HOSPITALITY: Emergency accommodation requirements change hotel risks - PAGE 4

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COVER STORY

Rising material costs and shortages and an acute shortfall of skilled labor are hammering the construction sector. And when seeking insurance coverage, project owners and contractors face still firming rates and capacity cutbacks. Together, these factors can upset project scheduling and make securing coverage a challenge. **PAGE 18**

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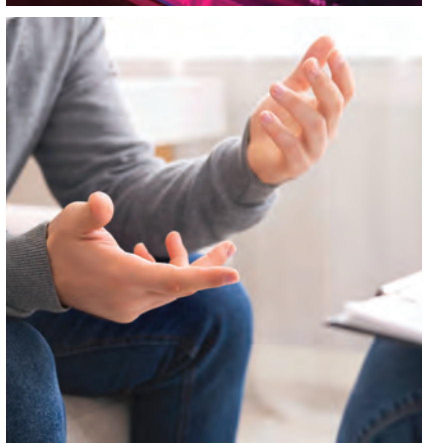

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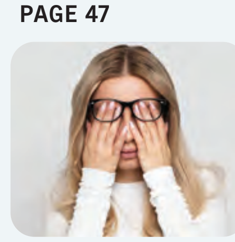

VIEW FROM THE TOP

SIERRA SIGNORELLI

Sierra Signorelli was named CEO of commercial insurance at Zurich Insurance Group Ltd. in March 2021. Based in Zurich, she is responsible for defining and implementing strategy for the insurer's global commercial business. Ms. Signorelli discusses how risk managers can get involved with ESG issues and the outlook for the commercial market. **PAGE 16**

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NEWS ANALYSIS

Emergency lodging trend alters hotel risks

CLAIRE WILKINSON
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Hotels that shift from short-term to extended-stay properties face greater scrutiny from insurers and potentially rate increases and tightening coverage, experts say.

Water damage, slip and fall accidents, fire and security risks are among insurer concerns. Hotel owners and operators need to inform brokers and insurers of any operational changes immediately, they say.

In recent weeks, New York City announced plans to lease various underused hotels to house asylum seekers, and an initiative that would require hotels in Los Angeles to provide vacant rooms to homeless people will go before voters in 2024, the City Council decided in August.

Communities may use hotels as emergency or temporary shelters in extreme weather or disasters, for homeless populations and as relief centers for migrants. Many hotels also adapted their operations during the pandemic, opening their rooms to health-care workers and other extended-stay guests.

If a hotel provides temporary or shelter housing, whether for a displaced or migrant community and it's still on a nightly basis for a short period of time, the risk profile doesn't change much, said Kimberly Gore, national practice leader of Hub International Ltd.'s hospitality practice, who is based in Myrtle Beach, South Carolina.

But if a hotel wants to engage in a lease with a municipality, such as New York, that could "change their classification from what we consider a hotel insurance definition to a long-term solution," Ms. Gore said.

Hotels should expect additional questions and even a supplemental application conversation with underwriters, and "it may or may not change their insurance rating," she said.

When a hotel shifts to long-term rentals, there tends to be greater wear and tear on the property because conventional hotel rooms are not designed for full-time occupancy, said Alexandra Glickman, senior managing director, global practice leader, real estate and hospitality, at Arthur J. Gallagher & Co. in Los Angeles.

> "The underwriters will look at this as a much higher risk, asset and operation, so that's going to correspond to increased pricing."
>
> Alexandra Glickman,
> Arthur J. Gallagher & Co.

Insurers also have liability concerns about potential drug use and dealing, and sexual abuse and molestation, Ms. Glickman said.

"The underwriters will look at this as a much higher risk, asset and operation, so that's going to correspond to increased pricing," and greater likelihood that it would go into the excess and surplus lines market, she said.

There's also a strong possibility that deductibles and retentions would increase, she said.

Currently, the market still has a willingness to provide coverage, but underwriters are doing their due diligence to understand the protections in place, said Michael Rouse, New York-based U.S. property practice leader at Marsh LLC.

"In some instances, they are adjusting deductibles to contemplate for perhaps a different type of loss frequency," that would be expected from a longer-term stay or residential-type risk versus a hotel operation, Mr. Rouse said.

