PRIVACY: Restrictions on use of personal data complicate cyber exposures - PAGE 4

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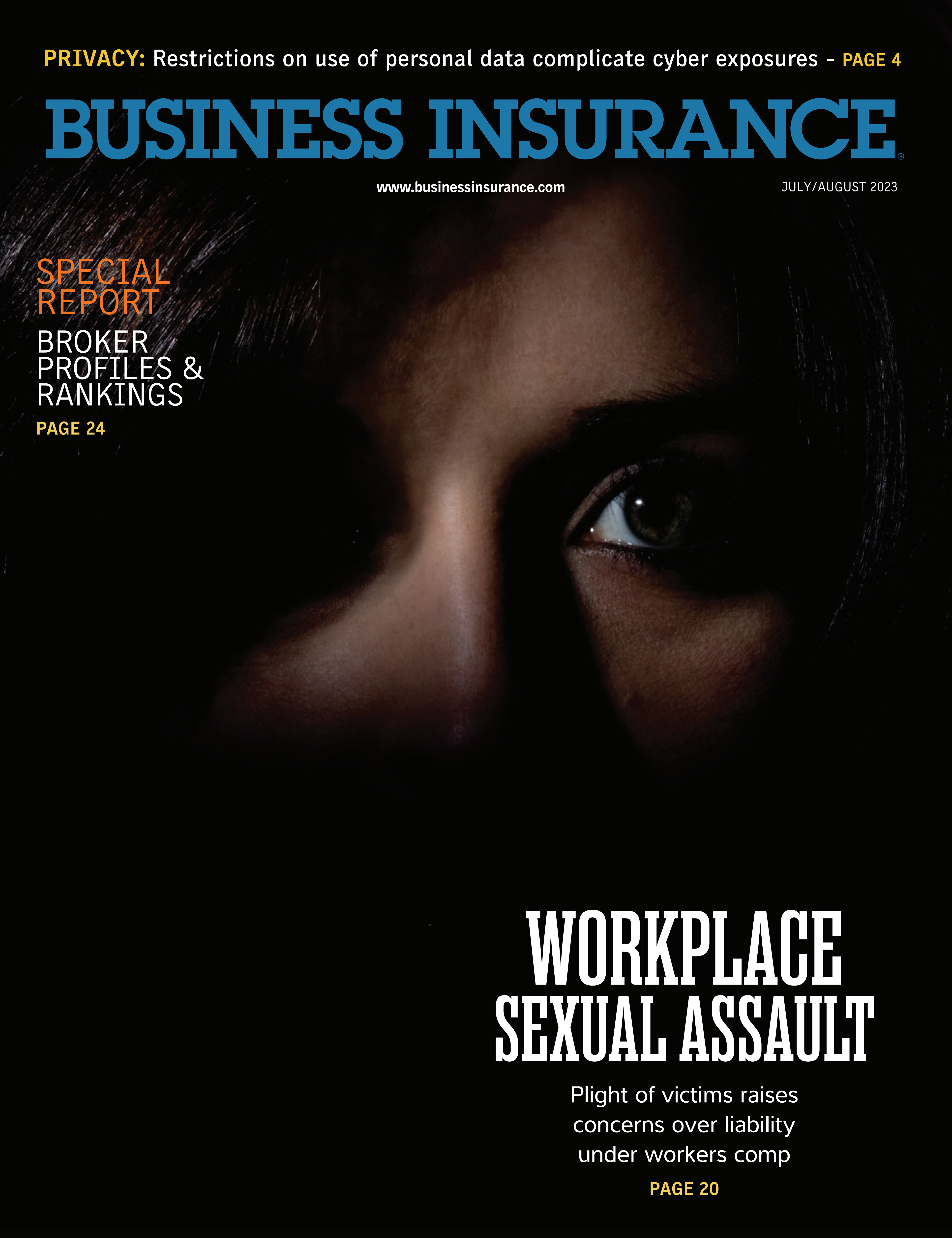

SPECIAL REPORT

BROKER PROFILES & RANKINGS

PAGE 24

WORKPLACE SEXUAL ASSAULT

Plight of victims raises concerns over liability under workers comp

PAGE 20

BUSINESS INSURANCE®

COVER STORY

INSIDE

SPECIAL REPORT: BROKER PROFILES & RANKINGS

NEWS ANALYSIS

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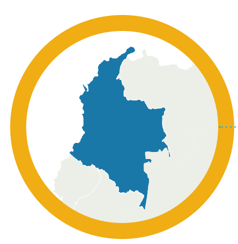

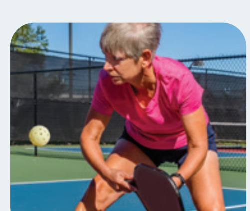

VIEW FROM THE TOP

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Cyber insurers track privacy exposures

BY MATTHEW LERNER
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Increased privacy claims surrounding the collection and sharing of data by companies are reverberating through the cyber insurance sector as underwriters and policyholders take steps to stem losses.

The deployment of data tracking and collection technologies by website operators and assertions of so-called "wrongful collection" and subsequent sharing of personally protected information are increasing as overall web usage and the development and use of such tracking technologies continue to grow.

An $18.4 million settlement approved in September 2021 to resolve a class-action lawsuit against health care provider Mass General Brigham Inc. over the use of cookies, pixels, website analytics tools and associated technologies on several websites without first obtaining the consent of website visitors encouraged further privacy lawsuits.

The "massive settlement prompted the plaintiffs bar to start attacking this technology in earnest," said Christine Flammer, New York-based claims manager, cyber and technology claims, for Axa XL, a unit of Axa SA.

Broad interpretations of statutory language by courts have also helped fuel a rise in claims, sources said, as judges allow cases to move forward, placing insurers on the hook for defense costs. In response, underwriters are considering wider use of exclusions.

"Motions to dismiss are not readily granted," said Anjali C. Das, a partner in Chicago with Wilson Elser Moskowitz Edelman & Dicker LLP and co-chair of the firm's national cybersecurity and data privacy practice.

She said courts are allowing cases to move into discovery to learn more about the new wave of claims and suits, some of which are based on arcane language in the Video Privacy Protection Act, or VPPA, a federal statute that was enacted in 1988 in response to the disclosure and publication of then-Supreme Court nominee Robert Bork's video rental history without his consent.

"The recent wave of litigation over the past 18 to 24 months has courts still wrestling with the role of VPPA in the modern world," Ms. Das said. One attraction of the VPPA to plaintiffs is that it provides for statutory damages of up to $2,500 per violation, she said.

A concern for insurers is that cyber insurance often contains provisions for defense costs, and class-action suits can be lengthy, potentially making insurers responsible for what could be substantial defense costs, Ms. Das said.

"There's cover under many cyber policies for defense of these actions," said Meredith Schnur, New York-based cyber brokerage leader, U.S. and Canada, at Marsh LLC.

The effect of the rise in claims and the uncertainty of courts' positions with insurers has been "immediate," said Bobby Bianconi, Rocky Hill, Connecticut-based head of U.S. technology and cyber at Aspen Insurance Holdings Ltd.

"We are extremely selective on who we will choose to partner with if they continue to deploy" data collection and tracking tools, he said. Any such applicant receives added scrutiny and must answer an expanded set of underwriting questions about how data is collected and shared, the answers to which could result in a "wrongful collection" exclusion being inserted in the policy, he said.

"There is a host of underwriting questions about what the market is looking for and to understand, and if they feel that the responses and the control environment that is in place at an organization using tracking tools are not to their satisfaction, they will look to exclude it," Ms. Schnur said.

Some organizations have removed tracking technology from their websites in response to the wave of claims, said Marissa Olsen, Jersey City, New Jersey-based senior vice president and global head of cyber claims at Aspen.

Ms. Flammer of Axa XL said privacy claims began to accelerate over the past year but noted that coverage for such "tracking claims" is often subject to sublimits or defense-only coverage.

Nadia Hoyte, New York-based national cyber practice leader with USI Insurance Services LLC, said that while tracking technologies are not new, "what's different is how we use information and with whom we share it." She said a wider application of risk management techniques could help stem collection claims.

"Privacy departments in organizations are very clear and focused when dealing with doctors and those involved with patient care, but those same considerations have not always been shared with the marketing department," which may be responsible for deploying the tracking technology, Ms. Hoyte said.

DATA PENALTIES

Biggest data fines 2012-2023

1. FACEBOOK: $5B (2019)
The fine was the largest set by the Federal Trade Commission and came after widespread public outcry over Facebook's mishandling of user information.

2. DIDI GLOBAL: $1.2B (2022)
The Chinese government fined ride-hailing company Didi Global a total of 8 billion Yuan ($1.2 billion) for a series of violations related to data security and personal information protection.

3. AMAZON: $886M (2021)
The Luxembourg National Commission for Data Protection fined Amazon a record €746 million ($886 million) for violating the European Unions General Data Protection Regulation.

4. EQUIFAX: $700M (2019)
Equifax was fined $700 million by the FTC in 2019 for its 2017 data breach. The fine was imposed on Equifax for failing to take adequate measures to protect the personal information of approximately 147 million people.

5. EPIC GAMES: $520M (2022)
Epic Games, the creator of Fortnite, was fined $520 million by the FTC in a settlement that involved the Children's Online Privacy Protection Act.

Source: Enzuzo Inc.

Regulators start to rein in data tracking activity

While litigation is driving concerns around online privacy claims, some risk managers and cyber security personnel also must respond to regulatory agencies and state lawmakers introducing new privacy rules and enforcing existing regulations.

"States are taking up the mantle on what kind of data regulations need to be in place to protect consumer information," said Jeremy Barnett, Calabasas, California-based chief commercial officer for Lokker, which is owned and operated by Apomaya Inc., a data and technology security company.

California's Consumer Privacy Act of 2018, which gave consumers more control over the personal information that businesses collect about them, was amended to provide consumers additional protections beginning Jan. 1, 2023, including the right to correct inaccurate personal information that a business has about them and the right to limit the use and disclosure of sensitive personal information collected about them, according to information on the California State Department of Justice's website.

Mr. Barnett said other states, including Colorado, Connecticut and Virginia, are considering similar legislation and regulations to protect consumers.

In addition, Nadia Hoyte, New York-based national cyber practice leader with USI Insurance Services LLC, said regulatory agencies in other states, such as New York's Department of Financial Services, are stepping up enforcement actions.

In May 2023, the DFS announced a $4.5 million penalty against OneMain Financial Group LLC, alleging it "failed to effectively manage third-party service provider risk, manage access privileges, and maintain a formal application security development methodology, significantly increasing the company's vulnerability to cybersecurity events," in violation of the department's Cybersecurity Regulation.

Matthew Lerner

NEWS ANALYSIS

Artificial intelligence poses risk to HR practices

BY JUDY GREENWALD
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Artificial intelligence can be a valuable tool for employers in functions such as hiring, but it also poses significant risks of inadvertent discrimination, experts warn.

The use of generative AI tools — including ChatGPT — which learn patterns and relationships from massive amounts of data, has exploded to more than 100 million users, according to a report released in June by the U.S. Government Accountability Office.

In the employment context, AI is most likely to be used in hiring but is expected to play a greater role in related functions, including layoffs, promotions and succession planning.

"It's quicker to have an AI source review all (job candidates') resumes and sort them than pre-interview candidates. It makes the process quicker" and involves fewer human resources staff, said Mary Anne Mullin, New York-based senior vice president at QBE Insurance Group Ltd.

But it still requires some human oversight, experts say. The issue has attracted the attention of Congress and federal regulators as well as some state and local legislative bodies (see related story).

Its use will increase as the technology becomes more sophisticated, said Joni Mason, New York-based senior vice president and national executive and professional risk solutions practice leader for USI Insurance Services Inc.

Employers "want to make sure that their algorithm doesn't discriminate against different groups," said Scott M. Nelson, a partner with Hunton Andrews Kurth LLP in Houston.

He said a general, if simplistic, rule of thumb is the "4/5 rule," under which a selection practice is considered to have a disparate impact if the selection rate for a certain group is less than 80% that of the group with the highest rate.

In a putative class-action lawsuit filed in U.S. District Court in Oakland, California, in February, Derek L. Mobley blamed Pleasanton, California-based Workday Inc.'s AI systems and screening tools for his failure to find employment despite applying for at least 100 positions since 2018.

> "Wrongful employment decisions and, in particular, claims around discrimination are in the offing."
>
> Kelly Thoerig, Marsh LLC

Mr. Mobley charged that the tools administered by Workday and used by employers rely upon "subjective practices" that have had a disparate impact on applicants who are African-American, older than 40, and/or disabled.

There will be more lawsuits, experts say.

"Wrongful employment decisions and, in particular, claims around discrimination are in the offing," said Kelly Thoerig, Marsh LLC's New York-based U.S. employment practices liability product leader.

She said that while there has not been a notable volume of AI-related employment claims to date, "the framework is there" for a creative plaintiffs bar.

Observers say employers will generally be held responsible for any perceived discrimination.

"It's incumbent upon these companies to not just rely on the vendor that supplies the AI program," Ms. Mullin said.

"It's going to come down to having a very diverse and strong set of data," said David Derigiotis, Detroit-based chief insurance officer for insurtech Embroker. "It has to be tested and tested and must be reported and the results found to be satisfactory before live production," he said.

Employment practices liability policies will likely provide coverage if there is litigation, observers say.

"What insureds might want to look at is what kind of computer-related exclusions could be on the policy, and they need to talk with their broker to make sure that any wrongful claim that arises from AI is covered under the definition of wrongful employment, including claims and settlements," Ms. Mullin said.

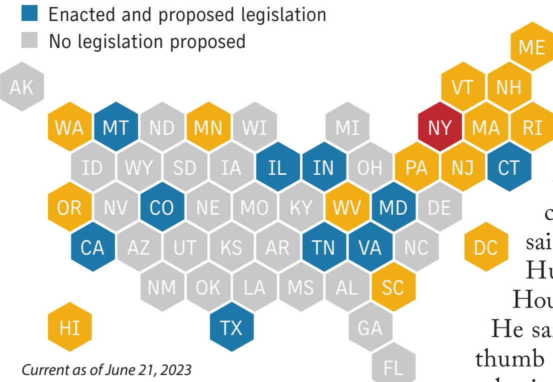
Technology errors and omissions coverage may also come into play, Mr. Derigiotis said.

"We have seen some questions around employers' utilization of AI and AI-related technologies come up with more regularity" during underwriting, but generally speaking "it hasn't created any outsize problems," Ms. Thoerig said.

2023 STATE-BY-STATE AI LEGISLATION SNAPSHOT

Artificial intelligence has now been adopted by more than a quarter of businesses in the United States, and nearly half of all organizations are working to embed AI into current applications and processes. This includes employment-related issues, among others.

- Proposed legislation
- Enacted legislation
- Enacted and proposed legislation
- No legislation proposed



Current as of June 21, 2023
Source: Bryan Cave Leighton Paisner LLP

LAWMAKERS, REGULATORS SET RULES ON USING AI AS A RECRUITMENT TOOL

Artificial intelligence's use in employment decisions has drawn the attention of federal, state and local regulators and legislators.

This includes:

- The Equal Employment Opportunity Commission in May issued guidance on how to avoid discrimination under Title VII of the Civil Rights Act of 1964 when using AI.
- During a June 13 hearing on AI, U.S. Democratic Sen. Jon Ossoff, of Georgia, chairman of the Senate Subcommittee on Human Rights & the Law, said AI's potential impact on work could include fundamental shifts in recruitment, candidate screening and hiring.
- A New York City law, Local Law 144, which took effect July 5, requires employers and employment agencies that use AI to conduct a bias audit within one year of its use, make information about the audit publicly available, and provide employees or job candidates with certain notices about its use.
- Illinois' Artificial Intelligence Video Interview Act, which became effective Jan. 1, 2020, regulates AI's use in job applicant video interviews.
- Maryland's Facial Recognition Services Law, which became effective Oct. 1, 2020, prohibits employers from using facial recognition technology during pre-employment job interviews without the applicant's consent.

In addition, the European Union has passed draft rules governing AI's use for functions including making hiring decisions. No comparable U.S. federal legislation is imminent.

Europe is taking a more unified approach than the United States, said Ernest Paskey, Washington-based partner and head of assessment solutions, North America, for Aon PLC.

AI-related uses have also been the focus of many state legislatures (see chart).

Some of the proposed legislation pinpoints hiring, while other measures are framed more broadly, addressing issues such as housing or credit, said Michael Fetzer, Brunswick, Georgia-based associate partner, global science and analytics, for Aon.

Judy Greenwald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AI technology builds momentum in claims sector

BY JON CAMPISI
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The insurance claims sector is tapping into technologies such as machine learning and artificial intelligence to increase efficiency, improve outcomes and detect fraud.

Whether it is a simpler version of AI that can be used to automate back-office processes or the newer generation AI, which can be used to analyze policyholders' claims history and policy preferences, these new technologies are becoming more widely used in the industry.

"There are a lot of policies that are written and a lot of claims that occur, which all have data around them," said Stan Smith, founder and CEO of Boston-based Gradient AI, which provides AI services for the insurance industry. "As I looked into it, claims were more of a challenge than underwriting. There was a lot of focus on how to get our claims costs under control."

Yet "the vast majority of claims being pretty benign means a lot of people have busy work to do," he said, adding that technology can help mitigate workloads.

Gia Sawko, Gradient's senior product manager of claims, said AI will change the way jobs are performed.

"There are jobs out there that are duplicative, or the resources could be divided differently so you're spending more time on the complex claims," Ms. Sawko said. "There are things that could be done that could be automated with the use of AI."

DATA TRENDS

According to management consultancy McKinsey & Co., four technology trends involving AI will help to reshape the insurance industry during the next decade.

- Increase in data from connected devices, moving from industrial settings to consumer devices.
- Increased prevalence of physical robotics, which is expected to reshape commercial insurance products.
- Open-source and data ecosystems are expected to be shared across industries.
- Advances in cognitive technologies will help process complex data streams in insurance products.

While the term AI is used broadly, it encompasses various platforms and processes. Automation and AI, for example, are sometimes used interchangeably, but they differ, said Leah Cooper, Chattanooga, Tennessee-based managing director of IT for Sedgwick Claims Management Services Inc.

"AI is just the tool," Ms. Cooper said. "Automation is putting all of the pieces together."

When rolling out AI pilot programs, Sedgwick saw success in document digitization and validation, reading for content, and automatic eligibility confirmation used to validate whether someone has proper coverage.

"AI is not going to replace someone's job. What it's going to do is take the red tape and the busy work off someone's desk so that you change the story about that person's job," Ms. Cooper said.

She said AI is also being used to detect claims oddities and discrepancies that could potentially signal insurance fraud (see related story).

"There are a lot of different opportunities when it comes to plugging into tools that can spot abnormalities," she said. "Using AI, we're able to spot the outliers, what's not normal."

The insurance industry traditionally lagged in technology, said Cheryle Tuttle, Tampa, Florida-based vice president of property/casualty and workers compensation for Sapiens International Corp.

"A lot of the problems have not changed," Ms. Tuttle said. "It's just technology and things like AI, data analytics, automation, these are all helping people in being proactive instead of reactive."

New technologies such as AI have "tremendous promise for our industry but if misused could be certainly damaging and counterproductive," said Joe Powell, Fort Wayne, Indiana-based senior vice president for data and analytics with Gallagher Bassett Services Inc.

Mr. Powell drew distinctions between the different forms of AI, including "narrow" AI, or machine learning, where models are built or "trained" on data targeting a specific desired decision outcome, and generative AI, which can involve taking a "single, very general model and (applying) it to a whole host of use cases."

"Those two are not substitutes for each other," he said. "It's not like we've moved from one to the other. I think the new, generative AI models are going to complement our narrow AI models in a lot of ways," Mr. Powell said.

Generative AI has the potential to improve the claims process because it enables claims professionals to "deliver a consistent product in an efficient way," he said.

Mike Cwynar, Orange County, California-based senior vice president of product delivery for Mitchell Casualty Solutions Group, said AI can benefit back-office claims management as well as customer service and document digitization tasks.

"A lot (of our clients) are really putting thought into how to make it a really user-friendly claims experience," he said.

Insurance personnel considering using generative AI should start small. "I wouldn't go in and try to rewrite your back-office process here," Mr. Cwynar said.

"It's key to partner with folks who understand not just the technology but the business domain, the problem that you're trying to solve, and being really careful in what you end up going after," he said.

Generative AI, he said, can generate content such as photos, video, text and code, and attempts to read questions and provide answers. But it can also suffer from what's known as "hallucination," a term referring to times when AI provides an answer not in line with what is expected.

"You really need to understand what you're trying to get out of tools like this, because they're tools right now," Mr. Cwynar said. "I wouldn't throw generative AI at the most complicated problem that I have out there. I'd use it to automate tasks and build my expertise and sophistication with it over time."

