

FLIGHT RISKS: Increased turbulence raises injury concerns for airplane crews - **PAGE 4**

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SPIKE LIPKIN

Spike Lipkin co-founded Newfront in 2017 with the aim of improving the insurance purchasing process. He established the San Francisco-based brokerage using technology designed to cut the amount of paperwork needed and streamline the placement of coverage. Newfront significantly expanded its operations through its 2021 merger with established broker ABD Insurance and Financial Services Inc. and has recently hired several well-known brokers. **PAGE 17**



OFF BEAT

In the cosmetics world, there's no mistaking North Little Rock, Arkansas, for Paris. **PAGE 34**



Airplane passengers, crew exposed to injury as changing weather increases turbulence

BY CLAIRE WILKINSON

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Climate change is increasing the likelihood of aircraft turbulence and related injuries to passengers and crew, potentially triggering more litigation against commercial airlines and other aviation entities.

Advances in technology can help mitigate the risks, but human behavior also plays an important role in preventing turbulence-related injuries during flights, experts say.

The incidence of reported events of either major or much rarer severe turbulence is increasing and a result of the changing climate, said Jonathan Ziss, Philadelphia-based partner at Goldberg Segalla LLP.

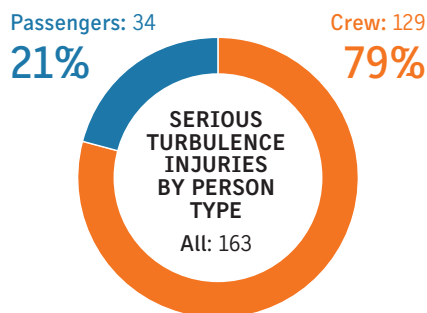
While statistically air travel is considered “inherently safe, any increase is worth noting and is worth thinking about,” he said.

From 2009 to 2022, the National Transportation Safety Board recorded 163 serious injuries to airline crew and passengers from turbulence on Part 121 air carriers, which includes large and regional airlines and cargo carriers. Injuries to crew accounted for 79%.

The cost of turbulence to U.S. airlines due to injuries — medical attention, missed work and liability payouts

SERIOUS TURBULENCE INJURIES BY PERSON TYPE (2009 TO 2022)*

The National Transportation Safety Board requires airlines to report serious injuries and fatalities. A serious injury is any injury that 1) requires the individual to be hospitalized for more than 48 hours; 2) results in a fracture of any bone (except simple fractures of fingers, toes or nose); 3) causes severe hemorrhages, nerve, muscle or tendon damage; 4) involves any internal organ; or 5) involves second- or third-degree burns, or any burns affecting more than 5% of the body surface. The FAA tracks these reports but not general incidents of turbulence.



*Part 121 air carriers only

Source: National Transportation Safety Board



— aircraft damage and flight delays is estimated at up to \$500 million annually, according to the National Center for Atmospheric Research.

In March, a Lufthansa flight en route from Austin, Texas, to Frankfurt, Germany, was diverted after it encountered significant turbulence at 37,000 feet and seven passengers were injured.

Hawaiian Airlines is facing litigation after severe turbulence on a flight that was 40 minutes from landing in Honolulu last December left 25 passengers and crew injured, six seriously. There were no pilot reports of severe turbulence along the route prior to the accident, but the U.S. National Weather Service had warned of thunderstorms in the area, according to the NTSB’s preliminary report.

While turbulence can occur when the air is disturbed by convective activity, such as thunderstorms, or in the wake of large aircraft, so-called clear-air turbulence is air movement created by jet streams.

Clear-air turbulence has a significant effect on the aviation sector and is increasing with climate change as wind shear strengthens, said Paul D. Williams, a professor of atmospheric science at the University of Reading in England.

“The amount of wind shear in the jet stream has gone up by 15% since satellites began observing it in the 1970s, and that’s because of climate change,” Mr. Williams said, noting that the amount of

“The amount of wind shear in the jet stream has gone up by 15% since satellites began observing it in the 1970s, and that’s because of climate change.”

Paul D. Williams, University of Reading

severe turbulence could double or triple by 2050, based on this trend.

For commercial airliners with typical cruising altitudes of 30,000 feet to 42,000 feet, clear-air turbulence is a concern because it’s invisible and increasing at multiple altitudes. “Changing altitudes is not going to be an escape route from this problem,” Mr. Williams said.

Turbulence incidents can be a basis for liability losses, said Marc S. Moller, of

counsel at plaintiff law firm Kreindler & Kreindler LLP in New York.

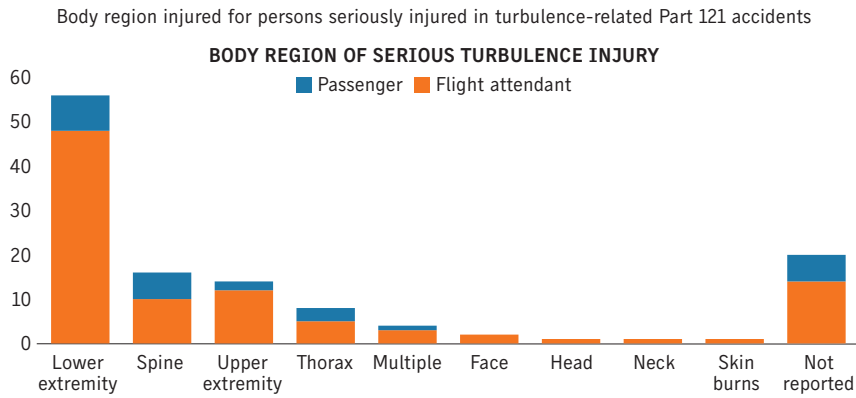
When turbulence causes injuries to passengers on international flights, the Montreal Convention of 1999 applies, basically rendering airlines absolutely liable, Mr. Moller said. In domestic U.S. turbulence incidents, however, passengers have to prove some measure of negligence by the airline, he said.

“Obviously, the pilot gets on the public address system early on and several times during the flight, telling people that they should keep their seat belts buckled because of clear-air turbulence concerns,” he said. But as a flight goes on without a turbulence encounter, warnings may be disregarded by passengers, he said.

Airlines are held to the highest degree of care with regard to safety, so it’s more than just a common negligence standard that would apply, said Mark McKinnon, Washington-based partner at Fox Rothschild LLP.

If an aircraft encounters clear-air turbulence that is undetectable and the pilots had no way of knowing it would occur, however, they’re not “guarantors of the safety of the crew,” Mr. McKinnon said. “If there was no possible negligence, because

INJURY BODY REGION (2009 TO 2018)



there was no way for them to detect the turbulence, then there's not going to be liability," he said.

Human factors influence the turbulence injury incidence rate, said Daniel Bannister, London-based lead on weather and climate research with the WTW Research Network, part of Willis Towers Watson PLC. "If your seat belt is buckled, then incidents are very low."

Flight attendants tend to be more at risk to turbulence-related injuries, especially during cruise phases of flights when they are walking through the cabin, doing their job, he said.

At a Federal Aviation Administration safety summit in March, NTSB Chair Jennifer Homendy stated that turbulence accounted for three of every four flight attendant injuries.

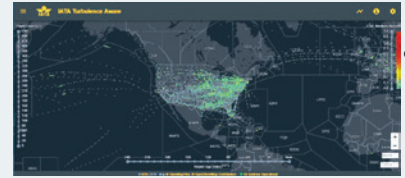
Airline crew injured on the job would have a workers compensation claim in the first instance, Mr. Ziss said.

If the injury were sufficiently severe and it was thought that a third-party was to blame — as in bad information from air traffic control, a defective radar system or poor aircraft design — they could also pursue a claim against other entities, he said.

TECHNOLOGY ADVANCES IMPROVE TURBULENCE PREDICTION RATES

Advances in data and technology are helping airlines reduce injury risks by more accurately measuring turbulence.

Historically, turbulence-prediction tools available to airlines were limited to weather forecasts, weather radar and pilot reports, but more airlines are moving to real-time inflight technologies to mitigate the risks, said Katsiaryna Vashchankova, Montreal-based head of operational data solutions at the International Air Transport Association.



IATA Turbulence Aware

IATA launched its Turbulence Aware data exchange platform in 2020 to provide airlines with crowd-sourced real-time turbulence updates, Ms. Vashchankova said.

The platform is built around software developed by the National Center for Atmospheric Research that can

be installed in aircraft systems and collects existing sensor data to calculate turbulence intensity around the aircraft through an algorithm.

"It gives you a much more precise measurement that is objective, aircraft-generated, and the data can be sent to ground systems in real-time," she said.

The reports are then sent to IATA, which anonymizes the data and can share it with participating airlines instantaneously, she said.

The sharing of real-time turbulence data is going to be transformative, said Paul D. Williams, a professor of atmospheric science at the University of Reading in England.

Another technology, Light Detection and Ranging or LIDAR, can detect invisible clear-air turbulence up to 20 miles ahead of an aircraft and has been tested with promising results, Mr. Williams said.

"In the future, as the atmosphere becomes more turbulent and the LIDAR technology is miniaturized and the cost comes down, we might well see this technology being rolled out," he said.

Claire Wilkinson

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'Tester' bias case could trigger litigation trend

BY JUDY GREENWALD

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A case before the U.S. Supreme Court involving a "tester" plaintiff suing a hotel she did not intend to visit for disability discrimination is raising fears that many similar lawsuits could follow if the high court rules in her favor.

A pro-plaintiff ruling could also hit many companies that have online presences, experts say.

While the plaintiff attorney in the case — *Acheson Hotels LLC v. Deborah Laufer* — is optimistic of a favorable ruling, some employment attorneys believe the court will rule in the business' favor.

The Supreme Court accepted the case in March, after the 1st U.S. Circuit Court of Appeals in Boston overturned a U.S. district court's dismissal of it and held that Ms. Laufer had suffered "a concrete and particularized injury," giving her standing to file suit under the Americans with Disabilities Act, even if she did not plan to visit The Coast Village Inn and Cottages in Wells, Maine. An argument date had not been set.

Courts are split over whether so-called testers can sue for disability discrimination. In addition to the 1st Circuit, the 11th U.S. Circuit Court of Appeals in Atlanta and the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, ruled in Ms. Laufer's favor in separate cases.

"It's encouraging that the court is taking the case, and it may indicate that some of the justices may have some discomfort with a broad view of tester standing, but it would be foolish to make too many predictions at this stage."

David Raizman, Ogletree Deakins

The 2nd U.S. Circuit Court of Appeals in New York, though, ruled against another plaintiff in a similar case, and the 5th U.S. Circuit Court of Appeals in New Orleans, the 10th U.S. Circuit Court of Appeals in Denver and the U.S. Court of Appeals, District of Columbia Circuit, have ruled against Ms. Laufer in other cases.

The Supreme Court has previously ruled in favor of a tester on a related issue. In 1982, in *Havens Realty Corp. v. Coleman*, the high court ruled that a black tester investigating where he could rent an apartment had standing to sue.

"There's a very good chance they will rule in favor of the hotels, whether by distinguishing this case from *Havens* or overturning it entirely," said Kian Hudson, of counsel with Barnes and Thornburg LLP in Indianapolis.



The potential ramifications of the case are broad and extend beyond the disability discrimination context, he said. The question the court must resolve is whether plaintiffs can win damages over a technical violation of the law or if they need to show further harm.

"The Supreme Court has taken different views of what actual injury means in different contexts, so it's difficult to know" how the court will decide the issue, said Steven J. Wells, a partner with Dorsey & Whitney LLP in Minneapolis. However, "it would take a fairly broad reading of the concept of standing to find for the plaintiff," he said.

David Raizman, a partner with Ogletree Deakins Nash, Smoak & Stewart PLC in Los Angeles, said, "It's encouraging that the court is taking the case, and it may indicate that some of the justices may have some discomfort with a broad view of tester standing, but it would be foolish to make too many predictions at this stage."

Corporate lawyers say a ruling in the tester's favor would have wide implications.

Ruling in Ms. Laufer's favor would "open the floodgates to lawsuits of every kind," said Minh N. Vu, a partner with Seyfarth Shaw LLP in Washington, who said she expects the Supreme Court to reverse the 1st Circuit.

"This case has profound consequences for future issues that we're going to be confronting in the digital era of the internet," said Sarah Elizabeth Spencer, an attorney

with Christensen & Jensen P.C. in Salt Lake City, noting the extent to which people access the internet for information and services. Ms. Spencer submitted an amicus brief supporting Acheson Hotels to the Supreme Court on behalf of the Chicago-based DRI Center for Law and Public Policy, an attorney group.

"Had Laufer showed up at Acheson's hotels as a tester with bags in hand asking about accessibility features, that's very, very different," Ms. Spencer said. This issue "is a slippery slope situation," she said.

Ms. Laufer's admission that she did not intend to go to the hotel means there was never going to be any likelihood of injury, said Sara H. Jodka, a member of Dickinson Wright LLP in Columbus, Ohio. "Our courts are not designed for handling hypothetical disputes," she said.

Martin H. Orlick, a partner with Jeffer, Mangels, Butler & Mitchell LLP in San Francisco, said he expects the Supreme Court "to require a higher burden" in these cases, with the plaintiff required "to have to come up with some concrete plans," such as airline tickets, before being able to file a disability discrimination lawsuit.



Ms. Laufer's attorney, Thomas B. Bacon, of Thomas B. Bacon P.A. in Orlando, Florida, said he is optimistic about the ruling. "The number of lawsuits out there is a direct result that everybody waits until they are sued" before rectifying cases of disability discrimination, he said.

PAST RULINGS SET SCENE FOR SUPREME COURT

Two U.S. Supreme Court rulings, one more than 40 years old and the other issued less than two years ago, may play a role in determining the court's ruling on whether a "tester" who did not plan to visit a hotel can pursue her discrimination liability case.

The rulings differ on the issue of whether plaintiffs suffered an injury that enabled them to pursue litigation in federal courts.

The high court's 1982 ruling in *Havens Realty Corp. v. Coleman* involved a case of "racial steering" in which a black tester — who had no intention of renting or buying a home — was told by an apartment complex owner that no apartments were available, while a white tester was told there were.

In its unanimous ruling, the court said the black tester in the case "alleged injury to her statutorily created right to truthful housing information."

"If the facts are as alleged, then respondent has suffered 'specific injury,'" the ruling said.

The Supreme Court's 5-4 ruling in *TransUnion LLC v. Ramirez* in 2021 involved a class of 8,185 individuals who charged that credit reporting agency TransUnion LLC violated the Fair Credit Reporting Act by failing to use reasonable procedures to ensure their credit files' accuracy.