Insurers are being presented with a different type of exposure than what they signed up for, said Brad Brown, program president at Griffin, Georgia-based Southern Hospitality Underwriters Inc., part of CRC Group Inc.

More insurers have exited this class of business and those writing it have introduced manuscript endorsements that may specifically exclude housing of COVID-19 patients, housing of COVID-19 workers and homeless people, Mr. Brown said.

"There are many endorsements to address what is truly a new exposure in this class of business," he said.

Depending on how hoteliers respond to underwriters' additional questions, there may be a slight increase in rate, said John Welty, Exton, Pennsylvania-based president of Suitelife, a managing general underwriter and part of Ryan Specialty LLC.

It's a question of whether the right practices are in place and "if they are, there should be little change in the overall rating of an account," Mr. Welty said.

That's not necessarily a reflection of the shift to extended stay but a function of the insurance marketplace and supply and demand, he said.

Market conditions have been choppy for the hospitality sector coming out of the pandemic and on top of the general market hardening, brokers said.

Hotels have seen rate increases of 25%-plus on both the casualty and property side since 2020 in the early days of the pandemic, Mr. Brown said.

Hoteliers should get a legal review of the agreement that a city or state is offering and ask themselves, "Is my return on investment, based on this agreement, sufficient for me to sustain the type of quality account that I want to be in this marketplace?" Mr. Welty said.

They need to consider how this change will impact other guests and share the agreement with their broker or agent, he said.

One client originally attracted to the notion that it could fill up its hotels recently "made a decision that it didn't want to commit to this bright object," Ms. Glickman said.

"And it was (in) a major metropolitan city, so the rent was outweighed by the risk," she said.

SECURITY, SAFETY ISSUES AMONG TOP CONCERNS FACING EVOLVING INDUSTRY

Hotel operators need to think about managing risks in a different way when a property becomes extended stay, experts say.

From a loss prevention and loss control perspective, a long-term-stay hotel becomes more of a habitational risk, said Stephen McKay, U.S. property risk advisory leader at Marsh LLC in New York.

Greater vigilance around fire protection — such as enforcing no-smoking rules and designating outdoor smoking areas, inspecting rooms regularly to prevent water damage, and minimizing occupancy loads in rooms — are steps hotel operators can take to manage the risks, Mr. McKay said.

Security and safety are top liability concerns in hospitality and lodging, said Kimberly Gore, national practice leader of Hub International Ltd.'s hospitality practice, who is based in Myrtle Beach, South Carolina.

"Knowing who is supposed to be on the property, who is coming in and out, and locking of doors" should be priorities, Ms. Gore said.

When a hotel has a mix of both short-term and extended stay guests, this becomes even more important as there may be additional visitors to a property providing social and other services, she said.

Managing possible language barriers is also critical, said John Welty, Exton, Pennsylvania-based president of Suitelife, a managing general underwriter and part of Ryan Specialty LLC.

"Whatever the languages, do you have staff that can communicate?" Mr. Welty said.

The bottom line is cleanliness and overall security of the property, said Brad Brown, program president at Griffin, Georgia-based Southern Hospitality Underwriters Inc., part of CRC Group Inc.

Claire Wilkinson

NEWS ANALYSIS

DOL rule change may fuel litigation

BY JUDY GREENWALD
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A U.S. Department of Labor proposal that would expand the number of workers who are considered employees rather than independent contractors potentially could lead to more employment-related lawsuits, experts say.

They also point out, however, that interpretation of the governing law on this issue, the 1938 Fair Labor Standards Act, is determined by the courts, which may not necessarily give deference to the DOL's own analysis of the law.

Furthermore, more than a dozen states, including California and New York, have laws that apply an “ABC” rule, which involves three interlocking methods for determining which workers should be classified as employees, and are not subject to the FLSA on this issue

Some observers describe the DOL proposal as an effort to bring federal enforcement more in line with these state laws while still complying with the FLSA.

The DOL has changed its approach to this issue several times in recent years, reflecting the party of the administration holding office, experts say (see related story).

The proposed rule would return the standard of evaluating who is an employee to the one established during the Obama administration and would reject the more pro-business standard of the Trump administration, which is now in effect, observers say.

