp claims nationwide. The latest figures, released in late April, show a steady increase in lost-time claims for most states. Those states without fee schedules are seeing a steeper climb.

Most experts agree that the aging workforce is a prominent cause of the increases.

In 2000, 32.4% of the U.S. population aged 55 or older worked; by 2020, that share had climbed to 39.2%, according to the U.S. Bureau of Labor Statistics. In 2021, 23% of the U.S. workforce was older than 55, up from the 13% reported by the BLS in 2000.

## CLAIM COSTS — BY PATIENT AGE




Source: Rising Medical Solutions

> "A slower healing process, more complex and expensive treatments, and longer time away from work can all result when a worker with a comorbidity gets injured."
>
> Mary Beth Pittinger, Chubb Ltd.

"The aging workforce is clearly a factor," said Russell Pass, Itasca, Illinois-based chief information officer, executive vice president of product development, at third-party administrator Gallagher Bassett Services Inc. "Workers 55 and over account for over a fifth of lost-time injuries and 31% of costs."

Virna Rhodes, Cherry Hill, New Jersey-based senior vice president, workers compensation claims, for Liberty Mutual Insurance Co., said older workers are more likely to have comorbidities. "It is likely their treatment is going to be more expensive than that of a younger worker," she said.

"Comorbidities are starting to influence the severity question (and) a lot of that has to do with the health of our society," said Max Koonce, Fayetteville, Arkansas-based chief claims officer for third-party administrator Sedgwick Claims Management Services Inc.

While an estimated 80% of workers comp claims are medical-only, indemnity claims, which compensate for lost wages, are where severity will kick in, Mr. Koonce said.

For an older worker "it takes a little bit longer to bounce back" following an injury, Mr. Beans said, referring to data on age-related claims costs. It's a "crystal clear straight line" upward as workers age and costs increase, he added.

"In many cases, aging workers are more

See **CLAIMS** next page

## Experts say advocating for injured workers can curb rising claim costs, avoid litigation

Short of maintaining a focus on workplace safety, the workers compensation industry is mostly "along for the ride" when it comes to claims severity, as there is not much that insurers can do to mitigate the upward trend, said Virna Rhodes, Cherry Hill, New Jersey-based senior vice president, workers compensation claims, for Liberty Mutual Insurance Co.

One area where the industry can curb the rising costs and keep claims from lingering or going into costly litigation is advocating for injured workers, Ms. Rhodes and other experts say.

"The data is irrefutable on the early intervention, the advocacy model," said Jason Beans, CEO of Chicago-based Rising Medical Solutions. "If you get in and help them get their care … it tends to be a more trusting relationship out of the gate, and it helps in moving the claim forward."

Russell Pass, Itasca, Illinois-based chief information officer, executive vice president of product development, at third-party administrator Gallagher Bassett Services Inc., said the "human side" of claims management is key in managing costs.

That includes "not leaving workers to wonder, even for a minute, how supportive their employer is going to be" and showing that "we are sitting on the same side of the table as they are in getting them healthy, getting them back to work as quickly as possible," he said.

Max Koonce, Fayetteville, Arkansas-based chief claims officer for third-

party administrator Sedgwick Claims Management Services Inc., said bringing in additional resources — such as assistance with mental health — can pay dividends by helping "calm some anxiety that is naturally part of an injury."

"You want to address things as soon as possible so they don't grow exponentially, so it doesn't drive up the claim," he said.

*Louise Esola*

## CLAIMS VARIANCE BY AGE GROUP

Gallagher Bassett Services Inc. has been tracking the severity trend in workers compensation for several years. Insights show older workers tend to accrue longer, more expensive and more lost-time claims than younger workers.

**21% of workers comp claims come from workers aged 55 and older, but these make up 31% of costs.**

- Average costs incurred for injured workers 55 and older are **50% higher** than for those aged 25-34.
- Injured workers aged 55 and older accrue **40% more** lost-workday claims than those aged 25-34.
- According to the U.S. Bureau of Labor Statistics, by 2030, workers 55 and over are projected to account for **26%** of all claims; those 35 and over are projected to generate approximately **70%** of all claims.

**Outcomes deteriorate significantly after age 35 and more gradually thereafter.**

- **33% higher** cost for 35- to 44-year-olds vs. those between 25 and 34 years old
- **25% more** lost-workday claims for 35- to 44-year-olds vs. those between 25 and 34 years old
- **43% higher** indemnity cost per claim for 35- to 44-year-olds vs. those between 25 and 34 years old
- **8% fewer** lost-time claims closed at the same point in time for 35- to 44-year-olds vs. those between 25 and 34 years old

**Compared with previous years, payment flows have recently shifted toward indemnity, with medical down from 45% in 2019 to 41% in 2021, and indemnity increasing 4 percentage points, 40% in 2019 to 44% in 2021.**

- Average indemnity incurred on lost time claims continues to grow as expected, given wage growth and inflation since COVID.

Source: Gallagher Bassett Services Inc.

## CLAIMS

Continued from page 19

susceptible to having certain comorbidities like diabetes, heart disease or mental health issues, and those comorbidities can contribute to an increase in the severity of a workers compensation injury," said Mary Beth Pittinger, Whitehouse Station, New Jersey-based executive vice president, workers compensation, at Chubb Ltd.

"A slower healing process, more complex and expensive treatments, and longer time away from work can all result when a worker with a comorbidity gets injured," she said.

Tammy Bradly, Birmingham, Alabama-based senior director of clinical product marketing for comp services conglomerate Enlyte Group LLC, takes it a step further: "It's not just the aging workforce; it's the entire workforce. We are not a healthy population." Advocating for injured workers and worker wellbeing (see related story) has been a best practice in quelling severity overall, she said.

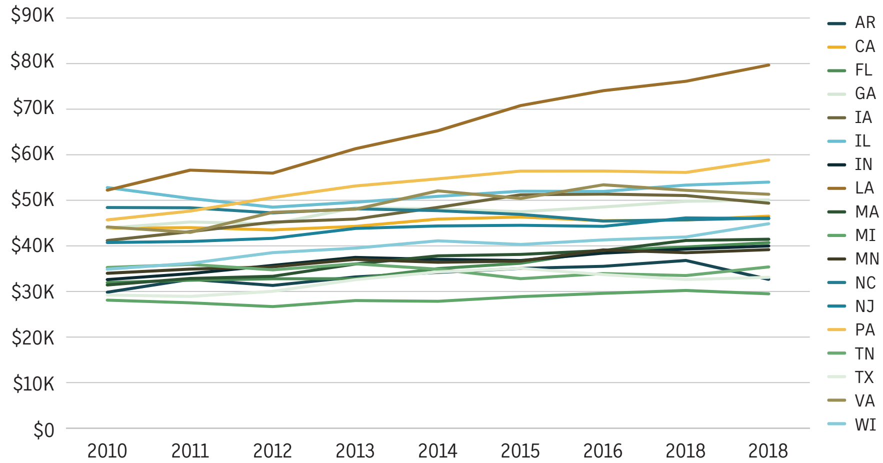
> "It's not just the aging workforce; it's the entire workforce. We are not a healthy population."
>
> Tammy Bradly, Enlyte Group

While younger workforces don't have the same incidence of comorbidity issues, they, too, can lead to more expensive claims.

With many employers reporting labor shortages, some may take on less experienced staff, whose lack of training may make them more vulnerable to injury, Ms. Pittinger said.

### TOTAL COSTS PER CLAIM WITH >7 DAYS OF LOST TIME

Data from 18 states studied show claim costs fluctuations and an upward trend for some.




Source: Workers Compensation Research Institute (WCRI)

"Some industries impacted by the labor shortage, such as construction and manufacturing, are more susceptible to incidents that could lead to a catastrophic injury; like falls from heights, burns, and machinery- or driving-related accidents," she said.

### Medical inflation

One factor that is tougher to manage is medical inflation.

In workers comp, medical inflation bumped up to 6.6% in 2021, compared with the three-year average of 6.4%, Mr. Beans of Rising Medical Solutions said. Increased utilization, or more treatments per injured worker, accounted for 2.8% of the increase, he said, adding that 85% of the remainder of the inflation was due to an increase in the services rendered in a hospital setting.

"The majority of the shift is going to more expensive care," Mr. Beans said. Outpatient "ambulatory" hospital services, rather than procedures performed in a doctor's office, are also driving up costs, as comp payers have to pay costly ancillary, facilities-based fees, he said.

Mr. Pass of Gallagher Bassett said mergers between medical facilities and consolidation of physicians practices are also adding to the increasing costs.

"The fewer (facilities) there are, the more bargaining power they have," he said.

"From a severity standpoint, from a cost standpoint, claims are going to cost more," Mr. Koonce said of medical inflation, adding that some states saw fee schedule increases in recent years, as "part of the normal process" stemming from regular federal Medicare cost increases, which help set comp schedules in most cases by law.

Emerging technology is also affecting claims costs, said Ms. Tanabe, who mentioned advances in medical imaging as one example.

"An MRI machine has more capability to see things than it did 20 years ago; things will get picked up and treated," she said.

"The technology has improved but it's more expensive. The equipment is more expensive; the treatment is more expensive," Ms. Tanabe said.

## Advances in medical technology contribute to rising claims severity

Gravely injured workers have better chances of survival due to advances in medical technology, but while such developments are welcomed, lifetime medical care and indemnity payments contribute to rising claims severity.