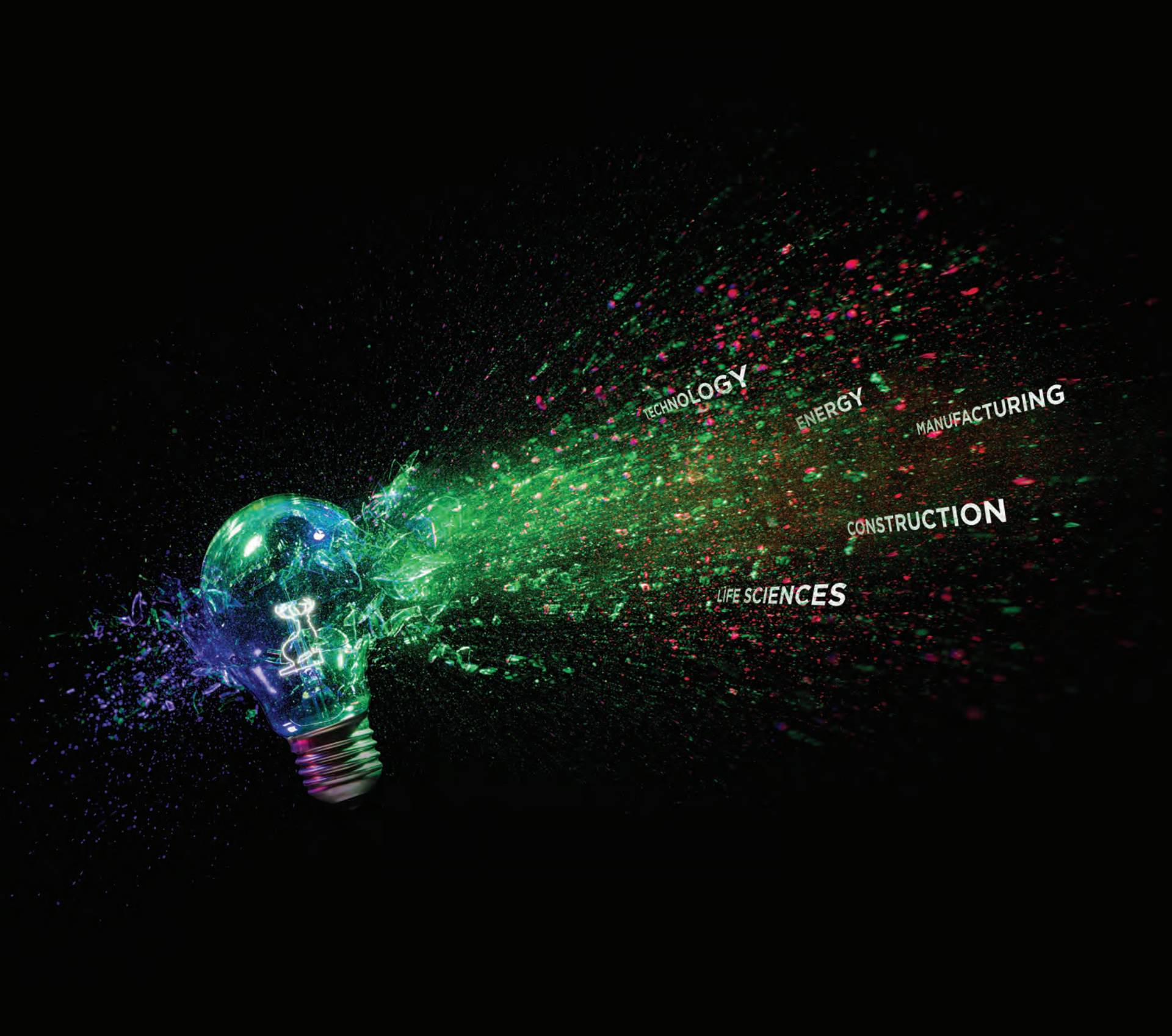
The majority opinion, written by Justice Brett Kavanaugh, said, "No concrete harm, no standing."

The ruling said that while 1,853 class members whose credit reports were provided to third-party businesses "have demonstrated concrete reputational harm" and have standing to sue, 6,332 other class members whose credit files were not provided to third-party businesses did not.

In a dissenting opinion, Justice Clarence Thomas said, "TransUnion's misconduct here is exactly the sort of thing that has long merited legal redress."

Both cases are discussed in the 1st U.S. Circuit Court of Appeals' ruling in *Acheson Hotels LLC v. Deborah Laufer*, which the high court recently accepted for review. "We think Havens Realty shows the clear path here ... unless the Supreme Court tells us that TransUnion overruled it," the appeals court ruling said.

Judy Greenwald



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Teen worker safety practices under scrutiny

BY LOUISE ESOLA

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Employers that hire workers ages 14 to 17 years must comply with a patchwork of safety regulations that vary sharply by jurisdiction, as some states take steps to loosen restrictions on such employment.

Meanwhile, federal agencies are stepping up their focus on the unsafe working conditions and exploitation that many younger workers face.

On March 8, Arkansas Gov. Sarah Huckabee Sanders signed a law that rolled back requirements that the state verify the ages of workers under 16 and provide them with certificates permitting them to work. And on April 18, the Iowa Senate passed a controversial bill that would allow such younger employees to work longer hours and would eliminate existing rules concerning the serving of alcohol in establishments that employ young workers.

Other states are considering or have considered changes that would make it easier for employers to hire underage workers, drawing opposition from children's rights advocates who say the changes would endanger such workers.

Yet some experts say workers under 18 years old are still protected, given federal regulations outlined by the U.S. Occupational Safety and Health Administration and Department of Labor's Wage and Hour Division.

YOUNG WORKERS & INJURIES

Experts say younger workers are particularly at risk for injuries. Federal data collected between 2012 and 2018 shows that teenagers between 15 and 17 years old represent about half of injuries in such industries as leisure and hospitality and accommodation and food services.

INDUSTRY

Leisure and hospitality	56%
Accommodation and food services	48%
Trade, transportation and utilities	17%
Retail trade	16%
Educational and health services	5%
Health care and social assistance	4%
Manufacturing	1%

Source: U.S. Department of Health and Human Services

Arkansas "just stopped requiring the work permits ... but all the federal safety and health requirements are still in place," said Richard Fairfax, Frederick, Maryland-based principal consultant for the National Safety Council. "The only thing that has changed is the state saying, 'We're not going to require people to get a work permit.'"

However, some experts say holes in safety requirements about hiring young people remain and that any effort that reduces oversight is detrimental. Many employers are unaware of rules specifying whom they can



hire, and often it's not until an accident occurs that they understand the implications of hiring young workers, they say.

Unscrupulous employers — many hiring underage immigrants — are the target of recent federal efforts to curb unsafe working conditions for young workers. And state-level changes have drawn the DOL's renewed attention.

The DOL and the U.S. Department of Health and Human Services on March 24 announced a partnership between the DOL's Wage and Hour Division and HHS's Administration for Children and Families to "deepen information-sharing, coordination, training and education" addressing what both departments have called the exploitation of young workers, including child labor trafficking.

Beginning this month, the DOL is offering webinars for employers, parents and young workers regarding federal child labor regulations. Seema Nanda, solicitor of the DOL, said in a statement to *Business Insurance* that "child labor protections apply in all states, and no state has the ability to limit these provisions."

"The Department will vigorously enforce child labor protections in all states and is closely monitoring state action in this area," she said.

Labor law experts say the renewed focus is timely but not new.

"There are a lot of regulations out there that have been on the books obviously for over 60 years, and certainly they haven't really changed dramatically," said Ray Perez, Atlanta-based attorney in the safety and health practice group at Jackson Lewis P.C.

While OSHA dictates workplace safety regulations for all workers, the Wage and Hour Division addresses safety for workers younger than 18. The division lists several duties prohibited for younger workers for safety reasons. "A lot of these minors don't know the law (and) they don't have the ability to contact anyone to file complaints," Mr. Perez said.

Scott Hecker, Washington-based senior counsel with Seyfarth Shaw LLP, said there's "tension" between federal and state approaches

to the issue, as "certain states are rolling back or loosening up some of the restrictions for child or teen labor based on the tightness of the labor market."

"It's hard for employers to toe those lines, to be aware of the obligations under both federal and state (systems)," he said.

Complicating workplace safety is the seasonality of some younger workers, said Jennifer Maclachlan, Sandwich, Massachusetts-based member and past-chair of the American Industrial Hygiene Association's Committee on Teen Workplace Health and Safety. She said safety training for both employers and employees is the No. 1 issue.

Employers "just don't think about it. They're just so busy," Ms. Maclachlan said. "I'm on Cape Cod, Massachusetts, and our population triples during the summer, and people get so busy and a lot of these businesses are seasonal. And I think they just think, 'I'm going to train this teen worker to do the job,' and they don't incorporate safety into it."

Mr. Fairfax, of the National Safety Council, said the number of regulations from different entities — state and federal — can be confusing for employers.

"Some of them, legitimately, aren't aware," he said, adding that family businesses tend to fall in this category. For example, owners of agriculture or manufacturing businesses can employ their own children "although they can't use any heavy equipment," he noted.

"A lot of it's just a lack of understanding and a lack of information," he said.

Greg Ripple, a Chicago-based shareholder in the labor & employment practice at Vedder Price P.C., said employers that aren't paying attention to guidelines — especially now — are more at risk than ever.

"They need to have a system in place where they are making sure that those minors and the company are complying with both the (federal) industrial rules and state rules and making sure they have that kind of compliance and training," he said.

In 2022, the U.S. Department of Labor found that several automotive parts suppliers in Alabama were employing child laborers as young as 12.

Reuters

WORK PROHIBITIONS

Under U.S. Department of Labor guidance, workers 15 and under are prohibited from:

- Working in most occupations involving transportation, construction, warehousing, communications and public utilities.
- Working in mining; workplaces where goods are manufactured or processed; in freezers or in meat coolers.
- Operating or tending any power-driven machinery, except office machines.
- Working in baking operations.
- Sign waving or door-to-door sales activities.
- Working from ladders or scaffolds.

Workers under the age of 18 may not perform duties deemed "hazardous" by the DOL, including:

- Operating most machinery, including in bakeries, woodworking, construction, paper manufacturing, metalworking, and meat and food processing.
- Driving a motor vehicle or working as an outside helper on motor vehicles, with some exceptions for 17-year-olds.
- Forklift operations.
- Mining.
- Manufacturing of brick, tile and related products.
- Wrecking, demolition and ship-breaking operations.
- Roofing operations.
- Trenching and excavation operations.

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Parametric cover gains ground in hard market

BY MATTHEW LERNER

mlerner@businessinsurance.com

Parametric insurance is gaining traction as traditional insurance prices continue to harden and companies operating in the sector build up a claims payment history, industry observers say.

The coverage, though, which is based on an index or threshold rather than being triggered by a specific loss, remains a specialist area that is used to address a specific risk or a shortfall in traditional insurance programs, some say.

Areas covered by the products have expanded — for example, with the recent launch of parametric insurance coverages for cyber exposures.

Parametric coverage comes in various formats. One often-cited example is coverage for a ski resort as protection against a lack of snowfall. Should a specific minimum snowfall — such as 12 inches in a specified period — not be reached, a payout could be triggered, regardless of whether the ski resort lost money.

Parametrics are often tied to a single, measurable threshold or index, and payments can be made comparatively quickly, often within 30 days of a loss, experts say.

Megan Linkin, New York-based senior parametric nat cat structurer for Swiss Re Corporate Solutions, said claims in North America have frequently been settled within 14 days. Among Swiss Re's offerings are parametric hail coverage, available in the U.S. since 2020, and its Pop Storm platform, where hurricane limits up to \$5 million can be bound online in a parametric policy. Other products address hurricane and earthquake risks, she said. In addition to hurricane, earthquake is another leading peril covered by parametrics.

Demonstrating claims payments is a key component in building trust in the product, Ms. Linkin said.



“Market disruption is forcing folks to really think about how they transfer natural catastrophe risk.”

Cole Mayer, Swiss Re Corporate Solutions

“An additional piece of education that has helped make the case with clients is the claims. That claims history has definitely helped,” she said, in terms of building client confidence and demonstrating the products will respond and perform as described.

Ms. Linkin added that Swiss Re has had claims under its hail coverage for all three years it has been in effect and payouts have occurred with other products for hurricanes and earthquakes in North America and Asia Pacific.

“Paying claims is the end goal of insurance. We are exposed to more than 60 geographies and 20 perils and have paid claims due to frosts, cyclones, wildfires, droughts and hailstorms,” said Tanguy Touffut, co-founder and CEO of Paris-based Descartes Underwriting SAS.

Parametrics, though, appear more limited in scope than traditional insurance when covering a specific risk, and thus more expensive, said Susan Hiteshew, vice president of risk management for AvalonBay Communities Inc., an Arlington, Virginia-based real estate investment trust.

“You are very proscriptive in what you’re covering, and that’s generally a narrower scope than what a traditional insurance policy would cover, so on a relative basis it appears more expensive,” Ms. Hiteshew said, adding she has reviewed such coverage for more than one company but has yet to use it.

The coverage can be a useful tool for risk professionals addressing a specific risk or shortfall in an overall program, she said.

Parametric coverage can also provide an additional avenue to capacity amid a firm property market in which traditional capacity is constricted, said Cole Mayer, senior structurer, North America, in San Francisco for Swiss Re Corporate Solutions.

“Market disruption is forcing folks to really think about how they transfer natural catastrophe risk,” Mr. Mayer said. Some policyholders are adding parametric coverage to their risk management “toolbox” and using it to cover deductibles and exclusions or gaps left by traditional coverages, he said.

“We’ve seen a substantial increase in interest from clients in parametric and

index solutions. The hard market environment and more volatile loss frequency and severity have resulted in increased retentions, tightening of terms and conditions, and coverage exclusions,” said Antoine Bavandi, London-based global head of the public, parametric and climate resilience solutions practice for Gallagher Re, the reinsurance business of Arthur J. Gallagher & Co.

While parametrics are “traditionally mostly used for public sector transactions and agriculture insurance, parametric solutions are now increasingly being considered as a complementary component in commercial insurance programs,” he said.

Parametrics are also being deployed beyond mainstream property/casualty exposures.

For example, New York-based Parametrix Insurance Services Inc. monitors cloud providers for outages as part of its triggering mechanism for cloud downtime coverage. Intangic MGA Ltd., a London-based cyber managing general agent launched recently with backing from Axa XL, a unit of Axa SA, offers companies up to \$15 million in coverage for losses from material cyber breaches, using the measured level of malicious activity targeting a company and the subsequent loss in value as triggers.

Ryan Dodd, founder and CEO of Intangic, said newly abundant data empowers the growth of parametrics. “It’s easier and inexpensive to gather, store and process data. You have a much larger, more robust data set from which to determine predictive outcomes.”

“Data advancements are making parametric products more robust, which is increasing buyers’ appetite,” said Descartes’ Mr. Touffut. “Incorporating satellite and radar technologies, machine learning and advanced physics into underwriting models has enabled a much more precise understanding of risks.”

TRIGGERS DEvised TO PROVIDE COVERAGE FOR CLOUD OUTAGES, CYBER RISKS

Parametrics have recently been used to cover cyber exposures for businesses that conduct operations online and rely on cloud computing services.

New York-based Parametrix Insurance Services LLC provides technology downtime insurance to protect businesses from potential losses tied to third-party content delivery network outages. It monitors cloud providers for outages as part of the triggering mechanism for its cloud downtime coverage.

Parametrix’s main clients are enterprises with revenue between \$200 million and a

few billion, with coverage limits ranging from \$5 million to around \$50 million, according to Tel Aviv, Israel-based Neta Rozy, co-founder and chief technical officer of Parametrix. She said that typically policyholders are insured against outage or service disruption affecting one or more of the top three cloud providers: Amazon Web Services, Microsoft Azure and Google Cloud Platform.

“Cyber is a market where people are looking for solutions,” said Ryan Dodd, founder and CEO of Intangic MGA Ltd., a London-based cyber

managing general agent launched with backing from Axa XL, a unit of Axa SA. Intangic offers U.K.-based companies up to \$15 million in coverage for losses from material cyber breaches, using the measured level of malicious activity targeting a company and the subsequent loss in value as triggers.

Demand is “moving faster than expected,” Mr. Dodd said, after Intangic accelerated its plans to expand to the United States due to inquiries. “I didn’t expect we’d move this quickly to the U.S.,” he said.

Laurent Sabatié, co-founder and executive director of London-based Skyline Partners Ltd., which specializes in parametric coverages and partnered with Intangic in developing its cover, said the expanding use of parametric coverages “brings new actors into insurance,” such as data set providers and other players from the technology sector.

Parametrix has also recently adapted some of its models for use in structuring the first insurance-linked securities for cyber coverages, or cyber cat bonds.

Matthew Lerner



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Automation curbs, changes safety risks

BY JON CAMPISI

jcampisi@businessinsurance.com

Automation is increasingly being employed for tasks that were traditionally performed manually by workers in industries from automotive manufacturing to food processing, and while the change can lead to fewer injuries, the technology brings new risks.

The implementation of automation can reduce instances of repetitive strain injuries and other common injuries, but it can also lead to more severe workers compensation claims as workers interact with machines in different ways.

Automated operations can give employees a false sense of safety because they are performing fewer manual tasks and may perceive that there is no longer a danger of being exposed to traditional workplace hazards, said Kevin O'Sadnick, senior risk control manager for St. Louis-based Safety National Casualty Corp.

"Employers should still focus on providing employees with adequate training for newer automation and stress the importance of avoiding complacency," he said.



DANGEROUS WORK

Some of the statistically most dangerous industries have turned toward workplace automation. The level of danger varies based on different measurements. Ranked by nonfatal injury and illness rates, the most dangerous industries include:

- 🔧 Transportation and warehousing (#1)
- 🔧 Construction (#4)
- 🔧 Manufacturing (#7)

Danger is also measured by death rate and number of worker deaths.

Source: National Safety Council

While there is still a chance of workplace injuries, automating certain operations typically means fewer employees are exposed to hazards and often leads to fewer employees needing to be insured, he said, since automation could lead to fewer workers on the payroll.

Over the past decade, employers have increased pressure on workers to speed up processes, particularly in jobs such as warehousing and delivery.