It would restore the multifactor analysis to determine whether a worker is an employee or a contractor and ensure all factors are analyzed without assigning a “predetermined weight” to any one, among other impacts, the DOL said, in describing the proposal as “more consistent with longstanding judicial precedent.”

“The department is trying to downplay the impact of this rule, but make no mistake, it is designed to have a much broader brush with respect to determining employee status,” said Michael J. Lotito, San Francisco-based shareholder and co-chair of the Workplace Policy Institute at Littler Mendelson P.C.

“I don't think it revolutionizes the independent contractor employee” concept, but instead puts less focus on control and profit and loss in determining a worker's status than in the Trump administration's regulation, said Eric B. Meyer, a partner with FisherBroyles LLP in Philadelphia.

Michael W. Kelly, a partner with Squire Patton Boggs in San Francisco, said, “It's going to excite the plaintiff lawyers” and it is “going to cost businesses a lot of money, one way or another, whether they are paying just for fines, or judgments.”

Noah A. Finkel, a partner with Seyfarth Shaw LLP in Chicago, said, “This is an area where traditionally courts defined who's an employee and who's a contractor.”

The DOL rule “isn't a rule in the standard sense,” but an interpretation of the FLSA, Mr. Finkel said. The department's rules are not binding and will be used “only to the extent the court finds them to be persuasive,” he said.

With scores of judicial decisions on the law issued since 1938, the courts “will follow their precedent,” said Richard Reibstein, a partner with Locke Lord LLP in New York.

Mr. Kelly said, “I agree that the courts are going to continue to look at their history, but when they're doing their job correctly,” they will also look at regulations issued by the agency that is charged with enforcing the underlying laws, “so I don't think this is something any business can ignore.”

Meanwhile, more than a dozen states operate with the ABC test, which is more stringent than the latest DOL proposal, leading plaintiffs attorneys to file litigation on this issue under state, rather than federal, law.

Under California's ABC test, for instance, an employer must consider a worker a contractor if he or she is free from the hiring entity's control and direction; performs work that is outside the usual course of the hiring entity's business; and is customarily engaged in an independently established business of the same nature involved in the work performed.

“This is one area where states are being restrictive” in designating workers as independent contractors, in part to ensure individuals are appropriately paid, but also to generate income from workers compensation and unemployment insurance, said Jonathan A. Segal, a partner and managing principal with Duane Morris LLP in Philadelphia.

The DOL's notice of proposed rulemaking indicates the Biden administration considered adopting the ABC test burden but decided not to because it cannot use its rulemaking authority “to enact such a massive change,” said Aaron Goldstein, partner with Dorsey & Whitney LLP in Seattle.

The latest proposal is “somewhere between where they were and where the ABC test is, and I do think it's going to move the test that gets applied on a national basis a lot closer to California but not quite there,” Mr. Kelly said.

In light of the proposed rule, employers in non-ABC states should take a fresh look at their policies, observers said.

“There's going to be more attention paid to the FLSA once this rule takes effect,” which presumably the DOL wants to happen “before it ramps up certain investigations,” Mr. Meyer said.

“You want to look now to make sure you've got it right, or at least got it close enough, going forward,” he said.

“Employers should be reviewing who they have as independent contractors and examine the potential cost of misclassifying them under the new test,” versus the burden, challenge and expenses of classifying them as employees, Mr. Kelly said.

CLASSIFYING EMPLOYEES

The latest U.S. Department of Labor proposal on classifying employees and independent contractors would:

- Align the department's approach with courts' Fair Labor Standards Act interpretation and the “economic reality” test.
- Restore the multifactor analysis to determine whether a worker is an employee or contractor.
- Ensure all factors are analyzed without assigning a “predetermined weight” to any factor.
- Revert to “longstanding interpretation” of the economic reality facts, which include investment control and opportunity for profit or loss factors.
- Assist with employees' and independent contractors' proper classification.
- Rescind the Trump administration's independent contractor rule.

Source: U.S. Department of Labor

CONTRACTOR REGULATION SHIFTS AGAIN

The U.S. Department of Labor's varying positions on how to define independent contractors and employees reflects the changes in administration.