"People are going to survive injuries at a greater rate than before," said Matt Zender, Las Vegas-based senior vice president of workers compensation strategy for AmTrust Financial Services Inc. "Injuries that occur today have a greater likelihood of success than 25 years ago because medical technology has advanced. We can help injured workers with quality of life that we haven't seen before."

"I don't view my goals as lowering severity as long as severity is helping," he added.

Virna Rhodes, Cherry Hill, New Jersey-based senior vice president, workers compensation claims, with Liberty Mutual Insurance Co., said claims with lifelong care, such as for workers with paralysis or traumatic brain injuries, are a focal point for insurers.

"I roundtable a lot of our catastrophic cases and the conversation is that people are living with injuries where previously it would have been a fatality," she said. "These are the ones we talk about in terms of lifelong care (and) we have a pretty decent volume of them."

Lifetime medical care is "definitely a driver" in the rise in individual comp claim costs, she said.

*Louise Esola*

## SAFETY FOCUS CUTS INJURY FREQUENCY

While claims severity is likely to continue to increase, experts say drops in the frequency of workers compensation-related injuries could help offset the effects of rising costs.

On frequency and severity, "you put the two together and it's still a positive story," said Russell Pass, Itasca, Illinois-based chief information officer, executive vice president of product development, at third-party administrator Gallagher Bassett Services Inc.

Some are confident the decline in frequency will help control overall comp spending.

"I would encourage everybody to look at the pieces and the parts" of the industry's financial picture, said Donna Glenn, Boca Raton, Florida-based chief actuary for the National Council on Compensation Insurance.

Experts note that workplaces are getting safer.

"Improved safety measures have done very well in recent years," said Jason Beans, CEO of Chicago-based Rising Medical Solutions. "In looking at the data, places are getting safer ... and we are less of a manufacturing society. The jobs have gotten safer."

Virna Rhodes, Cherry Hill, New Jersey-based senior vice president, workers compensation claims, for Liberty Mutual Insurance Co., said risk management has helped.

"I have a very close partnership with my risk control team," she said. "We talk about ways to prevent the injuries."

Liberty Mutual, for example, last year introduced its ErgoValuator app, which allows employers to film a worker's posture while completing tasks, using artificial intelligence to recommend corrections.

"While we don't have direct control over medical inflation, the workers comp industry can be impactful with implementing safety, employee well-being, and new hire training to help prevent catastrophic, costly injuries from happening," said Mary Beth Pittinger, Whitehouse Station, New Jersey-based executive vice president, workers compensation, at Chubb Ltd.

*Louise Esola*

SPECIAL REPORT


# High-stakes cyber claims demand quick action

INSIDE



BY JUDY GREENWALD

*jgreenwald@businessinsurance.com*

The biggest difference between handling cyber claims and more traditional property/casualty claims is the speed with which the process unfolds, which demands an immediate, coordinated response by the policyholder, insurer and broker, observers say.

Claims handling for the more traditional property/casualty lines is a comparatively leisurely process, in which a claim is made, the policyholder awaits a decision on coverage, and matters progress from there to either a paid claim or litigation, they say.

In contrast, cyber claims are characterized by often frantic speed, with simultaneous events occurring on multiple fronts and conceivably the company's existence at stake.

"Every cyber incident is an emergency situation," said Kristine D'Amato, New York-based national claims counsel, executive and professional risk solutions, for USI Insurance Services LLC.

"You have a policyholder facing something it has never faced before" who "oftentimes feels they don't know exactly what's happened," she said, adding that every minute can cost companies if their operations are shut down.

### MOST FREQUENTLY SEEN CYBER COVERAGE EXCLUSIONS

- Vendor/supplier used not approved by insurer
- Fines/penalties
- Claim covered under crime policy
- Prejudice issues, insured acted without insurers' consent
- First party cover not taken out
- Betterment

Source: Willis Towers Watson PLC

John Scordo, New York-based cyber claims advocacy leader for Marsh LLC, said the broker is already collaborating with insurance adjusters "literally the first hour" after a ransomware event.

"There are multiple parties that have to be involved; schedules have to mesh for at least the first 48 hours," said Dan Twersky, New York-based global cyber claims leader for Willis Towers Watson PLC. He noted that cyber events often happen on a Sunday, when it can be difficult to reach people.

The critical nature of the situations adds to the sense of urgency, observers say.

Cyber events "can really bring down the company," with some businesses finding that hackers have made their source code publicly accessible, said Christine Flammer, New York-based claims manager for Axa XL, a unit of Axa SA.

Threats are constantly evolving, even on a daily basis, as hackers find new ways to infiltrate networks, said Savanna Boyles, New York-based senior director of claims for insurtech Corvus Insurance Holdings Inc. "We see new twists and iterations in the types of claims on a continuous basis," she said.

Another issue is determining the extent of cyber losses.

Initially, everyone "is trying to figure out what actually happened," whether it is a breach, a ransomware incident "or some other variation," said Daniel J. Healy, a partner with Anderson Kill P.C. in Washington. Determining the extent that data is compromised and what has been damaged "can be pretty complicated," he said.

Ms. Boyles said that unlike fire damage, where the evidence of loss is tangible, cyber losses are "far more elusive in measurability, and the extent and the cost of the loss isn't always as cut and dried as it is with other lines."

Another issue with cyber claims is the number of parties involved, including lawyers, forensics experts, security and public relations specialists, which requires insurers to act as quarterback, said Tim Zeilman, Simsbury, Connecticut-based global cyber product owner at Hartford Steam Boiler Inspection and Insurance Co., a Munich Reinsurance Co. unit.

Despite insurers' immediate initial involvement, because so many "coverage buckets" are involved, "the claims continue for a long time" and can involve first-party, business interruption, regulatory, class-action, fraud and crime claims, Mr. Scordo said.

Furthermore, cyber claims may include many exclusions that need to be understood and could raise so-called silent cyber issues, said Jamie Taylor, London-based senior management director in data protection & cyber security at DWF Group, a provider of legal and business services.

Thomas H. Bentz, a partner with Holland & Knight LLP in Washington, said, the "burn rate," how quickly the claims exceed retentions, is significant with cyber.

In a typical directors and officers class action, he said, it takes "months, if not years," before claims pierce retentions and policy limits. With a cyber claim, it may happen the first day, he said.

### AVERAGE TIMELINE FOR A CYBER CLAIM


Source: Willis Towers Watson PLC

The situation also demands advance preparation, said Katherine Keefe, Marsh's Philadelphia-based cyber incident management leader for the U.S. and Canada. She said Marsh spends much time with policyholders before they're ever faced with a cyber incident to familiarize them with their policy and their options, so they're prepared to use available resources "to the maximum effect."

An often-mentioned problem is when policyholders use vendors that are not approved by their insurer to respond to a cyber incident.

Ms. Boyles said that sometimes in the heat of the moment policyholders, who

See **CYBER** on page 25

are unaware their insurers have a 24/7, 365-day response team, "just kind of panic and perhaps try to take matters into their own hands" and reach out to nonapproved vendors.

"It can become a major point" if that vendor cannot handle more complex matters such as a ransomware attack, she said.

Ms. D'Amato said, "There are policy forms that'll allow some leeway of choice of vendor or counsel," but almost invariably with the caveat that the insurer must approve the selection in writing.

### A CHECKLIST FOR ENSURING SMOOTH CYBER CLAIMS

To help ensure smooth cyber claims handling, risk managers should:

- Have close communication with their insurer.
- Take advantage of the insurer's pre-claim services.
- Review in advance policyholder obligations, whom to contact and the information that should be made available.
- Have an up-to-date incident response plan in place.
- Have hard copies of the plan available.
- Engage in tabletop exercises.
- Give immediate notice under all policies if an event happens.
- Get to know their vendors.
- Know any implications of using a non-insurer-approved vendor to respond to a cyber incident.
- Not keep secrets from their insurer.

Source: *Business Insurance* interviews

"I have seen some policies that actually will say you don't have to use a preapproved vendor, but if you don't" there are different limits or retentions, said Joni Mason, New York-based senior vice president, national claims practice leader, at USI.

"My recommendation is to keep the carrier informed at every step" because it is more difficult to get insurers' approval if the outside vendor has already been hired, Ms. D'Amato said.

Cyber experts stress the need to immediately inform the insurer of the claim.

"There's nothing worse than having to adjust a cyber claim in hindsight. … You're just sitting there, trying to unpick decisions made in the heat of the moment," said Roger Francis, cyber claims director at CFC Underwriting Ltd. in London.

"Many times, when people don't report initially, it can become a greater problem down the road, and if there's a threat actor in the system, it gives them more time to move around and possibly deploy malware," said Lisa Jaffee, New York-based assistant vice president of cyber/tech/media/crime claims for Hiscox USA.

Another issue that may arise is a lack of cooperation on the policyholder side.

Tara Bodden, general counsel and head of claims at insurtech At-Bay Inc. in San Francisco, said it can be challenging to track down a claim's cause if employees "kind of get in the way" on the investigation because they're worried about being blamed and losing their jobs.

Experts say policyholders should be aware that checking to make sure in ransomware situations that the hacker is not on the list of sanctioned entities of the U.S. Department of the Treasury's Office of Foreign Assets Control can add time to the process.