"Wherever there has been work speed-up, there's also been demand for human speedup," said Massachusetts Institute of Technology labor economist David Autor, who addressed automation and its forecasted effect on industry, workers comp systems and general employment during a presentation at the Workers Compensation Research Institute's annual Issues & Research conference in Phoenix in March.

The shift to automation reduces repetitive motion injuries, especially in



warehousing and delivery jobs — where compressed timelines are raising concerns. Amazon Inc., for example, is the subject of several investigations — including by the U.S. Occupational Safety and Health Administration — on worker injury rates and work site "quotas" on delivery.

In many ways, automation and new technologies have made workplaces safer, which has been reflected in a years-long decline in workers comp frequency rates, said Mark Walls, vice president of client engagement for Safety National.

Yet as some workplaces become more automated, with new technologies being deployed to help with productivity and cut down on injuries, severity may be an issue, experts say.

In manufacturing and warehousing, new technologies used as tools to help with repetitive stress injuries affecting the musculoskeletal system — such as robots — can lead to more severe and costly claims if workers are hurt by the technology.

Rebecca Morgan, Kansas City, Missouri-based vice president of product management for Enlyte Group LLC subsidiary Mitchell International Inc., said one step employers can take to better manage risks associated with automation is education.

"As the injuries change, we need to

educate and protect workers in a slightly different way," she said, emphasizing the importance of better training employees to work alongside robots in a more collaborative way.

In some cases, workers may be required to perform quality assurance checks on the machines that are performing the automated tasks, she said.

"I do think we'll see fewer injuries overall, but the types of injuries will change as the workplace becomes automated," Ms. Morgan said. "Whether we are talking about a robot on a manufacturing line or software automation in the back office, workers will need to learn to perform their functions alongside that automation."

Mr. O'Sadnick, of Safety National, said new technologies come with high-tech safety features, including laser barriers or interlocked access gates, and informing workers on the importance of these features can help cut down on workplace injuries.

Kushal Agrawal, Chicago-based senior vice president, head of strategy, at third-party administrator Gallagher Bassett Services Inc., said any new technology introduced in the workplace with the goal of modifying work, "almost always introduces a new risk."

"The new risk that gets introduced in

theory should be less frequent, (but) it could have a high severity," he said.

Mr. Agrawal said keeping workers healthy and safety-conscious can help manage risks associated with an automated workplace.

While the use of robotics in some sectors is intended to cut down more repetitive worker injuries by replacing manual tasks, employees are still in danger of getting hurt in new and different ways, said Newport Beach, California-based attorney Jeff Adelson, with the firm Adelson McLean.

"How is being hurt by a robot any different from having a machine fail or having a defect in a machine?" he said. "You're not supposed to stick your hand in a punch press. You're probably not supposed to engage in a robotic device."

Aaron Holt, a labor and employment attorney in the Houston office of law firm Cozen O'Connor, said problems with newer technologies concern everyday safety aspects, since automation "takes the human out of the equation," which could lead to injuries.

"If everything continues working as it should, and as it was designed to, then maybe there's not a problem," he said. "As we are trying out new technologies, we have to be careful not to trust too much, too quickly in technology that we do not fully appreciate some of the unintended consequences."

Mr. Holt said most companies strive to be safety conscious, while also striving to still be profitable.

"That's always sort of the interplay in making sure you're doing things safely ... but at the same time you're wisely spending your resources for the long-term health of the business," he said.

Mr. Holt said "more complicated and expensive" automated machines could potentially lead to more severe worker injuries, but manually controlled machines also account for the bulk of worker injury claims.

"There's a cost to a bunch of little injuries," he said. "There's a cost to a big injury. The employer's still going to be liable for both of those injuries."

FIRMS HARNESS WEARABLES TO REDUCE INJURIES

Workers compensation injury frequency rates are declining, and industry experts say new workplace technologies are helping to cut claims.

New technologies such as wearable devices used in construction and other industries are deployed to reduce injury frequency.

For example, exoskeletons in the construction field are used to help

increase strength and decrease stress to workers' muscles and joints.

Other wearable devices focus more on environmental job site safety by alerting workers to dangers and hazards that could lead to injuries.

"It all boils down to, you can deploy technology to reduce frequency, but that again has to be focused, it has to be isolated to a place, and

then you have to customize it and then you'll actually see results," said Kushal Agrawal, Chicago-based senior vice president, head of strategy at Gallagher Bassett Services Inc.

Companies that see more frequent rates of repetitive musculoskeletal injuries tend to be adopting wearables, Mr. Agrawal said.

Jon Campisi

IMAGINE

IMM



IMAGINE *the possibilities*

Life's "what if...?" moments can be overwhelming. Yet, "what if" can open a world of possibilities — instead of leading to feelings of helplessness, it can spark hope. And with the right partners, it's easier to imagine the possibilities instead of the perils.

In the unexpected, Sedgwick is here for you — helping people, restoring property, preserving brands, and empowering performance. We bring the best of our global and local resources to turn the possibilities you're envisioning into realities.

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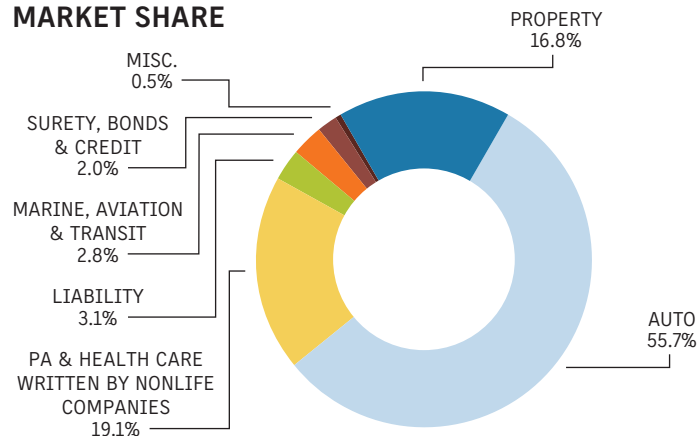
PROFILE: MONTENEGRO

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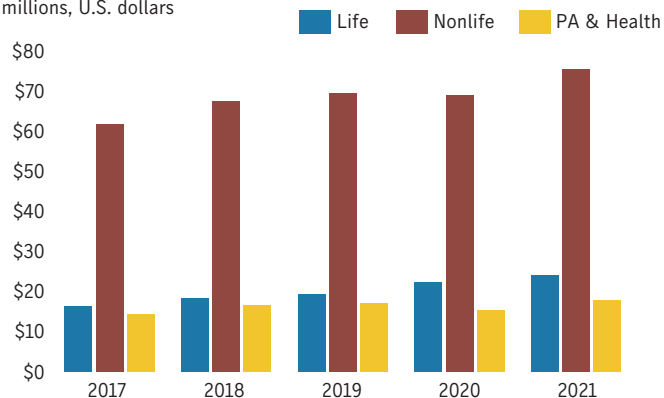
Montenegro, a small Balkan country that separated from the former Yugoslavia in 2006, has an economy almost wholly dependent on tourism. This made it extremely vulnerable to the travel barriers erected against COVID-19, resulting in a 15.3% reduction in real GDP in 2020. Before the crisis, foreign investors had been pouring money into new resort and marina developments, though most of the related insurance business was written on a fronting basis. Total nonlife premiums in 2021 were only €78.8 million (USD \$87.7 million), with compulsory auto third-party liability comprising 48.2%. There are five insurers in the nonlife market, all of them foreign-owned. The market is dominated by two Slovenian-owned insurers, Lovcen and Sava, which had a joint market share of 61.4% in 2021. Although distribution is still dominated by branch-based sales staff, there are now 12 domestic insurance brokers.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Workers compensation (state scheme)
- Professional indemnity for insurance brokers, auditors, lawyers, notaries, architects, engineers, construction supervisors and construction companies
- Liability insurance for the carriage of dangerous goods by road, rail and air transport
- Air carriers and aircraft operators liability
- Shipowners liability for marine oil pollution (financial guarantee or insurance)

NONADMITTED

Nonadmitted insurance is not permitted in Montenegro because the law provides that insurance must be purchased from locally licensed insurers, with only limited exceptions.

INTERMEDIARIES

Except for a limited number of lines, insurance intermediaries are not allowed to operate in Montenegro without a license. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Although the clear implication of the Insurance Law is that nonadmitted insurance is not allowed, it is not a criminal offense for a Montenegrin resident to insure directly abroad.

MARKET DEVELOPMENTS

Updated March 2023

- Premium growth prospects for this year are uncertain for several reasons, including inflation. Also, because the coastal strip is fully developed and the government lacks funds for new infrastructure, there will likely be a dearth of new construction policies.
- A Law Amending the Insurance Law went into effect in January 2022, the main purpose of which was to establish the governance aspects of the EU Solvency II directive, including the key functions of risk management, compliance monitoring, internal audit and internal control.
- A Law Amending the Law on Compulsory Transport Insurance also went into effect in January 2022. Its main effect was to bring Montenegro's compulsory aviation third-party liability requirements into compliance with EU standards as regards both scope and amount. Passenger liability and third-party bodily injury liability are compulsory for all aircraft, including drones and model aircraft.
- To comply with the international agreement to enforce a minimum 15% corporation tax rate, Montenegro introduced a progressive corporation tax regime in January 2022.
- There was an estimated auto casco market loss of up to €1 million (\$1.1 million) caused by two hailstorms in Podgorica in the summer of 2022.

AREA

5,333

square miles

POPULATION

602,445

MARKET CONCENTRATION

76.7%

market share of top three insurers

2023 GDP CHANGE (PROJECTED)

2.5%

Information provided by Axco.
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global insurance intelligence,
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Court upholds Boy Scouts trust

■ A federal district court in Delaware ruled against dozens of insurers who objected to a \$2.46 billion trust for sexual abuse victims established by a bankruptcy court for the Boy Scouts of America, stating there was no evidence the settlement was not reached in good faith.

The ruling by the U.S. District Court in Wilmington in *In re: Boy Scouts of America BSA LLC*, debtors concerned the Wilmington bankruptcy court's September 2022 order, which confirmed a reorganization plan that included a global resolution of sexual abuse claims.

The 155-page ruling by Judge Richard G. Andrews said the plan channels to the settlement trust all abuse claims against the Boy Scouts of America and related entities and those covered by settling insurance companies, observing that there were 82,209 "unique and timely claims" asserting abuse.

The bankruptcy court settlement provided at least \$2.46 billion in cash and property to the trust, plus unliquidated assets, including insurance rights worth up to more than \$4 billion, the ruling stated.

"The plan, if upheld, will ensure the survival of an American institution," the ruling said.

Two groups of non-settling insurers objected to the plan.

In ruling against the insurers, the court said they "introduced no evidence of collusion or that any claims were fraudulent."



Florida church wins hurricane ruling

■ A federal appeals court reversed a lower court and held that a Florida church is entitled to coverage for roof damage incurred in two hurricanes because of the policy language, despite the parties' apparent intent.

Hurricane Matthew in 2016 and

Hurricane Irma in 2017 tore through Melbourne, Florida, peeling back Shiloh Christian Center's roof and allowing rain to soak the exposed structure, according to the ruling by the 11th U.S. Circuit Court of Appeals in Atlanta in *Shiloh Christian Center vs. Aspen Specialty Insurance Co.*

In 2015, Shiloh had specifically asked Aspen to stop covering named windstorm-related losses, which included hurricane losses. Aspen agreed, but its 2016 policy did not contain the exclusion.

Similarly, in 2017, Shiloh's policy application asked that windstorms be excluded, but a named windstorm exclusion was not listed in its policy.

Shiloh sued Aspen in U.S. District Court in Orlando, seeking coverage for the hurricanes' damage. The district court ruled in the insurer's favor and was overturned by a three-judge appeals court panel.

"The cardinal principle is that a policy's text is paramount," the ruling said.

The later policy, like the earlier one, "contains a broad coverage clause and a detailed 'exclusion' provision that includes all manner of specific exclusions but, conspicuously, does not mention 'Named Windstorms,'" the ruling said in reversing the lower court and remanding the case for further proceedings.



Court rules against Liberty Mutual unit

■ A federal appeals court overturned a lower court and ruled in favor of a biotechnology company in a directors and officers liability insurance policy dispute over coverage and \$1.1 million in legal fees.

Bothell, Washington-based Cocrystal Pharma Inc., formed through a merger between Biozone Pharmaceutical Inc. and Cocrystal Discover Inc. in January 2014, had a D&O policy with Liberty Mutual Insurance Group unit Liberty Insurance Underwriters Inc., according to the ruling by the 3rd U.S. Circuit Court of Appeals in Philadelphia in *Liberty Insurance Underwriters Inc. v. Cocrystal Pharma Inc.*

In October 2014, the U.S. Securities and Exchange Commission subpoenaed Cocrystal Pharma, requesting documents about it and its predecessor, Biozone. It appeared the SEC was mainly interested in Biozone, but it also sought Cocrystal documents, according to the ruling.

Liberty Mutual paid Cocrystal \$1.1 million for the defense costs incurred

in responding to the SEC's subpoena. Based on the enforcement action, private plaintiffs filed three lawsuits against the company.

Although the enforcement action and the lawsuits were filed after the policy period ended, Cocrystal sought coverage, arguing the post-policy actions should merge into one claim made within the policy period.

Liberty denied coverage and sued Cocrystal in U.S. District Court in Wilmington, Delaware, seeking a declaration of no coverage and recoupment of the \$1.1 million.

Cocrystal countersued, seeking a declaration of coverage and bad-faith denial of coverage, as well as to prevent Liberty's recoupment of defense costs paid.

The district court ruled in the insurer's favor and was overturned by a three-judge appeals court panel.

"The document requests in the subpoena show the SEC could *potentially* bring enforcement actions against Cocrystal directors and officers, depending on the results of its investigation," the ruling said.

"Given how broadly Delaware courts apply the duty to defend, this potential of future liability is enough to trigger coverage," it said in vacating the district court's summary judgment and remanding the case for trial.



EEOC obtains sex bias judgment

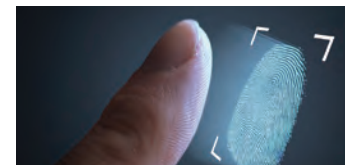
■ The U.S. Equal Employment Opportunity Commission announced that a sex discrimination lawsuit it filed against a Maryland employment agency resulted in a default judgment of nearly \$2.7 million.

The EEOC sued Hanover, Maryland-based Green JobWorks LLC in U.S. District Court in Baltimore in 2021, alleging the company violated Title VII of the Civil Rights Act of 1964 by subjecting female workers to a pattern or practice of sex discrimination in job and work duty assignments.

The EEOC alleged Green JobWorks refused to hire female workers for demolition and laborer positions or to assign them to such positions because of their sex. It also said that the company assigned certain work duties on the basis of sex.

The default judgment against Green JobWorks consisted of \$665,566 in lost wages with interest and \$2 million in punitive damages.

DOCKET



UNION WORKERS CAN'T SUE UNDER BIPA

The Illinois Supreme Court ruled federal labor law bars unionized workers from suing their employers for alleged violations of the state's Biometric Information Privacy Act. The unanimous ruling held that campus security workers at Roosevelt University in Chicago must bring claims that the school used their fingerprints for timekeeping without their consent in union arbitration rather than court. The university was backed by the U.S. Chamber of Commerce and groups representing the retail and restaurant industries.

LABOR BROKER PLEADS GUILTY TO COMP FRAUD

An unlicensed New York labor broker pleaded guilty to two felony counts of insurance fraud and fraudulent practices in connection with a scheme to evade paying workers compensation insurance premiums. Salvador Almonte Jr. engaged in what prosecutors called an "extensive insurance fraud scheme" that resulted in the evasion of more than \$1 million in premiums and left more than a hundred construction workers underinsured. Mr. Almonte will be required to pay \$500,000 in restitution as part of the guilty plea.

POSTAL WORKER'S BIAS SUIT REINSTATED

A federal appeals court reversed a lower court ruling and reinstated age discrimination and retaliation claims filed by a fired postal worker. Anastasia Nedd Allen was hired as a city carrier assistant in April 2018, when she was 53, and fired before her 90-day probationary period lapsed. Ms. Allen contacted the U.S. Equal Employment Opportunity Commission, which led to a written settlement. After she was reinstated in December 2018 and terminated again in February 2019, she sued the U.S. Postal Service in U.S. District Court in New Orleans charging age discrimination and retaliation. The district court granted the postal service summary judgment dismissing the case but was overturned on appeal.