Regulation on the issue is based on the Fair Labor Standards Act, the 1938 law that requires an employer to pay an employee a minimum wage as well as overtime compensation for hours worked in excess of a 40-hour week.

Observers say in some ways regulation in this area is an effort to adapt a decades-old law to a changing economy.

“It does have a mindset of someone who's standing in line to punch a timeclock,” as opposed to the gig economy, in which many workers are classified as independent contractors, said Christopher L. Nickels, a partner with Quarles & Brady LLP in Milwaukee.

Guidance issued by the Obama administration in 2015, which reflected an expansive view of who is an employee, said some employees were being intentionally misclassified as independent contractors to cut costs and avoid compliance with the labor law.

In January 2021, during the waning days of the Trump Administration, the Labor Department issued a more restrictive final rule that focused on workers' control over the work and their opportunity for profit and loss, in determining whether they were employees or independent contractors.

The rule was scheduled to take effect in March 2021, but its implementation was delayed because of its review by the Labor Department under the Biden administration.

In May 2021, the Biden administration rescinded the rule, with Labor Secretary Marty Walsh stating this would “help preserve worker rights and stop the erosion of worker protections that would have occurred had the rule gone into effect.”

But in March 2022, a federal court in Beaumont, Texas, said the DOL's withdrawal of the rule was illegal, holding that before rescinding it the department “was required to contemplate alternatives within the ambit of the rule” but had failed to do so.

As a result, the Trump administration rule has remained in effect, which prompted the latest DOL proposal.

Judy Greenwald

Property insurers set to raise rates further

GAVIN SOUTER
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Commercial insurers look set to impose significant rate hikes on property insurance buyers at year-end as they face large third-quarter catastrophe losses, mainly from Hurricane Ian.

At industry meetings and during earnings calls last month, insurers, reinsurers and brokers all indicated that substantial rate hikes will be applied to catastrophe exposed property risks.

The rate hikes will likely also have a broader reach as reinsurance capacity falls and other losses related to inflation and higher court awards hit liability lines (see related story).

Property insurers were already looking for rate hikes prior to the Category 4 storm hitting the Gulf Coast of Florida in September.

While many of the losses from Ian, which various modelers say could result in more than $50 billion in insured losses, will hit auto and homeowners insurers hard, commercial insurers operating in Florida are also expected to pay significant amounts in storm-related claims.

In addition, reinsurers, which support insurers operating nationwide, are expected to see big losses and limited retrocessional reinsurance capacity and will pass on some of their increased costs to insurers and ultimately policyholders through higher rates at Jan. 1 renewals.

In late October, several insurers and reinsurers announced hundreds of millions — and in some cases more than $1 billion — in catastrophe losses for

Reuters

Losses from Hurricane Ian hit insurers' third-quarter results, which likely means buyers will face tough renewals.

the third quarter. Industry bellwether Travelers Cos. Inc. reported a 20% drop in quarterly profit and said it expected $512 million in pre-tax catastrophe losses.

Executives at the world's largest brokerage, Marsh & McLennan Cos. Inc., on its earnings call said property insurance rates will likely increase and property catastrophe reinsurance rates, which were already expected to rise 20% to 25% or more, will likely rise even higher.

> "There's clearly a prognosis that the market is going to get more disruptive as we go into 2023."
>
> Kevin Smith, Liberty Mutual Insurance Co.

"The property market, particularly property cat, was already in a massive transition where everyone was expecting 1/1 to be a difficult date," said Mike Karmilowicz, New York-based CEO of Everest Insurance, a unit of Everest Re Group Ltd.

He was speaking during an interview at the Insurance Leadership Forum held Oct. 7-11 in Colorado Springs, Colorado. The annual event is organized by the Washington-based Council of Insurance Agents & Brokers.

Prior to Hurricane Ian, property rates were expected to rise, said Mike Rice, Denver-based CEO of CAC Specialty.

"A lot of people were saying they thought rates probably were going to go up 10 points, but after Ian maybe it's 20 points," he said.