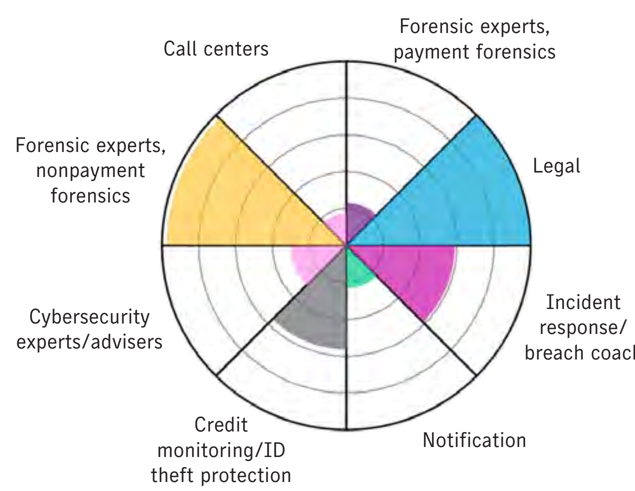
An October 2020 advisory from the department warns that companies, including cyber insurers, that facilitate ransomware payments to sanctioned entities may be violating OFAC regulations.

"It certainly is a challenge to make sure that you're complying with all the appropriate laws and regulations, particularly OFAC's," Mr. Zeilman said.

"It's something that adds another kind of level of complexity to claims handling" that runs parallel to the effort of working with policyholders and seeing they are properly reimbursed, he said.

### CLAIM EVENTS PROFILE

Themes that are prevalent for cyber losses through their appointed vendors




Source: Willis Towers Watson PLC

## POLICYHOLDERS, INSURERS MUST BE IN STEP ON CLAIMS

Good communication between policyholders and insurers is critical to successful cyber claims handling, experts say.

Make sure "that you're communicating with the claims handler," including any claims updates, said Joni Mason, New York-based senior vice president, national claims practice leader, for USI Insurance Services LLC.

"Policyholders should prepare long before a claim even happens," said Savanna Boyles, New York-based senior director of claims for insurtech Corvus Insurance Holdings Inc.

"You're really behind the 8-ball if you wait for the day IT says they see something funny in your network."

Many cyber insurers offer pre-claim services to better prepare companies for an event, including providing a free hour's consultation with an attorney to ask any questions, said Stuart Panensky, a partner with FisherBroyles LLP in Princeton, New Jersey.

Companies should also do tabletop exercises, which is a great way for a policyholder to learn what to do before an incident occurs, he said.

Policyholders are going "even outside their standard tabletop exercises" to review in advance their obligations, whom they should contact, what information should be available if an event occurs, and what they should be tracking insofar as losses and the additional expense being accrued, said Dan Twersky, New York-based global cyber claims leader for Willis Towers Watson PLC.

Preparation should include having hard copies of incident response plans in case there is no access to online copies, Mr. Panensky said.

Policyholders should also know the implications if they use a non-approved vendor in their response to a cyber incident and be open with their insurers, experts say.

"Don't keep secrets," Mr. Panensky said. Even if there is a coverage issue, insurers "will pay for everything" they have contracted to pay, he said.

Cyber incident victims should also give notice immediately under all policies, "not just cyber policies," said Daniel J. Healy, a partner with Anderson Kill P.C. in Washington.

*Judy Greenwald*

## COMPLEX CYBER CLAIMS TEST INSURERS' TECHNICAL EXPERTISE, CAPABILITIES

Many experts say cyber liability insurers have done a good job overall in handling claims, but their expertise and efficiency vary and it can sometimes take months for claims to be paid.

"Cyber insurance has really evolved over the past decade," said Savanna Boyles, New York-based senior director of claims for insurtech Corvus Insurance Holdings Inc.

"The nuances of cyber insurance and cyber claims were not fully understood" a decade ago, but programs have since matured, as insurers have added technical expertise, she said.

John Scordo, New York-based cyber claims advocacy leader for Marsh LLC, said, "The nature of the cyber event and claims and the interaction with the insurer is really very intertwined, and I think carriers are doing a really good job" in their advice and responsiveness.

Christine Flammer, New York-based claims manager for Axa XL, a unit of Axa SA, said insurers are doing well not only in handling claims in the heat of the incident but in partnering beforehand and debriefing afterward as to what can be done better the next time.

Roger Francis, cyber claims director at CFC Underwriting Ltd. in London, said of insurers, "The ones that are handling it best are spending time and money to hire talented individuals with the right expertise."

Some insurers "tend to drag their feet a little bit" and scrutinize losses more closely as the market has hardened, said Dan Burke, San Francisco-based national cyber practice leader for Woodruff Sawyer & Co.

"We've had more trouble with insurers who are starting to outsource a lot of the process," said Dan Twersky, New York-based global cyber claims leader for Willis Towers Watson PLC.

"They're coming back and asking a lot of questions before paying," sometimes months later, he said.

Mr. Twersky said there's sometimes "Monday morning quarterbacking" about the period when people were scrambling to respond to a cyber incident, which makes it difficult for the policyholder.

Mr. Twersky said the pandemic has complicated matters, as claims adjusters have not been able to "go down the hall and speak to their manager."

*Judy Greenwald*

# Insurers mobilize to identify comp fraud in effort to stem rise in suspicious claims

**BY AMY O'CONNOR**


Fraud investigations are triggered by red flags in a workers compensation claim, and the examples run the gamut.

No witnesses to the employee's alleged injury; the timing of the claim, such as right after the weekend; an employee who has frequent or repetitive injuries; inconsistent medical treatment or statements about the injury; or the location of where the incident occurred, are just some examples of what can spark suspicion.

Fraud experts say employers and their insurers have reasons to be concerned: Workers comp fraud costs insurers and employers more than $1 billion annually, and that number is expected to rise, according to the National Insurance Crime Bureau.

Despite many companies moving to remote work because of the COVID-19 pandemic, NICB said it's seen a spike in workers comp fraud referrals over the past two years.

The bureau noted the increase could be indicative of the opportunistic nature of workers' fraud claims and the state of the economy. Workers who have been laid off due to the pandemic have hired attorneys and filed questionable workers comp claims for injuries not previously reported to their employers, or workers who were successful with previous claims may be becoming "repeat offenders," NICB said.

> "Obviously, fraud affects everybody and that drives up the overall claims cost, so we're really trying to make sure that we're doing our due diligence for our policyholders and our agencies."
>
> Jennifer Langan,
> Missouri Employers Mutual Insurance Co.

"Workers compensation fraud is one of the many layers of fraud that exist, resulting in increased costs to insurers, increased costs of premiums, and unintentionally exposing honest employees to risks," said NICB President and CEO David Glawe.

Insurers invest significant resources each year, both in internal and external personnel as well as technology, to identify and investigate fraudulent workers' comp claims.

Fraudulent claims by workers, which are the most common types of comp fraud, typically involve employees with an existing injury claiming benefits, those misstating facts about a claim, fake or exaggerated injuries, false loss statements, fictitious losses, and individuals who still work or earn income while claiming comp benefits.

Jennifer Langan, vice president and chief claims officer for Missouri Employers Mutual Insurance Co. in Columbia, Missouri, said the company investigates every workers comp claim before determining compensability of a loss to rule out potential fraud activity.

In Missouri, about 10% of workers comp claims turn out to be fraudulent, she said.

If a claims investigation reveals any suspicious allegations, Ms. Langan said the company's special investigations unit is brought in to further investigate.

"Obviously, fraud affects everybody and that drives up the overall claims cost, so we're really trying to make sure that we're doing our due diligence for our policyholders and our agencies," she said.

Bill Byington, MEM's senior special investigative unit specialist, oversees workers comp fraud investigations for the company and, when applicable, refers his investigations to the state attorney general's office for further action.

The cost of investigating workers comp fraud claims varies greatly, he said, because there can be different components involved in each investigation, such as surveillance, subpoenas, depositions, medical reviews and legal reviews. Some claims can be easily proven as fraudulent and denied without huge costs. Other claims may be "partially fraudulent," Mr. Byington said, such as when an employee is injured at work and receives comp benefits but then also earns income from a side job.

"If it's apparent early on that we can prove beyond a reasonable doubt that this was a fraudulent file and get on with the denial as quickly as possible, that's the best outcome we can hope for from a fraudulent aspect," Mr. Byington said.

If a claim is determined to be fraudulent, MEM works with the employer to prevent the problem from happening in the future, Ms. Langan said.

Tony Natale III, supervisor of Philadelphia-based law firm Marshall Dennehey's workers compensation department, has spent more than 30 years defending insurers and employers in workers compensation cases, with a caseload that has included a variety of federal cases and workers comp matters for the NHL and NBA.

In 99% of cases referred to him by insurers there is an element of fraud, Mr. Natale said, whether it be an employee who exaggerated their injury, or a claim for an injury that didn't happen at work.

Mr. Natale said insurers have been more proactive in investigating fraud claims over the past 10 years, but they are more hesitant about taking additional legal action when there is fraud involved. It can be challenging and expensive to prosecute fraud claims because it must be proven that the claimant acted with the intent to defraud, he said. Companies often decide it's more cost-effective to settle the case and close the file.

"You have to look at the big picture – even if we can prove (there's fraud), we are going to be paying benefits for years before we get this person off of comp, versus, I can settle it for one year of benefits today,'" he said. "(But) just because we settled this case to stop the bleeding doesn't mean that fraud isn't there."

Mr. Natale said the industry should work with attorneys in taking a stand and fighting fraud because it will make a difference in the number of overall fraud claims.

Technology companies are offering products to identify workers comp fraud.

Klear.ai in Cypress, California, has developed predictive analytics software that uses artificial intelligence to scan for potentially problematic claims.