MACHINE LEARNING POWERS FRAUD DETECTION

As artificial intelligence becomes more widely used in the insurance industry, one function that can benefit from its implementation is fraud detection.

Generative AI can look at various factors in claims filings to see if there are any indicators of fraud, such as "falsification of details around the damage level," said Leah Cooper, Chattanooga, Tennessee-based IT managing director for Sedgwick Claims Management Services Inc.

AI can be used to detect atypical behavior, a sign of potential fraud, said Joe Powell, Fort Wayne, Indiana-based senior vice president for data and analytics with Gallagher Bassett Services Inc.

"What's great about these AI systems is that they can learn what's typical across a much broader spectrum of data than a human can ever look," Mr. Powell said.

AI, especially Microsoft OpenAI's language model GPT, can be particularly useful in fighting fraud, since it can "analyze vast amounts of claims or communication data, spotting patterns and inconsistencies that may suggest fraudulent activity," said Gregg Barrett, CEO of Kalispell, Montana-based insurance software provider WaterStreet Co.

QBE North America partnered with Vejle, Denmark-based DETECTsystem A/S after learning about that company's fraud detection system, FDS, which uses advanced technology to detect image and document fraud in claims, said Brian Wilson, vice president and head of the special investigations unit at the New York-based insurer.

"You receive a lot of these (supplemental documents) with every single claim that comes in," said Dan Gumpright, Scottsdale, Arizona-based executive vice president of products and operations for DETECTsystem A/S. "It's kind of like looking for a needle in a haystack."

Putting a human on fraud detection would be "very inefficient in terms of cost," whereas AI can complete the task quicker and more accurately, he said.

Jon Campisi

NEWS ANALYSIS

More buyers seek parametric wildfire cover

BY MATTHEW LERNER
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Parametric coverage for wildfire exposures is gaining traction amid a challenging environment for catastrophe-exposed property risks.

Improved data sources and satellite imagery are also among the reasons for the broader uptake because better data translates to improved coverage trigger designs and increased confidence among users, experts say.

"Wildfire is a clear use case for parametric because it is easy to measure," said Laurent Sabatié, co-founder and executive director of London-based Skyline Partners Ltd., an insurtech managing general agent that specializes in parametric coverage.

With the traditional property insurance market hardening, capacity for wildfire risks declining and retentions rising, parametric coverage can help provide additional capacity.

"We definitely are receiving more inquiries about parametric wildfire coverage, mainly due to the capacity reduction in the indemnity market," said Jacob Choi, New York-based global head of analytics within Marsh Specialty's parametric solutions group.

"Capacity weaknesses" in the property catastrophe market are likely to continue for "the foreseeable future," said Paul Schultz, Chicago-based CEO of Aon Securities, a unit of Aon PLC, and parametric coverage provides another option to such challenges.

Underwriters in the wildfire sector are "tentative " and concerned about being compensated adequately for the risks they assume or weary of the volatility involved, prompting some to decrease writings, Mr. Schultz said.

"We see parametrics as one of our key strategies going forward," particularly with wildfire, which is among the so-called "secondary perils" along with severe convective storm, he said.

As traditional underwriters turn away from wildfire, some commercial policyholders seeking coverage turn to the parametric market.

"We're fielding increased numbers of inquiries about wildfire, inevitably due in part to the hardening indemnity market, but also because the risk environment is more complex due to climate change. The retreat of the current traditional market in California has reduced capacity available, with severe spikes in retentions and deductibles imposed by commercial carriers," said Sébastien Piguet, chief underwriting officer for Paris-based Descartes Underwriting SAS, a parametric insurance managing general agent.

Several large personal lines insurers, including State Farm Mutual Automobile Insurance Co. and Allstate Insurance Co., recently announced they will stop writing new commercial and personal property insurance in California due to increased wildfire risks, among other things.

There has been a "very significant" increase in interest in parametric coverage, and that "translates into getting more deals done," said Cole Mayer, San Francisco-based head of parametric for Aon PLC, who recently joined the brokerage from Swiss Re Corporate Solutions, part of Swiss Re Ltd.

There were 7.5 million acres in the U.S. burned by wildfire in 2022, near the 10-year average of 7.3 million acres, according to a June report from Gallagher Re, the reinsurance brokerage unit of Arthur J. Gallagher & Co. The number of fires reported rose to 68,988 from 58,985 in 2021, according to the report.

While Alaska and portions of the Southwest saw an active wildfire season, the rest of the nation saw below-average wildfire activity. California, which in 2020 and 2021 had wildfire losses of 4.4 million acres and 2.6 million acres, respectively, saw just 363,939 acres burned in 2022, report data showed.

Improved data in the forms of higher-resolution imagery and better availability also helped in the development of parametric coverage by allowing for better design of triggers and new indices, sources said, such as the percentage burned of an asset base of a forestry operation.

"We definitely are receiving more inquiries about parametric wildfire coverage, mainly due to the capacity reduction in the indemnity market."

Jacob Choi, Marsh Specialty

"New data from commercial and public satellites like Sentinel 2 has contributed significantly to the market's growth, offering high-resolution imagery efficiently," said Kevin Dedieu, chief research and development officer for Descartes.

"The combination of enhanced data, more research, and improved modeling enables the insurance industry to detect and monitor wildfire events with increased accuracy in a near real-time basis," Mr. Choi said.

Skyline's Mr. Sabatié said Landsat is used extensively by the insurance industry. The Landsat program, jointly managed by NASA and the U.S. Geological Survey, is a series of Earth-observing satellite missions, which now consists of orbiting and active satellites Landsat 8 and Landsat 9, according to the USGS.

"Ultimately, data and information on the losses is what informs about the risk" and whether it can or should be covered, Mr. Sabatié said.

Sources said parametric coverage can be used by itself or in conjunction with traditional indemnity insurance.

"Our clients are able to use parametric wildfire as a standalone policy or as an additional coverage in order to fill gaps in coverage, such as non-damage business interruptions, or be used as a deductible buydown," Marsh's Mr. Choi said. Typical parametric clients can include forestry operations and wineries, he added.

"Parametric can help expand the scope of coverage and tools for risks like wildfire that previously our clients couldn't adequately transfer," Mr. Mayer said.

U.S. WILDFIRES (YEAR-TO-DATE)

TOTAL NUMBER OF LARGE FIRES
9 incidents

NEW LARGE FIRES
1 total

WILDFIRES
TOTAL WILDFIRES
23,056

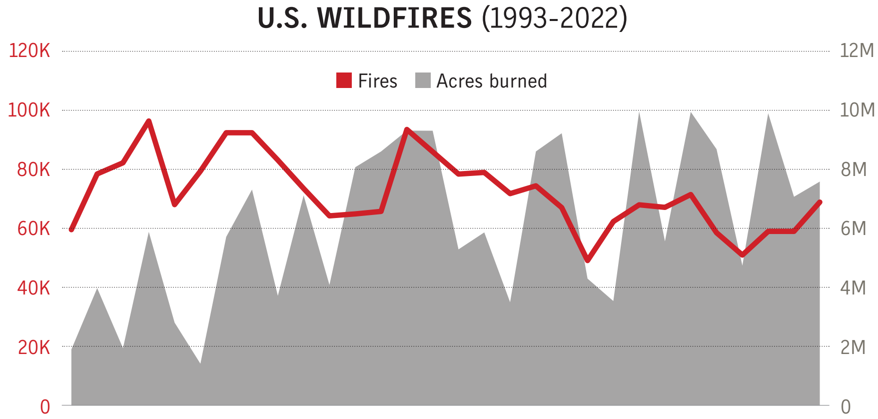
ACRES BURNED ON LARGE FIRES
87,520

ASSIGNED PERSONNEL
1,731

TOTAL ACRES BURNED
656,905

As of June 27, 2023
Source: National Interagency Fire Center

U.S. WILDFIRES (1993-2022)



Source: Congressional Research Service (CRS), NICC Wildland Fire Summary and Statistics annual reports

NEWS ANALYSIS

Law enforcement liability concerns rise in changing claims environment

BY JUDY GREENWALD
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LONG BEACH, California — Escalating claims alleging excessive force by police officers, rising liability awards and increased mental health concerns for officers are among the top risk management challenges for public entity risk managers, experts say.

The public is growing more willing to complain about issues such as police misconduct, said Holly Lerose, Hartford, Connecticut-based assistant vice president, public sector claims, business practice lead, for Travelers Cos. Inc.

About 65% of claims against police departments are for excessive force and charge civil rights violations, she said during a session of the Public Risk Management Association's annual conference last month in Long Beach, California.

Heightened scrutiny after recent high-profile incidents has led to "an increased willingness to criticize police officers" and a rise in citizens coming forward, she said.

"We have definitely seen an uptick in terms of severity of those claims within our book," she said. Several years ago, $500,000 claims accounted for about 5% of the total number but now account for more than 25% of claims, she said.

Staff retention was the focus of a session at the conference on navigating the changing landscape of law enforcement liability. "We've got staff reductions as a huge issue," said Dan Foster, Montgomery, Texas-based casualty loss control expert for Munich Re Specialty Insurance, a division of Munich Reinsurance Co.

The increased number of resignations that started two years ago, resulted in a 40.4% work force reduction, Mr. Foster said. While 2022 "stayed fairly stable," agencies are "still dealing with deficits," which has led some to change their qualification standards, he said.

Some departments may no longer require a bachelor's degree or other educational qualification; will employ candidates with convictions for petty crimes or misdemeanors, such as marijuana use or possession; or change physical ability and residency requirements, he said.

In light of the changes, departments should keep training up to date, have well-developed internal investigation procedures, consistent documentation and operate with transparency, he said.

"I honestly find it surprising that there are still agencies today" that are reluctant to use body cameras when they provide "some of the best defense that we have," he said.

During another session, Chester Darden, an associate with Franklin, Tennessee-based Public Entity Partners, said measures law enforcement agencies should consider include more flexible work shifts.

"Each shift is a little bit different," he said. The day shift, for example, may deal with fender benders and some shoplifting, while the night shifts are "dealing with some of the bad stuff," such as domestic assaults, he said.

Mental health is the biggest challenge facing police departments, Mr. Darden said. If an officer says he is struggling "you've got to have a culture to say, 'It's OK, it's not a sign of weakness, it's not a sign of low testosterone to say, I'm not okay.'"

Departments also need to do more training on police encounters with citizens with physical and mental disabilities, said Sara Dearing, Chicago-based senior claims attorney/claim litigation and coverage, for Genesis Management & Insurance Services Corp., during another session.

Police officers must adapt to specific situations, she said.

For example, when a police officer pulls over an individual who has a handicap plate on the car and asks that individual to get out of the vehicle, he should anticipate that the person "may need to go and reach for something to assist them out of the car."

Work-from-home settings pose challenges for public entities

Future risk management challenges facing public entity risk managers include working from home, earthquakes and safe drinking fountains, says a risk manager.

Gary Rosenblum, associate vice president, risk management, at California State University, Sacramento, discussed these during a session on future trends in risk management at the Public Risk Management Association's annual conference.

The Occupational Safety and Health Administration "doesn't regulate the home workplace," he said. People are putting in longer hours working from home, and they will become injured, he said.

"In the future, I think OSHA is going to wake up and try to do something about regulating home work," Mr. Rosenblum said. "You'll find out that this is going to be a big topic and it's going to be very hard to regulate."

Mr. Rosenblum said technology has developed to the point where there can be some warning of an impending earthquake. Those who are 30 miles away get 30 seconds of warning, for instance, and those 60 miles away, a minute, he said.

California has handled the development by creating an earthquake warning system that sends messages to people's cell phones.

But a better risk mitigation system for earthquakes is called for that would provide information that industry, hospitals and utilities could use, Mr. Rosenblum said.

"We could have every single elevator in the state of California have an earthquake protection connection," he said. When an earthquake is imminent, an elevator could stop at the next floor and open its door.

Showing a picture of an older water fountain, Mr. Rosenblum said it dispenses unsafe amounts of lead, "and someday, somebody's going to test it and tell you you're killing them with lead."

Mr. Rosenblum said, "In order to get ahead of that curve ... we ended up testing every single fountain on campus," a total of 975. They are tested every four years, and a sticker on each provides information on how little lead it dispenses.

"This is the future of water fountains, and if you are an entity that has a lot of water fountains, keep that in mind," Mr. Rosenblum said.

Judy Greenwald

SETTING, ENFORCING STANDARDS MITIGATES ABUSE RISK

Organization leaders who promote clear boundaries backed by enforcement mechanisms can successfully manage the risks of child abuse and molestation, experts say.

Statistics indicate that one in four girls and one in 13 boys will be sexually abused before they turn 18, but many incidents go unreported, said Candace Collins, director of strategic alliances at Arlington, Texas-based Praesidium Inc., which specializes in preventing sexual abuse in organizations that serve youth and vulnerable adults. She spoke during a session last month at the Public Risk Management Association's annual conference.

These children will later be prone to serious physical and behavioral consequences, including mental health issues, said Dorothy Gjerdrum, St. Paul, Minnesota-based senior managing director at Arthur J. Gallagher Risk Management Services Inc.

Organizations are beginning to pay more attention to the issue, due to events such as the testimony of Olympic gymnasts who accused Larry Nassar of molestation and the enactment of state "reviver" laws that extend the statute of limitations for molestation victims to file a lawsuit.

Another external factor "that's putting extraordinary pressure on organizations right now" is the amount of litigation claims, Ms. Collins said.

"The insurance market for sexual abuse and molestation liability continues to harden," she said. "It's becoming more difficult to obtain coverage at the right terms and conditions and at the right price point, and that's not changing."

Ms. Collins said a survey her company conducted found insurers are asking questions about organizations' policies, training, screening processes, and supervision of children.

Efforts by insurers are beginning to result in changes in how organizations manage the risks, Ms. Collins said.

In those that have successfully addressed the issue by setting standards and introducing enforcement mechanisms, "everyone has ownership and takes a part," she said. "All of that really starts with a voice from the top."

Ms. Gjerdrum added, "The most expensive (sexual molestation) claims that we've looked at are when a district tries to cover it up, or when they pretended it didn't happen. So, walking away from this is not a path to success."

Judy Greenwald

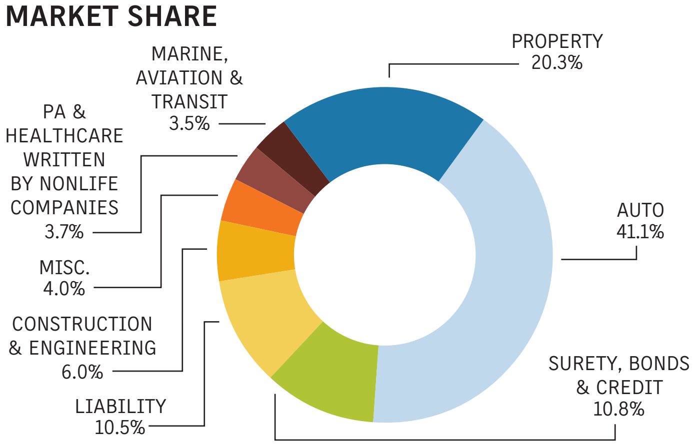
PROFILE: COLOMBIA

35

GLOBAL P/C MARKET RANKING

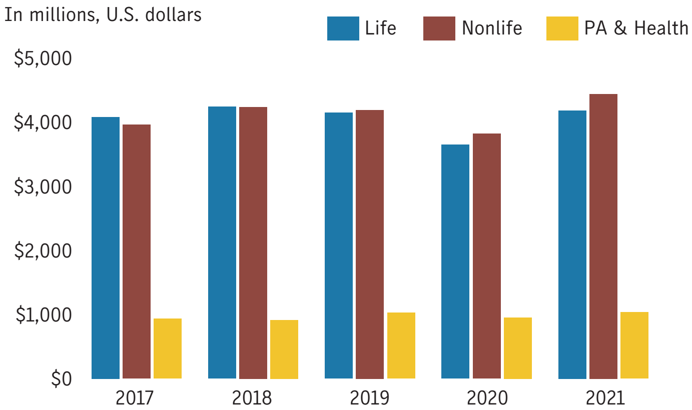
The Colombian insurance market ranked 42nd in the world by premium income in 2021 and 35th for nonlife business. Total market premium income in 2021 was COP 36.1 trillion ($8.54 billion). Nonlife business — excluding workers compensation, personal accident and health care — represented 45.8% of the total. No nonlife class of insurance showed significant deterioration of loss ratios during the two main years — 2020 and 2021 — of the COVID-19 pandemic, but since 2022 its longer-term effects, such as currency devaluation and inflation, have affected the pricing of major classes such as auto and property. The voluntary auto insurance market reportedly imposed rate increases of up to 30% last year, reflecting higher costs for spare parts and labor.

MARKET SHARE

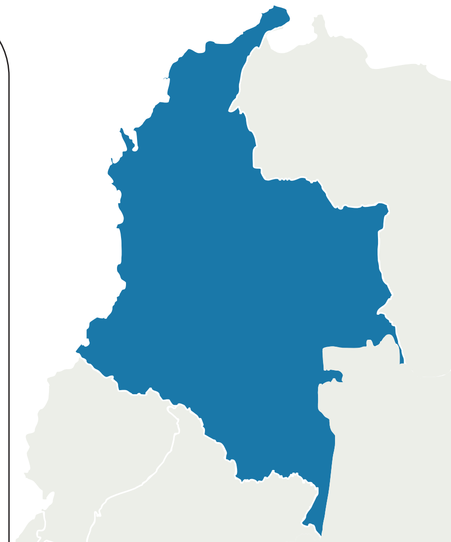


MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA

439,736

square miles

POPULATION

49.34

million

MARKET CONCENTRATION

50.18%

market share of top five insurers

2023 GDP CHANGE (PROJECTED)

1.0%

MARKET DEVELOPMENTS

Updated May 2023

- The measures implemented by the Colombian government to contain the spread of COVID-19, together with the weakening world economic growth, hit the local economy. The effect of the pandemic on the nonlife insurance market was felt more in lower-than-planned premiums than higher claims. Despite a contraction of 6.9% in GDP in 2020, nonlife premiums grew by 3.2%, followed by 17.1% growth in 2021.
- Economic recovery during the first half of 2021 was hampered by violent demonstrations and road blockages countrywide, initially in protest against proposed tax reforms to recover some of the costs of the COVID-19 pandemic. Even though these proposals were quickly withdrawn, other causes, including indigenous rights and a reaction to authorities' aggressive response to protests, fueled the disturbances, which led to almost 60 acknowledged deaths and thousands of injuries. The Colombian Insurers' Federation (Fasecolda) estimated related losses at COP 374.3 billion ($88.5 million) from 6,737 cases.
- Compulsory personal accident insurance for victims of auto accidents, or SOAT, is an important and much-debated class. Among the problems it faces are evasion from over half the people supposed to buy cover, a high degree of claims fraud and suspected state-controlled pricing.
- With Decree 2497 of December 2022 confirming an already announced 50% reduction in premiums for many motorcyclists and other categories, such as taxis and buses, loss ratios were seen as likely to continue deteriorating even though an element of additional claims would be borne by the state through established funds rather than by insurers directly.

COMPULSORY INSURANCE

- Auto liability third-party property damage
- Workers compensation
- Fidelity guarantee for insurance brokers
- Liability insurance for public transportation by land, water, cable cars or rail
- Liability insurance for air carriers for injury to passengers and damage to baggage or goods during international journeys
- Shipowners liability for marine oil pollution (financial guarantee or insurance)

NONADMITTED

By law insurers must be locally licensed. At the same time there is nothing in the law to indicate that insurance must be purchased from locally licensed insurers, with some exceptions. This is generally interpreted to mean that insurers can issue policies from abroad, with exceptions, if approached by a buyer and the transaction is carried out abroad.