We make your clients safer.

YOU'RE THE HERO.

Your clients rely on your advice to protect their people and their business. With the state's largest workplace safety team, training resources and more, we'll help your clients work safe — and you'll be the hero. See how our safety resources help you keep your clients happy and your agency strong at texasmutual.com/hero.

TexasMutual[®]
WORKERS' COMPENSATION INSURANCE





Prior to co-founding Newfront in 2017, CEO Spike Lipkin handled insurance purchasing for other entities he was involved with during his time at Blackstone Inc. and Opendoor Technologies Inc. Looking to improve the insurance purchasing process, he established the San Francisco-based brokerage using technology designed to reduce the amount of paperwork needed and streamline the placement of coverage. Newfront significantly expanded its operations through its 2021 merger with established broker ABD Insurance and Financial Services Inc. Newfront has recently hired several well-known brokers, including former Marsh LLC veteran John Newell. *Business Insurance* Editor Gavin Souter recently spoke with Mr. Lipkin about the company's expansion and its plans.

Spike Lipkin NEWFRONT

Q Newfront has made several high-profile hires over the past few months. What does this mean for your strategy?

A It's a very strong validation of our strategy; our strategy hasn't changed. We believe that our industry is changing, and clients are going to demand a more analytical, transparent and data-driven option. We've now spent six years building a high-tech and high-touch experience, and those recent hires that have joined us are people who are voting with their feet, saying, "This is the best place to build an insurance career because I have the right tools to deliver the best client experience."

Q But why were you pursuing them? What is it that you wanted to bring into the company?

A We pursued them because they are the elite talent in the industry. These are folks that every firm is pursuing. ... National expansion is something that's very important to us, and so bringing in John Newell to lead our expansion and to lead our scaling was a big part of that. We've made some high-profile hires outside of California. We brought on a team in Boston; we brought on someone to lead our Philadelphia market, our Pittsburgh market; we're growing our New York presence as well. Chicago is an area where we're investing, and Texas. So, we're taking what has worked really well and expanding it across the country.

Q With all this activity, where do you see opportunities for growth?

A We're at the most fascinating time. We are increasingly living in a world that is risky. There are new vectors of risks and there are also more perils out there, and those are happening more frequently — natural disasters, pandemics — so the need for what brokers do is increasingly more significant. If you are an innovative broker who can bring a digital experience to clients, you are also well matched for the new digital era where clients have unique risks. If technology is remaking every company, we're going to see whole new markets within insurance develop.

We're at the beginning of an AI revolution, and that's going to change everything for clients, and it's going

to change how brokerages operate. If you think about brokerages, there's this huge transactional component. You have skilled professionals that have spent decades becoming experts in this business, and some of what they do is this really valuable client-facing work, but a lot of what they do is packaging of information, filling out forms, spending their days toiling away on this work, and I think that's going to change.

Q How do you think artificial intelligence is going to change the process?

A It is going to eliminate the bottom half of what professionals do. On one end of the spectrum, you have really valuable client-facing work, on the other end you have transactional work. Technology will increasingly take on the transactional work, and that will mean that professionals can have more meaningful relationships with their clients, more strategic relationships with their clients.



It also means that if you take the transactional work and digitize it, all of the data associated with the transaction suddenly becomes structured — insights, benchmarking, forecasting — and these things that today are really laborious and make sense for a client of a certain size are suddenly going to be broadly available. So, you're going to see this democratization of really good decision-making that AI is going to power.

Q AI is also raising fears among people that their jobs may

disappear. Where do you see that happening in the insurance sector?

A We believe fundamentally that if you're a CFO or a general counsel and you're making large or middle-market insurance decisions, a human is always going to be an important part of that, but there's technology that will empower that human. When you look at other industries, the story is very different. We've all read these statistics about AI eliminating jobs, and I unfortunately think that will happen and it will change the risk profile in many of these industries. So, insurance brokers who are highly adaptable and understand the changing market will be well-suited.

Q Last year, you raised \$200 million. Any acquisitions on the horizon?

A We see massive opportunities for organic growth in front of us and so we don't have any plans to acquire other companies. We are focused on building the tools and culture to be the destination for top talent in our industry. ... We're not planning to acquire; we're planning to build.

Q Are there any product areas or industry verticals that you're looking to expand into?

A We will always be strong in our core verticals around technology, life science, financial institutions, but recently we've made some meaningful investments in real estate. So, we brought on Jonathan Naranjo in the past year and built out a team. In construction we brought on Matt Summers to lead our construction practice and then a whole host of other verticals.

If you start with technology, you can find a path into almost any industry. So, we work with telehealth companies and that's a really good foray into health care because it turns out that every health care company is becoming a digital health company. The same is true in construction. These buildings are becoming more and more sophisticated, the technologies used to build are becoming more and more sophisticated. So, we think technology is going to touch every industry, and our core foundation in technology will lead us into many other industries.

There are new vectors of risks and there are also more perils out there, and those are happening more frequently — natural disasters, pandemics — so the need for what brokers do is increasingly more significant.



Proven Outcomes for the Most Unpredictable Injuries

To manage uncertainty for the widest range of catastrophic and severe injuries, you need established expertise and independently verified results that deliver superior health outcomes and financial assurance.

Severe and catastrophic injuries bring tremendous uncertainty to the injured workers, families, businesses, and communities they affect. Too often, nonspecialized management delivers a sub-optimal outcome and diminished patient experience to the injured workers it is supposed to serve. Even for high-performing and experienced claims programs, without dedicated management, the administrative burden associated with these cases can drain time, resources, and money.

Achieving certainty and optimal outcomes requires a formula that balances risk transfer, medical and behavioral expertise, and a commitment to provable results that deliver financial certainty and real value to clients. For over 30 years, Paradigm's incomparable care management model and suite of products have built a steady client base from unmatched trust, transparency, accountability, flexibility, and industry-leading outcomes for everyone involved.

Risk Transfer—the Basis of Certainty

The core of Paradigm's ability to deliver certainty is an accountable risk transfer model that provides competitive, fixed pricing for early and accurate medical reserving and clear functional and clinical outcomes—guaranteed.

“Because these are cases that have a long tail and are highly volatile, stakeholders need to accurately predict lifetime claim cost and length,” says Kathy Galia, Paradigm Chief Clinical Solutions Officer. “Paradigm's clinical and data expertise translates to pricing confidence and long-term savings, including 32% lower lifetime medical costs.”¹

Paradigm Outcome Plans offer the flexibility to meet the unique needs of any client and solve the widest range of problems with certainty. HERO CatastrophicSM and HERO SevereSM plans are fixed-cost, medical risk transfer contracts that deliver a guaranteed outcome based on injury diagnosis and expert-driven data-guided assessment. Complex Large Loss Plans are time-based risk transfer contracts for complex older claims.

Galia explains, “Paradigm is the only true risk transfer company—we assume the risk until we achieve a verifiable and mutually agreed-upon outcome with the client and the injured worker's treating physician.”

Our Wide Range of Physicians, Nurses, and Clinicians Are Leading Experts in Their Fields



From left to right:

Cannon Peppers, Paradigm Network Manager
Maria Ratcliff, MPA, Paradigm Senior Director of Clinical Solutions
Dr. Indira S. Lanig, PM&R, board certified in SCI, and Paradigm Medical Director
Chris Turla, Paradigm Director of Clinical and Pricing Solutions

Why Medical Management Proficiency Matters

The average catastrophic case involves more than 60 medical providers and 100 appointments in the first year alone. Half of these injuries will require specialized home care, and 30% will need some form of long-term care.²

“Nurse generalists and non-specialized physician consultants are not enough for catastrophic cases,” says Michael Choo, MD, Paradigm Chief Medical Officer. “The clinicians at Paradigm are specialized medical and behavioral experts who are truly committed to our approach and foster relationships with the top practitioners and research organizations in their respective fields.”

Paradigm physicians, nurses, and behavioral health specialists undergo an unmatched level of catastrophic injury-specific training and mandatory continuing education. Working directly within the Paradigm Management Team assigned to each case, these clinicians match injured workers to a carefully curated network of the best possible providers for each diagnosis. Along with direct medical expertise, care decisions are informed by the knowledge and results derived from a data set containing more than 20,000 catastrophic cases.

“Paradigm's processes are so transparent and their care so skilled, we always know what to expect, which is incredibly valuable for our risk-management and claims-admin teams.”

Kevin Confetti

Associate Vice President & Chief Risk Officer
 University of California — Office of the President

Fully Integrated Behavioral Health Support

Paradigm pioneered the whole-person, whole-family approach in workers' compensation. From the beginning, we have been advocates and catalysts for the growing understanding of the importance of behavioral care to injury treatment outcomes.

“Paradigm believes medical expertise and behavioral health expertise working together cohesively are vital to the recovery process for seriously injured workers,” says Deborah M. Benson, PhD, ABPP, Vice President of Clinical Solutions for Paradigm.

For nearly 15 years, Dr. Benson has led the integration of Paradigm's behavioral expertise into an established and consistent medical team.

Paradigm Management Teams feature integrated behavioral health professionals assigned to provide support, coping strategies, and resource facilitation to all injured workers and families. This includes proactive, day-one assessments and personalized care plans designed to promote positive psychosocial adjustment of the injured worker and family to address potential barriers to recovery.

Paradigm's clinical roster of behavioral expertise includes board-certified psychiatrists and neuropsychiatrists, psychologists and neuropsychologists, rehabilitation counselors and applied behavior analysts. This comprehensive approach sets the standard in the industry and potentially the broader health care space.

As Paradigm Medical Director David B. Arciniegas, MD, Immediate Past Chair of the International Brain Injury Association and current President of the American Neuropsychiatric Association, puts it, "The emphasis we place on outcomes, the development of evidence-based treatment plans, and the collaboration with interdisciplinary treatment teams—including behavioral health networks—is one that can and should serve as a model for general health care."

Human-Centered, Outcomes-Focused Care for the Most Challenging Cases

1

Personal engagement with the injured worker within 48 hours by a catastrophically trained nurse

2

Medical and behavioral health treatment plan developed by a dedicated and accountable team of experts

3

Risk-bearing, guaranteed Outcome Plan is presented with a competitive fixed price

4

Clinical management by experts to minimize anticipated medical and behavioral health risks and maximize functional recovery

5

Agreement with the client that the guaranteed outcome has been achieved—and confirmed by the treating physician

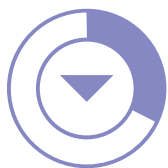
Paradigm Outcomes

Superior outcomes have been synonymous with Paradigm from the beginning. "We started as Paradigm Outcomes™ in 1991 to provide a much-needed focus on catastrophic workplace injuries and achieve guaranteed outcomes for these exceptionally challenging cases," explains Dr. Choo. "The ability to actually deliver on this promise has required consistent dedication to client service, clinical excellence, data curation, results measurement, and process improvement over the past 30-plus years."

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6x
better

7% industry
benchmark

44% of injured workers needed
behavioral health therapy during
Paradigm Outcome Plan

14% of injured workers needed ongoing
behavioral health therapy at Outcome
Plan completion³

Sources:

¹ Milliman Complex and Catastrophic Workers' Compensation Claims Cost Analysis for Paradigm—October 2020

² Paradigm data

³ Paradigm completed Outcome Plans with end year 2022



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BUILDING A STRATEGY TO SAFELY MANAGE SUPPLY CHAIN RISKS

Construction sector faces challenges ranging from catastrophes to politics in struggle to keep projects on time

BY MATTHEW LERNER

mlerner@businessinsurance.com

Maintaining supply chain integrity is a high-wire act with a small net, buffeted by myriad exposures from basic quality assurance and control to conflicts, coups and catastrophes in far-off lands.

Add in macroeconomic factors, such as inflation and labor shortages, and the process of aligning all the variables productively and profitably becomes exponentially more difficult, experts say.

The construction sector, due to its size and scope, is more exposed to supply chain woes that can cause concern for insurers than industries that do not consume similar volumes of raw materials or require as much skilled labor.

Building construction insurance programs that include contingencies for supply chain disruptions and related risks can help protect contractors and others, they say.

“You must really understand your supply chain, because it’s much more complex than you think. If it’s simple, that means it’s not redundant.”

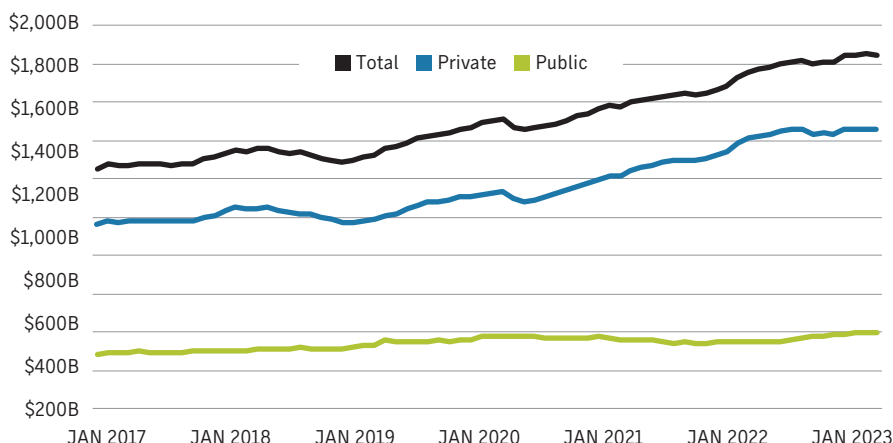
Cheri Hanes, Axa XL

Kevin Bates, group head of risk and insurance for Australian construction company Lendlease Corp. in Sydney, said a robust supply chain should include secondary and tertiary supply options and opportunities, which create a “strong competitive tension” that translates to improvements in quality, speed to market and safety.

“There’s a need for everybody to raise their game. It’s competitive. People want to win the work and they know that things like safety, quality and reli-

CONSTRUCTION SPENDING

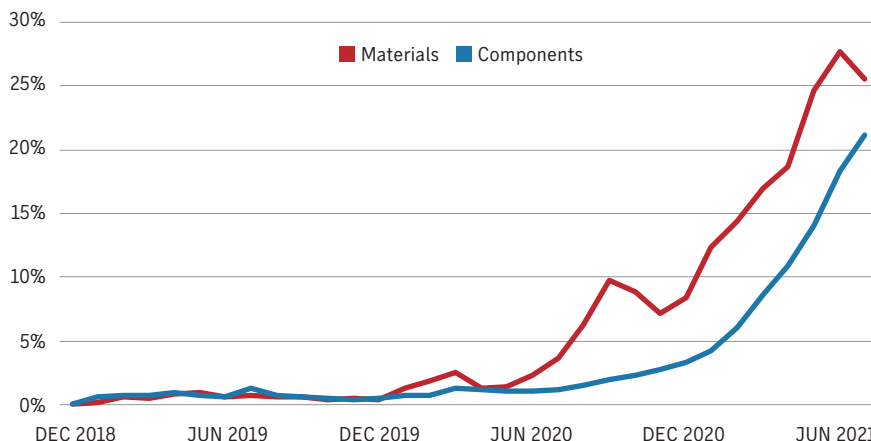
Seasonally adjusted annual rate (SAAR)



Source: U.S. Census Bureau

CONSTRUCTION PRICES

Percent change since Dec. 2018 in producer prices for materials and components for construction



Source: U.S. Bureau of Labor Statistics

ability are points of differentiation,” said Mr. Bates, who is also a board member of the Risk & Insurance Management Society Inc.

Redundancy and contingency planning should be a part of a well-designed supply chain, said Dallas-based Cheri Hanes, who heads the subcontractor default insurance risk engineering team at Axa XL, a unit of Axa SA.

To weather challenges, “you must really understand your supply chain, because it’s much more complex than you think. If it’s simple, that means it’s not redundant,” and potentially more exposed to disruption, she said.

“Where possible, redundancy is always a good idea, or at least having contingency plans in place,” said Cincinnati-based Pat Stoik, chief risk officer for Overhaul Inc., which specializes in in-transit supply chain risk management. “Route planning, proper security protocols for transit and storage, visibility of the goods while in the supply chain, and contingency plans all contribute to successful navigation of the supply chain challenges.”

“The risk manager and the supply chain team should work very closely to make sure that the risk handling matches the supply chain activities being followed,” Mr. Stoik said.

Larger companies should have risk management capability within the supply chain management function, said David Shillingford, an adviser to Troisdorf, Germany-based Everstream Analytics.