> "We have every reason to believe that going forward, technology is going to play an even more important role in being able to identify and detect fraud."
>
> Anand Shirur, Klear.ai

Klear.ai said its model's algorithm lists more than 40 red flags that indicate potential fraud, including demographic and employment details, wages, number of claims filed in the past three years and other behavioral markers. Adjusters can then investigate the claims identified.

Anand Shirur, vice president of product development for Klear.ai, said the company works predominantly with insurers' claims teams. The growing sophistication of fraud schemes and the industry's talent gap, which will make it harder to find experienced adjusters who are adept at spotting fraud, will increase the necessity of fraud technology, he said.

"We have every reason to believe that going forward, technology is going to play an even more important role in being able to identify and detect fraud," he said.

# Deep data pools create opportunities for improved outcomes, cost savings

BY MICHAEL BRADFORD

Data-rich workers compensation records are a fertile field for analytics that can direct claims to adjusters and others best-suited to manage them, help identify qualified doctors and attorneys, and provide other insights.

The results for insurers and employers are healthier workers and lower costs, among other benefits, sources say.

Predictive analytics aid the decision-making of adjusters, said Virna Rhodes, Marlton, New Jersey-based senior vice president, workers compensation claims, for Liberty Mutual Insurance Co. and its Boston-based third-party administrator Helmsman Management Services LLC.

"Data analytics are only as good as the people who use them," she said. Used effectively, they can help "get the claim in the hands of the right expert at the earliest opportunity."

Ms. Rhodes said Liberty Mutual's claims systems "are just awash in notes and data" that artificial intelligence analyzes to flag claims based on potential severity, the likelihood of an injured employee returning to work, compensability of a claim, and whether subrogation is likely or fraud could be present.

Analytics can generate significant savings, sources say.

"You're trying to get the claim to the right person at the right time," said Adam Wesson, director of claims solutions at Verisk Analytics Inc.'s North Reading, Massachusetts-based ISO Claims Partners. "The sooner you involve the right resources in handling the claim, the better the outcome you're likely to have."

Skip Brechtel, executive vice president and chief information officer at Cannon Cochran Management Services Inc. in Metairie, Louisiana, said an analysis by Cannon several years ago showed that claims with two or more comorbidity factors cost as much as seven times more than those without them. In 2014, CCMSI began using an algorithm that considered 70 comorbidity data fields to help determine whether indemnity claims could become severe and require closer management attention.


"And that's how we got started on this path" that led CCMSI three years ago to begin pushing around 400 claims data elements and other information daily to Boston-based analytics provider Gradient AI Corp., where artificial intelligence identifies drivers of claims costs, predicts outcomes and provides guidance for reserve-setting.

"As we all know, artificial intelligence in the use of predictive analytics has come on greatly in the last four to five years," Mr. Brechtel said.

Stan Smith, CEO of Gradient AI, said its insurer and TPA clients typically shave from 3% to 5% off claim costs, with some seeing savings of as much as 14%. "It's been very strong in all cases, but it's been very substantial in certain cases," he said.

"These models get smarter the more data that you give them," said Joe Powell, senior vice president of data and analytics at Gallagher Bassett Services Inc. in Fort Wayne, Indiana. The TPA feeds its machine-learning model with medical billing, diagnoses and other claims-related information to create tens of millions of records that can be used to study outcomes.

A valuable use of analytics is to help identify doctors and lawyers who are contributing to favorable outcomes for employers, Mr. Powell said.

Gallagher Bassett selects its network medical providers based on outcome and quality data, he said.

Providers are evaluated and rated on how closely they adhere to medical-based guidelines when treating injured workers, Mr. Powell said. "And then we're able to rank and rate our providers on how often they're treating by the book," he said.

"It's very similar on the law firm side," Mr. Powell said. "We look at the cases they are handling and the outcomes that they drive and we measure their performance."

For both doctors and attorneys, "we're adjusting those outcomes based on the complexity of the cases they are handling," Mr. Powell said. An algorithm ensures physicians and lawyers handling mostly complex cases are not necessarily ranked lower than those with simpler and easier to resolve cases, he said.

Analytics can also help manage the risk of workplace injuries, Mr. Wesson said. The models provide "a whole wealth of information" that employers can use to identify the type, frequency and severity of injuries among their workers, he said. By uncovering those trends, risk managers can better understand how to prevent injuries.

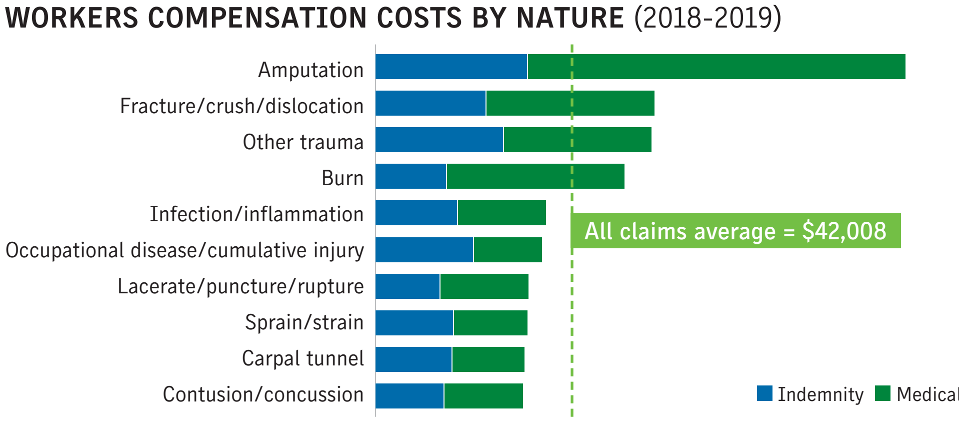
The structure of the models varies.

"The most primitive approach might be to set up a handful of business rules and call them predictive models," an approach that could have some value, said Joel Raedeke, Chicago-based chief technology and data science officer at Crawford & Co.'s TPA Broadspire Services Inc. "That's sort of a window-dressing approach that I've seen."

A more robust approach is to build a multivariate predictive model, which is powerful and, if properly maintained, can integrate new features as they are developed over time, Mr. Raedeke said.

Such models can be expensive and labor intensive unless they take advantage of artificial intelligence to keep them current, he said.

**WORKERS COMPENSATION COSTS BY NATURE** (2018-2019)




Source: National Safety Council

## CLAIMS ANALYTICS HELP PLUG ADJUSTER TALENT GAP

Sophisticated analytics are making up for some of the talent drain in the claims management profession.

Experienced adjusters were leaving their positions even before the COVID-19 pandemic, a trend that has accelerated as claims professionals — like many in other occupations — have decided to make career changes, said Adam Wesson, Reading, Massachusetts-based director of claims solutions at Verisk Analytics Inc.'s ISO Claims Partners.

"One of the ways to overcome that is by leveraging data," Mr. Wesson said. Predictive analytics are more important than ever in managing claims when experienced handlers are scarce and claims costs are rising, he said.

"Using objective data helps prevent claims from falling through the cracks," he said. Inexperienced adjusters might not identify the potential severity of a claim that a model would alert them to address, Mr. Wesson said.

Skip Brechtel, executive vice president and chief information officer at Cannon Cochran Management Services Inc. in Metairie, Louisiana, said its analytics tool helps train new hires. "It can help identify early on if they are having problems with reserving or analyzing a claim. It's been very beneficial from that perspective," he said.

"It becomes part of the teaching for younger adjusters," Mr. Brechtel said. "They may have missed something, and artificial intelligence caught it. It helps build that knowledge and make them a better adjuster."

*Michael Bradford*

# SPECIAL REPORT

## THIRD-PARTY ADMINISTRATORS

### LARGEST THIRD-PARTY ADMINISTRATORS*

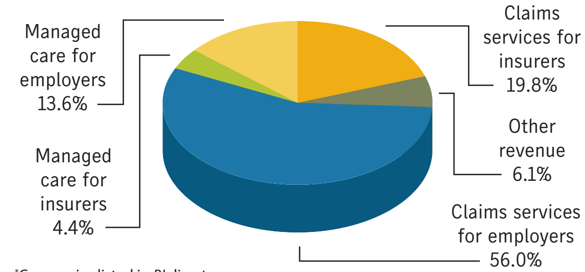
Ranked by 2021 gross revenue

| Rank | Company | TPA services provided | Gross revenue 2021 | Gross revenue 2020 | % increase (decrease) | Total number of claims-handling staff | Officers |
|---|---|---|---|---|---|---|---|
| 1 | Sedgwick Claims Management Services Inc. | Multiline** | $4,040,019,560 | $3,478,231,916 | 16.2% | 27,151 | David A. North Jr., executive chairman; Michael A. Arbour, CEO; Robert J. Peterson, president |
| 2 | UMR Inc. | Employee benefits only | $1,410,000,000 | $1,300,000,000 | 8.5% | 3,700 | Scott Hogan, president-CEO |
| 3 | Crawford & Co. | Multiline** | $1,102,032,000 | $1,016,195,000 | 8.4% | 4,469 | Rohit Verma, CEO; Joseph Blanco, president |
| 4 | Gallagher Bassett Services Inc. | Multiline** | $1,100,362,091 | $973,195,976 | 13.1% | 5,899 | Scott Hudson, president-CEO; Mike Hessling, CEO-North America |
| 5 | CorVel Corp. | Multiline** | $620,000,000 | $592,000,000 | 4.7% | 1,100 | Gordon Clemons, chairman; Michael Combs, president-CEO |
| 6 | Meritain Health | Employee benefits only | $591,000,000 | $554,000,000 | 6.7% | N/A | Melissa Elwood, COO |
| 7 | ESIS Inc. | Multiline** | $413,400,000 | $404,900,000 | 2.1% | 1,345 | Leigh Anne Sherman, president |
| 8 | Helmsman Management Services LLC | Multiline** | $379,456,993 | $357,140,323 | 6.2% | 1,140 | David Dwortz, president-CEO |
| 9 | Trustmark Health Benefits Inc. | Employee benefits only | $230,000,000 | $225,000,000 | 2.2% | 500 | Nancy Eckrich, president-CEO |
| 10 | Cannon Cochran Management Services Inc., dba CCMSI | Multiline** | $178,000,000 | $172,000,000 | 3.5% | 1,052 | G. Bryan Thomas, president-CEO |