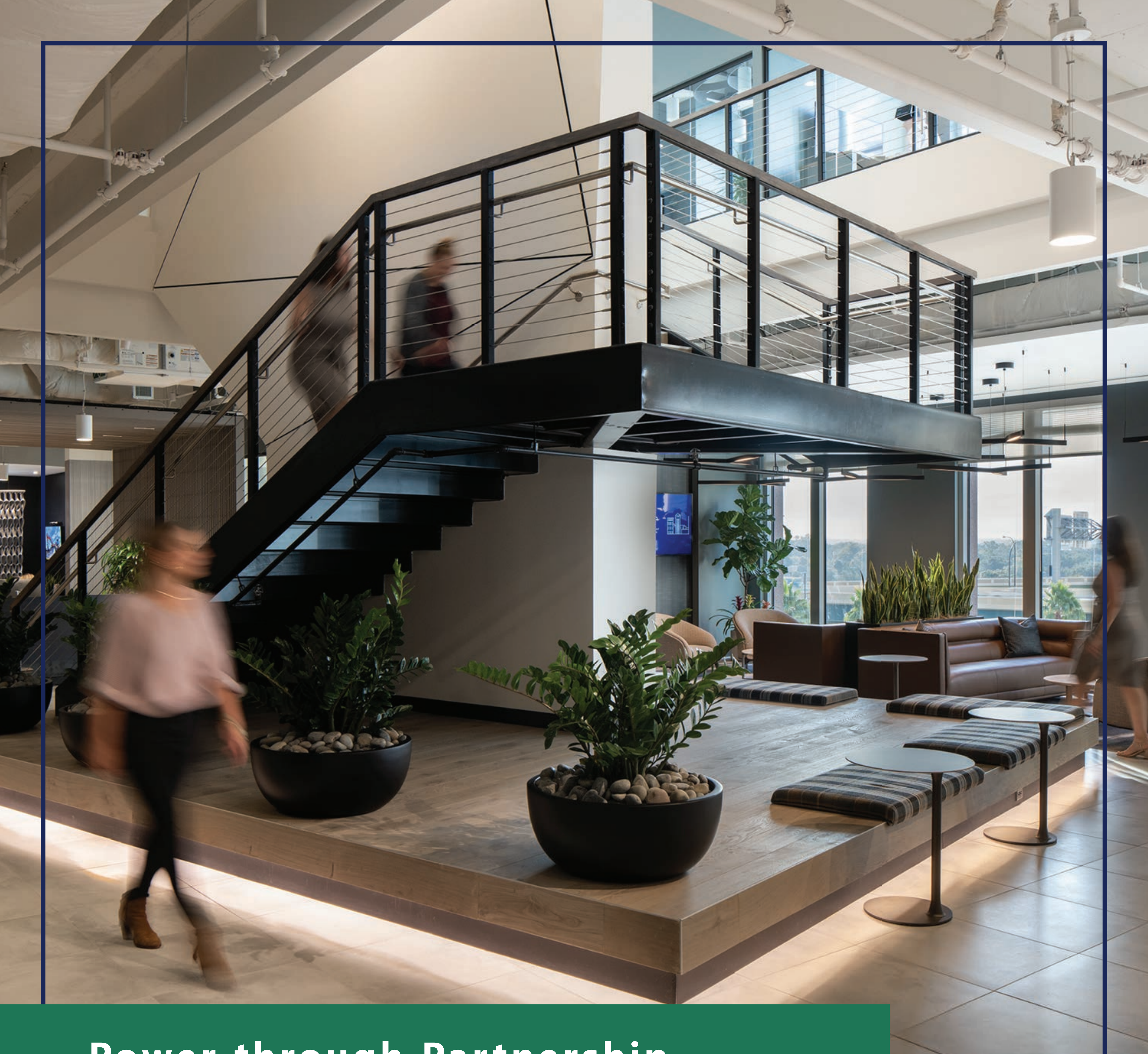
INTERMEDIARIES

Insurance brokers must be licensed to do business in Colombia. They are not permitted to place business with nonadmitted insurers, with the exception of property and liability insurance associated with international marine, international commercial aviation and space risks.

MARKET PRACTICE

Cross-border business is allowed in certain classes, subject to local registration of the insurers involved, and policyholders are also free to obtain insurance outside the country, with some exceptions.

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



LEGAL BRIEFS

Single robocall ruled grounds to sue

■ The allegation of even one unwanted robocall is sufficient cause to sue under the Telephone Consumer Protection Act of 1991, a federal appeals court ruled in reinstating a putative class-action lawsuit against a utility.

Matthew Dickson initially alleged he had received 11 unwanted robocalls from Houston-based Direct Energy LP in violation of the TCPA, which restricts certain telemarketing practices, including using any automatic telephone dialing system or an artificial or prerecorded voice, according to the ruling by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Matthew Dickson v. Direct Energy LP; Total Marketing Concepts Inc.; Silverman Enterprises LLC.*

The U.S. District Court in Akron, Ohio, dismissed the lawsuit after an expert testified on Direct Energy's behalf that Mr. Dickson had received only one ringless voicemail.

The lower court held that Mr. Dickson's receipt of the call did not constitute a concrete harm because he could not recall what he was doing when he received it; he was not charged for it; it did not tie up his phone; and he "spent an exceedingly small amount of time" reviewing the call.

In reinstating the lawsuit, a three-judge appeals court panel held that Direct Energy's unsolicited call "implicates Dickson's common-law right to seclusion, that is, his right to be left alone from others, including by means of telephone communications."

Direct Energy "invaded Dickson's private sphere when it placed an unsolicited prerecorded call to his cellphone," the panel said in concluding Mr. Dickson had successfully alleged an intangible harm and reinstating the lawsuit.

AssuredPartners unit sues former broker

■ An AssuredPartners Inc. unit has sued a former broker and the brokerage he established, charging violation of an employment agreement.

AssuredPartners of New Jersey LLC sued Edgar Ortiz for allegedly violating a restrictive covenants agreement, according to the complaint filed in U.S. District Court in Cedar Rapids, Iowa, in *AssuredPartners of New Jersey LLC v. Edgar Ortiz and Silk Road Transportation Insurance LLC.*

It charged that in September 2022, while still working for AssuredPartners, Mr. Ortiz violated his agreement by surreptitiously transferring AssuredPartners' confidential and proprietary information to his personal electronic email addresses and started his own competing agency, Bellevue, Iowa-based Silk Road.

The complaint said Mr. Ortiz left AssuredPartners three months later to run Silk Road.

The lawsuit charges Mr. Ortiz with breach of contract and both him and Silk Road with tortious interference with contractual and prospective contractual relations and violation of Iowa's Uniform Trade Secrets and Defend Trade Secrets Acts.

It seeks an injunction preventing further violation of the employment agreement and liquidated, punitive or exemplary damages, among other measures.

Biotech firm wins round in D&O suit

■ A federal district court in Los Angeles refused to dismiss directors and officers liability coverage litigation filed by a biotech company that incurred $1.4 million in legal fees and costs to date in defending a lawsuit filed by a former employee.

Partner Re Ireland Insurance DAC issued a D&O policy for the period December 2018 to December 2020 to San Diego-based Skye Bioscience Inc., according to the ruling in *Skye Bioscience Inc. v. Partner Re Ireland Insurance DAC.*

The policy provided coverage for losses resulting from any securities claim made against the company for a wrongful act, the ruling said.

During the policy period, Skye received a demand from a former Skye employee who alleged she had been wrongfully terminated after she complained about the company's alleged misconduct, including various violations of federal securities law, the ruling said.

She alleged her termination amounted to retaliation under the 2002 Sarbanes Oxley Act, in a lawsuit filed against Skye in U.S. District Court in Santa Ana, California.

Partner Re denied coverage in the case based on its interpretation of the phrase "securities claim" in its coverage.

As result, Skye funded its own defense, paying about $1.4 million to date in defense costs and fees, while a jury awarded the employee $4.9 million in damages.

That lawsuit is ongoing, as the parties file post-trial motions and Skye continues to incur legal fees and costs in connection with its defense.

In its lawsuit against Partner Re, Skye charges the insurer with breach of its contractual duty to provide coverage.

"Skye has plausibly alleged" that the lawsuit is covered by the policy," the ruling said. "As Skye argues, Sarbanes Oxley is defined as a 'securities law' in the Securities Exchange Act of 1934," it states.

PFAS-related suit sent back to state

■ An Ohio state court must decide whether Admiral Insurance Co. has to provide coverage to a company whose clothing products allegedly caused cancer in firefighters and their spouses, a federal appeals court ruled.

Medina, Ohio-based Fire-Dex LLC, which is facing an array of lawsuits over the firefighter clothing it manufactures, asked Admiral to defend or indemnify it, according to the ruling by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Admiral Insurance Co. v. Fire-Dex LLC.*

The ruling noted that the case is a "small part of a developing national story," with plaintiffs charging that per- and polyfluoroalkyl substances, also known as PFAS, which are used in manufacturing firefighting products, are linked to certain kinds of cancer.

Admiral denied Fire-Dex coverage, citing exclusions in its policy, primarily an occupational disease exclusion policy rider. It then filed suit in U.S. District Court in Cleveland, seeking a declaratory judgment it was not obligated to provide coverage.

The district court refused to exercise jurisdiction over Admiral's complaint and was affirmed by a three-judge appeals court panel.

"Admiral's suit would encroach upon state jurisdiction (in this case, Ohio's)," the ruling said.

The district court correctly held that "Ohio courts have yet to answer questions tied to insurance liability for PFAS manufacturing" and that "those matters are best resolved by an Ohio court in the first instance," it said.

"States, it bears reminding, are the masters of their own law, subject to certain constitutional and statutory restraints," the panel said in affirming the lower court.

DOCKET

INSURER MUST DEFEND COMPANY IN BIPA SUIT

A federal appeals court affirmed that a Hanover Insurance Group unit must defend an information technology company in two putative class actions filed under the Illinois Biometric Information Privacy Act. The 7th U.S. Circuit Court of Appeals in Chicago affirmed an April 2022 ruling by the U.S. District Court in Chicago in *Citizens Insurance Co. of America v. Wynndalco Enterprises LLC*, which held that a catch-all exclusion in the policy issued by Hanover unit Citizens was ambiguous and therefore the insurer had a duty to defend the policyholder. Addison, Illinois-based Wynndalco was sued for allegedly selling information in violation of BIPA.

SCHOOL DISTRICT SETTLES EEOC SUIT

A Wisconsin school district agreed to pay $450,000 and raise salaries to settle a U.S. Equal Employment Opportunity Commission pay discrimination lawsuit. The EEOC charged that the Verona Area School District paid nine female special education teachers and a female school psychologist lower salaries than more recently hired male colleagues. It said the teachers were paid $3,000 to $17,000 less per year than a male colleague, while the female school psychologist was paid at least $16,000 less per year than her male peer.

OSHA CITATION AGAINST CHEWY VACATED

A federal appeals court vacated a workplace safety citation issued to online pet supply retailer Chewy Inc. following a warehouse worker's forklift fatality in December 2018. The Atlanta-based 11th U.S. Circuit Court of Appeals ruled that the Occupational Safety and Health Administration improperly cited Chewy for inadequately protecting warehouse employees from "underrides," a type of forklift accident that occurs when the rear part of a forklift is short enough to pass under shelves without hitting them.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Ramona Tanabe

WORKERS COMPENSATION RESEARCH INSTITUTE

In May, Ramona Tanabe became president and CEO of the Workers Compensation Research Institute, where she began working in 1996. During her tenure, she has helped the Cambridge, Massachusetts-based institute evaluate the workers comp industry by conducting studies on state policies and trends. *Business Insurance* Assistant Editor Louise Esola interviewed her recently on her work and what's to come. Edited excerpts follow.

Q Your background is in law. What was your career trajectory into the comp space?

A I changed from private practice at a law firm because of a move to Boston from Chicago. And I wasn't licensed in Massachusetts. I was looking for something that sparked my interest and made me feel like I was contributing to public policy research. One of the best classes I took in law school was about legislation and how was it created. Looking up legislative histories was fascinating to me. So, being able to work at a firm that did public policy research as a tool to help policymakers make those decisions, and make those decisions with more information, I thought, well, that's a pretty interesting thing. On workers comp, I learn something new every single day. It's been a wonderful and fascinating ride and I hope more people that are looking for career paths go into workers comp.

Q What surprised you about workers comp?

A Just how different every state is, and why they're all different. I just found it fascinating that there were so many different ways to operate within this umbrella of workers comp.

Q Which WCRI study have you been most excited about?

A I get excited about all of the work we publish because of the value we are providing to policymakers and other stakeholders. Our objective is to have WCRI research help them make informed decisions about state workers compensation systems and policy discussion. Our opioid research helped identify the unnecessary prescriptions of opioids to injured workers and tracked the various methods to stem the flow by jurisdictions. Our worker outcomes research gave us a first-of-its-kind window into the experience injured workers have within the system. Our attorney involvement studies found workers with injuries were more likely to seek a lawyer when they feared getting fired. Our annual benchmarking studies allow us to track the performance of state workers compensation systems.

Q What are some top issues to watch in comp?

A It's not unique to workers compensation — there are shortages in the medical workforce. The shortages happened in two waves — because of the great resignation at the beginning of the pandemic, and the second wave was the post-pandemic burnout among medical workers. The questions that one wants to ask about that are: How is that going to impact claim outcomes? How will it affect return-to-work timing? How does it affect access to care and good outcomes while operating within this shortage? There are also general labor shortages that will affect workers compensation because of increasing wages. There are longer shifts, lack of training and fatigue — all of that will affect claims. And there might be limitations on light-duty work or transitional work for those injured workers that want to return to work. Medical inflation is something we hear people ask about all the time, and we have a report coming out on this shortly. Behavioral health strategies and treatment and expansion of mental health access are also rising focuses.

Q Mental health seems to be the talk of the town in comp circles. What are you seeing?

A It's about the expansion of mental health access as a corresponding piece within behavioral health, because behavioral health is different than mental health. Behavioral health is about how somebody reacts to a crisis or stress within their life. In workers comp, it's treating the whole person as opposed to the specific injury that they had, because that piece really affects the recovery of people. Full recovery is also determined by social determinants of health, the underlying contributions of general health functioning, and quality of life. Those include economic stability, education, access to quality health care, the neighborhoods you live in, in social and community context — all of those things are important, and I think there's a focus on that.

Q Data and analytics are taking over in terms of predictive modeling in comp. What are some goals for WCRI in helping the industry better understand claims?

A We've been helping the industry understand the workers compensation system since 1983. We use data in order to analyze and provide insights. Recently, we started looking at some of the predictive assumptions, changes in the workforce and how that impacts workers compensation outcomes. That study uses statistical methods to create relationships between claim characteristics and economic conditions. And then it makes several assumptions about claim composition trends in the future and provides a prospective look at how the workers comp features might change. It's providing the insight into how the economic changes and demographic characteristics might influence the workers compensation systems.

Q What do you wish more employers understood about injured workers?

A It's not necessarily about injured workers but just about workers in general. Whether it's telecommuting or a hybrid workforce; there's a challenge of creating a continuity with communication and giving the workers tools that they can use to be more resistant to some of the things that come with working remotely, like loneliness or feeling disconnected from your employer. One has to imagine that happens in an injury situation in workers compensation where you're not in the workforce. And there is an important role that employers can take on to make sure that people feel connected. Creating those tools to increase the communication is always important.

Behavioral health is about how somebody reacts to a crisis or stress within their life. In workers comp, it's treating the whole person as opposed to the specific injury that they had, because that piece really affects the recovery of people.

WHEN SEX CRIMES TAKE PLACE IN THE WORKPLACE

Exclusive remedy in comp complicates legal and liability scenario as awareness of sexual assault rises after #MeToo

BY LOUISE ESOLA
lesola@businessinsurance.com

Sexual assault in the workplace is a crime that can happen almost anywhere.

It happens in restaurants. It happens in offices and at retail stores. It happens to housekeeping staff in hotel rooms. It happens on business trips and in parking lots, advocates for assault victims and legal experts say.

"It happens so much more than it ever gets reported, and that coincides with any form of sexually inappropriate behavior that happens, whether it's in the workplace or elsewhere," said Sandra Henriquez, CEO of Sacramento, California-based ValorUS, formerly the California Coalition Against Sexual Assault, which has expanded across the United States.

> "We've seen a lot of these types of issues develop over the past five years, and it's obvious that we as a society had a #MeToo reckoning."
>
> Marshall Gilinsky,
> Anderson Kill

Oftentimes, victims attempt to sue employers. There's no shortage of cases, especially in recent years, as the #MeToo movement — inspired in part by widespread and systemic sexual assault in the film industry — led to a flood of litigation, experts say.

And the lawsuits are increasing, said Marshall Gilinsky, a Boston-based shareholder for Anderson Kill P.C.

"We've seen a lot of these types of issues develop over the past five years, and it's obvious that we as a society had a #MeToo reckoning," he said. "People have been more comfortable coming forward with allegations."

What's also changing is the awareness of the definition of sexual assault: It's not always a violent rape involving penetration. It can be any unwanted touch, according to Ms. Henriquez.

And physical touching can result in criminal charges. After a television news reporter doing a live shot in 2020 of the Savannah Bridge Run in Savannah, Georgia, had her buttocks slapped by a runner, the runner, Thomas Callaway, was sentenced to a year's probation and fined $1,000 after pleading guilty to sexual battery.

Patrick Perotti, a Cleveland-based partner at Dworken & Bernstein Co., which represents employers, summed it up: "You are not allowed to touch someone else without their permission."

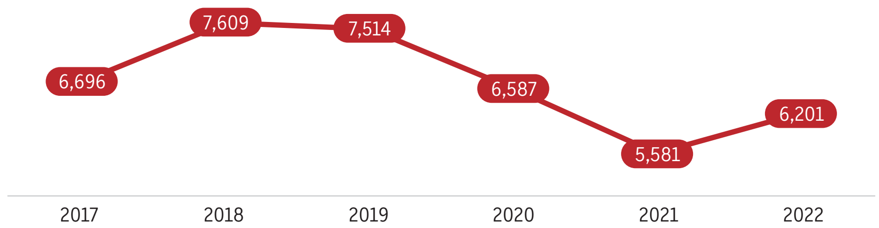
Employers grappling with lawsuits filed by workers who claim they were sexually assaulted in the workplace typically turn to workers compensation's exclusive remedy in defense of allegations that could, if a jury finds the employer to be at fault, translate into millions of dollars in damages, legal experts say.

A 2010 case that went to trial in Tennessee resulted in a $3 million jury verdict against P.F. Chang's China Bistro Inc.

SEXUAL HARASSMENT CASES

The U.S. Equal Employment Opportunity Commission reported an increase in sexual harassment charge receipts following the onset of the #MeToo movement in 2017. After dips during the pandemic, many expect numbers to climb as industries return to normal operations.

Overall, recoveries for sexual harassment claims have increased since #MeToo. For example, in 2021, the EEOC reported that $61.6 million was recovered, compared with $40.7 million in 2016.



Source: Equal Employment Opportunity Commission (EEOC)

The case involved a restaurant manager who was violently raped at gunpoint by a cook who had clocked out for the evening but jammed the back door of the restaurant where the alarm system had been repeatedly documented to be malfunctioning.

The plaintiff's attorney, Gary Smith, of Memphis, Tennessee-based Gary K. Smith Law PLLC, said, "We knew from day one that exclusive remedy would be their first defense."

A lower court and the Tennessee Court of Appeals in 2017, in *Jane Doe et al. v. P.F. Chang's China Bistro Inc.*, agreed that exclusive remedy did not apply because the company had numerous security failures, Mr. Smith said.

"We also thought that the risk of rape by a co-employee in a store that was closed after hours and not open to the public, was not a risk of the employment … and we prevailed on that," he said.

A spokeswoman for P.F. Chang's said the company does not comment on litigation.

The Iowa Supreme Court in June came to a different conclusion in a case involving a call center worker who sued Cedar Rapids, Iowa-based Thomas L. Cardella & Associates, which operates call centers in several states, for negligence for allegedly failing to protect her from sexually-related assault and battery by two supervisors at its Ottumwa, Iowa location.

In case No. 22-0918, the woman said

See **ASSAULT** next page

ASSAULT

Continued from previous page

she complained about the behavior of both men and quit when Cardella failed to offer a solution. The state's highest court ruled that exclusive remedy barred the suit, writing that "(w)hen an employee is injured by the tortious acts of another employee at work, the workers compensation exclusivity rule precludes a common law tort action against the employer for the resulting injuries, even when the co-employee's conduct is intentional."

The Iowa Supreme Court, which overturned a $400,000 verdict from a lower court, ruled that the case involved "recovery of mental health injuries caused by Cardella's failure to protect her from injuries caused by assault and battery in the workplace: in other words, physical injuries" under state law.

Cardella did not return requests for comment.

Legal outcomes often depend on the facts surrounding the assault: Was the perpetrator a coworker, an acquaintance or a stranger? Were there warning signs or security lapses? Where did the incident happen? Was a physical injury documented?

Jurisdiction is also an important factor in the success or failure of a case, legal experts say.

"There are a lot of questions that have to be answered," said Jeff Adelson, a partner with the Newport Beach, California-based law firm Adelson McLean P.C., which represents employers. Cases in California often hinge on who the perpetrator was: a coworker, where the risk is not inherent, or a member of the public, in a public-facing business where violence is always a workplace risk.

"There's a flood of people coming in retail stores all the time," Mr. Adelson said.

Most states allow for exclusive remedy defense in sexual assault cases, and the cases often see years of litigation. Complicating the issue, many assaults are determined to have resulted in mental injuries only and not all states allow for mental injuries in workers compensation.

That question arose in *Truman Arnold Companies v. Circuit Court*, which was heard by the Arkansas Supreme Court in 2017. The case was filed by a woman at a car wash who alleged her supervisor raped her. A circuit court assessed that the injury was mental, and Arkansas doesn't accept mental-only workers comp claims. The state's highest court sent the case back to the comp court for further evaluations on the type of injury, among other issues.