“There is an opportunity for insurers to work more closely with companies that

See **CONSTRUCTION** next page

Failing to connect dots on world events can create unforeseen exposures

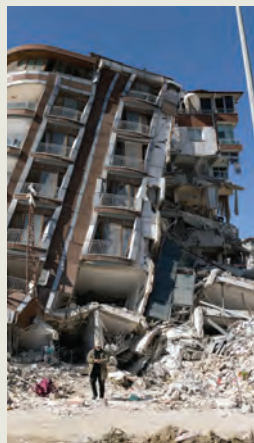
Supply chain integrity and performance can be hurt by events that may at first seem unrelated but can have profound consequences for end users.

“This is not an isolated function. Nothing is compartmentalized,” said Michael Pignataro, U.S. contractor builders risk leader for Marsh LLC in New York.

For example, a user of mechanical or electrical equipment has an indirect exposure to markets for copper, a key raw material in wiring.

“If there are major price fluctuations in copper or logistical problems around copper, even though I am not a direct purchaser of copper, those issues or problems are reflected in my end product,” Mr. Pignataro said.

Chile, by far the world’s largest producer of copper, has had three earthquakes of magnitude 6.0 or greater and has



experienced political unrest since 2019.

“You can’t just look at it as an end user,” Mr. Pignataro said. “You must focus not only on your suppliers but your suppliers’ suppliers,” and so on up the chain, he said.

Dallas-based Cheri Hanes, who heads the subcontractor default insurance risk engineering team at Axa XL, a unit of

Axa SA, said the political unrest in Papua New Guinea during September 2021 roiled aluminum markets because the nation is the world’s third leading producer of bauxite, a key raw material for aluminum.

A seemingly isolated event “can ripple through the supply chain because we are so connected,” Ms. Hanes said. Other geopolitical events such as the

conflict in Ukraine affect supplies and markets for food and fuel, she added.

The production of materials in Europe has been hit by utilities outages stemming from the Russia-Ukraine war and Russia’s control over energy supplies in the region, said Andrea Blair, Nashville-based director of business resilience and continuity management services at Zurich Resilience Solutions, part of Zurich North America.

Mr. Pignataro said the conflict in Ukraine has increased interest

in contract frustration insurance, which can cover losses related to the failure of delivery of contracted goods.

“While these products have always existed, the requests are starting to come from many more first-time buyers and there is a lot more curiosity” about the product, he said.

Matthew Lerner

CONSTRUCTION

Continued from previous page

are mapping their end-to-end supply chain to develop or extend supply chain risk transfer mechanisms,” he said.

Disruption

Common causes of supply chain disruptions include price hikes for a broad range of input materials. In a recent risk survey conducted by the Association of General Contractors of America and management consulting company FMI Corp., price increases of materials and equipment overtook a lack of skilled and craft workers to become the top risks among contractors.

“The risk manager and the supply chain team should work very closely to make sure that the risk handling matches the supply chain activities being followed.”

Pat Stoik, Overhaul Inc.



“With materials costs fluctuating so much month to month, contractors remain wary about committing to projects with unpredictable costs and lead times. While inflation in the broader economy is settling back to earth, construction costs keep hitting updrafts,” Ken Simonson, chief economist at the AGC in Arlington, Virginia, said in a recent statement

on construction input costs.

Cost volatility is among the chief challenges facing the construction sector, said Danette Beck, head of industry verticals and national construction practice leader for USI Insurance Services Inc. in Valhalla, New York.

Early and frequent communication coupled with contract clarity, such as

cost escalation clauses in builder’s risk policies, which cover building during the construction process, can help avoid flashpoints later. “You have to be able to get ahead of some of these challenges,” Ms. Beck said.

A material escalation clause allows for adjustments in contract pricing to account for changes in material costs or availability,

said Kansas City, Missouri-based Michael Campo, national construction practice director for IMA Financial Group Inc. He also suggested project owners could include a delay damages clause that specifies the damages that a contractor will be liable for in the event of a delay in the project schedule.

Careful inventory control can help mitigate cost exposures but must be managed to avoid creating additional exposures, Ms. Beck said. Warehousing materials may appear to make sense to control acquisition costs and delivery times but may have property exposure implications. Sublimits for off-site storage in builders risk policies can average between \$5 million and \$10 million, so policyholders should be careful not to exceed coverage limits with inventory, Ms. Beck said.

“Contractors have been pre-ordering materials and storing them for future usage in response to the risk of suppliers not delivering materials or equipment on time. This results in an inventory risk both in holding too much, resulting in storage costs, but also the risk of damage while in storage,” Mr. Campo said.

Many of the products and components used in construction are manufactured on a just-in-time basis, an inventory management method where goods are received from suppliers only as they are needed. The main objective of this method is to reduce inventory holding costs and increase inventory turnover, said Blanca Berruguete, global industry solutions director for construction in Madrid for Allianz Global Corporate & Specialty, a unit of Allianz SE.

Andrea Blair, Nashville-based director of business resilience and continuity management services for Zurich Resilience Solutions, part of Zurich North America,

Looking back on COVID provides useful lessons

The COVID-19 pandemic wreaked havoc on supply chains worldwide, causing delays and shortages due to restrictions.

The outbreak, though, also served as an unplanned stress test for operations everywhere, bringing to light many existing weaknesses and exposures, which were often exacerbated by the pandemic.

“COVID was a circuit breaker,” said Kevin Bates, group head of risk and insurance for Australian construction company Lendlease Corp.

“COVID taught everyone a very strong lesson around secondary and tertiary supply chains. It forced people to think about what they’d been doing correctly and incorrectly and what they could do better. It forced a discussion,” said Mr. Bates,

who is also a board member of the Risk & Insurance Management Society Inc.

COVID-19 presented an almost lethal cocktail of challenges to business operations.

“Supply chain problems were prominent during the COVID-19 lockdown amid a perfect storm of causes, including shifts in demand, labor shortages and structural factors,” said Blanca Berruguete, Madrid-based global industry solutions director for construction at Allianz Global Corporate & Specialty.

The pandemic made existing challenges worse.

“COVID revealed a lot of supply chain issues,” said Dallas-based Cheri Hanes, who heads the subcontractor default insurance

risk engineering team at Axa XL, a unit of Axa SA. The pandemic, she said, “uncovered and amplified exposures. It did not create them all.”

Materials producers and fabricators ratcheted down production in response to declines in demand during the pandemic but may have miscalculated how quickly operations would return to normal, especially in the construction sector, said Andrea Blair, Nashville-based director of business resilience and continuity management services for Zurich Resilience Solutions, part of Zurich North America.

Supply shortages continue but should ease during this year’s third quarter, she said.

Matthew Lerner



recommends general contractors incorporate pricing thresholds into their procurement contract language to help mitigate any potential upside pricing exposure due to market volatility.

Tracking lead times for materials can help avoid delays in procurement, Ms. Blair said. In addition, rigorous quality assurance and controls as materials reach a work site can help avoid further delays and complications.

The recent sudden surge in demand within the construction sector could also put supply chains and resources under additional pressure at a time when costs are being closely monitored, which can affect quality and increase susceptibility to error, Ms. Berruquete said.

Credit risk

Credit risk is another potential source of supply chain disruption and the exposure has increased with rising borrowing costs, said Doug Collins, head of trade credit in New York for Ascot Group Ltd.

For example, a metal fabricator or parts supplier could easily be caught and squeezed between a spike in a commodity price, such as aluminum or copper (see related stories) and working within the

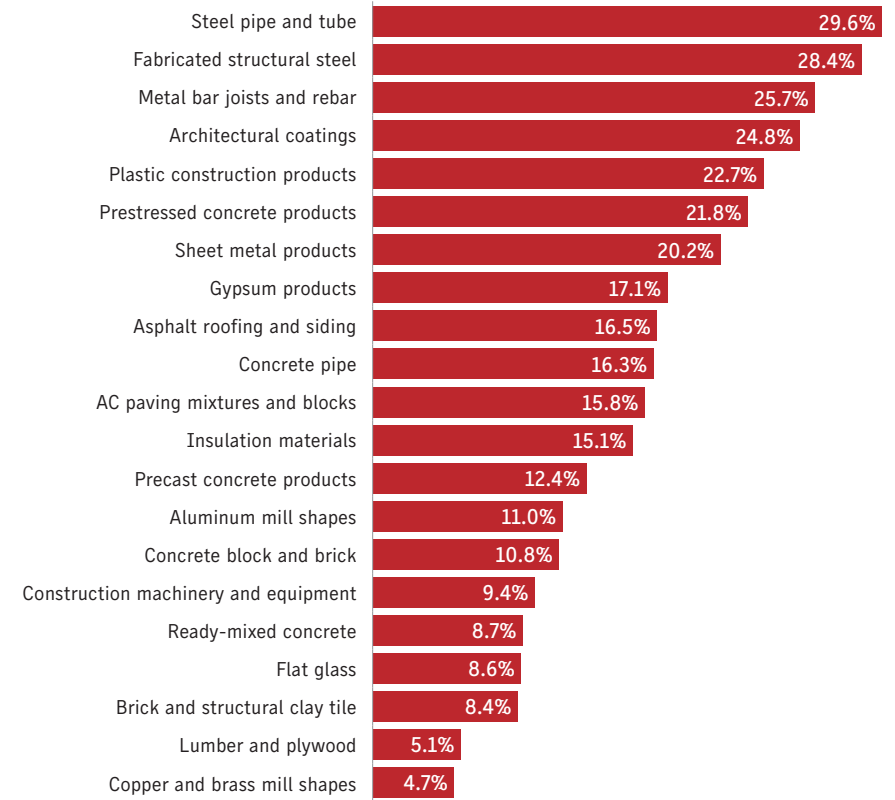
limits of a fixed price contract with a customer. If that supplier is shipping net payment terms of 30, 60 or 90 days, it can further exacerbate the problem and hurt a business's financial position and credit-worthiness, or even threaten its survival.

The AGC/FMI survey showed that almost 40% of respondents reported an increase in subcontractor defaults compared with a year ago. Mr. Collins said there is evidence of increased corporate bankruptcies and restructurings this year and that new submissions for trade credit insurance, which covers payment risk, are up substantially, perhaps twice the volume of this time last year.

Jon Handen, Hunt Valley, Maryland-based vice president, special products, for Atradius Trade Credit Insurance Inc., said small and medium sized enterprises are particularly sensitive to supply chain finance risk. He said such operations could benefit from the support of large corporate buyers, financial markets, governments and underwriters.

Mr. Bates, the risk manager, said he has heard of larger contractors extending support to key suppliers to avoid failures that could potentially cascade into larger events with greater potential exposures and losses.

CONSTRUCTION MATERIALS PRICE MOVEMENT – PAST 12 MONTHS



Source: U.S. Bureau of Labor Statistics

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CLAIMS

CLAIMS MANAGEMENT

State mandates rle workers comp physicians

BY LOUISE ESOLA
lesola@businessinsurance.com

INSIDE

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When hackers strike, cyber insurers should be at the top of organizations' call lists. **PAGE 26**

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▶ RESEARCH & DATA

Top third-party administrators, services, claim information, revenue and more. **PAGE 29**

Many physicians are at odds with workers compensation claims management professionals over how to best navigate a long-standing but evolving process used to get injured workers well and back to work: utilization reviews.

Disagreements over the effectiveness of elements of the utilization review process, which insurers say ensures they only cover medically necessary drugs and treatments, can slow down treatment and keep workers off the job for longer, experts say.

Utilization reviews, which have been around for decades, are more frequently being mandated, and several states have introduced drug formularies and treatment schedules. The process requires a back and forth between doctors and claims handlers, involving documentation and imaging in some cases, to monitor

care such as drugs, tests, surgery and physical therapy.

Workers comp insurers, third-party administrators and pharmacy benefits managers have grappled with the introduction of new utilization review processes for the past several years. For instance, California implemented its

medical treatment utilization schedule in 2018, and New York this year introduced a program to electronically streamline utilization reviews among providers and claims handlers.

In addition, according to reports compiled by the National Council on Compensation Insurance, 15 states have in place closed-drug formularies that require prior authorizations. Many formularies and prior authorization processes were put in place due to the opioid crisis, rising medical costs and poor outcomes among injured workers, among other reasons.

Doctors, though, have long decried such prior authorization measures.

“It’s very frustrating because when you’re an (occupational injury) doc and you know that you’re following the science, all this does is provide a delay for getting the person better.”

Dr. Douglas Martin, Center for Neurosciences, Orthopaedics & Spine Occupational Medicine

According to a survey of 1,001 doctors conducted in December 2022 by the American Medical Association, 80% said advance treatment approvals have led to early treatment abandonment, 31% said that prior authorization criteria — many of which are in place due to state regulations or parameters set by individual insurers — are “rarely or never evidence-based,” and 64% said authorization requests have led to “ineffective” initial treatments.

“It’s very frustrating because when you’re an (occupational injury) doc and you know that you’re following the science, all this does is provide a delay for getting the person better,” said Dr. Douglas Martin, medical director of the Center for Neurosciences, Orthopaedics & Spine Occupational Medicine in Sioux City, Iowa, who sees about 55 workers comp patients a week.

Dr. Martin serves as a medical examiner for



several entities, including the Nebraska Worker’s Compensation Court and is president of the American College of Occupational & Environmental Medicine, whose guidelines were used to help craft the California drug and treatment formulary. He said there’s much frustration among physicians when it comes to getting approvals for sound and timely evidence-based care.

Many delays occur when it comes to physical therapy requests and can cause injuries to worsen or have significantly delayed recovery, he said.

Industry experts say they understand the problems that can arise but assert that utilization reviews go a long way in ensuring adequate care and return to work.

“We see evidence-based medicine as a tool to make sure that the employees are getting the right care at the right time, with the overall goal of getting the employee back to work to the pre-injury status,” said Leah Sharp, Franklin, Tennessee-based senior vice president with GBCARE, a unit of Gallagher Bassett Services Inc. “We don’t see it as necessarily a drag on the system; it’s care that is managed. We’re making sure that the employees are getting the right care.”

Ben Roberts, Duluth, Georgia-based vice president of utilization reviews for Genex Services, an Enlyte LLC company, said access to information on patients is often the first issue to resolve.

“Among the biggest challenges with slowing down the utilization review process are really around the completeness of the information that’s provided,” he said.

Clinical utilization review teams evaluate the medical necessity and reasonableness of treatments against evidence-based guidelines and the guidelines often have very specific requirements about what needs to be present for an approval, Mr. Roberts said.

“Delays come into play when insufficient information is provided,” he said.

Experts say educating physicians on the process is part of the solution.

Changes in documentation processes in states like California and New York can be a challenge for physicians, Ms. Sharp said.

“It’s a scenario where it’s a culture shift,” Ms. Sharp said. “If doctors take the time to learn the guidelines or understand how to put them into practice, they will see a lot less frustration than they currently do.”

Technology is also part of the answer, said Silvia Sacalis, a Tampa, Florida-based licensed pharmacist and vice president of clinical services for Healthesystems LLC.

“We see evidence-based medicine as a tool to make sure that the employees are getting the right care at the right time, with the overall goal of getting the employee back to work to the pre-injury status.”

Leah Sharp, GBCARE

“Some of the delays are due to challenges with workflow design and the manual turnaround of information,” she said.

More automation could streamline the process of transmitting information that is relevant and needed for utilization reviews, Ms. Sacalis said.



OVERTURNING DECISIONS

Utilization reviews in California may be subject to an independent medical review if decisions are appealed. The state collects data on outcomes of such second reviews.

178,927

Claimants made 178,927 requests for independent medical reviews in 2021.

7.2%

7.2% of decisions that denied treatment requests made by physicians treating injured workers were overturned, compared with 9.5% in 2020.

31%

31% of review requests related to pharmaceuticals — the largest category of requests — with 27% of those requests related to opioids. Pharmaceutical review requests have trended down from 34% of the total in 2020, 37% in 2019 and 42% in 2018.

19%

The next highest numbers of requests were for diagnostic tests, such as imaging and radiology, and rehabilitation requests, such as physical therapy and chiropractic care, each representing 19% of all services.

15%

Treatment request denials that were overturned most often in 2021 were for behavioral and mental health services, with 15% overturned.

Source: California Department of Industrial Relations, Division of Workers’ Compensation

PROGRAM FAILED TO OVERSEE CONTROLLED SUBSTANCE PRESCRIPTIONS

A scathing report on one of the country’s largest workers compensation programs highlighted the importance of utilization reviews, according to experts.