*Companies listed in *BI* directory; **Includes employee benefits and/or property/casualty and/or workers compensation
Source: *BI* survey

### TPA REVENUE*

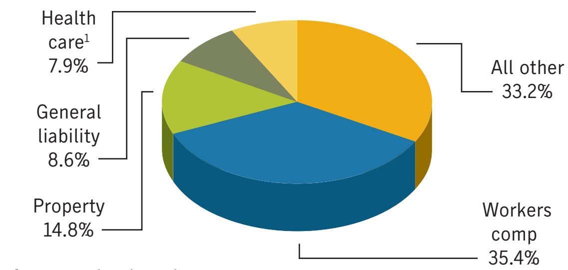
Percentage of 2021 revenue from all services provided




*Companies listed in *BI* directory

### TYPES OF CLAIMS MANAGED*

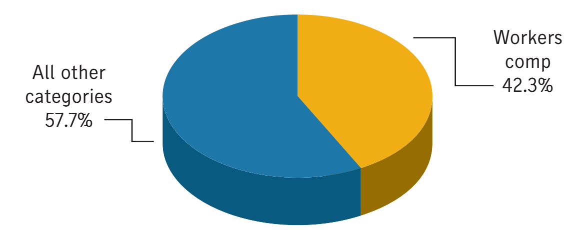
Percentage of claims by category




*Companies listed in *BI* directory
[1]Includes medical, vision, dental and prescription drugs

### VALUE OF CLAIMS PAID*

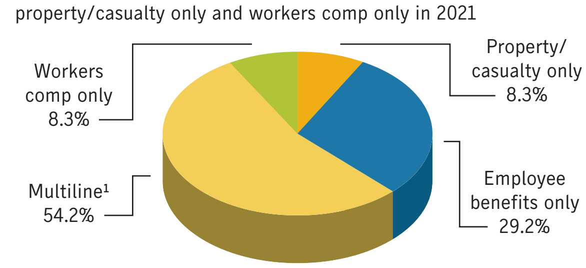
Based on the amount of claims paid in 2021




*Companies listed in *BI* directory

### TYPES OF SERVICES PROVIDED*

Percentage of TPAs handling multiline[1], employee benefits only, property/casualty only and workers comp only in 2021




*Companies listed in *BI* directory
[1]Includes employee benefits and/or property/casualty and/or workers compensation
Source: *BI* survey

### LARGEST CLAIMS-HANDLING TPAs*

Ranked by 2021 gross revenue from claims handled for employers

| Rank | Company | 2021 revenue[1] |
|---|---|---|
| 1 | Sedgwick Claims Management Services Inc. | $1,749,583,027 |
| 2 | UMR Inc. | $1,410,000,000 |
| 3 | Gallagher Bassett Services Inc. | $622,338,240 |
| 4 | Meritain Health | $547,200,000 |
| 5 | Crawford & Co. | $348,000,000 |

*Companies listed in *BI* directory. [1]Excludes managed care and medical billing services.
Source: *BI* survey

### LARGEST MULTILINE[1] TPAs*

Ranked by 2021 gross revenue from claims handled for employers

| Rank | Company | 2021 revenue[2] |
|---|---|---|
| 1 | Sedgwick Claims Management Services Inc. | $1,749,583,027 |
| 2 | Gallagher Bassett Services Inc. | $622,338,240 |
| 3 | Crawford & Co. | $348,000,000 |
| 4 | ESIS Inc. | $267,500,000 |
| 5 | Helmsman Management Services LLC | $201,813,391 |

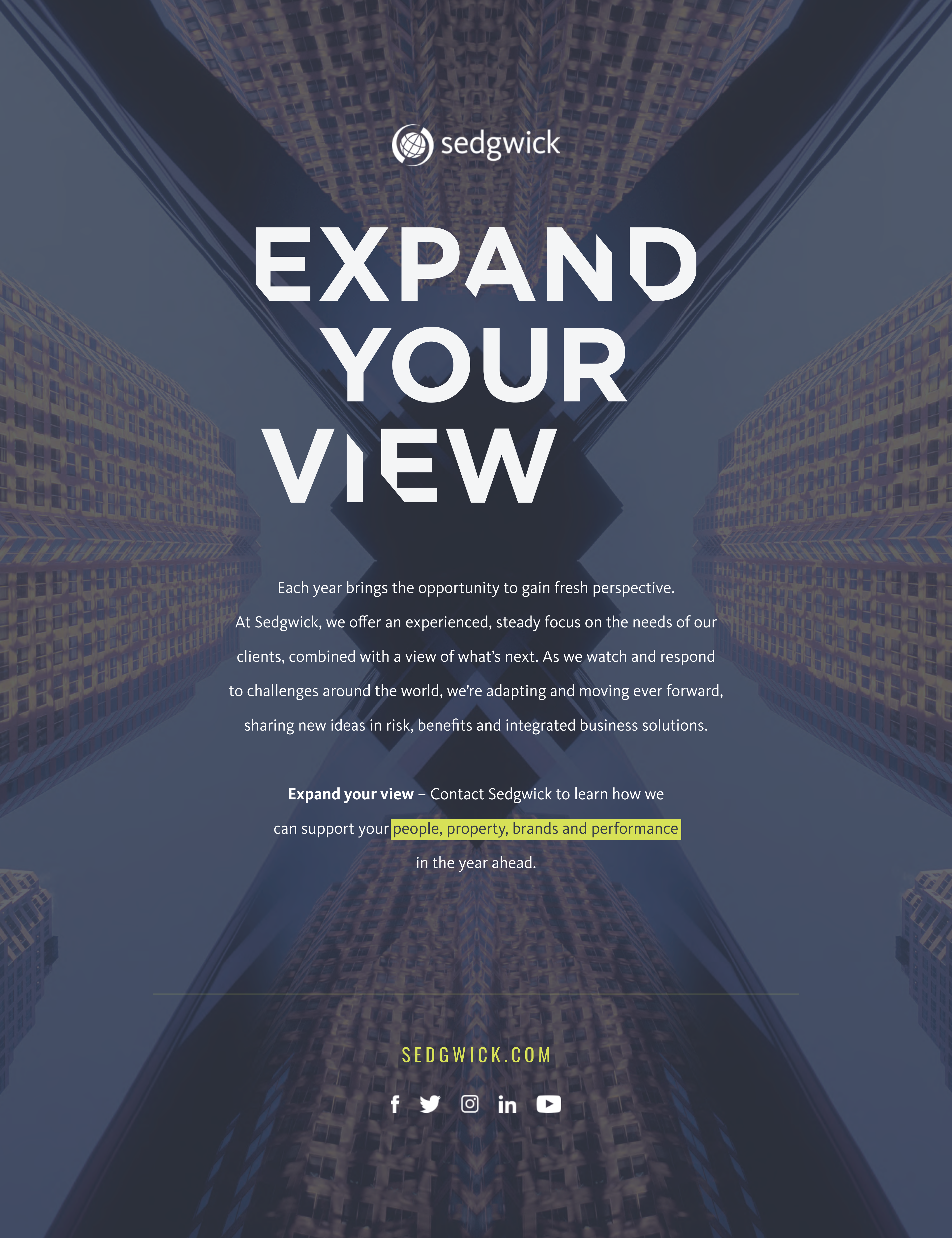
*Companies listed in *BI* directory. [1]Includes employee benefits and/or property/casualty and/or workers compensation. [2]Excludes managed care and medical billing services.
Source: *BI* survey

### LARGEST BENEFITS-ONLY TPAs*

Ranked by 2021 gross revenue from claims handled for employers

| Rank | Company | 2021 revenue[1] |
|---|---|---|
| 1 | UMR Inc. | $1,410,000,000 |
| 2 | Meritain Health | $547,200,000 |
| 3 | Trustmark Health Benefits Inc. | $205,000,000 |
| 4 | HealthComp Holding Co. LLC | $120,000,000 |
| 5 | Amalgamated Employee Benefits Administrators Inc. | $67,253,000 |

*Companies listed in *BI* directory. [1]Excludes managed care and medical billing services.
Source: *BI* survey


sedgwick
EXPAND YOUR VIEW
Each year brings the opportunity to gain fresh perspective. At Sedgwick, we offer an experienced, steady focus on the needs of our clients, combined with a view of what's next. As we watch and respond to challenges around the world, we're adapting and moving ever forward, sharing new ideas in risk, benefits and integrated business solutions.
Expand your view – Contact Sedgwick to learn how we can support your people, property, brands and performance in the year ahead.
SEDGWICK.COM

# OPINIONS

COMMENTARY

# Cyber liabilities test corporate defenses

It took awhile to happen, but it looks like cyber liability insurance is well on the way to becoming the mainstream line of coverage that the earliest market participants said it would become.