> "The workers compensation system never intended to cover the kinds of injuries victims experience after a rape."
>
> Andrea Giampetro-Meyer, Loyola University Maryland

"One fact could change the outcome of whether or not it's a work comp case," said Zachary Rubinich, Philadelphia-based partner at Rawle & Henderson LLP, which represents employers.

William Anderson, Atlanta-based partner at Hamilton, Westby, Antonowich & Anderson LLC, said workplace sexual assault is "extremely fact sensitive and case specific" but added that change may be on the horizon.

"This is a very different conversation that people would have had 25 years ago," he said. "I think the case law — many of the cases that we rely upon are 25 years old, 20 years old, 10 years old — is going to become more fluid."

In addition, lawmakers in two states have attempted to remove the exclusive remedy defense through legislation.

For the seventh consecutive year, New York lawmakers were presented with a bill that would override exclusive remedy in cases involving a "sexual offense," as described in state law as a sexual act "committed without consent," including "forcible touching." S.B. 5698, introduced in March, stated that injuries from a sexual offense would be compensable under workers comp and would allow "such employee to pursue any other remedies available at law or in equity."

EXPERTS SAY EMPLOYERS LAG IN SEXUAL HARASSMENT PREVENTION TRAINING

While the term sexual harassment has been in widespread use since the 1970s, some experts say employers still fail to adequately train employees on what constitutes improper behavior and it's putting businesses at risk.

Incidents occur despite ever-increasing regulations on mandatory workplace training, they say.

"What's happened is it has become a check-the-box exercise for the employers; it's just another training that these employees all have to have," said Renee Noy, co-owner of Calabasas, California-based WorkWise Law P.C., which provides training.

Companies often underestimate the risk of sexual harassment, mainly because they have a policy in place, she said.

"Nobody ever believes that this stuff happens because it's insane that it does happen," Ms. Noy said. "You would think with all these new rules and the zero tolerance policies that so many companies now have to have, or internally decide to have, that it would start to diminish a little bit, but it really hasn't. It's just gotten really, really bad."

Government statistics show sexual harassment cases fell slightly in 2020 and 2021, but experts attribute that to the drop in attendance at offices and other workplaces during the pandemic (see box).

In a recent workplace sexual harassment case, the 9th U.S. Circuit Court of Appeals in San Francisco in June overturned an earlier ruling and found that loud "sexually graphic, violently misogynistic" music blared throughout the workplace can be considered sexual harassment.

In *Stephanie Sharp et al. v. S&S Activewear LLC*, eight former employees — seven women and one man working at a Reno, Nevada, location — sued apparel manufacturer S&S Activewear after they repeatedly complained of blasted music that denigrated women, glorified prostitution and described extreme violence. The sounds from commercial-strength speakers placed throughout S&S' 700,000-square-foot warehouse were considered "motivational" music for workers, according to court papers.

Mark Mausert, a Reno-based lawyer who represented the plaintiffs in the case, said most companies have an anti-sexual harassment policy, but "usually what the companies have is a policy on a page in the personnel manual and it's not enforced."

"When you think about some rap music, it's the implicit message that negates any training or any policy or any instructions that you've given," he said, adding that the lyrics sometimes include details of graphic acts of violence toward women. The warehouse workers, in their complaint, said the music prompted male workers to imitate sexual acts.

S&S did not return requests for comment. It does, however, tout employee-friendly policies on its website.

Richard Chapman, a Chicago-based employment litigation attorney with Clark Hill PLC who conducts sexual harassment training as a managing member of the training company Chapman Associates, said companies with no follow-through or disconnected sexual harassment training will see it manifested in the organization's culture.

"If it's just, 'Here, sign a form, check in the box,' then that's what employees see," he said. "Because they see it's not important to the firm, and I think that's a pervasive feeling that people have."

Camille Oakes, Atlanta-based president and CEO of Better Safety LLC, which provides safety training, said that despite more and more training being mandated in many states and municipalities, "it feels like there's been no change."

Of training, she said, "there's a concept in safety called work as prescribed versus work as done. There's the stuff that we say we're going to do on paper and then there's the stuff that we actually do."

Often, training materials don't relate to job sites where they are used, said Kathleen Dobson, Detroit-based safety director at Alberici Constructors Inc.

Citing the example of videos that show harassment in an office setting, she said, "People on our job sites don't act that way. They don't respond that way. They don't interact that way. And, so, that just becomes 20 minutes where people can just snooze off because it's not relevant to them."

Ms. Dobson continued: "They need real people talking about real situations, bringing up the dirty little secrets that all construction companies have, where they can say, 'Hey, on this occasion 15 years ago we had a problem with sexual harassment and here's what happened, here's how we dealt with it and we've learned from it.'" she said.

Lance Ewing, vice president of enterprise risk management and operations for the San Manuel Band of Mission Indians in Highland, California and a longtime risk professional, said companies should audit themselves on compliance and follow through.

"There's the spirit of the law and then there's the actual letter of the law, and we think in this case, you've got to be in the spirit of the law and make sure that it gets down to the hundreds of thousands of employees," he said. "Do you need to reach all of them? Yes. And ask yourself, 'Is this a concrete block in our defense wall if something would happen?'"

Updating policies to stay ahead is also vital, said Michael Schmidt, a New York-based labor and employment attorney with Cozen O'Connor P.C.

"We are seeing ever-changing standards on dealing with sexual harassment and other types of harassment," he said. "Companies not only need to look at their actual policies, but they need to look at the training that they're giving to make sure that they're doing what needs to be done and keeping up with changes in the law in their jurisdictions."

And training, Ms. Oakes said, is only one piece of the puzzle; firing offensive workers is something companies are reluctant to do but should, she said.

"You can't change a person by sending them through a computer-based training that tells them, 'Don't be racist, don't be homophobic, don't be sexist,' because it's already in them," she said. "So, sometimes, if we really want to change culture we have to get rid of the people that are doing it."

Louise Esola

FAILURE TO RESPOND TO ASSAULTS OPENS EMPLOYERS TO LIABILITY

It's not always the act of sexual assault or harassment that puts companies at risk, as few have direct control over the intentional acts of others; it's when companies don't promptly respond to concerns that liability issues arise, experts say.

"It's important that companies take immediate action in responding to these claims and address the concerns raised by the people who come forward," said Marshall Gilinsky, a Boston-based shareholder at Anderson Kill P.C.

"That involves taking very seriously their allegations and assessments as to what's happened and investigating them thoroughly to make sure that any problems that exist are identified and dealt with."

Lance Ewing, vice president of enterprise risk management and operations for the San Manuel Band of Mission Indians in Highland, California, said an immediate response can help mitigate legal ramifications later on.

"Companies need to embrace the fact of sexual harassment and sexual assault, or even sexual bullying; they need to be aware of that and take immediate action," he said.

Sometimes the response can be better security, experts say.

"It's always important to determine what the employer has done to safeguard the employees in high-risk situations," said Zachary Rubinich, Philadelphia-based partner at Rawle & Henderson LLP.

"It could be something as simple as additional security cameras, additional lighting in certain areas where you may have overnight workers, or you may have workers who work alone who could be susceptible to criminal activities."

Panic buttons for hotel housekeepers, for example, are required in several jurisdictions, including New York and Illinois — mostly in response to complaints from workers facing sexual harassment or assault.

But companies don't have to wait for regulations.

William Anderson, Atlanta-based partner at Hamilton, Westby, Antonowich & Anderson LLC, recalled a large chain-hotel client that implemented a "buddy system" for housekeepers — requiring them to work on the same floor in pairs.

"I thought it was a great idea, not only because of sexual assault but for other safety reasons, such as slips and falls," he said.

Louise Esola

S.B. 5698 also would have clarified "that workers compensation should be exclusive remedy except when the employee suffers personal injury as a result of a sexual offense committed by a co-worker." Legislative documents filed in support of the bill said that "(w)hile workers compensation should be available to those injured by a sexual offense, committed in the workplace, it should not be the exclusive remedy, since there are sometimes egregious instances of employer malfeasance and negligence in the workplace which tragically lead to the workplace sexual assault or injury." In addition, "an already victimized employee should not be forced to endure an employer's claim that a violent and repeated sexual assault was a natural condition of her employment."

H.B. 3977, introduced in Texas in March, stated that an employee who is a victim of a sexual assault may sue their employer if the injuries "arose from the employer's negligence."

Both bills failed to progress, according to a spokesman for the American Property Casualty Insurance Association. Sponsors in both states did not return repeated requests for comment.

Andrea Giampetro-Meyer, a professor in law & social responsibility at Loyola University Maryland in Baltimore, said she was glad to see states attempting to tackle the issue — which she researched for an article for the University of California-Los Angeles Women's Law Journal in 2000: "Raped at Work: Just Another Slip, Twist, and Fall Case?"

For the analysis, Ms. Giampetro-Meyer and two co-authors examined cases in which courts determined that a woman's only remedy for a workplace rape was workers compensation. The authors argued that "rape is an extraordinary injury and therefore should not be treated like purely physical injuries more commonly covered under workers compensation."

"We were just ahead of our time apparently," she said. "The workers compensation system never intended to cover the kinds of injuries victims experience after a rape."

Broker revenue grows as rate hikes continue

BY GAVIN SOUTER
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INSIDE

Insurance brokerages continued to benefit from a favorable business environment over the past year.

Economic expansion, hardening rates in many lines and the effect of inflation on insured values all stimulated revenue growth.

But with rising interest rates slowing down the previously electric rate of mergers and acquisitions in the sector, growth through M&A will likely diminish, several experts say.

Brokerages may also be affected by the Federal Trade Commission's recent proposal to ban noncompete clauses in employment agreements.

Rate hikes, particularly in the property insurance sector, are driving up revenue for brokers. While increased retentions and other program adjustments mean that higher premium rates don't always directly correlate with higher commissions and fees, brokers are still seeing solid increases in organic growth.

John Howard, chairman and CEO of Charlotte, North Carolina-based Truist Insurance Holdings Inc., a unit of Truist Financial Corp., said there have been "significant" rate increases for catastrophe-exposed property.

"We are seeing a reduction in limits, a reduction in industry capacity. We are seeing tighter terms and conditions. As a result of those things, our clients are retaining more risk and paying more for the coverage they purchase," he said.

"My expectation is that the second half of this year is probably going to resemble the first half of this year," in terms of rates and market conditions, Mr. Howard said.

Further rate increases in catastrophe-exposed regions will likely depend on what happens during the hurricane season, said J. Powell Brown, president and CEO of Brown & Brown Inc.

"I do believe, if we get through a moderate storm season in Florida, that there will be some mitigation of rates by year end or into early next year. I don't know if that means a flattening of rates or a slight decrease, but I think it's got to moderate at some pace," Mr. Brown said.

> "Professionally, we can explain what's going on, but it doesn't make the news any more bearable."
>
> J. Patrick Gallagher Jr., Arthur J. Gallagher & Co.

The hardening property market creates more work for brokers because it's harder to place risks, said Meyer Shields, Baltimore-based managing director at Keefe, Bruyette & Woods Inc. "But, net net, it's a tailwind to revenues."

John Wepler, chairman and CEO of Woodmere, Ohio-based mergers and acquisitions consultancy Marsh, Berry & Co. Inc., said insurance brokers are under pressure because they have to deliver rate increases while buyers are scrutinizing purchases more closely.

Rate hikes stemming from higher property losses and increased court awards can be explained to clients, said J. Patrick Gallagher Jr., chairman, president and CEO of Arthur J. Gallagher & Co.

"Professionally, we can explain what's going on, but it doesn't make the news any more bearable," he said.

Retentions

Policyholders are retaining more risk as a result of the rate hikes, several brokerage executives said.

"Clients are actively engaging in other ways to finance the risk," said Eric Andersen, president of Aon PLC. "They've gotten much more aggressive in how they finance it themselves or mitigate it themselves versus spending money in the marketplace."

Marsh clients retain about $70 billion of risk in their captives, said Martin South, president and CEO of Marsh LLC.

"In the last couple of years, clients have had to retain more market risk," he said.

Brokers are also benefiting from generally positive economic conditions, despite continued fears of a recession.

"The economic outlook seems probably better in the remainder of the year than we anticipated as the year started. I thought we might have a slowdown in the economy by Q4. I think that slowdown, if it happens, isn't until next year," Mr. Brown said.

Concerns about an economic slowdown are not showing through in Gallagher's data, Mr. Gallagher said.

"Our commercial middle market clients are doing great," he said. "I think we are in a good spot."

With the disruption from the pandemic largely over, companies are trying to grow their business, which provides opportunities for brokers, and they are also more concerned about issues such as cyber risk and geopolitical risk, Mr. Andersen said.

Inflation

Inflation, which has come down from the peaks of 2022 but remains relatively high, is generally beneficial for insurance brokers, experts say. It drives up insured values and grows payrolls, which leads to higher premiums and, therefore, increased commissions.

"Inflation raising the value of assets is going to change the price of coverage," said Carl Hess, CEO of Willis Towers Watson PLC.

> "When you look at the overall profit margins, the discipline with respect to acquisitions and capital management, every one of these companies is as well-managed as they've ever been."
>
> J. Paul Newsome Jr., Piper Sandler & Co.

Inflation, interest rates, cyber risk and climate change are all "headwinds for everybody else and tend to be a tailwind for insurance brokers," said Gregory L. Williams, CEO of Acrisure LLC. "It's why you're seeing such strong organic growth from insurance brokers over the last couple of years."

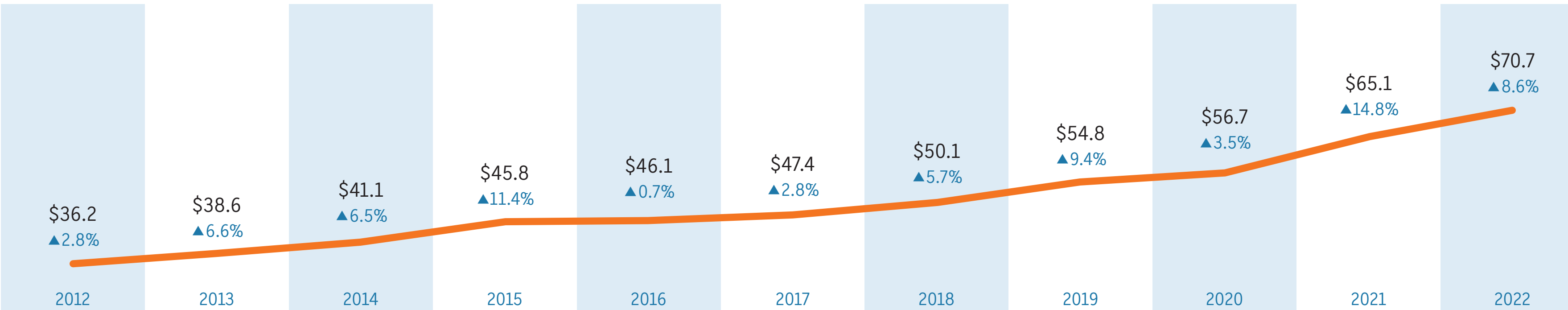
Publicly traded brokerages are also benefiting from good management, said J. Paul Newsome Jr., managing director with Piper Sandler & Co. in Minneapolis.

See **BROKERS** page 30

A DECADE OF GROWTH*

The world's 10 largest brokers posted a revenue gain of $5.6 billion, or 8.6%.

*IN BILLIONS OF DOLLARS



Source: *BI* survey

WORLD'S 10 LARGEST INSURANCE BROKERS

Ranked by 2022 brokerage revenue

2023 rank	2022 rank	Company/office/website	Officers	2022 brokerage revenue	2021 brokerage revenue	% increase (decrease)	Employees	Offices	PERCENTAGE OF REVENUE*							
									Commercial	Wholesale	Reinsurance	Personal lines	Employee benefits	Services	Investments	Other
1	1	Marsh & McLennan Cos. Inc. New York www.marshmclennan.com	John Q. Doyle, president-CEO	$20,664,000,000	$19,859,000,000	4.1%	85,000	741	50.7%	0%	9.7%	0%	25.8%	13.5%	0.7%	(0.3%)
2	2	Aon PLC Dublin www.aon.com	Gregory C. Case, CEO	$12,403,000,000	$12,185,000,000	1.8%	50,000	N/A	53.4%	0%	17.4%	0%	17.7%	0%	0.6%	10.9%
3	3	Willis Towers Watson PLC London www.wtwco.com	Carl Hess, CEO	$8,726,000,000	$8,826,000,000	(1.1%)	46,600	N/A	31.1%	0.6%	0%	0.8%	57.6%	8.4%	0%	1.6%
4	4	Arthur J. Gallagher & Co. Rolling Meadows, Illinois www.ajg.com	J. Patrick Gallagher Jr., chairman-president-CEO	$8,377,600,000	$6,966,100,000	20.3%	43,640	760	37.9%	12.0%	11.8%	4.6%	17.4%	14.3%	2.0%	0%
5	5	Hub International Ltd. Chicago www.hubinternational.com	Marc Cohen, president-CEO	$3,758,202,000	$3,226,383,000	16.5%	16,901	542	48.0%	8.6%	0%	13.7%	28.5%	0.8%	0.4%	0%
6	8	Acrisure LLC Grand Rapids, Michigan www.acrisure.com	Greg Williams, chairman-CEO	$3,619,152,426	$2,816,765,855	28.5%	14,923	929	74.6%	3.2%	2.8%	3.3%	13.4%	1.8%	0.8%	0%
7	6	Brown & Brown Inc. Daytona Beach, Florida www.bbinsurance.com	J. Powell Brown, president-CEO	$3,563,194,322	$3,047,522,000	16.9%	15,201	495	36.4%	35.2%	0%	5.3%	18.0%	4.8%	0.2%	0.1%
8	7	Truist Insurance Holdings Inc. Charlotte, North Carolina www.truistinsurance.com	John Howard, chairman-CEO	$3,344,969,000	$2,862,673,000	16.8%	9,697	109	26.2%	53.9%	0%	6.7%	9.1%	3.1%	0.9%	0%
9	10	Alliant Insurance Services Inc. Irvine, California www.alliant.com	Thomas W. Corbett, chairman-CEO	$3,199,376,174	$2,613,966,706[1]	22.4%	9,858	N/A	49.6%	13.1%	0%	14.0%	20.4%	2.1%	0.4%	0.3%
10	9	Lockton Cos. LLC[2] Kansas City, Missouri www.lockton.com	Ron Lockton, executive chairman; Peter Clune, CEO	$3,049,717,000	$2,703,060,000	12.8%	10,757	130+	58.9%	6.0%	6.1%	0.6%	27.4%	0%	1.1%	0%

*Percentage of revenue may not add up to 100% due to rounding. [1]Restated. [2]Fiscal year ending April 30. N/A = not available.
Source: *BI* survey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100 LARGEST BROKERS OF U.S. BUSINESS*

Ranked by 2022 brokerage revenue generated by U.S.-based clients

2023 rank	2022 rank	Company	2022 U.S. brokerage revenue	% increase (decrease)
1	1	Marsh & McLennan Cos. Inc.[1]	$10,125,360,000	8.5%
2	2	Aon PLC[1]	$5,630,962,000	3.2%
3	3	Arthur J. Gallagher & Co.[1]	$5,445,440,000	16.7%
4	4	Willis Towers Watson PLC	$4,712,040,000	4.7%
5	6	Truist Insurance Holdings Inc.[1]	$3,344,969,000	16.8%
6	5	Brown & Brown Inc.[1]	$3,334,437,247	11.4%
7	7	Acrisure LLC	$3,322,381,927	23.5%
8	8	Alliant Insurance Services Inc.[1]	$3,128,989,898	19.9%**
9	9	Hub International Ltd.[1]	$2,931,397,560	21.1%
10	10	USI Insurance Services LLC[1]	$2,450,509,269	14.0%
11	11	AssuredPartners Inc.[1]	$2,229,216,910	10.6%
12	12	Lockton Cos. LLC[2]	$2,168,348,787	9.7%
13	13	NFP Corp.[1]	$1,720,941,599	9.7%**
14	14	BroadStreet Partners Inc.	$1,302,300,000	13.7%
15	16	RSC Insurance Brokerage Inc., dba Risk Strategies Co.[1]	$1,150,078,742	24.1%
16	15	Alera Group[1]	$1,148,000,000	23.3%
17	17	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants[1]	$1,028,612,000	15.3%
18	18	Baldwin Risk Partners LLC	$1,014,500,000	41.0%**
19	19	Digital Insurance Inc., dba OneDigital[1]	$750,321,223	11.6%
20	20	PCF Insurance Services[1]	$730,000,000	23.7%
21	21	Higginbotham[1]	$576,499,000	28.0%
22	22	IMA Financial Group Inc.[1]	$557,775,736	24.5%
23	23	The Hilb Group LLC[1]	$501,613,000	24.7%
24	25	Foundation Risk Partners Corp.	$496,150,000	21.8%**
25	24	Leavitt Group[1]	$418,117,000	18.0%
26	35	Patriot Growth Insurance Services LLC[1]	$386,620,000	79.9%
27	26	High Street Insurance Partners Inc.	$384,874,000	32.3%
28	34	World Insurance Associates LLC[1]	$347,157,059	54.7%
29	NR	Automatic Data Processing Insurance Agency Inc.	$317,538,246	17.0%
30	27	CBIZ Benefits & Insurance Services Inc.	$304,100,000	7.9%
31	29	Cottingham & Butler Inc.	$295,674,000	10.8%
32	30	Insurance Office of America Inc.	$280,390,305	9.7%
33	28	Woodruff Sawyer & Co.	$276,870,000	1.5%
34	31	Holmes Murphy & Associates Inc.	$273,714,000	8.2%
35	32	Cross Financial Corp., dba Cross Insurance[1]	$268,571,000	8.5%
36	36	Relation Insurance Inc.	$260,000,000	45.0%
37	33	Paychex Insurance Agency Inc.	$249,400,000	1.4%
38	41	CAC Group[3]	$182,984,919	28.8%
39	37	Hylant Group Inc.[1]	$179,714,786	11.5%
40	38	Unison Risk Advisors	$162,053,649	8.3%
41	39	Heffernan Group[1]	$158,713,922	8.1%
42	43	Cadence Insurance[1,4]	$157,675,329	16.7%**
43	40	Newfront Insurance	$154,900,000[5]	6.8%[5]
44	45	The Liberty Co. Insurance Brokers Inc.[1]	$153,450,000	46.1%
45	42	Insurica Inc.[1]	$152,634,328	10.5%
46	56	Keystone Agency Partners LLC[1]	$137,821,000	72.3%
47	44	AmeriTrust Group Inc.	$135,785,286	11.2%
48	53	Sunstar Insurance Group[1]	$121,000,000	40.5%
49	46	Marshall & Sterling Enterprises Inc.[1]	$111,796,579	7.7%
50	47	TrueNorth Cos. LC	$109,288,000	5.7%