A U.S. Department of Labor’s Office of Inspector General audit of its Office of Workers’ Compensation Programs that was released last month found that the program failed to properly oversee prescriptions for a dozen controlled substances, including fast-acting fentanyl that has been linked to overdose deaths nationwide.

The audit of 2015-2020 data focused on the Federal Employees’ Compensation Act program, which serves injured federal workers, and found that overall FECA “lacked

a pharmacy benefit manager to help contain costs and had not determined if alternative prescription drug pricing methodologies would be more competitive.”

The audit, which compared the federal program with comp practices nationwide, also found that the Office of Workers’ Compensation Programs lacked sufficient clinical expertise and guidelines to ensure appropriate pharmaceutical decisions, which could negatively affect claimants’ health, recovery and return to work.

Maggie Valley, North Carolina-based consultancy CompPharma LLC, headed by Joe Paduda, its Skaneateles, New York-based president, assisted with the audit.

Mr. Paduda said the worst findings

included 1,330 prescriptions for fentanyl, an opioid that had been restricted but was prescribed nonetheless. “A number of things that should not have happened did, in fact, happen,” he said.

Overall, the audit found that the FECA program paid for 12 separate controlled substances that “are considered dangerous and carry a high risk for psychological or physical dependence, abuse and addiction,” according to the report.

“The concern here is really a patient safety issue. Given all of the notoriety fentanyl has achieved it’s not news to anybody that this is a really dangerous medication,” Mr. Paduda said.

A policy or procedure that ensured prior authorizations were done would have prevented the fentanyl scripts from going

to patients who do not meet the requirements, he said.

The Office of Workers’ Compensation Programs has hired experts to help with its program since the period covered by the audit, the office’s director, Chris Godfrey, said in a statement.

“The Federal Employees’ Compensation Act program implemented a Pharmaceutical Benefit Management function in late 2021, which addressed many of the issues raised by OIG and significantly improved patient safety, quality of care for FECA claimants, and reduced drug spending by \$87.9 million in the first year alone. These improvements were not reflected in the OIG report, which covered a period prior to the implementation of the PBM,” the statement said.

Louise Esola



Prompt notification of cyber insurers can mitigate effects of hacker attacks

BY JUDY GREENWALD

judygreenwald@businessinsurance.com

One of the first things an organization should do if it suspects it is the subject of a cyberattack is contact its cyber insurer.

In addition to putting the insurer on notice of a potential claim, the policyholder may be able to access a range of incident response experts through the insurer. Also, the coverage often requires that a policyholder only use pre-approved vendors, experts say.

The policyholder should then, under the guidance of legal advisers, promptly notify regulators, customers and investors of an incident.

Before an incident occurs, carefully and correctly filling out cyber insurance applications can help smooth the claims handling process and avoid friction with insurers (see related story).

“You don’t have to spend the next 10 hours figuring out what happened. ... That’s our job.”

Tara Bodden, At-Bay

Policyholders should contact their insurers at the first suspicion of a cyber-attack, said Theresa Le, Cupertino, California-based chief claims officer for Cowbell Cyber Inc. They should do this



even if “it’s not altogether clear” there has been an attack, she said.

And policyholders shouldn’t attempt to investigate the incident alone, according to experts.

By acting alone, policyholders without cybersecurity expertise may corrupt evidence and worsen the situation, said Matthew Cullina, Providence, Rhode Island-based head of global cyber insur-

ance business for CyberScout LLC, a data breach services company.

When an incident occurs, policyholders should have information including the name of the policyholder, the insured entity’s name and address, a description of the loss, and, if relevant, a screenshot of the ransomware demand, said Joni Mason, New York-based senior vice president, national executive and professional

risk solutions claims practice leader, of USI Insurance Services Inc.

“It is more important to make the call promptly than it is to have everything on hand to answer every question the insurance company might have for you,” said Tim Zeilman, Simsbury, Connecticut-based global cyber product owner at Hartford Steam Boiler Inspection and Insurance Co., a Munich Reinsurance Co. unit.

“You don’t have to spend the next 10 hours figuring out what happened,” said Tara Bodden, general counsel, head of claims, at insurtech managing general agency At-Bay Inc. in San Francisco. “That’s our job, to help through all the investigations.”

Observers give insurers high marks for their cyber claims handling.

“They’re doing an excellent job,” said John Farley, New York-based managing director of Arthur J. Gallagher & Co.’s cyber liability practice. Claims disputes occur in all lines of coverage, but, overall, insurers are responding to cyber claims, he said.

Axa XL, a unit of Axa SA, has a 24/7 hotline for cyber incident reporting, said Danielle Roth, New York-based head of cyber and tech E&O claims for the insurer. After the call is made, a handler will soon respond and make the initial intake call to get more information, with the understanding that at that point there are a lot of unknowns.

The panels of experts that insurers have available include lawyers, allowing

ADVANCED PLANNING EASES CYBER CLAIMS PROCESS

Policyholders can increase the chances of a smooth claims process long before a cyber incident occurs by carefully filling out their cyber liability insurance submissions, consulting with technology experts and making sure they understand their policies’ terms and conditions, experts say.

Raising questions with underwriters on the meaning of clauses, in what is a relatively new and evolving line of insurance, and clarifying the extent of coverage can help avert claims disputes.

Tara Bodden, general counsel, head of claims, at insurtech managing general agency At-Bay Inc. in San Francisco, said policyholders should carefully consider what they report in their cyber insurance submissions.

If a company incorrectly answers questions about issues such as security hygiene and there is an incident, “there’s a possibility you will not be covered for that,” she said.

“The big headline there is, when you are actually filling out your application for cyber insurance, make sure you ask people who know about security,” Ms. Bodden said.

She said one issue that has emerged in litigation concerns differences between companies’ privacy policies and security practices. “If you have a privacy policy, make sure your security practices match that,” she said.

Claims disputes typically involve a difference between underwriters’ and policyholders’ understanding as to what

policies provide, said Bhavesh Vadhani, Tysons, Virginia-based cybersecurity, technology risk and privacy practice global leader for CohnReznick LLP, an accounting, tax and advisory firm.

“Do your research” and get an understanding from the insurance broker what the policy provides, Mr. Vadhani said. Read the fine print and ask the insurer, “What does this particular clause mean, and what are you actually covering?” he said.

James Berry, London-based chief claims officer for Corvus Insurance Holdings Inc., said, “For me, it’s more a case that policyholders should be aware that we work on the basis the policyholder’s presumed to have read and understood” the policy’s terms



and conditions and exclusions.

If there is a lack of clarity during the underwriting process, it “goes back to a two-way street,” he said. “Underwriters ask questions to understand the risk and the answers provided are very important,” and during a cyber event those questions may be highlighted, he said.

Judy Greenwald

policyholders to quickly contact a breach attorney.

An attorney will “provide a cloak” of attorney-client privilege around the subsequent process, said Karriann Couture, Chicago-based assistant vice president and cyber E&O claims leader at Aon PLC.

Attorneys will also “help guide (policyholders) through the legal minefields they’ll have to negotiate,” Mr. Farley said. With insurers’ 24/7 hotlines, “you’ll get an attorney any time you need one,” he said.

Using pre-approved vendors reduces the potential for claims disputes. Evan Bundschuh, commercial lines manager for brokerage Gabriel Bundschuh & Associates Inc. in Scarsdale, New York, said he has seen instances where policyholders who hired a forensic investigator without first getting their insurer’s approval were later told the costs would not be covered.

Insurers are “just not making room for exceptions on this,” said Ms. Mason of USI.

In addition, policyholders should be aware of cyber disclosure regulations and adhere to any pertinent notification laws in a timely manner, whether applicable to regulators, customers, investors or other affected parties, Mr. Bundschuh said.

If policyholders are subject to a ransomware attack, cybersecurity companies will arrange for ransom payments on the policyholders’ behalf. When situations develop, “our firm gets pulled in to negotiate with the bad guys and manage transactions,” including obtaining bitcoins, said Darin Bielby, Philadelphia-based managing director of Cypfer Corp., a cybersecurity company.

Paying ransomware demands, though, is not necessarily recommended.

“The decision to pay or not pay is not black and white,” said Lindsey Nelson, London-based cyber development leader for CFC Underwriting Ltd.

There are “lots of considerations needed to be made” and making an informed decision “is incredibly important when it comes to claims litigation,” she said.

Among other considerations, policyholders should be aware that they and their insurers face penalties if they facilitate ransomware payments to entities sanctioned by the U.S. Department of Treasury’s Office of Foreign Asset Controls. Such entities might include organizations affiliated with or controlled by governments hostile to the United States, terrorist groups or drug traffickers.

However, companies that are attacked by state actors will still be covered for restoring their operations, said Deborah D’Angelo Hirschorn, New York-based managing director, U.S. cyber

PREPARING FOR CYBER CLAIMS

To limit disputes over cyber liability insurance claims, policyholders should:



- ✓ Fill out insurance submissions with care and accuracy.
- ✓ Be sure privacy policies line up with security practices.
- ✓ Closely examine the coverage and ask questions if unclear.
- ✓ Call the insurer promptly as soon as an incident is suspected.
- ✓ Contact a data breach attorney immediately after calling the insurer.
- ✓ Notify regulators, customers and investors of any incident.
- ✓ Avoid independently hiring vendors or launching an investigation.
- ✓ Use only insurer-approved vendors.
- ✓ Check whether ransomware hackers are on the U.S. Department of Treasury’s Office of Foreign Asset Controls’ sanctions list.

Source: *Business Insurance* interviews

and technology claims leader, for Lockton Cos. LLC.

While “it’s more common to get the full coverage,” for ransomware attacks, some insurers have sublimits or co-insurance provisions for ransomware-related events, said Ms. Couture of Aon.

Meanwhile, the impact on the claims process of the Lloyd’s Market Association’s introduction in March of four new war, cyber war and limited cyber operations exclusions for standalone cyber insurance policies is undetermined.

“You wonder how long the claim will take to be adjusted” as insurers determine to which entity a cyberattack should be attributed, Ms. Hirschorn said.

If policyholders do not get the coverage they thought they were entitled to, they should assemble the facts of

what was needed for “a complete fix” to obtain coverage, said Daniel J. Healy, a partner with Brown Rudnick LLP in Washington.

When claims are covered, insurers are reluctant to pay for system upgrades intended to prevent a future attack, said John Scordo, New York-based cyber claims advocacy leader for Marsh LLC. It is not considered “relevant to the incident,” he said.

And “silent cyber,” or cyber-related coverage contained within other property/casualty policies, remains a concern for insurers that have sought to eliminate coverage for cyber risks from nonspecialist policies, experts say.

“Cyber coverage is a new animal in the scale of things, and we don’t have a really developed body of case law on cyber and insurance issues.”

Robert L. Wallan,
Pillsbury Winthrop Shaw Pittman

While cyber policies have been available for more than 20 years, observers say there has been relatively little litigation over the coverage, so there are few guiding precedents.

“Cyber coverage is a new animal in the scale of things, and we don’t have a really developed body of case law on cyber and insurance issues,” said Robert L. Wallan, a partner with Pillsbury Winthrop Shaw Pittman LLP in Los Angeles.

Furthermore, because of confidentiality provisions, it is unknown how many cases are settled, he said.

“I haven’t seen a ton of disputes over the coverage from the cyber forms,” said Thomas H. Bentz Jr., a partner with Holland & Knight LLC in Washington.

NOTICE TO THE CLAIMANTS, CREDITORS AND ALL OTHER PERSONS INTERESTED IN THE AFFAIRS OF R&Q REINSURANCE COMPANY (IN LIQUIDATION)

NOTICE IS HEREBY GIVEN:

The Commonwealth Court of Pennsylvania ordered R&Q Reinsurance Company into liquidation effective March 23, 2023. Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, was appointed the Statutory Liquidator, and was ordered to take possession of R&Q Reinsurance Company’s property and to liquidate its business. Deputy Insurance Commissioner Laura Lyon Slaymaker oversees the liquidation on his behalf.

This information is important. It is recommended that you read it carefully before contacting the Liquidator’s Office with questions. You may also want to consult your attorney or insurance advisors before you proceed.

If you have a claim against R&Q Reinsurance Company that you intend to pursue, you must file a proof of claim in order to have your claim considered. Proofs of claim must be filed no later than September 29, 2023.

A proof of claim must be filed even if a claim was made against R&Q Reinsurance Company prior to liquidation, and a separate proof of claim form must be filed for each claim you have. A proof of claim shall include the following: A proof of claim form containing the original signature of the claimant; a description of the claim and any security interest; whether collateral security or personal security is pledged in accordance with the terms of the policy; documentation of any payments made on the claim; and a statement that the amount is justly owed the claimant. If you require additional proof of claim forms, please request them from the Statutory Liquidator.

It is important to note that although R&Q Reinsurance Company is insolvent it has assets, including reinsurance that must be collected by the Liquidator. It will be several years before all R&Q Reinsurance Company assets are collected and distribution amounts can be determined. To participate in a distribution you must file a Proof of Claim. It is important that you keep R&Q Reinsurance Company fully advised of all developments in the cases so that R&Q Reinsurance Company can use this information to recover funds from reinsurers and thereby potentially increase the distribution to policyholders and creditors. Claims for losses under policies of insurance have the highest priority for payment other than administrative expenses.

PROOF OF CLAIM FORMS CAN BE OBTAINED AS FOLLOWS:

Download: www.insurance.pa.gov

Click on Regulations, then Liquidations & Rehabilitations, then Estates in Liquidation.

Request by E-Mail: ra-in-claims@pa.gov

Request by Telephone: (717) 787-7823

Request by Mail: Statutory Liquidator for R&Q Reinsurance Company, Capitol Associates Building, 901 N. 7th Street, Harrisburg, PA 17102

If a claim is based upon an “instrument in writing,” that document should be attached to the proof of claim. If the document has been destroyed, a statement of the facts and circumstances of the loss must be filed, under oath, with the claim.

The Order of Liquidation enjoins all persons from instituting or continuing any action at law or in equity or any attachment or execution against R&Q Reinsurance Company, or the Statutory Liquidator. All persons indebted to, or having any property of R&Q Reinsurance Company in their possession, directly or indirectly, are hereby notified to tender an account of the indebtedness. Payment of the debt or delivery of the property should then be made to the Statutory Liquidator.

CHANGE OF ADDRESS NOTIFICATION

YOU ARE REQUIRED BY ARTICLE V OF THE INSURANCE DEPARTMENT ACT TO NOTIFY THE STATUTORY LIQUIDATOR OF YOUR CHANGE OF ADDRESS. IF YOU FAIL TO DO SO YOU MAY JEOPARDIZE RECOVERY FROM THIS ESTATE.

Additional material which answers frequently asked questions regarding the liquidation process, can be found at the Department’s website www.insurance.pa.gov (click on Regulations, then Liquidations & Rehabilitations). Please review this material carefully.

This notice and the information are in summary form and may not contain all necessary information for your particular situation. You are urged to consult an attorney if you have any questions. All claims are subject to payment only in accordance with applicable law.

General questions about the liquidation procedure should be addressed to the Statutory Liquidator at: Statutory Liquidator of R&Q Reinsurance Company, Capitol Associates Building, 901 N. 7th Street, 3rd Floor, Harrisburg, PA 17102, (717) 787-7823

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Comp claims tangled by pot laws

BY JON CAMPISI

jcampisi@businessinsurance.com

Managing workers compensation claims that involve the use of medical marijuana as an injury treatment protocol is so novel that employers and insurers remain confused over how to handle the claims.

Issues of concern include dosing, coverage and reimbursement for marijuana, which remains illegal at the federal level.

Industry experts say there's not enough information on the drug as it pertains to such issues as pain management, weaning and return to work — issues that have also plagued opioid prescribing in claims management for more than a decade.

"It's a mess, it's a quandary," said Brian Allen, Salt Lake City-based vice president of government affairs for the pharmacy solutions team at Enlyte Group LLC subsidiary Mitchell International Inc.

While it is legal in 40 states, Mr. Allen said New Mexico is the only state with a comp fee schedule for medical marijuana.

Nikki Wilson, senior director of clinical pharmacy services for Mitchell, said the comp industry appears to be focused on whether, and how, to cover or reimburse for the drug before its treatment application is even fully tested.

"We're almost putting the cart before the horse a little bit where we've got regulatory and legal jumping ahead of clinical, so we're trying to play catchup in a lot of ways to capture this," said Ms. Wilson.