Figures vary, but according to the National Association of Insurance Commissioners, insurers wrote about $4.1 billion in cyber liability premium in the United States in 2020, with $2.75 billion in direct written premiums by U.S. domiciled insurers, the latest year for which figures are available. That's still just a fraction of the $727 billion in U.S. property/casualty direct written premiums, but the numbers are growing fast.

Globally, data company Statista estimates that cyber liability accounted for $8 billion in premium in 2020 and will grow to more than $20 billion by 2025.

Gavin Souter
EDITOR

The premium growth is just part of the story. The market conditions for cyber liability have transformed over the past few years. Not so long ago, insurers were jumping into the cyber market and trying their best to persuade sometimes circumspect buyers that this was a must-have coverage that they could purchase at very reasonable rates.

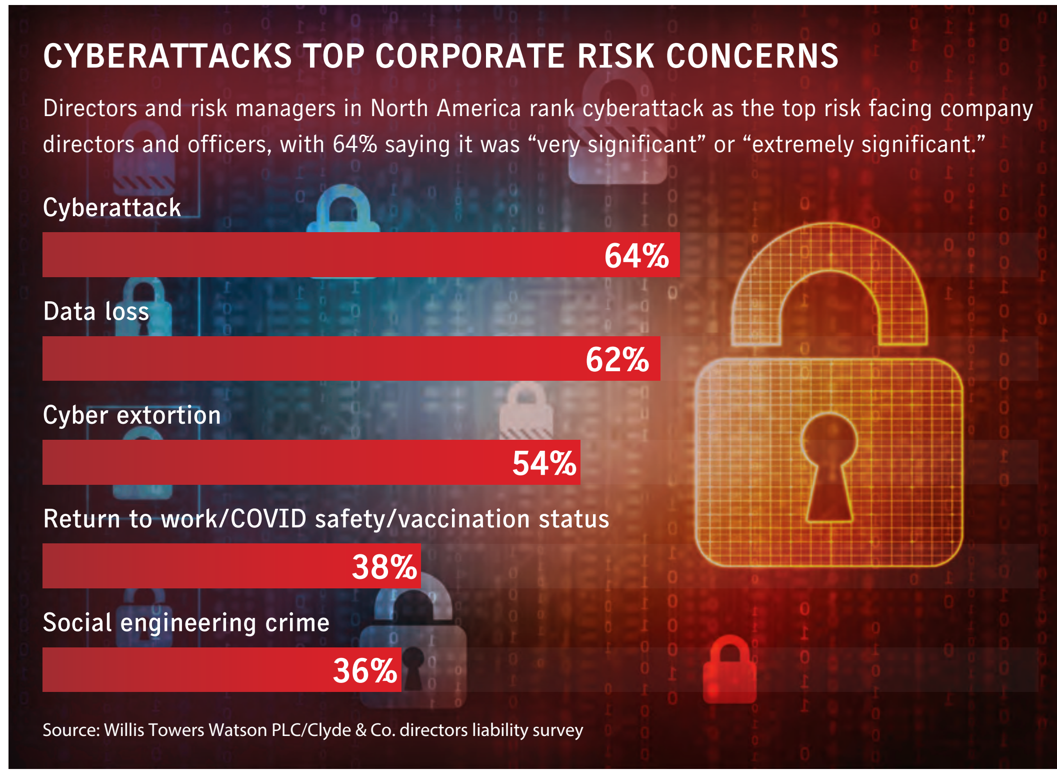
Now, premiums are increasing sharply, in some instances by multiples; capacity continues to shrink, with some insurers exiting the market; and underwriters are insisting on strict risk controls before they sign on to a policy. According to Amwins Inc.'s state of the market report released last month, primary aggregate limits have fallen from $10 million to $5 million or less and rates are not expected to start flattening in this "impossibly hard market" until the fourth quarter of this year.

Insurers are reacting to the surge in cyber losses that began shortly before the onset of the COVID-19 pandemic in 2020 and has continued since. Ransomware attacks, which some attribute in part to the rise in remote work over the past two years, have surged.

As cyber insurance claims move from the realm of theory to practice for more and more companies, risk managers must grapple with a different kind of claims scenario. As we report on page 22, when a cyber incident occurs, it needs to be addressed urgently and with the full participation of insurers and their approved cybersecurity vendors as quickly as possible after the breach — regardless of the time or day of the week.

But like other insurance claims, there is plenty of room for long-running coverage disputes to arise from cyber-related incidents. As we report on page 16, claims over the infamous 2013 Target Corp. cyberattack are still being litigated.

With such a complex exposure, risk managers are just part of the army of experts that organizations need to have on standby to address the threats, but they have a vital role to play in ensuring that internal and external resources are ready to respond. Given the pervasiveness of the threat, cyber risk adds yet another dimension to the concept of enterprise risk management.




VIEWPOINT

# Global risks multiply

**BY CLAIRE WILKINSON**
*cwilkinson@businessinsurance.com*

For multinational companies, wherever they are based, navigating the global risk landscape is anything but straightforward. Aside from a slow-to-dissipate pandemic, these organizations are dealing with a range of challenges including supply chain issues, inflation, and workplace talent shortages, not to mention possible ramifications from the regional conflict arising from Russia's invasion of Ukraine. Brokers and underwriters trying to help these policyholders assess, mitigate and transfer part or all their risks in the shifting environment are similarly faced with complex and changing scenarios.

Several experts attending the Risk and Insurance Management Society Inc.'s first in-person annual convention in three years in San Francisco in April said that cost pressures, increased taxes and regulations make operating on the global stage more complicated today than in the past. In addition, multinationals are facing a period of rapid digitization brought on by the pandemic. While this has accelerated efficiency, provided new revenue opportunities and introduced more expedient ways of working, there are obvious risk downsides. Cyber threats have shot up the risk rankings published by major industry players, for example.

Against this backdrop, risk managers are facing persistent price increases. Insurance rates continued to increase in the first quarter, according to the latest global insurance index from Marsh. That marked the 18th consecutive quarter of rate increases in the commercial property/casualty insurance marketplace, albeit rate hikes are decelerating for many lines. In this environment it should come as no surprise that multinationals are seeking every available edge to manage costs, create efficiency and ensure consistency in the way their operations are protected.

The good news is that many options are available to organizations as they explore how best to manage and transfer their risks in the challenging insurance market. As we report on page 12, demand for global insurance programs is on the rise as buyers with international activities and operations seek to manage their exposures around the world. For many, these programs can be a good, cost-effective option. Captive insurers, which have long been used by multinationals when coverage in the commercial market cannot be found or is not available at an affordable price, are also seeing greater use. While some are dusting off existing captives and increasing their retentions to offset the increase in rates, others are establishing captives for new lines of coverage, with many reporting growth in financial lines and cyber risks in captives.

Meanwhile, organizations face complex environmental, social and governance risks, with their actions on climate change, energy transition, diversity and inclusion, cybersecurity and sustainable investing increasingly under the microscope. For multinationals operating in multiple countries with cultural differences, the need to address ESG issues is perhaps even more relevant and complicated. Brokers report that larger clients are more frequently seeking advice on how to handle ESG risks, and several insurance initiatives have been introduced that would reward those with superior ESG frameworks, such as in the directors and officers liability arena. However, more nuanced risk management and transfer solutions will be needed as global businesses in different sectors look to address ESG going forward.

# All sums in insolvencies: An impaired methodology

*Andrew Costigan is a partner in Freeborn & Peters LLP's litigation practice group and a member of the firm's insurance/reinsurance industry group. He can be reached at acostigan@freeborn.com.*

Several courts have applied an "all sums" allocation methodology to continuous losses, that is losses triggering multiple years of a policyholder's insurance coverage. Those decisions were rendered in cases arising from disputes involving solvent insurers. When an all sums allocation methodology is applied to insolvent insurers, it can have unintended side effects.

In the aftermath of the explosion of asbestos cases in the last two decades of the 20th century, courts had to develop methods of allocating continuous losses over policyholder coverage blocks extending many years. This was necessary because asbestos losses develop over many years and the policy wordings did not specify an allocation methodology for such losses. Those same methodologies have been applied to environmental and other losses occurring over a period of years.

The two main allocation methods are pro rata and all sums. A pro rata method apportions the loss to each insurer in the coverage block severally, usually as a percentage of time on risk. In contrast, an all sums method permits an insured to select a particular year in the coverage block and collect all its losses from the insurers in that policy year up to the limits of each insurer's policy. The insurers affected are then entitled to seek contribution from the other insurers in the coverage block to pay their fair share of the loss.

Generally, policyholders prefer an all sums allocation methodology and insurers prefer a pro rata methodology. An all sums allocation permits the policyholder to recover, up to the policy limits of triggered policies, without apportioning any of the loss to uninsured time periods; without diminution for unrecoverable insurance; and without having to pursue each insurer in the coverage block separately. An insurer tagged for more than its pro rata share then has the right — and the burden — of pursuing contributions from other insurers in the coverage block.

There are pros and cons to each methodology and policyholders and insurers have battled them out in state after state, with some states choosing one method, other states choosing the other. One thing all states have in common, however, is that whichever method they chose, they did so in the context of evaluating claims presented to solvent insurers.

That matters because insolvency upends the balance of benefits and costs. An all sums methodology applied to an insolvent insurer provides fewer benefits to the policyholder and greater costs to the insurer than would be the case with a solvent insurer. From the policyholder's perspective, the main problem is that the insolvent insurer will not be paying the full amount allowed, but only some percentage of it. That means the policyholder will have to pursue other insurers in the coverage block to make up the deficiency.