2023 rank	2022 rank	Company	2022 U.S. brokerage revenue	% increase (decrease)
51	50	M3 Insurance Solutions Inc.[1]	$108,886,926	18.9%
52	49	Eastern Insurance Group LLC	$98,814,068	1.7%
53	51	Lawley LLC	$97,551,725	7.7%
54	52	Horton Group Inc.[1]	$97,509,414	9.5%
55	64	Alkeme Inc.	$94,000,000	53.3%
56	48	Insurors Group LLC	$93,005,616	(5.0%)
57	54	Towne Insurance Agency LLC[1]	$91,470,151	11.5%
58	57	Sterling Seacrest Pritchard Inc.	$89,685,125	15.9%
59	58	Houchens Insurance Group Inc.[6]	$89,406,517	14.1%**
60	55	James A. Scott & Son Inc., dba Scott Insurance	$88,746,249	10.7%
61	59	Starkweather & Shepley Insurance Brokerage Inc.[1]	$78,051,690	8.5%
62	60	Shepherd Insurance LLC[1]	$75,479,312	10.5%
63	61	Graham Co.	$73,491,006	7.6%
64	62	Huntington Insurance Inc.	$70,275,150	6.8%
65	NR	Inszone Insurance Services	$69,076,647	40.3%
66	63	Sterling & Sterling LLC, dba SterlingRisk[1]	$67,063,489	7.2%
67	65	Moreton & Co.	$66,654,565	8.5%**
68	66	Robertson Ryan & Associates Inc.	$66,155,613	13.3%
69	68	Oakbridge Insurance Agency LLC[1]	$64,010,000	21.0%
70	67	Bowen, Miclette & Britt Insurance Agency LLC[1]	$61,181,288	12.9%
71	74	M&O Agencies Inc., dba The Mahoney Group	$56,151,660	19.5%
72	71	Fisher Brown Bottrell Insurance Inc.	$54,892,383	9.4%
73	75	Christensen Group Inc.	$54,804,586	21.3%
74	70	Panorama Insurance Associates Inc.[7]	$54,504,928	4.8%
75	73	The Partners Group Ltd.	$54,303,012	14.0%
76	69	Frost Insurance Agency Inc.	$54,209,329	3.2%
77	78	MJ Insurance Inc.[8]	$47,943,648	12.2%
78	79	First Insurance Group LLC[1]	$46,983,271	12.1%
79	77	Charles L. Crane Agency Co.	$46,974,428	6.9%
80	76	The Loomis Co.	$46,530,000	4.0%
81	NR	LP Insurance Services LLC[1]	$46,491,908	12.6%
82	87	Reliance Partners LLC	$45,289,061	24.7%
83	85	The Buckner Co. Inc.	$42,572,460	13.2%
84	82	R&R Insurance Services Inc.	$42,342,363	6.1%
85	83	Rich & Cartmill Inc.	$41,519,685	5.5%
86	80	James G. Parker Insurance Associates[9]	$41,312,266	1.5%
87	84	Ansay & Associates LLC[1]	$40,709,842	7.3%
88	90	Tricor Insurance[1]	$40,611,116	16.7%
89	NR	OneGroup[1]	$40,125,787	17.7%
90	81	Kapnick Insurance Group	$38,914,180	(4.2%)
91	91	The Plexus Groupe LLC[1]	$36,824,724	10.5%
92	89	Tompkins Insurance Agencies Inc.	$36,687,000	3.9%
93	93	Ross & Yerger Insurance Inc.	$35,345,454	12.6%
94	NR	King Insurance Partners	$34,067,448	274.9%
95	NR	Turner Surety & Insurance Brokerage Inc.	$33,868,400	6.6%
96	92	Pacwest Alliance Insurance Services Inc.	$33,515,870	1.9%
97	95	Swingle, Collins & Associates	$32,815,981	10.4%
98	98	Unico Group Inc.[6]	$31,984,425	14.7%
99	NR	Commercial Insurance Associates LLC	$31,842,953	32.5%
100	97	Gibson Insurance Agency Inc., dba Gibson	$31,033,000	11.2%

*Companies that derive more than 49% of their gross revenue from personal lines are not ranked. **2021 brokerage revenue restated. NR = Not ranked. [1]Reported U.S. acquisitions. [2]Fiscal year ending April 30. [3]Formerly Cobbs Allen/CAC Specialty. [4]Formerly BXS Insurance. [5]*BI* estimate, referencing Growjo. [6]Fiscal year ending Sept. 30. [7]Formerly Professional Insurance Associates Inc. [8]Fiscal year ending Aug. 31. [9]Fiscal year ending May 31.
Source: *BI* survey

LEADING U.S. COMMERCIAL RETAIL BROKERS

Ranked by 2022 commercial retail brokerage revenue from U.S. offices*

Rank	Company	2022 revenue	% increase (decrease)
1	Marsh & McLennan Cos. Inc.	$5,791,000,000	8.4%
2	Aon PLC	$3,049,000,000	2.6%
3	Acrisure LLC	$2,366,114,010	44.8%
4	Arthur J. Gallagher & Co.	$2,119,164,000	13.1%
5	Alliant Insurance Services Inc.	$1,589,971,143	8.9%[1]
6	Hub International Ltd.	$1,449,270,000	21.9%
7	Lockton Cos. LLC[2]	$1,391,190,000	10.4%
8	AssuredPartners Inc.	$1,152,465,279	10.3%
9	Brown & Brown Inc.	$1,144,237,160	9.2%
10	USI Insurance Services LLC	$1,135,662,967	10.4%

*Excludes revenue from placement of employee benefits. [1]Restated. [2]Fiscal year ending April 30.
Source: *BI* survey

LARGEST BENEFITS BROKERS

Ranked by 2022 global benefits revenue

Rank	Company	2022 employee benefits revenue	% increase (decrease)	% of 2022 gross revenue
1	Marsh & McLennan Cos. Inc.	$5,345,000,000	1.7%	25.8%
2	Willis Towers Watson PLC	$5,103,000,000	1.2%	57.6%
3	Aon PLC	$2,224,000,000	3.2%	17.7%
4	Arthur J. Gallagher & Co.	$1,484,105,000	8.6%	17.4%
5	USI Insurance Services LLC	$1,083,487,775	20.0%	43.6%
6	Hub International Ltd.	$1,075,788,000	16.6%	28.5%
7	NFP Corp.	$977,324,438	9.6%	44.2%
8	Lockton Cos. LLC[1]	$843,610,000	11.9%	27.4%
9	Alliant Insurance Services Inc.	$658,749,158	15.8%	20.4%
10	Brown & Brown Inc.	$644,374,448	14.9%	18.0%

[1]Fiscal year ending April 30.
Source: *BI* survey

LARGEST PRIVATELY OWNED BROKERS*

Ranked by 2022 brokerage revenue

Rank	Company	2022 brokerage revenue	% increase (decrease)
1	Hub International Ltd.	$3,758,202,000	16.5%
2	Acrisure LLC	$3,619,152,426	28.5%
3	Alliant Insurance Services Inc.	$3,199,376,174	22.4%
4	Lockton Cos. LLC[1]	$3,049,717,000	12.8%
5	USI Insurance Services LLC	$2,475,261,888	14.0%
6	AssuredPartners Inc.	$2,279,595,981	11.7%
7	NFP Corp.	$1,933,642,246	12.2%[2]
8	BroadStreet Partners Inc.	$1,302,300,000	13.7%
9	RSC Insurance Brokerage Inc., dba Risk Strategies Co.	$1,185,648,188	24.1%
10	Alera Group	$1,148,000,000	23.3%

*Companies that derive more than 49% of revenue from personal lines are not ranked. [1]Fiscal year ending April 30. [2]Restated.
Source: *BI* survey

BROKERS

Continued from page 25

"When you look at the overall profit margins, the discipline with respect to acquisitions and capital management, every one of these companies is as well-managed as they've ever been. … I think that's underappreciated," Mr. Newsome said.

Brokers have been able to consistently expand their profit margins since the financial crisis, but there are signs that margin expansion may be slowing, he said. "It's a high-class problem, but investors are primarily concerned about whether they can continue to improve margins," he said.

Mergers & acquisitions

One of the issues that may slow growth is a reduction in M&As. Prior to the steady rise in interest rates that began last year, acquisitive insurance brokerages, many of which are backed by private-equity funds, pursued aggressive acquisition strategies, with some companies buying dozens of rivals in a year.

A slowdown in M&A activity began in the second half of 2022 and persisted in the first half of this year, as interest rates pushed up the cost of borrowing to fund the deals.

Brokerages will likely have to continue to grow organically but accept slower growth through acquisitions, Mr. Shields said.

M&A activity is slowing in the brokerage sector, said Mr. Williams of Acrisure, which has been the most frequent buyer of other brokerages over the past several years. "When you look at the higher cost of capital, I don't think it should be a surprise to anybody that that's the case."

"With interest rates up, there's a natural slowing of activity," said Mr. Hess of WTW.

But as technology gets further embedded in the brokerage sector, pressure to consolidate will rise, he said.

Consolidation in the brokerage sector will likely continue, despite rising interest rates, said Ilene Anders, chief financial officer of Alliant Insurance Services Inc.

"There's a lot of investment dollars that have found their way to our industry, so it's remained competitive from an M&A standpoint," she said.

Noncompetes

The brokerage sector could also be affected by the FTC's recent proposal to ban noncompetes because, the agency said, they prevent workers from freely changing jobs.

While brokerages usually use nonsolicitation and nondisclosure agreements rather than noncompetes, some fear the FTC may seek to broaden its proposed ban to include other types of restrictions. In addition, there has been a rise in litigation between brokers over alleged breaches of employment agreements over the past several years.

A shortage of staff among brokers, driven in part by private-equity-owned brokers reaching a size where they need more managers, appears to have led to a rise in poaching suits, Mr. Shields said. Most of the disputes are settled through cash settlements, which will likely continue, he said.

Brokerage executives say they need to be able to protect their businesses, especially when they purchase other brokerages.

"I am talking about professional services (companies) oftentimes we purchased at substantial multiples. I should have an expectation, and so should my shareholders, of ownership," Mr. Gallagher said.

In addition, brokerages seek to protect their data and teams that they have developed, Mr. Andersen said.

Michael Bradford, Jon Campisi, Matthew Lerner and Claire Wilkinson contributed to this report.

1 Marsh McLennan

2022 brokerage revenue: **$20.66B**
Percent increase: **4.1%**

Marsh & McLennan Cos. Inc. delivered 9% organic growth last year, surpassed the $20 billion revenue mark and continued to pursue acquisitions, expanding its middle-market and international business.

Internally, the New York-based brokerage restructured, consolidating real estate, aligning its workforce and rationalizing technology. John Doyle, previously president and CEO of Marsh LLC, its main brokerage unit, took over as president and CEO of Marsh McLennan on Jan. 1, 2023.

A decline in overall insurance sector mergers and acquisitions activity last year did not dampen Marsh McLennan's long-held acquisition strategy. The company completed 20 acquisitions in 2022, many of them through Marsh & McLennan Agency LLC, its middle-market unit, according to SEC filings.

Last year's deals included the acquisition of Hunt Valley, Maryland-based HMS Insurance Associates Inc., a top 100 brokerage with about $50 million in annual revenue.

Marsh also made several international purchases last year, including in Chile and Japan, and increased its stake in a Morocco-based brokerage.

In this year's second quarter, its reinsurance brokerage unit, Guy Carpenter & Co. LLC, said it would acquire Israel-based Re Solutions.

"We have a good pipeline of acquisitions. We look to companies that will make us better, grow faster, and in countries and geographies and segments where we would like to do it," said Martin South, president and CEO of Marsh. The number of acquisitions completed by Marsh McLennan Agency since it was formed 15 years ago has crossed the 100 threshold, he said.

The deals helped Marsh McLennan grow its brokerage revenue to $20.66 billion in 2022, a 4.1% increase over 2021, and retain its No. 1 position in *Business Insurance*'s ranking of the world's largest brokerages.

In the first quarter of this year, its insurance and reinsurance broking units posted a combined 9% underlying growth rate, buoyed by continued rate increases, new business and strong retention despite the uncertain economic backdrop.

Last year's revenue growth was "solid" albeit lower than the double-digit revenue growth delivered in 2021, analysts say.

Marsh McLennan saw good growth in its insurance and reinsurance broking business in 2022 and in the first quarter of this year, said Elyse Greenspan, managing director, equity research, insurance, at Wells Fargo Securities LLC in New York.

The reinsurance market is as hard as it's been in about 20 years and rate hikes at Jan. 1 persisted during the April and June renewal seasons, which "should be a tailwind" to organic revenue growth for Guy Carpenter, Ms. Greenspan said.

Broking growth should help offset any slowdown in the company's consulting operations due to economic contraction, she said.

Cyber, construction and credit specialty areas have been significant growth drivers, but Marsh saw its representations and warranties and transactional risk business slow due to rising inflation and interest rates and the pullback in capital markets, Mr. South said.

Martin South

Marsh has made progress in using artificial intelligence for data extraction and policy comparisons and will launch a version of ChatGPT later this year within the company's firewalls, Mr. South said. "We've got a number of pilots underway, but I don't think it's at a stage yet where the accuracy is to be relied upon," he said.

A restructuring program announced in January is slated to deliver around $300 million of savings by 2024, at a total cost of $375 million to $400 million, Mr. Doyle said on the company's first-quarter earnings call with analysts.

Marsh McLennan is adjusting expenses to what is expected to be a more sluggish pricing environment should the economy weaken, said Mark Dwelle, director, insurance equity research, at RBC Capital Markets LLC in Richmond, Virginia. "I view it mostly as periodic housekeeping," Mr. Dwelle said.

Marsh McLennan has hired more than 10,000 employees in the past two years, including over 6,000 at Marsh, and will hire at similar rates in future, Mr. South said.

"Like any professional services firm we can lose some talent, but there's no question over the last few years we've been a net gainer," he said. Voluntary turnover has decreased slightly, perhaps due to the tight economy, which will slow down hiring, Mr. South said.

Claire Wilkinson

2 Aon

2022 brokerage revenue: **$12.4B**
Percent increase: **1.8%**

Aon PLC implemented more organizational changes over the past year, hired senior staff and made targeted acquisitions as it continued to rebound from its failed effort to buy rival Willis Towers Watson PLC.

The brokerage, which had revamped its organizational structure in 2021 after calling off the WTW deal, in May realigned its operations around two main areas in part to address emerging risks and changing client needs, said Eric Andersen, president of the company.

In addition, the brokerage furthered its diversity and inclusion efforts.

Aon reported $12.4 billion in brokerage revenue in 2022, up 1.8% from the prior year, and remains No. 2 in *Business Insurance*'s ranking of the world's largest brokerages.

Aon performed solidly in 2022, posting 6% organic growth, a year after its protracted attempt to buy WTW collapsed under regulatory pressures, said Meyer Shields, Baltimore-based managing director at Keefe, Bruyette & Woods Inc.

The brokerage is likely still in the process of restaffing in areas where it lost people during the abortive takeover and competing with rivals that recruited aggressively during that period, he said.

Eric Andersen

"It's a high caliber group of professionals and a very strong senior management team, so I think they'll weather this quite comfortably, but we are seeing that concern," Mr. Shields said.

Aon's organic growth last year was "pretty good" but not as good as some of its rivals' gains, said J. Paul Newsome Jr., managing director with Piper Sandler & Co. in Minneapolis.

In addition, the company has a long track record of buying businesses with high profit margins, and it completed fewer deals over the past couple of years, he said.

"It may be that that process has peaked, and they're hitting a point where margin expansion can only really come from pure efficiencies," Mr. Newsome said.

Aon's acquisition strategy focuses on bringing in new capabilities, Mr. Andersen said.

"In areas where we've got these new emerging risks that our clients are dealing with, for us to be able to match the risk and capital, you need insight," he said.

In May, Aon announced a realignment of its operations around two main categories: risk capital, which includes commercial insurance and reinsurance and is headed by Andy Marcell, and human capital, which includes health and retirement benefits consulting and human resources services, which is led by Lambros Lambrou.

As a result of the change, the company will be in a better position to offer services to address emerging risks, for example, by using reinsurance analytics capabilities to address concerns of risk management clients, Mr. Andersen said.

Among the acquisitions Aon completed in 2022 was ERN Evaluacion de Riesgos Naturales y Antropogenicos SA de CV, a Mexico City-based catastrophe modeling company.

Meanwhile, U.S. retail brokerage revenue was pressured in 2022 by reduced demand for transaction-related business, such as representations and warranties coverage and run-off services, which declined with a drop in mergers and acquisitions, according to Aon's 10K filing with the U.S. Securities and Exchange Commission.

"It has grown to be a good business for us," Mr. Andersen said. "But that type of business is nonrecurring by nature, so you see a little bit of that volatility showing up from time to time."

Aon made some notable senior hires over the past year, including Mindy Simon from Conagra Brands Inc. as chief operating officer.

In addition, the brokerage made some recent hires to address emerging risks, including Curtis Scott as future mobility growth accelerator leader and Patty Daberkow, global business development and strategic operations leader. Both had previously worked at Lyft Inc. and Uber Technologies Inc.

Aon has also increased its efforts to hire and promote diverse candidates, Mr. Andersen said.

Since 2021, 20% of Aon's senior executives' short-term incentives have been tied to the success of diversity and inclusion efforts.

Aon's executive committee is equally split between male and female executives, Mr. Andersen said.

"We know it's a long journey and it's probably never over, but ultimately we wanted to take some strong steps internally so our colleagues knew we were serious about developing all kinds of talent," he said.

As of Dec. 31, 2022, 25% of staff and 31% of new hires who disclosed their ethnicity were racially or ethnically diverse.

Gavin Souter

3 Willis Towers Watson

2022 brokerage revenue: **$8.73B**
Percent decrease: **-1.1%**

Willis Towers Watson PLC's brokerage revenue slipped last year as it continued to rebuild its operations following its failed sale to Aon PLC, but its organic revenue growth accelerated in the second half of 2022.

The brokerage, which saw Carl Hess take the helm as CEO at the start of last year, also revamped its senior leadership, made changes to its North American corporate risk and broking arm and continued to make progress with its transformation program.

High-profile hires included Michael Chang, formerly with Sompo International Holdings Ltd., as head of corporate risk and broking for North America. Under Mr. Chang's leadership, the business has since been restructured into industry verticals.

Employee growth accelerated last year, and while WTW will always be in the market for talent, the rebuilding is largely complete, Mr. Hess said.

"There's always a lag between when you bring somebody on and when they're fully productive, but the revenue associated with the people we brought in is in line with our expectations, even if there's still room for them to fully ramp up," Mr. Hess said.

Employee retention has been trending favorably, in part because WTW is "a much more stable organization" than it was 18 months ago, he said.

Among its hires over the past year, WTW brought back almost 800 people who had previously worked for the company.