Adding to the confusion is a legal landscape that is a patchwork of state laws and rulings; some state courts have ruled workers comp payers must either cover or reimburse medical marijuana used by injured workers, but some laws prohibit or don't require reimbursement.

Six states allow for reimbursement of comp claims for medical marijuana while seven expressly prohibit reimbursements (see chart).

Employers and insurers have expressed concerns over having to pay for a drug that is federally illegal.

Barak Kassutto, a comp attorney with the Philadelphia law firm Morgan & Akins who represents employers and insurers, took issue with a March Pennsylvania appeals court ruling that determined insurers are not prohibited from reimbursing injured workers for medical marijuana.

"I think the issue here is the concern that the court is compelling employers and insurers to violate federal law," he said.

As a result of the ruling, insurers must reimburse injured workers for the drug in cases where the treatment is deemed necessary for recovery, according to Abington,



Pennsylvania-based claimants attorney Jenifer Kaufman, the solo practitioner who won the binding Commonwealth Court ruling in *Fegley v. WCAB*.

Bradley Andreen, a Pittsburgh-based comp defense attorney with the firm Rulis & Bochicchio LLC, said the issue may affect comp settlements, especially those with a Medicare set-aside. Because marijuana is still illegal at the federal level, Medicare won't pay for the drug, which could place prospective settlements in limbo, he said (see related story).

The issue is further complicated by Pennsylvania's medical marijuana law, which says comp insurers are not required to "cover" the drug but says nothing about prohibiting reimbursement.

"If there's no coverage for something, how is the carrier or the employer supposed to reimburse it," Mr. Andreen said. "That's part of the whole principle of insurance. If you don't have coverage for something, then they don't pay for it. You don't do something indirectly that you don't do directly."

"They're using it to reduce their pain, not to get high," claimants attorney Ms. Kaufman said of injured workers and marijuana.

Issues such as dosing and medical necessity are often a concern with drugs in general, she said.

"I think this issue is common with all

medications," she said. "There's still going to be a learning curve for a lot of people in the bar and for insurance companies."

And employers still can challenge the drug's usage in comp by filing for utilization reviews, Ms. Kaufman said.

Utilization reviews for medical marijuana might be difficult, Mr. Andreen said. In Pennsylvania, for example, there is no "prescribing" doctor, and the person who is giving out the medication is a marijuana dispensary "salesperson."

"There's no medical doctor peer for the claimant or the (dispensary) salesperson to do a utilization review," Mr. Andreen said. "It's basically the claimant deciding themselves what their medicines should be. How do you subject that to a utilization review?"

Del Doherty, owner of Houston-based pharmacy benefit manager ProdigyRX, said providing reimbursements for a federally illegal substance like marijuana raises numerous concerns.

"For this, what is the usual and customary price that you charge?" he asked. "Will you only reimburse for edibles or also for vape and smokeable products? There's no standard for reimbursement. Just saying that you've got to pay for it is one thing. Now, you're just believing what people are showing on the receipt."

Louise Esola contributed to this report.

REIMBURSEMENT FOR MEDICAL MARIJUANA IN COMP

Reimbursement for medical marijuana in workers compensation claims varies by state. Below are the states that allow for, or expressly prohibit, reimbursement (as of March 2023):

STATES ALLOWING FOR REIMBURSEMENT



STATES EXPRESSLY PROHIBITING REIMBURSEMENT



Source: National Organization for the Reform of Marijuana Laws (NORML)

MEDICARE RULES COMPLICATE SETTLEMENTS

Workers compensation insurers in some states may have to reimburse injured workers for medical marijuana when the drug is considered a reasonable treatment.

Some employer attorneys say the decision might affect future workers comp settlements.

Bradley Andreen, a Pittsburgh-based comp defense attorney with the firm Rulis & Bochicchio LLC, said the issue may prevent some cases from settling.

While many comp cases settle on the wage loss component, some settlements leave open future medical costs for injured workers, with the anticipation the case could settle at a later date, he said.

Because many injured workers are on Medicare, settlements sometimes involve establishing Medicare set-aside trusts, since Medicare's interests must be taken into account.

But comp medical marijuana reimbursements could jeopardize settlements, which often contain wage loss and future medical components, because a federal program like Medicare would not be able to breach federal drug laws, Mr. Andreen said.

"Medicare doesn't pay for all medical expenses, and obviously they're not going to pay for medical marijuana," he said.

Dan Anders, chief compliance officer for Delray Beach, Florida-based Tower MSA Partners, said comp settlements routinely include funds dedicated to non-Medicare-covered costs, but Medicare would likely just ignore a medical marijuana reimbursement request because it is illegal at the federal level.

"Medicare's not going to include the medical marijuana in the MSA (Medicare set-aside), so you're not going to modify the cost of the MSA as a result," he said.

Brian Allen, vice president of government affairs for the pharmacy solutions team at Enlyte Group LLC subsidiary Mitchell International Inc., said that while a federal health program cannot reimburse for medical marijuana, he questions whether this would include Medicare set-asides since MSAs are considered comp settlements, not Medicare settlements.

"I think it's questionable," he said. "It's kind of a gray area. That's one of the problems with the law the way it is right now, with all these conflicting federal and state statutes. It creates all these really nebulous areas of law."

Jon Campisi

THIRD-PARTY ADMINISTRATORS

LARGEST THIRD-PARTY ADMINISTRATORS*

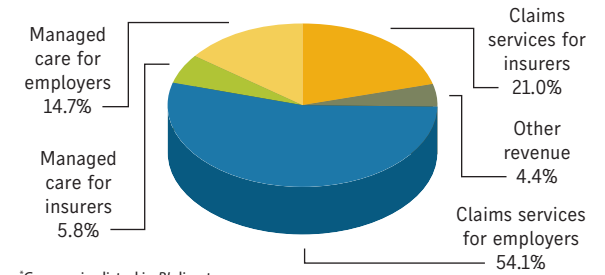
Ranked by 2022 gross revenue

Rank	Company	TPA services provided	Gross revenue 2022	Gross revenue 2021	% increase (decrease)	Total number of claims-handling staff	Officers
1	Sedgwick Claims Management Services Inc.	Multiline**	\$4,326,829,707	\$4,040,019,560	7.1%	27,976	David A. North Jr., executive chairman; Michael A. Arbour, CEO; Robert J. Peterson, president
2	UMR Inc.	Employee benefits only	\$1,540,000,000	\$1,410,000,000	9.2%	4,200	Scott Hogan, president-CEO
3	Gallagher Bassett Services Inc.	Multiline**	\$1,222,116,157	\$1,100,362,091	11.1%	6,986	Scott Hudson, president-CEO; Mike Hessling, CEO-North America
4	Crawford & Co.	Multiline**	\$1,189,482,000	\$1,102,032,000	7.9%	4,685	Rohit Verma, CEO; Joseph Blanco, president
5	CorVel Corp.	Multiline**	\$704,000,000	\$620,000,000	13.5%	1,268	Gordon Clemons, chairman; Michael Combs, president-CEO
6	Meritain Health	Employee benefits only	\$618,000,000	\$591,000,000	4.6%	N/A	Melissa Elwood, COO
7	Helmsman Management Services LLC	Multiline**	\$427,348,000	\$379,456,993	12.6%	1,180	David Dwortz, president-CEO
8	ESIS Inc.	Multiline**	\$411,500,000	\$413,400,000	(0.5%)	1,487	Jim Shevlin, president
9	Trustmark Health Benefits Inc.	Employee benefits only	\$266,000,000	\$230,000,000	15.7%	500	Nancy Eckrich, president-CEO
10	Cannon Cochran Management Services Inc., dba CCMSI	Multiline**	\$190,000,000	\$178,000,000	6.7%	1,068	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*

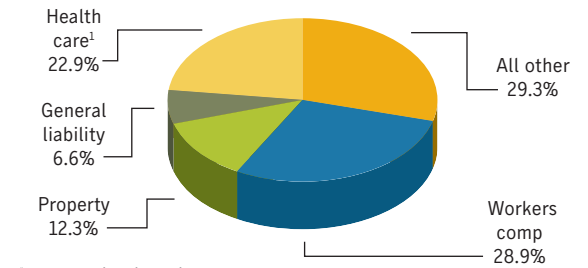
Percentage of 2022 revenue from all services provided



*Companies listed in BI directory

TYPES OF CLAIMS MANAGED*

Percentage of claims by category

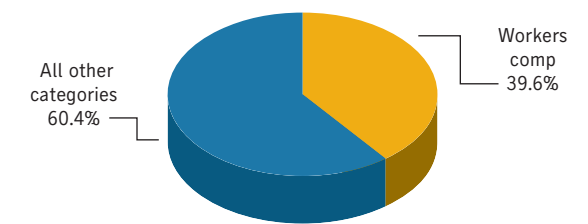


*Companies listed in BI directory

¹Includes medical, vision, dental and prescription drugs

VALUE OF CLAIMS PAID*

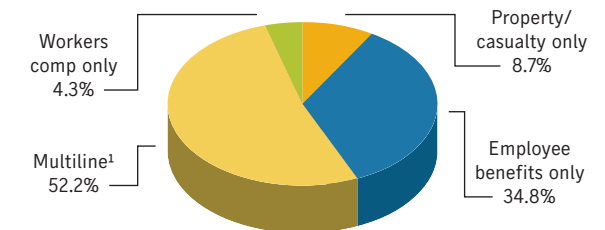
Based on the amount of claims paid in 2022



*Companies listed in BI directory

TYPES OF SERVICES PROVIDED*

Percentage of TPAs handling multiline¹, employee benefits only, property/casualty only and workers comp only in 2022



*Companies listed in BI directory

¹Includes employee benefits and/or property/casualty and/or workers compensation
Source: BI survey

LARGEST CLAIMS-HANDLING TPAs*

Ranked by 2022 gross revenue from claims handled for employers

Rank	Company	2022 revenue ¹
1	Sedgwick Claims Management Services Inc.	\$1,820,237,170
2	UMR Inc.	\$1,540,000,000
3	Gallagher Bassett Services Inc.	\$675,242,376
4	Meritain Health	\$573,500,000
5	Crawford & Co.	\$356,000,000

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

LARGEST MULTILINE¹ TPAs*

Ranked by 2022 gross revenue from claims handled for employers

Rank	Company	2022 revenue ²
1	Sedgwick Claims Management Services Inc.	\$1,820,237,170
2	Gallagher Bassett Services Inc.	\$675,242,376
3	Crawford & Co.	\$356,000,000
4	ESIS Inc.	\$277,000,000
5	Helmsman Management Services LLC	\$135,847,000

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

LARGEST BENEFITS-ONLY TPAs*

Ranked by 2022 gross revenue from claims handled for employers

Rank	Company	2022 revenue ¹
1	UMR Inc.	\$1,540,000,000
2	Meritain Health	\$573,500,000
3	Trustmark Health Benefits Inc.	\$223,000,000
4	Amalgamated Employee Benefits Administrators Inc.	\$66,315,875
5	Health Plans Inc. (HPI)	\$57,000,000

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

BUSINESS INSURANCE

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5:30 PM
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Monday, June 26
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Cheyenne Schulte, Lockton Cos. LLC
Amanda Stantz, Corvus Insurance Holdings Inc.
Jordan Thomas, Ascot Group Ltd.
David Walters, Gibson Insurance Agency Inc.
Bree Williams, Ventas Inc.

NORTHEAST

Erik Barnes, Axa XL, a unit of Axa SA
Herman Brito, Marsh LLC
Aubrie Cunningham, MedRisk LLC
Daniella Granata, QBE North America
Darryl Harding, kWh Analytics Inc.
Arielle Moody, American International Group Inc.
Kevin Rega, Great American Insurance Group Inc.
Dominic Rupprecht, Reed Smith LLP
Matt Wagner, Zurich North America
Matt Walsh, Conner Strong & Buckelew LLC

SOUTH

Brent Allred, Higginbotham Insurance
& Financial Services
Zach Atya, Measured Insurance LLC
Zach Bowling, Amwins Group Inc.
Dustin Cho, Covington & Burling LLP
Tracey Fallon, CRC Group
Jasmine Gilbert, Aon PLC
John Howell, Wiley Rein LLP
Scott Martin, RCM&D
Andrew Mutter, CAC Specialty
Steve Pereira, USI Insurance Services LLC

WEST

Christine Beaulieu, Lockton Cos. LLC
Brenden Beeg, Descartes Insurance
Solutions Agency Inc.
Chris Giuffre, USQRisk Insurance Services LLC
Rani Gupta, Covington & Burling LLP
Enjonli Hutchison, Amerisure Mutual Insurance Co.
Michelle Landver, Newfront Insurance Inc.
Robert Schimke, Alliant Insurance Services Inc.
Carlos Torrez, Poms & Associates
Insurance Brokers LLC
Marco Vignali, Pie Insurance Holdings Inc.
Taylor Walker, Loadsure Ltd.

Utilization review revisions needed

State efforts to impose additional restrictions on workers compensation-related medical treatments raise questions about the role of medical utilization reviews that need to be addressed to keep all sides working together and focused on the key goal of the comp system: healing injured workers.

Medical benefits represent the largest component of workers compensation costs and, given medical inflation trends, containing those costs is a major concern for workers comp payers. Utilization review is one of the main tools that the comp sector has used to curb runaway medical costs, but, as we report on page 24, physicians are increasingly bristling at the oversight.

The reviews, which have been in use for decades, are usually conducted by medical professionals, including other physicians, who review a patient's medical records and treatment plans to determine whether the prescribed treatment is necessary and appropriate.

State laws and regulations add another dimension to the process by imposing features such as medical treatment utilization schedules and closed-drug formularies that require prior authorization before prescriptions can be filled — features that were often put in place during the opioid crisis.



Gavin Souter
EDITOR

For doctors confident in their abilities and judgment, the process can be onerous and slow down the treatment of patients, possibly worsening their conditions. A physician on the ground in front of the injured patient, the argument goes, is uniquely positioned to make the best choices for the patient's ultimate welfare.

Indeed, the expertise of highly trained medical professionals is vital for the safe and efficient treatment of patients, but with about one million physicians in the United States

inevitably there is going to be a range of opinions, and escalating costs of medical treatments can't be ignored.

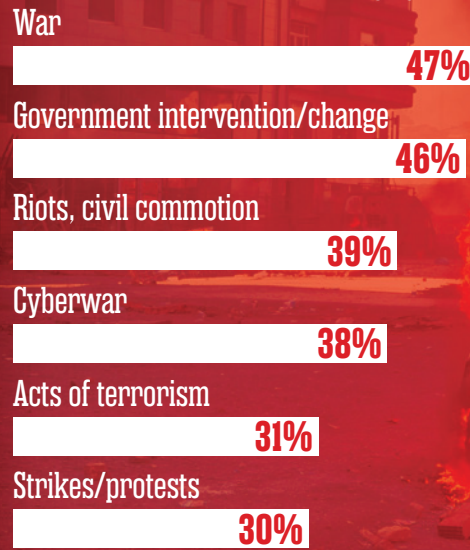
Comp payers have a responsibility to make sure they are not overpaying for care, but they also need to ensure that their review requirements are reasonable and practicable, especially if they are denying coverage for a treatment or test that a doctor views as important or essential.

To solve the problem, it is imperative that doctors, workers comp insurers and claims managers work together to resolve any differences as to how medical treatments are approved and monitored. Engaging in more collaborative decision-making processes and revising utilization review policies to better reflect the needs of injured workers should be embraced. Maybe regulators need to take note.

Ultimately, the goal of everyone involved should be to create a system that prioritizes the needs of injured workers while also ensuring that resources are being used in the most effective and efficient way possible. This requires the acknowledgment of sometimes dueling perspectives, and an understanding of how every party involved in the process plays a vital role in seeing that injured workers receive timely, high-quality care.

What types of political risks and violence are of most concern to your company?

TOP SIX ANSWERS ARE SHOWN



Source: Allianz Risk Barometer 2023

Respondents could select more than one risk.
Total number of respondents: 357

VIEWPOINT

Civil unrest raises risks

BY CLAIRE WILKINSON

cwilkinson@businessinsurance.com

Rising political violence, social unrest and geopolitical risks continue to be a significant concern for organizations. While many global companies have developed sophisticated risk management programs that have long considered how best to mitigate and transfer these risks, the likelihood of their operations being disrupted by civil commotion and related physical damage and liability appears to be higher than it once was and likely to increase further.