From the insolvent insurer's perspective, an all sums allocation greatly multiplies its costs. Instead of being able to resolve a policyholder's claim in a single suit in the liquidation court, the insurer will be saddled with the prospect of needing to initiate contribution actions in other courts to recover the excess of its pro rata share. Arguably, it also provides a preference to such policyholders as opposed to policyholders paid on a pro rata basis. Either way, whether by the extra payment to all sums policyholders or the extra expenses incurred by the liquidator in seeking contribution from other insurers, an all sums allocation reduces the funds available to the liquidator to pay claims.

Few courts have considered whether an all sums allocation should be permitted against an insolvent insurer. The Supreme Court of Missouri applied Pennsylvania law and permitted an all sums recovery against the Transit Insurance Co. receivership for claims submitted under insurance policies that Transit issued to a Pennsylvanian policyholder. In doing so, the court noted that if Missouri law applied, Transit would have been permitted to "allocate the claims based on a pro rata, time-on-the-risk method." The court considered whether its determination that Pennsylvania law applied should be affected by Transit's insolvency. Ruling that it should not, the court held that "[t]he most ratable distribution of Transit's assets requires that the receivership only pay claims that would be valid if the company had remained solvent." The court did not address any of the practical problems involved in allowing all sums claims against an insolvent insurer. Similarly, in New York an all sums recovery was permitted against the liquidator of Midland Insurance Co., although the court's analysis did not include any discussion of the effect, if any, of Midland's insolvency.

In contrast, New Jersey courts supervising the liquidation of Integrity Insurance Co. came to the opposite conclusion, denying all sums recoveries against Integrity's liquidator. As in the Transit case, the insurer issued policies to out-of-state policyholders from all sums jurisdictions. Unlike Transit, however, the Integrity court found that the insurer's insolvency made all the difference in what law applied.

The court found that New Jersey had a "compelling interest in applying a pro-rata allocation methodology to insolvent insurance companies being wound up under its jurisdiction [in order to protect its] paramount interest in treating Integrity's creditors equitably and prohibiting the waste of resources entailed by paying certain of its policyholders amounts due from the policyholders' other insurers."

The court did not set down a blanket prohibition on the use of an all sums methodology against an insolvent insurer, but it did find, under the circumstances presented in that case, that an all sums allocation "would seriously violate New Jersey's policy of equitable distribution of the assets marshalled through the liquidation proceedings." In part, the court based its decision on the practical consideration that the insurer's liquidation closing plan had been largely implemented, leaving the liquidator "without the realistic probability of recoupment."

The practical problems noted by the Integrity court are greatly magnified if the liquidator has reinsurance for all sums claims being allowed in the insolvency proceeding. Although reinsurance contracts are contracts of indemnity, the insolvency clause typically included provides that the reinsurer shall pay the liquidator in accordance with the cedent's liability, not the smaller amount actually paid to its policyholders.

This can exacerbate the difficulty of resolving claims in the liquidation court. The insolvency clause gives the reinsurers a right to interpose their own defenses to claims asserted against the liquidator that implicate the reinsurance. Just as the use of an all sums allocation methodology can greatly increase the claim amount allowed by the liquidator, so, too, it increases the reinsurers' incentive to assert their right to contest claims in the liquidation court.

The result is that an all sums recovery against an insolvent insurer provides the policyholder little benefit, but it has the prospect of increasing the litigation costs of policyholders, insolvent insurers and reinsurers alike, thus making all sums a losing proposition in liquidation proceedings.

# MARKET PULSE

## Marsh extends D&O ESG program to Bermuda

■ Marsh LLC said it has partnered with Everest Re Group Ltd. to expand its directors and officers liability initiative that recognizes clients with superior environmental, social and governance frameworks to the Bermuda market.

A global rollout of the program to the United Kingdom, Europe and Asia markets will follow.

Buyers seeking D&O coverage in the Bermuda market will be considered for preferred policy terms and conditions and broader coverage if they can demonstrate strong ESG credentials, Marsh said.

The enhanced program will include explicit coverage for chief sustainability officers and an increased limit for independent board directors, said Amy Barnes, head of climate and sustainability strategy at Marsh.

Everest will initially provide up to $1 million in additional limits ringfenced for independent directors in excess of the layer purchased, Ms. Barnes said.

The definition of loss has also expanded to provide coverage for fines and penalties, she said. Fines and penalties are not typically covered under a D&O policy in the U.S.

The Bermuda market can cover punitive damages, fines and penalties under a D&O policy irrespective of climate and sustainability, and insurers have more comfort in providing it "recognizing that they are protecting individuals, rather than the corporate body," she said.

Marsh last October introduced the D&O ESG initiative for U.S.-based clients.

## CorVel releases claims risk score for comp claims

■ CorVel Corp., a Fort Worth, Texas-based provider of risk management and workers compensation services, launched a claims risk score interface in Care Edge, the company's integrated claims management platform.

The new functionality uses artificial intelligence and predictive analytics to identify which claims might go off track and provides intervention recommendations related to risk, according to a company statement.

The risk score uses advanced technology to assess data elements on a claim and assess its level of risk, incorporating factors such as return-to-work estimates, physical demand requirements, pain levels, claimant medical compliance, comorbidities, claim history, age and other psycho-social indicators.

With each factor analyzed, corresponding actions are triggered to help the adjuster address issues in real time.

## PRODUCTS & SERVICES

## Genex expands catastrophic injury services

■ Genex Services LLC, an Enlyte Group LLC company, announced an expansion of its catastrophic injury services through the rollout of its catastrophic injury management and crisis response programs.

The programs combine the catastrophic programs of Genex and its sister company Coventry Workers' Comp Services. In a statement, Tim Howard, senior vice president of field case management, said the combined programs enable the company to provide 870 catastrophic case managers nationally to handle critical workplace accidents from the first incident report through recovery.

The programs provide a response when critical events occur in the workplace and crisis intervention assistance in the aftermath to address physical and mental needs of affected employees, the company said.

## Marsh unveils AI-driven property analytics tech

■ Marsh LLC said it has launched artificial intelligence-powered analytics technology to help clients manage property risks.

The technology digitizes primary risk data, including construction, occupancy, protection and exposure information. It uses artificial intelligence and machine learning to identify anomalies and other issues to improve the data's quality.

The data is fed into other Marsh analytics technology such as catastrophe modeling and risk finance optimization so users can view and quantify their property risks in real-time and assess risk mitigation, retention and transfer options.

## Sedgwick expands managed care offerings

■ Sedgwick Claims Management Services Inc. announced it is offering its managed care services independent of claims administration.

Memphis, Tennessee-based Sedgwick said in a statement that the independent managed care offerings enable clients to choose from a suite of services.

Sedgwick offers a range of managed care services, including cost containment services encompassing medical bill review, nurse audit and bill negotiations.

Within clinical care are nurse triage, case management, surgery nurse services, behavioral health, pharmacy management, transition work services, vocational return-to-work services and utilization review.

## Cryptocurrency insurer adds reinsurance program

■ Bermuda-based cryptocurrency insurer Relm Insurance Ltd. said it is introducing a reinsurance program, Relm II.

Relm said in a statement that Relm II will enable it to tap into substantial pools of aligned investor capital to support traditional lines of coverage, such as directors and officers liability and professional liability.

The collateralized reinsurance program can accept both crypto and fiat, or regular currency, as collateral.

Relm II is domiciled in Bermuda and regulated by the Bermuda Monetary Authority.

## Amerisure launches specialty division

■ Amerisure Insurance said it has launched a specialty division, Amerisure Surety, headquartered in Farmington Hills, Michigan.

The division is led by Michael Ito, senior vice president of surety, in Lombard, Illinois, and Aaron Green, vice president of surety, in Hiawatha, Iowa.

Mr. Ito was previously senior vice president of NAS Surety Group, and Mr. Green was Midwest regional manager and vice president with Swiss Re Corporate Solutions.

The surety team will report to Amerisure Chief Financial Officer and Treasurer Chris Spaude.

Amerisure specializes in insurance for the construction, manufacturing and health care sectors.

# DEALS & MOVES

## AF Group to acquire AmeriTrust Group

AF Group, a Lansing, Michigan-based holding company whose affiliated brands provide specialty and workers compensation insurance, has agreed through its subsidiary Accident Fund Insurance Co. of America to buy AmeriTrust Group.

Terms of the deal were not disclosed.

Headquartered in Southfield, Michigan, AmeriTrust offers specialty insurance programs and products, including workers compensation, commercial package and automotive business coverages.

## Hub purchases California agency

Hub International Ltd. said it has acquired Chun-Ha Insurance Services Inc., a Garden Grove, California-based commercial, personal lines and employee benefits agency that serves the Korean American community.

Terms of the deal were not disclosed.

Ki Hong Park, CEO and president of Chun-Ha, and the agency's staff will join Hub Los Angeles Orange County, Chicago-based Hub said in a statement. Chun-Ha has about 50 employees, according to its website.

## Higginbotham buys Mississippi broker

Commercial brokerage Higginbotham said it has acquired Insurance & Risk Managers, a Brookhaven, Mississippi-based brokerage.

Terms of the deal were not disclosed.

IRM also has offices in Hazlehurst, McComb and Winona, Mississippi, and has about 30 employees, according to its website.

In addition, Higginbotham bought Lyon Fry Cadden Insurance Agency Inc. in Mobile, Alabama.