WTW reported $8.73 billion in brokerage revenue in 2022, a 1.1% decline from the prior year, and retained its position as the world's third-largest brokerage.

After picking up in the second half of 2022, organic growth continued to improve into this year's first quarter, as WTW's risk and broking operation saw a 10% increase.

Some 4% of brokerage revenue WTW reported in 2022 came from organic growth, which refers to the growth in commission and fees, and excludes acquisitions, discontinued operations and foreign currency exchange fluctuations.

The company is still working its way back to performing consistently among its broking peers, analysts say. In the first quarter, WTW revised its free cashflow guidance and flagged pension income as a potential earnings headwind.

Consensus analyst estimates for company revenues and earnings for the balance of this year and next year are already lower than WTW's guidance, said C. Gregory Peters, managing director-equity research, at St. Petersburg, Florida-based Raymond James & Associates Inc.

Once WTW's management makes those revisions, the hope is that things will have "bottomed out" for the brokerage, Mr. Peters said.

WTW "no longer has a reinsurance business and that's one of the businesses right now showing the strongest growth in the brokerage market," but the company's growth in the second half of 2022 and this year's first quarter did start to improve, said Elyse Greenspan, managing director, equity research, insurance, at Wells Fargo Securities LLC in New York.

The company sold its reinsurance business to Arthur J. Gallagher & Co. in late 2021.

WTW's exit from Russia in March last year was another headwind that hit its margins and earnings per share expectations and guidance, she said.

Carl Hess

"We put together a series of targets not just for EPS but for revenue and profitability for 2024, and we see what the bridge is we have to construct to get there on that," Mr. Hess said, adding, "It's a bridgeable gap."

In general, growth is robust and above average in all specialty areas, including natural resources and construction, Mr. Hess said. Directors and officers liability insurance has slowed due to declining rates, while transactional business across the industry has also slowed with rising interest rates, he said.

WTW has said it expects to deliver mid-single-digit revenue growth this year.

Mergers and acquisitions are also back on the table, though "big, transformative M&A" is not what WTW has in mind, Mr. Hess said.

"If there are organizations that help us, whether it's deepening one of our specialty businesses or helping with the geographic footprint that lets us serve multinational organizations more effectively, we're interested and we're going to explore," he said.

Last year, WTW acquired Butterwire Ltd., a financial analytics company with expertise in climate risks, and completed the acquisition of Leaderim, an insurance broking and risk consultancy business in Israel. It also acquired the remaining 51% of its India joint venture.

Claire Wilkinson

4 Arthur J. Gallagher

2022 brokerage revenue: **$8.38B**
Percent increase: **20.3%**

Arthur J. Gallagher & Co.'s revenue soared in 2022 as it absorbed the treaty reinsurance operations of Willis Towers Watson PLC, and the trend is set to continue this year as it completed another major acquisition.

The $660 million April acquisition of BCHR Holdings L.P., which does business as Buck, will significantly expand Gallagher's benefits consulting business and its overall capabilities, the company's top executive said.

The acquisitions will likely also help Gallagher, which is primarily known as a middle-market broker, grow its business with larger policyholders, analysts say.

The Willis Re deal has significantly grown Gallagher's reinsurance brokerage business but has also improved its retail broking capabilities, said J. Patrick Gallagher Jr., chairman, president and CEO of the brokerage.

For example, the reinsurance teams have enhanced the analytics and reinsurance purchasing for Gallagher's public sector pools business, he said.

"Probably 50% of our risk sharing pools around the United States have benefited either in structure, form, product, carrier utilization from the reinsurance people looking at them and saying, 'Hey, have you thought of this?'" Mr. Gallagher said.

In addition, deeper relationships with reinsurers provide retail brokers with better market information, he said.

J. Patrick Gallagher Jr.

Gallagher's reinsurance brokerage revenue leapt from $193.2 million in 2021 to $1.01 billion in 2022. The brokerage also made management changes at Gallagher Re, with James Kent, who had previously led Willis Re, transitioning to a wider role at Gallagher in March before leaving the company last month. He was succeeded as CEO of Gallagher Re by Tom Wakefield.

The Buck deal will also help the brokerage's retail business, Mr. Gallagher said.

In addition to greatly expanding Gallagher's benefits business, Buck brings relationships with some large clients that Gallagher hadn't served, he said.

Gallagher appears to be expanding its prospects to include larger companies, said J. Paul Newsome Jr., managing director with Piper Sandler & Co. in Minneapolis.

"In terms of size of clients, they're changing their stripes a little bit," he said. "They're increasingly international, they're increasingly large, and I think they'll continue to develop their capabilities."

Gallagher reported $8.38 billion in brokerage revenue in 2022, a 20.3% increase over the prior year, and remains the fourth largest broker in *Business Insurance*'s ranking of the world's largest brokers.

In addition to the Buck and Willis Re deals, Gallagher continues its decades-long strategy of buying numerous smaller brokerages. Last year, it acquired 36 brokerages, including Top 100 brokerage M&T Insurance Agency Inc., the same number as in 2021. In the first quarter of this year, the brokerage reported 10 acquisitions, and it announced several more in the second quarter.

While the wider market for brokerage acquisitions has slowed as interest rates have risen over the past year, Gallagher is continuing its pace of deals this year, Mr. Gallagher said. Unlike private equity acquirers, which often use a highly leveraged model, a publicly traded broker like Gallagher can use equity as well as debt to finance deals, he said.

In addition, Gallagher will look to expand its international acquisitions from its established operations in the United Kingdom, Ireland, Australia, New Zealand, Latin America and in Asia, Mr. Gallagher said.

"India will be a big story for us," he said. "That economy is just a rocket ship. We have a brokerage business there, and we are looking for more acquisitions there."

Among other international developments, Gallagher is one of several companies that have been subpoenaed in the U.S. Department of Justice's investigation of alleged corruption at state-owned enterprises in Ecuador. In a filing with the Securities and Exchange Commission last November, Gallagher said it is fully cooperating with the investigation.

In 2022, Gallagher saw exceptional expansion of its profit margins as it capitalized on some expense savings from the COVID-19 pandemic, such as reduced real estate and fewer professional consulting services, said Meyer Shields, Baltimore-based managing director at Keefe, Bruyette & Woods Inc.

"They nailed down in a permanent fashion temporary savings that they'd identified over the course of COVID," he said.

In addition, to growth through acquisitions, Gallagher's brokerage business reported 9.7% organic growth last year and repeated that growth rate in the first quarter of this year.

Gavin Souter

5 Hub International

2022 brokerage revenue: **$3.76B**
Percent increase: **16.5%**

Hub International Ltd. continued its long-time growth strategy over the past year, buying dozens of smaller brokerages while also pursuing new business.

The brokerage also brought in an additional private-equity investor, buying shares of some existing investors, and raised an additional $6.9 billion in debt refinancing.

"Hub's main growth drivers are specifically organic growth and M&A, just as they have been in past years," said Marc Cohen, CEO of the Chicago-based brokerage.

"Our new business during the past three years has been stronger than it has been over the past 25 years," Mr. Cohen said. "The acquisitions that we made in the past have also worked out very well."

Hub reported organic revenue growth of 8% in 2022.

Hub's brokerage revenue grew 16.5% to $3.76 billion in 2022, which compared with the 19.6% increase it reported a year earlier. It retained its position as No. 5 in *Business Insurance*'s ranking of the world's largest brokerages.

The company made 68 acquisitions last year, compared with 72 in 2021, and this year completed 22 deals as of mid-June.

Among its recent acquisitions was Troy, Michigan-based Project Motown Holding Co., an agency platform that owns seven agencies.

"We're looking for firms that have great leadership and that have solid sales cultures, that have a proven history of strong organic growth and, most importantly, for firms that want to take advantage of all the resources, specialists and industry verticals that we've invested in," Mr. Cohen said.

"Our strategy has always been to find very good agencies, surround them with Hub's shared resources, and help them outperform. It is really about finding those firms" with the highest potential, he said.

Timothy J. Cunningham, managing partner at Optis Partners LLC in Chicago, said, "They're a fairly disciplined acquisition company. They're very good at the integration side post acquisitions. The outlook is very positive for them."

Evelyn Ocas Salazar, assistant vice president at Moody's Investors Service in New York, said the credit rating agency recently changed its outlook for Hub to positive from stable. She said the change reflects the company's steady revenue growth and its "quite strong" earnings before interest, taxes, depreciation and amortization.

Mr. Cohen said that looking five years out, he expects Hub "to continue to build our middle-market and small-business client group," while also investing in the upper-middle segment both organically and through recruitment. He said the upper-middle segment is the fastest growing for the brokerage.

Increasing prices over the past several years have not been easy for Hub's clients, Mr. Cohen said. "Our responsibility as insurance brokers is to educate our clients about market dynamics and bring to the table creative options to help them manage those costs," he said.

The strategies employed include greater risk assumption, entering the excess market and exploring alternative risk opportunities such as captives, Mr. Cohen said.


Marc Cohen

"Because we are educating them well in advance of renewals, the key is to not let this be a surprise right before the policy expiration," he said.

The brokerage is also assessing how developments in artificial intelligence could be used in the brokerage sector, Mr. Cohen said.

"We have a 'pilot and learn' culture at Hub, which forces us to be thoughtful around evolving technologies such as AI," he said. "We would like to learn how AI can assist in claims, client servicing, finance, even employee experience-related tasks. After careful assessment and understanding of the impact on our business, we will chart our course, utilizing AI where it makes the most sense for us."

Hub announced in April that Los Angeles-based private equity company Leonard Green & Partners would make a "substantial minority investment" in the broker, which is valued at $23 billion.

Hellman & Friedman, which invested in the brokerage in 2013, will continue to hold a controlling interest in Hub, and Altas Corp., which invested in it in 2018, will remain a significant minority shareholder.

Last month, Hub said it had raised $6.9 billion in debt to refinance its $6.4 billion term loan debt.

In addition, it increased its revolving credit facilities by more than $200 million to finance acquisitions and other investments in the brokerage, the company said in a statement.

Judy Greenwald

6 Acrisure

2022 brokerage revenue: **$3.62B**
Percent increase: **28.5%**

Acrisure LLC posted a healthy rise in revenue in 2022, helping it jump two spots in the ranking of the world's largest brokers, but economic headwinds are making the acquisitions that traditionally have fueled the company's expansion less attractive, which is expected to dampen growth this year.

Higher interest rates and capital costs are likely to slow the pace of mergers and acquisitions, said Gregory L. Williams, CEO of the Grand Rapids, Michigan-based brokerage. "We'll still do a number of deals and we'll still have significant growth in 2023," he said, but it isn't expected to reach the level of previous years.

Meanwhile, other changes at the company have helped fuel speculation that it will go public, maybe as soon as next year.

Acrisure made 116 deals last year, down from 155 in 2021. As of mid-June, the company had closed on or signed letters of intent on 40 acquisitions this year.

Organic growth reached nearly 10% last year, Mr. Williams said. That helped boost Acrisure's 2022 gross revenue by more than $1 billion, to $4.12 billion. Brokerage revenue was up 28.5% to $3.62 billion, pushing Acrisure up two spots to No. 6 in *Business Insurance*'s ranking of the world's largest brokerages.


Gregory L. Williams

Rising property/casualty rates helped grow Acrisure's revenue but higher interest rates hurt its title and mortgage origination business, said Evelyn Ocas Salazar, assistant vice president-analyst at Moody's Investor Service Inc. in New York.

The mortgage business, which is largely related to new construction, was not hit as hard as the title operations that suffered from a slowdown in refinancing, Mr. Williams said. "The increase in interest rates was the most rapid and pronounced in 30 years, so it kind of changed those businesses overnight," he said.

"That clearly added some volatility and margin degradation to their results," said Joseph Marinucci, senior director at Standard & Poor's Global Ratings in Princeton, New Jersey. "Their core business performed well," he said, "but those two lines are a bit more cyclical."

Acrisure in May said it is reorganizing into a regional structure and rolling out a new brand strategy. The company has often allowed its acquisitions to operate under their own names, but the new strategy will see the Acrisure name applied to all of its units.

"We view this as credit positive," Ms. Ocas Salazar said of the reorganization. "In the long run, it's going to be cost-efficient for the company. We've seen other brokers go this way and they see it in their margins. It's a short-term drag but a long-term benefit."

The new approach could signal that Acrisure leadership is positioning the company to go public, a move that has long been discussed, said Joseph Marinucci, senior director at Standard & Poor's Global Ratings in Princeton, N.J. "It's what's being talked about, obviously, because of their growth and where they're intending to go in the next stage of development," he said.

Recent press reports suggested that Acrisure would hold an initial public offering in 2024, but Mr. Williams was noncommittal. "This is probably a public company at some point in time. … Frankly, I don't know that 2024 is the right time."

If Acrisure does go public, "it won't be anytime soon," Mr. Williams said. "I'm leaving all options open as it relates to timing, and, again, it's not a foregone conclusion that that's what we'll do."

Acrisure operates in 21 countries and is looking for opportunities to expand further outside the United States, Mr. Williams said.

The brokerage's international footprint grew earlier this year with the acquisition of Warsaw, Poland-based Unilink SA, which distributes life and nonlife coverage in Eastern and Central Europe, he said.

Acrisure, which considers itself a fintech company, in 2020 purchased the artificial intelligence business of Tulco LLC and has since integrated AI throughout its operations, according to Mr. Williams. "It's infused in and heavily transforming everything that we are doing," he said.

Acrisure uses AI to handle a multitude of tasks, Mr. Williams said, with robotic processing work alone saving more than 5,000 hours a month. AI can predict products and services clients are likely to need and send those leads to sales personnel. The technology can also match those client needs with insurers' appetite to provide coverage, he added.

AI has changed "every facet of the business," Mr. Williams said.

Michael Bradford

7 Brown & Brown

2022 brokerage revenue: **$3.56B**
Percent increase: **16.9%**

Brown & Brown Inc.'s international expansion continued with significant acquisitions in 2022, and new business and rising insurance rates also contributed to solid revenue growth for the brokerage.

"We were really pleased with our performance last year, starting with the organic growth in the business of about 8.1%," said J. Powell Brown, president and CEO.

That organic growth was less than the 10.4% in 2021 but was still high when compared with historical averages, said C. Gregory Peters, managing director-equity research with Raymond James & Associates in St. Petersburg, Florida. "Last year, from an operating perspective, they had a pretty good year," he said.

Brown & Brown reported 2022 brokerage revenue of $3.56 billion, a 16.9% increase over the previous year. The company is No. 7 in *Business Insurance*'s ranking of the world's largest brokerages.

Growth continued through the first quarter of 2023, as revenue for the period rose 23.4% to $1.12 billion. Organic growth was 12.6%, a sharp rise from 7.8% during the comparable quarter in 2022.

Despite its strong performance last year, Brown & Brown's stock underperformed its peers, Mr. Peters said. However, it has rebounded this year and is outperforming the group, he noted.

The dull stock performance in 2022 may have been due to the market's reaction to the acquisition of London-based brokerage Global Risk Partners Ltd., and how losses in captives in last year's third quarter were communicated, Mr. Powell said. "Those are the two things that may have had a downward pressure on it, but I don't know," he said.

The acquisition of GRP — the largest yet for Brown & Brown — was one of 30 deals in 2022 that together represented combined annual revenue of $435 million. GRP, which is largely a retail broker, added $340 million in annual revenue and more than 2,100 employees across the United Kingdom and Ireland.

"The GRP acquisition was an interesting event because it represented a significant initiative to expand into Europe and specifically into the U.K. market," Mr. Peters said.

Another notable deal last year was the acquisition of the operating companies of BDB Ltd., a Lloyd's of London brokerage. "BDB does a lot of business in Italy," Mr. Brown said, and is active in France, the Benelux region, England and Ireland.

Brown & Brown completed seven deals during the first quarter of this year, with estimated combined annual revenue of $11 million.

In May, the brokerage announced plans to further expand internationally, agreeing to buy London-based Kentro Capital Ltd. "Kentro is predominately a program administrator but they also have some trade credit capabilities in England, Ireland and Europe," Mr. Brown said.

As it grows abroad, the brokerage remains "very bullish on the U.S. in terms of acquisitions," Mr. Brown said, noting that the deals made outside the country do not signal a move away from acquiring U.S.-based companies.

"The most important thing in any acquisition is cultural fit," Mr. Brown said. "And we were very fortunate to find a number of businesses that fit culturally last year."

J. Powell Brown

Business is robust this year, which is surprising in some respects, Mr. Brown said.

"We had thought that if you continue to increase interest rates, the economy has to sort of slow down. We haven't really seen that yet, and the vast majority of our customers are really busy."

Still, insurance market conditions remain challenging for the brokerage's clients, particularly for those that need property catastrophe insurance, Mr. Brown said.

"Their presence in the Florida market, which is seeing skyrocketing property rates, has translated into a very strong revenue opportunity for them, and that's likely to persist this year and maybe into next year," said Mark Dwelle, director, insurance equity research at RBC Capital Markets LLC in Richmond, Virginia.

Mr. Dwelle doesn't foresee headwinds that could stall Brown & Brown's growth, but he noted that "at some point, pricing across the board will start to slow, and they're certainly vulnerable to a slowdown in the economy, if that does ultimately emerge. But it certainly wasn't apparent in the first-quarter numbers and it's unlikely to be in the second-quarter numbers, either."

Michael Bradford

8 Truist Insurance

2022 brokerage revenue: **$3.34B**
Percent increase: **16.8%**

A modified ownership structure at Truist Insurance Holdings Inc. should stimulate more growth at the bank-owned brokerage, with a new private-equity stake funding more acquisitions and bolstering existing operations, its top executive says.

The brokerage, which benefits from a broad client base and its large wholesale operations, is also positioned to grow organically, analysts say.

A combination of organic growth and acquisitions helped Truist Insurance increase brokerage revenue nearly 17% in 2022 to $3.34 billion. The brokerage is ranked No. 8 in *Business Insurance*'s ranking of the world's largest brokers.

The February 2023 sale of a 20% stake in Truist Insurance to Stone Point Capital LLC for $1.95 billion values the brokerage at $14.75 billion.

The private-equity investment creates an equity vehicle tied to the broker's performance as opposed to that of the parent bank, which should help with staff recruitment and retention, said John Howard, chairman and CEO of the Charlotte, North Carolina-based brokerage, a unit of Truist Financial Corp.

"Now, with our own equity vehicle, we have a really effective incentive for recruiting, retention and performance, so that our teammates participate in the value they are creating," he said.

John Howard

Mr. Howard said the deal also readies Truist Insurance for the future. "I think you will see some larger acquisition opportunities over the next few years, and I wanted to ensure we were well-positioned for that," he said.

John Wepler, chairman and CEO of Woodmere, Ohio-based mergers and acquisitions consultancy Marsh, Berry & Co. Inc., said the move helps "unlock" the value of the insurance business. "The valuation of Truist Insurance Holdings was not properly reflected within the market capitalization of the bank," he said.

Truist Insurance reported 2022 organic revenue growth of 6.7%, as commercial retail brokerage revenue rose 22.4% to $885.4 million and wholesale revenue increased 14.8% to $1.82 billion.

The brokerage's growth last year was bolstered by two significant acquisitions.

In March 2022, Truist bought New York-based Kensington Vanguard National Land Services LLC, a title insurance agency, which added about $100 million in annual revenue to Truist's title business.

In September 2022, Truist acquired Dallas-based BenefitMall, a wholesale employee benefits broker, which added approximately $150 million in annual revenue to the brokerage's wholesale division. Financial terms were not disclosed in either deal.

Elyse Greenspan, managing director, equity research, insurance, at Wells Fargo Securities LLC in New York, said the organic growth rate shows that Truist is "doing a good job of navigating a hard-market environment." She added that Truist has a larger concentration in the wholesale brokerage sector than its peer brokers, which is a potential advantage as commercial rates continue to rise in aggregate this year.

"Wholesale brokers tend to benefit when business is flowing to nonadmitted markets during a difficult underwriting environment," Mr. Howard said.

Mr. Howard noted steep rate increases and capacity cutbacks in catastrophe-exposed property markets as the greatest challenge for brokers and policyholders but added that concerns persist in casualty markets as a result of both economic and so-called social inflation, or higher court awards and settlements. He said the rate environment for this year's second half will likely largely mimic that of the first half.

Mr. Wepler said that in addition to its spread of retail and wholesale business, Truist benefits from both geographical and client diversity.

"The portfolio of their business across channels is broad," Mr. Wepler said. "They have commercial lines and personal lines; they have mid-market and complex accounts in commercial and employees benefits; they have a very large and deep list of specialty programs; they can run from the smallest main street account all the way up to very sophisticated, high-hazard business. That diversity is beneficial from a stability perspective."

Technology and recruiting also contribute to Truist's growth, Mr. Howard said.

"Technology is becoming a bigger part of the insurance brokerage business. We invest more in technology every year and expect that to continue," he said.