Organizations within and beyond the insurance sector attribute the rising severity and frequency of strikes, riots and civil commotion events to the higher cost of living, which along with other social pressures has driven increased discontent. In January, the World Economic Forum ranked the cost-of-living crisis as the most severe global risk over the next two years. Associated social unrest and political instability will not be contained to emerging markets, the WEF said in its Global Risks Report.

For insurers and reinsurers, strikes, riots and civil commotion events in Latin America, Europe and North America over the past three years have led to significant payouts. So far, 2023 has offered little respite, with protests in France and Israel among the headline-making events, brokerage Howden Group reported last month. Insured losses from strikes, riots and civil commotion since 2015 have totaled more than \$10 billion, versus less than \$1 billion for terrorism, Howden said.

Not all protests result in damage. On a recent trip to Paris, for example, I was fortunate not to have travel plans disrupted by pension reform protests and related transit strikes that have hit France. A walkout by students and blockade outside a high school in the neighborhood where I was staying and a so-called "casserolade" in which a small group of

individuals banged pots and pans to express their discontent outside a restaurant where I was eating dinner were the only signs of unrest I witnessed.

For risk managers seeking to protect an organization's assets, though, the raised risk profile due to ongoing social and political uncertainty has a direct impact as insurance and reinsurance market conditions have become more difficult and underwriters have reset their views of the risks. Demand for coverage is up, while supply is down, and rates are necessarily higher.

For U.S. companies, political violence may not have been a coverage they always looked to buy. While protection was previously available through all-risk policies, many have had to reassess their coverage needs and look to buy specialty policies as property insurers have reduced limits and introduced exclusions. The rising demand for cover and trend toward restrictions appear likely to continue given the increased frequency of events and a potentially contentious presidential election looming next year.

Given the uncertainty, securing coverage that matches an organization's risk tolerance is only one part of the equation. The other parts include how best to plan for these events and respond if they happen. Reputational risks are growing as organizations choose to speak out, or not, on a wide variety of social issues that can prompt protests, strikes and political retribution. In some countries, too, the crackdown on protesters can be especially harsh, leaving businesses and their employees at risk of being caught up in the fallout.

Managing these changes while securing the best coverage will be a challenge for many organizations. Insurers and risk managers will need to work together to develop data and tools that can best help them assess the shift in civil unrest threats, buy protection where it's available and take steps to mitigate the risk where it's not.

Corvus, Core Specialty partner on E&O product

■ Insurtech Corvus Insurance Holdings Inc. said it is partnering with Core Specialty Insurance Holdings Inc. to expand Corvus' excess technology errors and omissions and cyber product, providing up to \$5 million in coverage for companies with revenue of up to \$500 million.

The program, which will be written on Cincinnati-based Core Specialty's paper, includes tech E&O coverage as well as a range of cyber coverages on an excess basis, Boston-based Corvus said in a statement.

It is supported by a panel of reinsurers as well as risks taken through Corvus' captive, Corvus Reinsurance Co. Corvus will have full management of the policies.

Coalition introduces AI program

■ Coalition Inc. said it is adding an artificial intelligence program.

The San Francisco-based managing general agent, which specializes in cyber risk, said its CoalitionAI program deploys AI and large language models to help brokers and businesses protect themselves from cyber risk.

It said appointed brokers in the U.S. now have access to Broker Copilot, a generative AI chatbot embedded into the Coalition dashboard that can answer questions about cybersecurity best practices and cyber policy coverage, among other functions.

It said under its CoalitionAI Security Copilot program businesses using its Coalition Control cyber risk assessment and monitoring platform can learn details about cyber security vulnerabilities.

Coalition said it plans to introduce additional AI capabilities.

Everspan, MGA unveil excess casualty program

■ Everspan Group Inc. and managing general agent Aurenity have launched a program to provide excess casualty buffer coverage for mid-market construction, hospitality, real estate, premises and products risks.

The program is aimed at providing buffer layer coverage between the primary market and attachments points in the excess space, a statement said.

Typical limits will be \$4 million excess \$1 million and \$3 million excess \$2 million, with flexibility to write shorter layers "as necessary," the statement said.

The program will be underwritten by Aurenity's excess casualty team led by Janet



Cyber MGA adds AI features to digital program

■ Cyber insurance provider Cowbell Cyber Inc. said it has launched MooGPT, a range of capabilities for its digital underwriting assistant Moo, which automatically underwrites similar risks based on a collection of rules.

MooGPT incorporates features including Cowbell Factors, a set of proprietary risk ratings that benchmark organizations against a risk pool of 35 million entities, and Cowbell Insights, cybersecurity recommendations automatically generated for small and medium-sized enterprises, a statement said.

The offering, which uses large language models, can also assist with information on the claims process and incident response planning.

MooGPT will be available to appointed brokers and active policyholders this summer, the statement said.

Pleasanton, California-based Cowbell was founded in 2019. It launched operations in the United Kingdom in April.

Beaver, and distribution will be through wholesale excess and surplus brokers.

Aurenity launched primary general liability and excess casualty programs in September 2022.

HDI offers online aviation cover in Canada

■ HDI Global Specialty SE said it has expanded its online insurance offerings to provide general aviation cov-

erage in Canada.

Its Aviation IQ platform provides coverage for small fixed-wing aircraft flown for private business or pleasure, and coverage for drones will be available shortly, HDI said in a statement.

Hull limits of up to \$1 million and liability limits up to \$5 million are available, according to a company spokesman.

The online coverage is already available in Australia and New Zealand, HDI Global Specialty said.

Construction software firm launches brokerage

■ Procore Technologies Inc., a construction management software company based in Carpinteria, California, said it has launched a brokerage.

Procore Risk Advisors places property/casualty coverage for general contractors, owners, subcontractors and public agencies.

It also has an in-house managing general underwriter that provides builder's risk coverage backed by Allianz SE and Swiss Re Ltd.

CFC offering professional liability, tech E&O cover

■ London-based CFC Underwriting Ltd. said it is introducing admitted professional liability and technology errors and omissions coverage.

Instant quotes through CFC's Connect platform are available up to a \$2 million aggregate limit across all admitted products, according to a CFC spokeswoman.

Clients looking for higher limits can still be submitted through Connect and will be reviewed by the CFC account team to evaluate complexity and risk profile.

Both products are designed to meet the needs of policyholders with annual revenue of less than \$25 million, according to the company.

Ascot launches US captives services

■ Ascot Group Ltd. said it has hired Mark Totolos, a former Skyward Specialty Insurance Group Inc. executive, as senior vice president of its newly formed U.S. captive solutions practice.

He will be part of the portfolio solutions group and report to Tony Lyons, head of portfolio solutions. The captives practice will initially offer reinsurance coverage and fronting services.

Mr. Totolos, based in Houston, previously served as senior vice president, head of captives & programs, at Skyward.

DEALS & MOVES

NFP purchases UK-based commercial brokerage

NFP Corp. said it has acquired Gravity Risk Services Ltd., a brokerage based in Stourbridge, England.

Terms of the deal were not disclosed. Gravity's risk services business will be combined with NFP's existing commercial insurance, employee benefits and human resources offerings.

Gravity's 19 staff, and Dale Collett, founder and director, will become part of NFP.

Gravity places coverage for a range of industries, including manufacturing, engineering, motor trade, construction, professional services and charities.

High Street makes California acquisition

High Street Insurance Partners Inc. said it has acquired Irvine, California-based Milestone Risk Management.

Terms of the deal were not disclosed. Milestone will join the High Street West Region and will report to Scott Goodreau, president, according to a statement.

Milestone has about 15 employees. This was the sixth transaction of 2023 for High Street.

Arch Insurance buys insurtech platform

Arch Insurance Inc. said it has acquired insurtech platform Thimble Inc.

Terms of the deal were not disclosed. Thimble offers small businesses coverage for general and professional liability, business equipment, commercial property, cyber and other risks on its digital platform.

Thimble was founded in 2016 as Verify by Global Aerospace Inc. to provide drone insurance.

Gallagher acquires Texas agency

Arthur J. Gallagher & Co. said it has acquired Boley-Featherston Insurance, a Wichita Falls, Texas-based retail agency.

Terms of the deal were not disclosed. Boley-Featherston places oil and gas, construction, health care and employee benefits lines.

Josh Andrajack, agency president; vice presidents Cameron Cremeens and Robbie Martin; and about 25 employees will remain in their current location under the direction of Bret VanderVoort, head of Gallagher's South Central retail property/casualty brokerage operations.



UP CLOSE

Jennifer D'Arcy

NEW JOB TITLE: London-based executive vice president, facultative reinsurance, Acrisure Re

PREVIOUS POSITION: London-based head of facultative reinsurance, Ed Broking

OUTLOOK FOR THE INDUSTRY: The hard-market conditions are likely to continue as interest rates rise globally, which encourages capital to retract from the market, and geopolitical factors such as the Russia-Ukraine war and tensions in the East cause market instability. As with all cycles, it is hard markets where brokers are able to demonstrate their skills and expertise at assisting their clients in navigating these challenges and ensuring they have the right protections and the most competitive premiums. The outlook for broking experts is therefore extremely positive.

GOALS FOR YOUR NEW POSITION: My goal is to set the strategic direction for developing facultative business from North America, build out our global marine fac capabilities, and develop a SpeedyFAC technology product that streamlines and expedites fac purchasing for the benefit of our clients.

CHALLENGES FACING THE INDUSTRY: Inflation is a key challenge for our clients' policyholders, and it is important to ensure that their insured values are kept up to date. In cases where insurers are overexposed in terms of limit due to price increases, we have an excess stock fac reinsurance product at Acrisure Re that enables insurance companies to purchase stand-alone coverage for stock values that exceed their net retentions and treaty limits.

FIRST EXPERIENCE: My first experience was on the marine graduate scheme at Willis in London back in 2002. My first secondment was as a marine cargo broker, and it was such an exciting time being one of the first visible ethnic minority female brokers on the trading floor in the Lloyd's marine market at that time. It was wonderful to have the sense of breaking barriers and being involved in high-profile and varied accounts, including global commodity traders and even pre-launch space risks.

ADVICE FOR A NEWCOMER: Never change who you are inside to fit into your environment. Our market depends on developing diverse talent from all walks of life, but do take your insurance exams seriously and complete them in good time. Diversity, expertise and passion are key. Love what you do.

DREAM JOB: I would have been a stockbroker, as I have a keen interest in all things economic and think the pace of the job would have been thrilling.

LOOKING FORWARD TO: Immersing myself in the Acrisure family culture and delivering first-class fac solutions to our clients.

COLLEGE MAJOR: My degree was business studies with a major in economics, but my education continued for many years after university, and I am now a proud fellow of the Chartered Insurance Institute.

FAVORITE MEAL: Lobster spaghetti with extra chili

FAVORITE BOOK: "Multipliers," by Liz Wiseman

HOBBIES: I am a keen gardener, and we usually have great growing conditions in the U.K. It's a great way to decompress, and there are interesting comparisons between growing a business and growing vegetables.

FAVORITE TV SHOW: I don't watch much TV but found "The Boys" series on Amazon Prime very entertaining.

ON A SATURDAY AFTERNOON: Spending quality time with my husband entertaining our 7-month-old son and two-year-old cocker spaniel.

"Never change who you are inside to fit into your environment. Our market depends on developing diverse talent from all walks of life, but do take your insurance exams seriously and complete them in good time. Diversity, expertise and passion are key. Love what you do."

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Everest Re Group Ltd. named Philadelphia-based **Mike Mulray** executive vice president and president of North America insurance. Previously, Mr. Mulray was global chief operating officer of Everest Insurance.



Munich Re Specialty Insurance named **Sabrina Hart** president and CEO. Ms. Hart had been interim CEO since January, when former CEO Michael Kerner was appointed a member of the Munich Re board of management, global specialty insurance division. Ms. Hart was among the 2013 *Business Insurance* Women to Watch.



Swiss Re Corporate Solutions named **Peter Mond** head of distribution management North America. Previously, Chicago-based Mr. Mond was strategic broker relationship leader for the North America retail division of Axis Capital Holdings Ltd.



Zurich North America hired New York-based **Heather Fox**, former general counsel and chief brokerage officer at management and professional liability wholesaler ARC Excess & Surplus LLC, as chief underwriting officer. She replaces Brandon Fick, who joined Liberty Mutual Insurance Co. as chief underwriting officer, global risk solutions North America, last year.



Brown & Brown Inc. named **Michael Vaughan** chief data officer. Mr. Vaughan will be based in Daytona Beach, Florida, in the newly created position. He had been senior vice president in the analytics data platform delivery and data strategy and architecture divisions of Truist Inc.



Willis Towers Watson PLC named **Jackie Bolig** head of property and casualty, corporate risk and broking North America, a newly created position. Previously, New York-based Ms. Bolig was executive managing director and co-lead of Aon Inpoint.



Pot site puffs out top drug strains

Girl Scout Cookies.”

It’s not just Thin Mints and Somoas anymore.

It’s No. 3 on the list of top marijuana strains in the United States, according to research by 420dc.com, an online platform for cannabis advocacy.

The list named — in order minus the aforementioned strain named after America’s most wholesome line of cookies — “Blue Dream,” “Sour Diesel,” “Green Crack” and “OG Kush” in the top five strains. Of the five ranked, two are medicinal: “Sour Diesel” and “OG Kush.”

420dc.com said it spent more than six months surveying more than 5,000 cannabis users from coast to coast to gauge trends.

Greetings from US copyright law!

The subtext behind a vibrant and social media-worthy “Greetings from Buffalo” mural in Buffalo, New York, is a not-so-cheery message: You are not welcome to feature this artwork on postcards and marketing materials without giving credit to the artist.

According to buffalonews.com, seven years after Casey William

Milbrand unveiled his most popular work, he is facing criticism for sending invoices to businesses and institutions requesting \$5,000 to \$180,000 for each alleged copyright infringement for using the image in income-generating marketing, promotional and branding materials without attribution to the Buffalo artist.

Mr. Milbrand argued that “Greetings from Buffalo” is protected by federal copyright and that with a lawsuit he could pursue up to \$150,000 if he can prove his work was intentionally reproduced for profit, according to the news article.



JUDGE TOSSES TRÈS MAGNI-FAKE L’OREAL LAWSUIT



Afederal judge dismissed a proposed class-action lawsuit accusing the cosmetics brand L’Oreal of tricking American shoppers into overpaying for its beauty products by making them believe the products came from France, Reuters reported.

The judge said L’Oreal’s referring to “Paris” and sprinkling French words on packaging would not deceive reasonable consumers about where its shampoo, mascara and other products came from.

The plaintiff, Veronica Eshelby, claimed she had not noticed the fine print before learning that the products she bought were manufactured in L’Oreal’s factory in North Little Rock, Arkansas, or elsewhere in the United States and Canada, according to the wire service.

The ruling, accessed by Reuters, states that reasonable consumers would understand that “Paris” was part of the brand name “L’Oreal Paris,” as L’Oreal is based in Clichy, a Paris suburb: “The front label is not so misleading that a reasonable consumer who cared about the country of manufacture should not be expected to look at the full packaging for a disclaimer, which was clearly and correctly provided.”

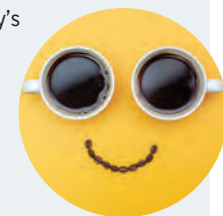
City serves up deal in coffee dispute

A coffee business whose baristas serve hot java in bikinis has accepted a skimpy settlement from the city of Everett, Washington, after suing for \$3 million in 2017 over the city’s dress code that banned the stand’s business model.

The Everett City Council voted unanimously in early April to settle for \$500,000, The Daily Herald reported.

Under the agreement, the city will keep most of its rules for probationary licensing of coffee stands and other quick-service businesses but will no longer dictate that baristas wear at least tank tops and shorts, according to the article.

Instead, the city will align dress code rules with an existing lewd conduct standard that makes it a crime to publicly expose too much of one’s private parts.



Bike course closes over insurance costs

While it seemed like a good idea for a hilly winter ski resort to pivot to a “gravity” mountain-biking course in the greener summer months, the notion was a crash course in risk management for a Wisconsin company that was forced to halt operations due to insurability issues.

As posted on its Instagram page, Little Switzerland in Slinger made the decision to close its off-season operation after its insurance company dropped coverage of the 10-year-old bike park, stating that “alternative insurance options would not make the park economically viable moving forward.”

After facing a backlash, including fans stating they wish to boycott the unnamed insurer, the resort chimed in, thanking fans for support and stating that it “had options, including a higher rate applied to our entire business or to insure the bike park separately.”

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