## Hilb Group acquires New Jersey broker

The Hilb Group said it has acquired Roseland, New Jersey-based E.B. Cohen Insurance and Risk Management.

The deal includes Elias B. Cohen & Associates, E.B. Cohen & Associates Assurance Agency LLC, E.B. Cohen & Co. Inc. and Roseland Assurance Agency LLC, collectively known as E.B. Cohen.

Terms of the deal were not disclosed.

E.B. Cohen specializes in the hospitality and real estate sectors and small businesses, Hilb said in a statement.

E.B. Cohen has 57 employees, according to its website.

# PEOPLE

"The insurance industry is poised for growth — especially the E&S market — as wholesalers and surplus lines insurers, in addition to managing challenging risks, become sources of expertise."

## UP CLOSE

## Sabrina Hart

**NEW JOB TITLE:** Atlanta-based president, excess and surplus lines, Munich Re Specialty Insurance Co.

**PREVIOUS POSITION:** Chicago-based executive vice president, Midwest region, Zurich North America.

**OUTLOOK FOR THE INDUSTRY:** The insurance industry is poised for growth — especially the E&S market — as wholesalers and surplus lines insurers, in addition to managing challenging risks, become sources of expertise. This remains true despite our uncertain times, such as returning to the office post-pandemic, the talent landscape, potential new COVID-19 variants, economic turmoil and inflation, and the Ukraine-Russia conflict.

**GOALS FOR YOUR NEW POSITION:** We all want to have impact and make a difference. I am fortunate to have joined a tremendous team and one of the strongest brands in the industry. So, with that backdrop, we aspire to be a top E&S brand. We will look to execute on our business plan and further the momentum our E&S business has achieved over the past several years. We will also continue our commitment of underwriting difficult-to-place, moderate to higher risks for specified segments. We will also look for growth opportunities within our core capabilities, while seeking to introduce new product offerings and continuing to add resources and expertise to our already talented team and build out additional operational efficiencies. Importantly, I share a passion for diversity, inclusion, equity and belonging, so I am excited to get deeply involved in Munich Re's ongoing diversity and inclusion initiatives.

**CHALLENGES FACING THE INDUSTRY:** There are several, notably everchanging market conditions, inflation, cyber, digitization, climate change, the aftermath of COVID-19, economic uncertainty, and the demand for talent, to name a few. Also, while I am delighted to see the progress, the industry still has a way to go in building a diverse workforce and talent pool.

**FIRST EXPERIENCE:** My first job was risk management assistant with a direct writer of specialty insurance. Then, with a six-month tenure, I was asked to consider either an underwriting trainee role or an actuarial analyst role. I chose underwriting, as I felt this presented the opportunity to blend both technical skills and interpersonal skills and allowed me to interact with customers and brokers. Back then, actuaries were not that close to the business.

**ADVICE FOR A NEWCOMER:** It makes me think of Patrick Lencioni's book, "The Ideal Team Player." Be humble, be hungry and be smart. I would add "be a sponge" and "be curious." Learn as much as you can about all facets of the business early in your career so you can determine which area sparks your passion the most.

**DREAM JOB:** A high school coach or a player on the LPGA Tour.

**COLLEGE MAJOR:** Mathematics at the University of North Carolina-Wilmington. Go Seahawks!

**LOOKING FORWARD TO:** In addition to being an ambassador for Munich Re, I'm looking forward to having fun and working with a great group of colleagues to "over-deliver" for our brokers, customers and our organization. We aim to be a market of choice. I am also looking forward to personal growth and learning.

**FAVORITE MEAL:** That's a tough one as I am a bit of a foodie and enjoy trying different things, but I'd say my favorite being those shared with family and friends. Now, my favorite dessert is easier — dark chocolate or my grandmother's red velvet cake.

**FAVORITE BOOK:** I am a junkie for leadership and team-building books.

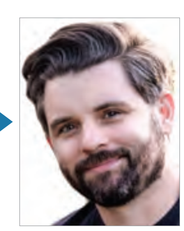
## ON THE MOVE

American International Group Inc. said **Tom Bolt** has been named executive vice president and chief risk officer. Previously, he was chief underwriting officer, general insurance. Mr. Bolt replaces Sabra Purtill, who was recently named executive vice president and chief investment officer for AIG's life & retirement business.

Swiss Re Ltd. named Zurich-based **Claudia Cordioli** to the newly created position of group finance director. Previously, Ms. Cordioli was chief financial officer, reinsurance. She was named one of the 2019 *Business Insurance* Women to Watch.

Axa XL, a unit of Axa SA, has hired **Gabriel Okolski** as senior underwriter in its political risk, credit and bond business, Americas. Mr. Okolski was previously senior vice president, credit, and financial analyst at Marsh LLC and is based in Washington.

Holmes Murphy & Associates LLC named Des Moines, Iowa-based **Espnola Cartmill** chief diversity officer. Previously, Ms. Cartmill was a partner at Belin McCormick P.C.



**Patrick Mulready** has joined Navigators as head of Navigators Wholesale Property, from Everest Insurance, where he was vice president of wholesale property. Mr. Mulready will be based in Boston. Navigators is a brand of The Hartford Financial Services Group Inc.

EPIC Insurance Brokers & Consultants named San Francisco-based **Shelley Yim** managing principal. Previously, Ms. Yim was a managing director at Aon PLC. She was named one of the 2021 *Business Insurance* Women to Watch. She will also be on the brokerage's inclusion council, which supports inclusion efforts of its clients.

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## Sweet verdict for Pop-Tarts

Want to be healthy? Daily multivitamin, exercise, a nutritious diet ... which includes Strawberry Pop-Tarts?

A federal judge in Manhattan wasn't buying it. In dismissing a proposed class-action lawsuit accusing Kellogg Co. of misleading health-conscious customers in labeling of Frosted Strawberry Pop-Tarts, the judge said reasonable shoppers would not expect strawberries to be the main ingredient in a "pre-packaged, processed sugary treat called Frosted Strawberry Pop-Tarts," according to Reuters.

The judge also rejected the idea that Pop-Tarts buyers missed out on the health benefits of strawberries.

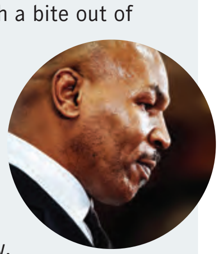
"A reasonable consumer is unlikely to purchase a toaster pastry coated in frosting exclusively for the nutritional value of strawberries in its fruit filling," he wrote.

In March, a federal judge in Chicago dismissed a similar lawsuit over unfrosted Strawberry Pop-Tarts.

## Mike Tyson's gummies take hit

Former boxing champion Mike Tyson won't be allowed to sell a new line of ear-shaped cannabis gummies in Colorado.

That's because the new edibles, shaped like ears with a bite out of them in a reference to the 1997 World Boxing Association Heavyweight Championship when Mr. Tyson bit Evander Holyfield's ear, violate state law, according to the Huffington Post.



Colorado prohibits marijuana edibles from being shaped like humans, animals, fruit or other images that could attract children, the news outlet says.

Tyson 2.0, Mr. Tyson's seven-year-old cannabis company, still plans to sell the edibles, but will modify their shape from a "bitten ear" to the letter "T" before they debut later this year, according to the article.

# HOT DOG! DISNEY SAYS IT'S SAFE FOR CHARACTERS TO HUG VISITORS AGAIN

Actors working at Disney parks and resorts will now be able to hug visitors after the company announced changes to its workplace safety policies.

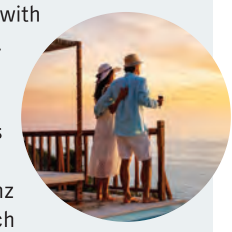
Disneyland, Walt Disney World, Disney Cruise Line and Aulani Resort in Hawaii this spring reintroduced traditional character greetings, ABC 7 in Los Angeles reported.

The theme parks released a video about the change to their COVID-19 social-distancing rules, showing Mickey Mouse waving for people to come inside and giving out hugs.

"It's been so great to see live entertainment returning to our theme parks, resorts and cruise ships, and today I'm thrilled to tell you about another quintessential Disney entertainment experience that's on the way back," wrote a communications manager on the company's blog. "We know many of you have missed these special moments, and your Disney character friends have missed you, too!"

## Vacationers: Take that, pandemic

It's either margaritas by sunset with mariachis or refreshing Dole Whip ice cream treats with Mickey and friends.



More Americans are planning vacation travel this summer, according to a study by Allianz Partners USA, which found that summer travel plans are up 16% year over year, with three in four Americans planning getaways.

The travel insurance and assistance company analyzed more than 1,175,000 flight itineraries for trips between five and eight days in length and for the sixth year in a row found that Orlando, Florida, and Cancun, Mexico, are the most popular domestic and international destinations, respectively, for 2022 summer travel.

"Our findings show that 'revenge travel' is about to be taken to a whole new level in summer 2022," an Allianz Partners spokesman said in the statement.

## Burger King accused of some whoppers

A Florida lawyer has some beef with Burger King.

Anthony Russo filed a federal lawsuit seeking class-action status alleging that the fast-food chain has misled customers with false advertising, displaying Whoppers, for example, that are bigger than what is actually served up in the restaurants, NBC News reported.

Mr. Russo alleges Burger King began inflating the size of its offerings in its images around September 2017. Before that, the suit claims, Burger King "more fairly" advertised its food products, according to the news outlet.

The suit claims the size of virtually every food item advertised by Burger King is "materially overstated" and that a burger featured in ads is 35% larger than the real-life version, with double the meat than what is actually served.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