The broker is expanding its recruiting efforts, with this summer's class of 95 interns 25% larger than last year's. "We've really built out our internship program, and that translates into hiring and career development," Mr. Howard said.

Matthew Lerner

SPECIAL REPORT

9 Alliant Insurance Services

2022 brokerage revenue: **$3.22B**
Percent increase: **22.4%**

Strong organic growth, acquisitions and active recruitment helped drive a more than 20% increase in revenue at Alliant Insurance Services Inc. in 2022.

The Irvine, California-based brokerage, which first entered the ranking of the world's Top 10 largest brokers last year, continues to expand its specialty business and seeks additional acquisitions despite rising interest rates.

Alliant reported 13.5% organic growth in 2022. Brokerage revenue increased 22.4% to $3.22 billion, moving it up one spot to No. 9 in the *Business Insurance* ranking.

And the company reported a total of 9,858 brokerage employees in 2022, up from 9,194 in 2021.

"Alliant has consistently been a good performer in the brokerage space, one of our better performers," said Julie Herman, director in the financing services ratings group for New York-based S&P Global Ratings, a division of S&P Global Inc.

Like other brokers, Alliant benefited from favorable insurance pricing and inflation, she said.

Alliant's specialty focus helps it outperform many of its peers, Ms. Herman said. In addition, its strategy of hiring experienced producers with established books of business has spurred growth, she said.

"They have very strong verticals and strong programs that enable solid new business generation fairly consistently," Ms. Herman said.

Alliant focuses on niche expertise and select industries, said Phil Trem, president of the financial advisory division at Woodmere, Ohio-based MarshBerry Inc.

"The one thing that we highlight when we think of Alliant is that they're very specialized," he said.

And while Alliant saw strong organic growth last year, it also grew through acquisitions, Mr. Trem said.

"They are a steady strategic acquirer," he said. "They do acquire firms fairly consistently."

Alliant looks for growth opportunities by expanding internal programs and through acquisitions, said Ilene Anders, Alliant's chief financial officer.

"For us, it's really what makes sense from a specialty perspective and where are the opportunities to build or expand," she said.

Alliant completed 14 acquisitions in 2022, Ms. Anders said, including deals in the energy and nonstandard auto insurance sectors.

"We focused really from a discipline perspective on where there might be companies out there that together we believe can accelerate growth as a result of expanding specialization or geographic footprint," Ms. Anders said.

While rising interest rates, which have increased steadily since last year, have affected the mergers and acquisitions market, Alliant remains "very opportunistic" in how it looks at deals and whether they make sense from a strategic standpoint, she said.

Odessa, Texas-based energy insurance brokerage McAnally Wilkins LLC was a "very large acquisition" for Alliant in 2022, Mr. Trem said.

In addition to growing through acquisitions, Alliant for years has actively recruited from its rivals, and the brokerage has been subject to numerous lawsuits alleging new hires breached previous employment agreements. Ms. Anders said she cannot comment on specific lawsuits.

Ilene Anders

Ms. Herman said Alliant secures experienced producers with well-established books of business and tries to come to a commercial resolution with the former employer or litigate in situations where that is not possible.

"Alliant maybe takes a little bit of a different stance," she said. "That strategy has been successful for them."

Ms. Anders said changing market conditions that have led to higher insurance rates have affected Alliant and the industry as a whole, but the brokerage continues to get "clients' needs served in terms of the coverages, albeit at a higher price."

Increasing interest rates have affected some areas of the company's operations, Ms. Anders said. The brokerage is completing fewer mergers and acquisitions due to the higher interest rate environment, which has increased the cost of capital, she said.

"Fortunately, we've got a lot of other areas of diversification across Alliant that have continued to grow quite well, and so it's more than making up for the slowdown," she said.

Ms. Anders said she expects investment to continue flowing to the brokerage sector, heightening competition and spurring more consolidation. She also expects to see an easing of insurance rates over the next couple of years as conditions around the property market will likely soften.

Jon Campisi

10 Lockton

2022 brokerage revenue: **$3.05B**
Percent increase: **12.8%**

Lockton Cos. LLC continues to focus on organic growth rather than acquisitions as it expands its business in the United States and internationally.

One notable exception in the past year was an acquisition the brokerage made in Brazil.

The Kansas City, Missouri-based brokerage reported $3.05 billion in brokerage revenue for the 2022 fiscal year, ended April 30. That was a 12.8% increase from 2021.

Despite the double-digit growth, Lockton slipped one position to the No. 10 spot in *Business Insurance*'s ranking of the world's largest insurance brokerages. Outside of the three largest brokers, its more acquisitive rivals posted bigger brokerage revenue gains.

A total of 95% of Lockton's growth is organic, said Peter Clune, the broker's president and CEO. "If you're not out doing acquisitions, it's the way to grow, through new business and retention," he said.

Timothy J. Cunningham, managing director of Optis Partners LLC in Chicago, said Lockton is an "extremely impressive organization" that has quietly and deliberately built a significant international presence.

About 23% of Lockton's commercial retail revenue is derived from non-U.S. offices.

Peter Clune Ron Lockton

In May, Lockton acquired Sao Paulo, Brazil-based full-service insurance and reinsurance broker THB Group Brazil from Amwins Global Risks Group Ltd. for an undisclosed sum.

"That was part of an overall Latin America strategy," Mr. Clune said, noting Lockton has increased its business in Argentina, Brazil and Chile.

Three years ago, Lockton hired Jose Otavio Sampaio, who is CEO of Lockton Brazil, and others from Willis Towers Watson PLC. Their addition "really changed the look and feel" of Lockton's business in Brazil, where it now has more than 500 people and its business has tripled over the past three years, Mr. Clune said.

The brokerage has seen significant growth in its overall reinsurance operations. Its reinsurance brokerage revenue increased 30.4% to $186.8 million in fiscal 2022. Industry surveys showed significant reinsurance rate hikes during Jan. 1 renewals.

Wholesale revenue for the broker increased 20.4% to $184.8 million.

Lockton also has a "very robust platform domestically in the U.S., both P/C and benefits," Mr. Cunningham said.

Mr. Clune said Lockton has a retention rate of more than 97% while also logging "record new business." The broker surpassed the $3 billion revenue mark in its 57th year in business, with $1 billion of that being added in the past 24 months.

The brokerage has actively recruited, with its total staff increasing about 15% in 2022.

"When people are treated right, empowered to do their job and have a shareholder that's willing to take a much lower margin, they can have the resources they need to do their job, that the culture's no longer just some soft statements on the wall,'" Mr. Clune said.

Among key hires, in December Lockton named Sara Romine, formerly assistant vice president with AT&T Corp.'s legal department, as U.S. general counsel. She succeeded Ann Abercrombie, who retired after 18 years with Lockton.

Chairman Ron Lockton said, "We spend a lot of time each year focusing on being able to maintain Lockton's private ownership and in paying attention to succession planning."

There is no designated successor at this point to the company founded by Ron Lockton's father, Jack, in 1966. Potential candidates in the next generation range in age "from three-and-a-half to 27," Mr. Lockton said.

Mr. Lockton said "the Lockton family, including myself, retains active client relationships. I've been a producer at Lockton since 1991, and still consider myself a producer," he said.

Lockton works with its clients several years out "to determine the most efficient way to manage the total cost of risk," so its clients have not been surprised by what has happened with rising rates, Mr. Lockton said.

The brokerage is also actively involved in taking advantage of artificial intelligence.

"We have a large amount of data at the heart of everything we do," Mr. Clune said.

"We use AI to help us ask better questions, generate greater insights and produce better outcomes for our clients.

This is refined by the experience and wisdom of our associates, but AI for Lockton is all focused on a greater client experience."

"We're excited about the future of AI," Mr. Lockton said. "We see it as an opportunity to add capabilities and large data sets" and perform better analyses.

Judy Greenwald

RESEARCH & DATA

Broker M&A deals steady after slowdown

BY STEVEN E. GERMUNDSON, TIMOTHY J. CUNNINGHAM & DANIEL P. MENZER

TOP BUYERS

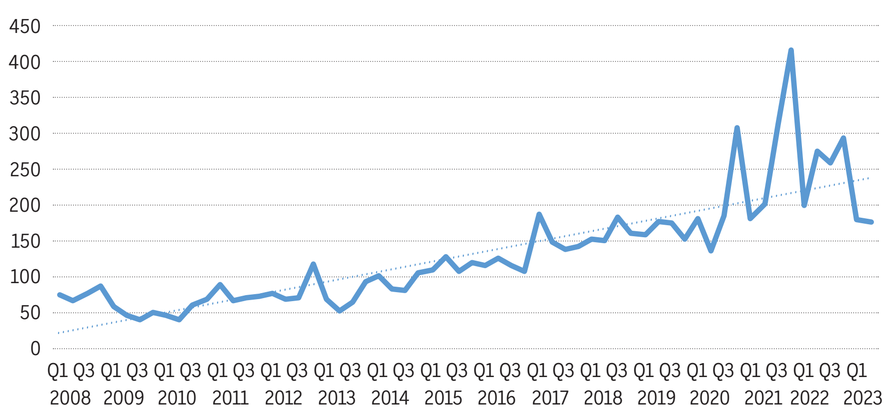
The top buyers during the first half of 2023 are shown below with comparable totals for 2018 through 2021:

Buyer	Company type	1st half 2019	1st half 2020	1st half 2021	1st half 2022	1st half 2023
Hub International Ltd.	Private equity/hybrid	26	28	25	34	29
BroadStreet Partners Inc.	Private equity/hybrid	17	30	19	16	26
Inszone Insurance Services	Private equity/hybrid	2	4	3	21	22
World Insurance Associates LLC	Private equity/hybrid	8	12	14	8	17
Patriot Growth Insurance Services LLC	Private equity/hybrid	19	9	5	15	16
Leavitt Group	Private	7	6	12	10	14
Arthur J. Gallagher & Co.	Publicly held	16	9	10	9	14
Keystone Agency Partners LLC	Private equity/hybrid	0	1	3	11	14
Risk Strategies Co. Inc.	Private equity/hybrid	4	5	2	7	13
Integrity Marketing Group LLC	Private equity/hybrid	2	1	0	11	12
TOP 10 TOTALS		101	105	93	142	177
ALL OTHERS		232	208	287	332	183
TOTALS FOR 1ST HALF OF YEAR		**333**	**313**	**380**	**474**	**360**

Source: Optis Partners LLC

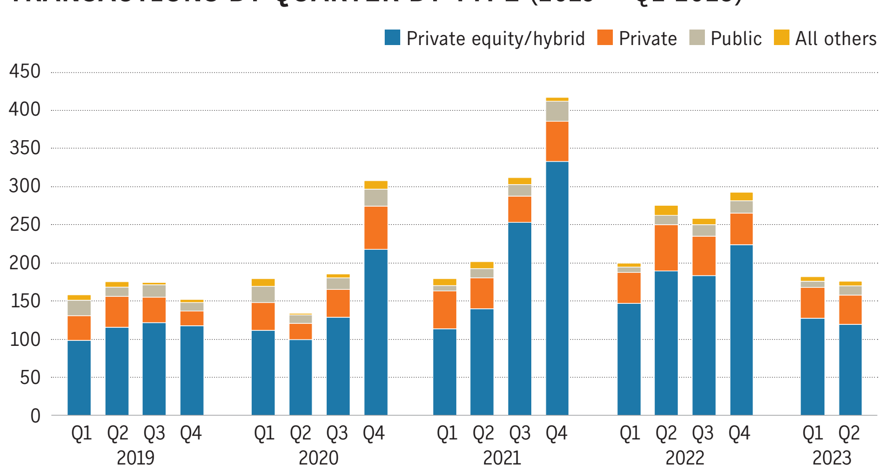
HISTORY OF DEALS TOTALS (Q1 2008 – Q2 2023)

Insurance agency and brokerage acquisitions by quarter:



Source: Optis Partners LLC

TRANSACTIONS BY QUARTER BY TYPE (2019 – Q2 2023)



Source: Optis Partners LLC

Merger and acquisition activity in the first half of 2023 among North America's insurance agents and brokers dipped below 2021 and 2022 levels but was nonetheless ahead of the pace set in earlier years.

While rising interest rates and a somewhat restrictive lending environment have led some buyers to stand on the sidelines over the past 12 months, there are plenty of others that are very active, including a large number of firms making their first deal.

The total number of U.S. and Canadian transactions involving property/casualty agents and brokers, benefits brokers, managing general agents, third-party administrators and related businesses during the first half of this year fell 24% to 359 from 474 during the first half of 2022 but was equal to the previous five-year average.

On a quarterly basis, there were 177 transactions during the second quarter, more than a third lower than the 275 reported in the same period in 2022. On a trailing 12-month basis, the deal count was 913, 11% lower than the 1,028 reported in all of 2022 and 24% below the 1,203 reported for the year-earlier period.

Buyers' appetite beyond the traditional insurance distribution targets has expanded significantly over the past few years. The broad buy-side universe has a deeper appetite, with a marked increase in seller types that includes more life insurance and financial services companies, including wealth management, human resources consulting, actuarial services and other ancillary business directly or tangentially related to insurance distribution. There have been 36 such acquisitions so far in 2023, which is a third lower than the 54 reported in the same period last year.

Private-equity-backed firms continue to dominate the deal-making landscape, something that we don't see changing for many years ahead. What has changed to some degree is which firms appear to be most active: World Insurance Associates LLC, Risk Strategies Co. and NFP Corp. appear on the Top 10 list of most active buyers for the first time. Also appearing for the first time is Leavitt Group, which is the only private firm to appear on this list.

Hub International Ltd., BroadStreet Partners Inc. and Inszone Insurance Services LLC were out front in the first half of 2023 reporting 29, 26 and 22 deals, respectively. While Hub's pace was off 15% over the same period in 2022, BroadStreet increased its activity by more than 60%, and Inszone was up 5%. Each of the remaining 10 most active buyers picked up their pace over the same period in 2022 by 10% or more. World Insurance Associates led all by more than doubling its deal count.

In total, the 10 most active buyers booked nearly half of the announced transactions so far in 2023, and there were 74 buyers that booked the rest. In total, there were 39 buyers that did more than one transaction in the first half of 2023, and there were 33 that reported making their first acquisition.

Historically active buyers whose transaction count dropped below their five-year average included Acrisure LLC, which is focusing more on integrating its purchased business than making new deals. Also in this category are PCF Insurance Services and Baldwin Risk Partners LLC, both of which have largely suspended dealmaking for the time being.

So far in 2023, there has been only one large transaction. In May, BroadStreet Partners acquired Canadian broker Westland Insurance Group Ltd. Westland had been a very active acquirer, having completed 47 transactions since 2018.

Among the very large brokers, there were two that reported significant minority investments by private equity. Truist Insurance Holdings Inc. sold a 20% stake in its brokerage business to Stone Point Capital LLC, and Hub International announced it will sell a substantial minority interest to Leonard Green & Partners LP, with a closing scheduled for the third quarter of this year.

Despite the fact that some historically very active buyers have slowed or stopped deal activity, the total number of buyers remains robust. This includes very large privately held firms that are becoming more acquisitive. There is plenty of evidence to suggest that we are still in a seller's market.

We anticipate deal activity to remain steady throughout the remainder of 2023. The number of deals closed may be 10%-20% off the peak in 2021, but it should still be well above the volume from earlier years.

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COMMENTARY

Humans supply missing link for AI

Human resources professionals have been trying to use more objective standards in recruitment for decades. Rather than relying on personal connections to find candidates and intuition to assess their abilities, organizations have turned to an array of methods to ensure they are either hiring or promoting the right person for the job.

Some hiring aids have been more accepted than others. As someone with handwriting a 6-year-old would be ashamed of, I for one have always been skeptical of the value of graphology in assessing a job candidate's suitability for a position, for example.

Others, though, have been widely acknowledged as successful methods to remove bias in hiring. Blind auditions, where musicians play to appraisers from behind a screen, have been shown to greatly reduce gender and racial bias in hiring by orchestras.

Gavin Souter
EDITOR

As we report on page 6, artificial intelligence is the latest tool being used to make recruitment more efficient and to reduce bias in the process.

But like many other technology applications, AI needs to be used in tandem with human assessments when it is tapped to help fill positions.

One of the major concerns with using AI in hiring and promotion is that despite the apparent objectivity of a machine, AI can introduce bias. That's because the algorithms used are based on historical data that could include biases, and if the information is accepted unchecked it can perpetuate those biases rather than reduce or eliminate them.

In addition, anyone who has ever been involved in the hiring process knows that it's an art as well as a science. While it's imperative to be aware of potential preconceptions when making decisions, qualities such as the ability of candidates to be creative or collaborate are not easily assessed by an algorithm.

The same is true for promotions. While data on performance and achievements play an important role, issues such as leadership ability, interpersonal abilities and other soft skills must also be assessed.

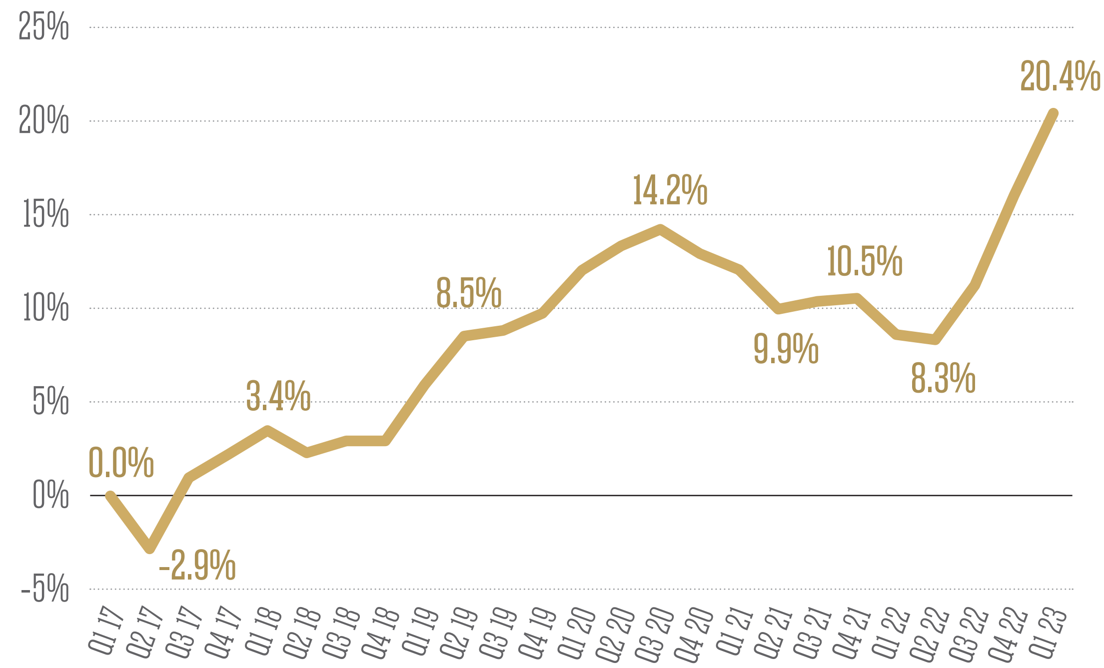
Lawsuits alleging bias by companies that use AI in hiring have already been filed, more will follow and, if any are successful, a flood of litigation will no doubt begin.

In addition, states and municipalities are introducing measures to regulate the use of AI in hiring, and the Equal Employment Opportunity Commission has signaled that the issue is on its radar.

Such concerns should not deter companies from using AI to streamline and improve what can be a difficult and laborious process. To mitigate against potential liabilities, though, organizations should perform regular audits of their AI-based hiring systems, ensure that legal, HR and risk management collaborate to manage the exposures and ultimately make certain that the process of hiring people is controlled by people.

PREMIUM CHANGE FOR COMMERCIAL PROPERTY

(Q1 2017 - Q1 2023)



Source: The Council of Insurance Agents & Brokers

VIEWPOINT

Property market takes hits

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

Recent decisions by major homeowners insurers to exit California's property insurance market are concerning as millions across the U.S. continue to feel the brunt of extreme weather and natural catastrophes, including convective storms, dangerous levels of heat, tornadoes and wildfires. As State Farm and Allstate recently announced they would stop issuing new home insurance policies in the Golden State, citing catastrophe exposures, inflation and higher construction costs, the reverberations are being felt in many parts of the country.

Just last month, I received mail from my homeowners insurer informing me of "important information" about my property insurance premiums. The upshot is that the insurer, like many others, has filed a request for a 35% rate increase on its property insurance product with New Jersey's insurance regulator. Under the proposed filing, the average homeowners policy will see a rate change of 36.3%. While it's not yet clear whether the increase will be approved and how it will affect my renewal, what is clear is that the wider property insurance market is at a crossroads.

For storm-hit states like Florida and Louisiana, the exits and rate increases by insurers are all too familiar. The impact of major hurricanes through the years has resulted in heavy insured losses in both commercial and personal lines insurance markets. While coverage in catastrophe-prone areas can still be found, it's at a much different price point and with more restrictive terms and conditions. Swiss Re issued a report last month in which it openly acknowledged that U.S. property/casualty insurers are responding to higher inflation and natural catastrophe losses with rate increases when possible and exits when not. The focus may be on homeowners, but underwriting actions are extending to other lines, including commercial property, Swiss Re said.

Meanwhile, brokers report that rate increases, which commercial property owners have been dealing with for at least five years, accelerated in the first half of this year. Buyers are understandably frustrated, and some are reducing their limits and buying less coverage. The move to retain more risk is not for everyone, but long-recognized alternatives to the traditional market, including captives and parametrics, are becoming mainstream and seem set to play an even larger role in the evolving property market.

Property premium in captives has increased rapidly in recent years, and parametric coverages for various catastrophe exposures, including wildfire and flood, are said to be seeing significantly greater uptake. As we report on page 10, the increased demand for parametrics is not just a response to accelerating prices, declining capacity and rising retentions in traditional property markets. Improved data is enabling parametric coverages to be structured more effectively with triggers that are better designed for organizations facing complex weather risks, which means buyers have more confidence in them.

While property markets could soften if this year's hurricane season proves benign, and some stability could return, what may not return quite as quickly is the premium that has left the traditional market. Creative ways to self-insure higher deductibles and retentions — and to plug gaps in programs — along with improved data and analytics are providing more options for organizations. Barring a significant fall in property insurance premiums, they will remain a mainstay of hard and soft markets.

How to avoid talking yourself out of your insurance coverage

Jacquelyn Mohr Heitman is a partner in Pasich LLP's Manhattan Beach, California, office and a member of the firm's insurance recovery practice. She can be contacted at jheitman@pasichllp.com.

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Policyholders often think that once their insurer has agreed to cover their claim, their obligations are done. That is not the case. Insurance policies generally contain provisions imposing a "duty to cooperate," which requires policyholders to provide additional information and assist the insurers in their investigation. Unfortunately, far too often, insurers rescind coverage based on information policyholders provide in response to requests that seem innocuous. Given that insurers regularly use the gathered information to deny coverage obligations, it is critical for policyholders to understand their coverages and limitations to ensure they don't inadvertently give information insurers can use against them.

This article analyzes a policyholder's duty to cooperate with its insurer, the extent of the obligations owed, insurer attempts to fish for information that can later be used to dispute coverage and what policyholders can do to protect themselves.

Duty to cooperate

Many insurance policies purport to impose a duty to cooperate on the policyholder. These provisions require the policyholder to cooperate with the insurer in the investigation of a claim and assist with the defense of a suit brought against the policyholder.

A common cooperation clause in a commercial general liability policy may state, "You must cooperate with us in the investigation or settlement of the claim or defense against the 'suit.'" Insurers contend that such provisions are necessary to assist them in the adjustment of claims or to help them defend policyholders against underlying lawsuits.

A policyholder may breach the duty to cooperate by refusing to: provide any information to its insurers, attend examinations under oath, assist insurers in their investigation, participate in the defense of an underlying claim or otherwise stonewall the insurers. Failure to cooperate may be grounds to deny coverage.

If a claim is made or a suit is filed, the insurer will often request information from the policyholder. While the insurer may appear to be gathering information about the claim, sometimes it may be fishing for information it could later use to deny the claim.

Insurer tactics

Though these tactics are employed by insurers in both first-party and third-party contexts, it is often more pronounced with third-party policies. For example, most third-party liability insurance policies impose a duty to defend upon the insurer, meaning the insurer has an obligation to hire defense counsel to defend the policyholder against a lawsuit brought by a third party. When a policyholder provides notice of a third-party suit, the insurer should be focused on providing a legal defense. However, insurers sometimes agree to defend under a reservation of rights, while gathering information that could be used to deny a claim.

In this regard, an insurer may ask the policyholder questions that could elicit responses that are later used to rescind coverage. For example, many CGL policies do not cover bodily injury or property damage known to have occurred prior to the policy period or is expected or intended from the standpoint of the policyholder. If an underlying suit alleges bodily injury or property damage, but is unclear regarding the time frame, an insurer may inquire as to when the bodily injury or property damage first occurred or when the policyholder first had knowledge of the damage or injury. As a practical matter, defense counsel is often the go-between for the insurer and the policyholder.

> An insurer may literally have millions of reasons (read: dollars) to try to avoid providing a defense or paying for a judgment or settlement of a third-party suit against a policyholder.

Thus, if an unwitting policyholder tells defense counsel that the injury or damage pre-dates the policy period, the insurer may use the information to deny coverage. The insurer-appointed defense counsel is not generally permitted to withhold information from insurers, even if the information leads to a coverage denial. Thus, as the architect of the litigation strategy, defense counsel is sometimes able to control whether to pursue discovery on issues that may be germane to coverage disputes. This creates an inherent conflict of interest for the parties.

Fortunately for policyholders, many states have developed statutory or common law to address this concern. Specifically, if the insurer has reserved rights to later deny the claim based on certain facts that may be developed during the case, the policyholder may be entitled to select its own independent counsel to defend against the third-party suit.

Although insurers must still pay for independent counsel, they do not have the right to receive information directly from independent counsel. Understanding this conflict of interest can allow a policyholder to demand independent defense counsel and help avoid the issue.

Tips for policyholders

Many policyholders misunderstand their relationship with their insurers. While an insurance policy does create a contractual bond between the policyholder and insurer, it is an arm's-length relationship.

Depending on the policy limit, an insurer may literally have millions of reasons (read: dollars) to try to avoid providing a defense or paying for a judgment or settlement of a third-party suit against a policyholder. If your insurer has not agreed to provide a complete defense, its interests may not be aligned with yours. This situation can also raise privilege issues: If the policyholder provides documents and information to the insurer, some courts have held that this can constitute a waiver of attorney-client privilege — another important consideration for policyholders to keep in mind when communicating with their insurers.

Policyholders that receive a request for information from their insurer should try to understand the purpose behind the request. Is the request for information material to the defense of the third-party suit or the coverage investigation? Or does the request seek information seemingly unrelated to the claim or defense? If it's the latter, beware: Your answer may provide the insurer with an escape from its coverage obligations.

Policyholders should be especially cautious regarding requests for information related to timing or the policyholder's knowledge of specific events. Policyholders should review the coverage triggers and exclusions of their policies to better understand the purpose behind insurer requests for more information and avoid making statements that the insurer can later cite as an argument for why a particular exclusion should apply.

If an insurer threatens to argue that a policyholder has breached its duty to cooperate, the policyholder should know that under applicable law the insurer must demonstrate that it suffered prejudice, or even substantial prejudice, from the alleged breach. This is a high bar.

Forewarned is forearmed: better understanding their duty to cooperate and the purpose behind insurer requests for information can help policyholders better protect their interests and avoid talking themselves out of coverage.

MARKET PULSE

Insurtech Corvus offers cyber risk endorsement

■ Insurtech Corvus Insurance Holdings Inc. said it is introducing an endorsement to its Corvus Signal cyber risk prevention program, which it introduced in May.

The endorsement reduces by 25% the self-insured retention for policyholders that use the security tools available in Corvus Signal, the company said.

The Boston-based insurtech said eligibility for the endorsement is determined during the underwriting process.

Aviation program manager partners with SiriusPoint

■ Aviation insurance specialist Air Centurion Services Inc. said that from Aug. 1 SiriusPoint Ltd. will provide capacity for its programs.

Previously, units of James River Group Inc. provided capacity for the Santa Barbara, California-based program manager, which started operations in 2016 and writes coverage for U.S. airlines and general aviation policyholders.

Air Centurion will also increase its liability capacity to $25 million from $20 million, said President Jason Niemela, in an email.

“Aviation capacity has been flat, but many companies are starting to offer larger lines on risks, so our plan is for moderate growth over the next 12 months,” he said.

The company offers $3 million in physical damage capacity.

Insuretrust launches private-equity division

■ Specialty brokerage Insuretrust launched a private-equity division, which will be headed by former Marsh LLC cyber leader Florence Levy.

The division will place coverage and offer risk management services, including digital and cyber risk management, to private-equity firms involved in frequent merger and acquisition transactions, the Norcross, Georgia-based unit of Starwind, a CRC Group company, said in a statement.

Ms. Levy joined Insuretrust as an executive vice president in March.

Coalition launches cyber scoring system

■ Managing general agent Coalition Inc. announced a vulnerability scoring system to help risk managers mitigate potential cyber threats.

The Coalition Exploit Scoring System uses real-time monitoring and dynamic scoring to determine which vulnerabilities to patch first, Coalition said in a statement.

The system uses artificial intelligence and large language modeling to scan descriptions used within newly released Common Vulnerabilities and Exposures — a database of publicly known information security vulnerabilities — and compares them with previously published vulnerabilities to predict the likelihood that a business will be exploited.

The scores generated by the system give IT and security managers a prioritization list outlining which vulnerabilities pose the greatest threat.

“Thousands of new vulnerabilities are published monthly, and it’s nearly impossible for IT and security teams to quickly understand and address them all,” Tiago Henriques, Coalition’s head of security research, said in the statement.

The online system is already being used by Coalition to evaluate risks and notify policyholders about them.

PRODUCTS & SERVICES

BRP covers private equity, venture capital

■ BRP Group Inc. said it would begin offering coverages for activities and operations in the private-equity and venture-capital sectors.

The industry verticals will support both buy- and sell-side transactions, including transaction risk and due diligence, advising venture firms on protecting their investments and partners’ personal assets, and building insurance programs for private equity and venture capital, a BRP statement said.

Available coverages will include property/casualty insurance at the firm level for global exposures; directors and officers and professional liability; outside directorship liability and employment practices liability; and cyber liability.

Portfolio company directors and officers liability and other management liability insurance will also be available as well as property/casualty coverages.

Among the leaders of the private-equity and venture-capital practices are Travis Holt, senior partner, senior vice president of private equity; Pam Mason, senior partner, senior vice president of venture capital; John Warren, senior partner, senior vice president of private equity; and Lidore DeRose, senior partner, senior vice president of transaction risk.

Chubb offers quoting platform for cyber risks

■ Chubb Ltd. introduced Cyber Central, a quoting platform designed for agents and brokers that specialize in cyber risks.

The insurer said in a statement the platform simplifies the process of quoting and issuing cyber technology errors and omissions and miscellaneous professional liability coverages on a stand-alone basis.

A spokesman said in a statement that limits can vary depending upon the type of business, the security controls the business has in place, and the types of coverage desired by the business.

Insurtech offers excess tech E&O capacity

■ San Francisco-based insurtech Embroker Inc. said it would offer excess technology errors and omissions coverage with up to $5 million in limits through its digital platform.

The minimum attachment point for the excess coverage, which is available to wholesale brokers, is $1 million.

Embroker, which launched in 2015, is supported by a panel of eight reinsurers.

Cowbell, Skyward partner on cyber insurance

■ Cowbell Cyber Inc. said it is partnering with Skyward Specialty Insurance Group Inc. to offer an expanded version of its cyber insurance program.

A spokeswoman for the Pleasanton, California-based insurer said in a statement that Cowbell introduced Prime 250 Cyber Liability and Prime Tech in 2020 for small and medium-sized enterprises with annual revenue of up to $250 million.

She said the strategic partnership with Houston-based Skyward Specialty “will broaden our appetite to underwrite companies with revenue up to $500M immediately, and in the near future write tech E&O insurance.”

DEALS & MOVES

Berkley sells division to AssuredPartners unit

W.R. Berkley Corp. unit Breckenridge IS Inc. said it sold its insurance services division to Accretive Insurance Solutions, a wholesale and program management unit of AssuredPartners Inc.

In a statement, W.R. Berkley said it will recognize an estimated pretax net realized gain on investment of $86 million on the sale in the second quarter. Other financial details were not disclosed.

The division specializes in property/casualty wholesale brokerage, contract binding and program administration, and includes Breckenridge Insurance Services LLC and Breckenridge Insurance Group Inc., which does business as Breckenridge General Agency.

Hub acquires seven Michigan agencies

Hub International Ltd. said it has acquired Troy, Michigan-based Project Motown Holding Co., an agency platform that owns seven agencies.

Terms of the transaction were not disclosed.

The acquisition consists of Johnston Lewis Associates Inc., Business Benefits Resource LLC, Joseph Aiello & Associates Inc., T. Souphis Insurance Consulting LLC, Custom Results Corporate Consulting, Creative Benefit Solutions and Health Insurance Consultants.

Project Motown has more than 60 employees.

Core Specialty makes medical stop-loss buy

Core Specialty Insurance Holdings Inc. said it has formed a medical stop-loss division by acquiring Standard Life and Accident Insurance Co., the medical stop-loss managing general underwriter unit of American National Group.

Jim Stelling, who most recently was an executive vice president at American National Insurance Co., will join Core Specialty as president of the division.

King Insurance Partners buys New Jersey agency

Gainesville, Florida-based King Insurance Partners said Wednesday it has acquired Pavese-McCormick Agency Inc. of Monmouth Junction, New Jersey.

Pavese-McCormick provides personal and commercial lines coverages, including property and liability lines as well as specialties including cannabis.

PEOPLE

"We've seen a gradual shift in the industry from a focus on loss recovery to predictive analytics. Analytics help to inform better decision-making to prevent losses before they happen and to mitigate severity when losses can't be avoided."

UP CLOSE

Denise Perlman

NEW JOB TITLE: Richmond, Virginia-based president of national business insurance, Marsh McLennan Agency

PREVIOUS POSITION: Richmond, Virginia-based executive vice president of business insurance and national partnerships, Marsh McLennan Agency

OUTLOOK FOR THE INDUSTRY: We've seen a gradual shift in the industry from a focus on loss recovery to predictive analytics. Analytics help to inform better decision-making to prevent losses before they happen and to mitigate severity when losses can't be avoided. It's no surprise that good risk management practices lead to a better overall experience and healthy financial outcomes.

GOALS FOR YOUR NEW POSITION: Further engagement with all Marsh McLennan businesses to build the best solutions for our clients.

CHALLENGES FACING THE INDUSTRY: Our team just did an analysis on this question. We identified the top five challenges that mid-market business leaders should be tracking this year — economic inflation, catastrophic risk, corporate governance, litigation and cyber risk. The impact of these trends includes higher costs for goods and services, supply chain disruptions, greater scrutiny of business practices, exposure to costly lawsuits and attacks on digital systems. Through robust risk management and effective risk transfer, organizations can protect their people and property as well as preserve opportunities for near-term and long-term growth.

FIRST EXPERIENCE: I started my career as an intern my junior year of undergrad at Essex Insurance Co. Upon graduation, I came back to Markel Corp. as a full-time employee. My first experience in the field was in business development for Markel's Mid-Atlantic region.

ADVICE FOR A NEWCOMER: Ask questions, be naïve and take it all in. Build your network and seek a mentor.

DREAM JOB: Food critic.

COLLEGE MAJOR: Bachelor of science in business administration in marketing for undergrad and MBA for grad school.

LOOKING FORWARD TO: The opportunity to spend more time on strategic initiatives for our business insurance team, our offerings and, in turn, delivering more innovative solutions to clients.

FAVORITE MEAL: Anything Italian: chicken Parmesan, angel hair spaghetti and sausage, pizza.

FAVORITE BOOK: "Great Expectations"

HOBBIES: Gardening, golf (I just started and really like it) and tennis.

FAVORITE TV SHOW: "Ozark"

ON A SATURDAY AFTERNOON: Being active. Spending time with my husband, daughter and miniature schnauzer, going to the park with my daughter and planting flowers. Sometimes on the weekends, I work at my parents' garden center and nursery we've had for 29 years.

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ON THE MOVE

American International Group Inc. said **Sabra Purtill**, who had been interim chief financial officer since January, will serve in that post on a permanent basis. The insurer said Shane Fitzsimons, who had served as CFO, was stepping down following a medical leave of absence.

Relation Insurance Inc. named **Tim Hall** CEO, succeeding Joe Tatum, who will remain on the board of the private-equity-backed brokerage. Mr. Hall, who was named president of Relation in December, joined the company as head of mergers and acquisitions in 2019.

Willis Towers Watson PLC named **Todd Lynady** multinational trade credit leader. Mr. Lynady was previously global head of insurance at fintech LiquidX Inc. He is based in New York.

IMA Financial Group Inc. said it would launch a government contractors specialty and named **Karen Dobson** to oversee it as national practice director. Ms. Dobson, based in Washington, was most recently head of international property and casualty for NFP Corp.

Aspen Insurance Holdings Ltd. named former American International Group Inc. executive **Robert Tartaglia** as senior vice president, chief operations officer, insurance. Based in Jersey City, New Jersey, Mr. Tartaglia was previously operational strategy and growth leader at AIG.

Everest Reinsurance Group Ltd. named **Trevor Gallagher** head of U.S. facultative reinsurance. Most recently, Mr. Gallagher was executive vice president of national accounts at American International Group Inc., where he worked for 23 years. He will be based in Warren, New Jersey.

PTO days beat health benefits

More American workers would rather have more days off than health insurance from their employer, according to a survey by Pew Research Center.

The Washington-based group surveyed 5,902 workers in February with questions about their current job, experiences in the workplace and workplace benefits.

Approximately 62% of workers said it's important to have a job that offers paid time off, compared with 51% of respondents who said having employer-paid insurance is the priority.

For workers who said their employer offers them paid time off for vacation, doctor's appointments, or to deal with minor illnesses, 48% said they take all the time off provided, while 46% said they take less time off than what's allowed.

Chatbot digs up artificial case law

A lawsuit filed against a Colombian airline over an injury caused by a beverage cart flew off course, as the plaintiff's attorney, instead of combing through legal volumes for case law, used a chatbot to locate cases to cite in his legal brief.

Avianca Airlines attorneys later discovered that the cases don't exist.

As reported by the New York Times, a federal judge confirmed the phony citations in a court filing regarding sanctions for the plaintiff's lawyer: "Six of the submitted cases appear to be bogus judicial decisions with bogus quotes and bogus internal citations."

The plaintiff's lawyer admitted in affidavits that he had used OpenAI's chatbot for his research and to verify the cases. He said he asked the chatbot if it was lying, according to the article.

He later attested that he "greatly regrets" the incident.

HEALTH INSURERS DINK PICKLEBALL IS BAD NEWS

Pickleball injuries could cost American insurers hundreds of millions a year, as insurance companies are reporting a surge in hip replacements, knee surgeries and other elective procedures, according to the Daily Mail.

The recent surge of interest in the sport of badminton-meets-tennis-meets-pingpong coincides with what UnitedHealth Group reports as a "higher-than-expected" frequency of injuries resulting in surgeries.

UBS Group analysts say some of the uptick, resulting in surges in health care costs between $250 million and $500 million, is likely because the number of pickleball players increased by 159% in three years. Of those, around one-third are seniors who are playing at least eight times a year, according to the Daily Mail.

The most common injuries from what has been dubbed "America's fastest-growing sport" include strains, sprains and fractures, with the wrist and lower leg being the most susceptible, Bloomberg reported.

LeBron cries foul in food fight

A LeBron James-backed pizza chain is hoping to score in court after another restaurant chain allegedly committed trademark infringement, SFGATE reported.

Mr. James, of the Los Angeles Lakers, is a part owner of Blaze Pizza, a company that filed a lawsuit against Blaze BBQ for operating under a similar name, the newspaper reported.

The suit alleges that Blaze BBQ is running its business with the same brand color scheme, using an identical restaurant points system, and offering pizza on its menu, according to the newspaper.

"Defendants' acts ... were clearly calculated to confuse consumers into believing that Defendants' goods and services originate with or are otherwise affiliated with or sponsored or endorsed by Blaze," the lawsuit reads.

Coming attraction: Travel insurance

Seventy-eight percent of travelers are likely to purchase trip protection for their summer excursions, which will likely come with infamously nonrefundable show tickets, according to a survey by Allianz Partners USA.

Theater shows and music festivals are topping travelers' wish lists for 2023 summer travel plans, according to the survey of 5,000 consumers, which found that 60% of travelers are bracing for entertainment "after years of restrictions."

As the travel insurance company points out, "some of the world's most famous music stars are announcing upcoming world tours while Broadway show classics are roaring back to life via sold-out shows."

According to Allianz Partners' survey, 39% of customers are planning to attend a theater or show, while 21% are purchasing tickets for a concert or music festival.

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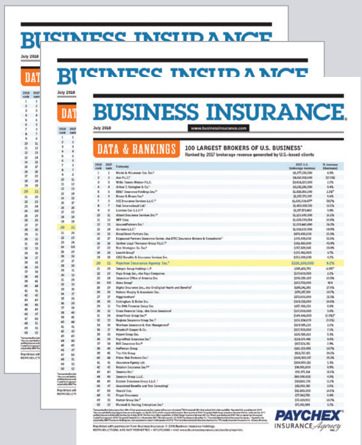

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