"There's clearly a prognosis that the market is going to get more disruptive as we go into 2023," said Kevin Smith, Chicago-based president of global risk solutions, North America, at Liberty Mutual Insurance Co. "Capacity is going to be very, very valuable, and who's going to deploy it and where is yet to be determined, but it's fair to say it's going to be a tumultuous market."

Losses from the storm likely mean that renewals will be even tougher for reinsurance cedents and primary insurance buyers, said Mike Kerner, CEO of Munich Re Specialty Insurance, a Princeton, New Jersey-based unit of Munich Reinsurance Co.

A demand for more catastrophe coverage as valuations have increased due to inflation, the strength of the dollar reducing available U.S. capacity for some overseas insurers, and climate concerns were already putting pressure on the market, he said.

Even insurers that don't face huge losses from the storm may see their reinsurance costs rise, said Jonathon Drummond, Chicago-based head of broking North America for Willis Towers Watson PLC.

"Every carrier is concerned about the downstream effect of this, meaning all the reinsurers and retrocessional reinsurers will be impacted," Mr. Drummond said.

Reinsurers usually have broad coverage agreements with insurers, so higher reinsurance prices will likely affect insurance pricing beyond Florida, said Paul Lavelle, New York-based head of U.S. national accounts at Zurich North America.

"Even without Ian rates in property were probably going to go up, and this is just an event that can't be ignored," he said.

Reinsurers were also expected to look for rate hikes before Ian hit, said several attendees at the American Property Casualty Insurance Association's annual meeting in Dallas Oct. 2-4.

Ian had an immediate effect on available capacity, which is going to be a challenge for the industry, said Justin Lorence, Minneapolis-based senior broker at Lockton Re, part of Lockton Cos. LLC.

"The largest of the large reinsurers were already trying to come to grips with how they'd support potential increased demand at 1/1 in light of inflation and the risk appetites of clients," he said.

According to Aon PLC, global reinsurance capital declined 11% in the first half of 2022.

A further $10 billion to $20 billion in limits is being sought at Jan. 1, said Paul Anderson, Minneapolis-based executive managing director, U.S. property growth leader, at Aon. "What everyone's working through right now is where that capacity will come from … and Ian will add a little challenge along the way."

Claire Wilkinson contributed to this report.

CASUALTY PRICE HIKES COME DOWN FROM HIGHS, BUT MORE INCREASES LIKELY

While the direct effect of Hurricane Ian will likely hit property insurance lines hardest, casualty rates are also expected to continue rising.

General inflation and social inflation, or higher court awards and settlements, are still affecting liability lines of business, but the casualty market has been hardening for four years, so insurers are more comfortable with rating levels for many lines of coverage, insurers and brokers say.

"Rates were going up 20% to 30% and now they are going up 5% to 10%. I don't think the market is giving up ground relative to inflation," said Mike Kerner, CEO of Munich Re Specialty Insurance, a Princeton, New Jersey-based unit of Munich Reinsurance Co.

Inflation and social inflation continue to pressure the liability insurance market, but rate hikes have come off their highs, said Paul Lavelle, New York-based head of U.S. national accounts at Zurich North America.

"After three years, they're still increasing but not at the pace they had been," he said. "It's probably high single- to low double-digit rate increases."

Liability rates have stabilized but are unlikely to soften, said Paul Smith, Parsipanny, New Jersey-based senior vice president, carrier relations, at H.W. Kaufman Financial Group Inc.

Cyber liability, though, where rates have rocketed since the beginning of the COVID-19 pandemic, will likely remain difficult, he said.

Liability capacity is also returning, said Jonathan Drummond, Chicago-based head of broking North America for Willis Towers Watson PLC.

At the height of the market in 2018, it was possible to buy up to about $2.2 billion in excess liability capacity, Mr. Drummond said. After the market began to harden in 2020, capacity for individual clients fell to about $625 million on average, but since then insurers have expanded capacity and it's now possible to buy about $1 billion in capacity, he said.

"The capital that's here is offering more capacity than they did in the heart of the hard market," Mr. Drummond said.

In directors and officers liability, more than 20 new entrants have entered the market over the past year, he said.

D&O renewal rates have fallen significantly as more insurers have entered the market, following sharp rate increases over the previous three years, said Denver-based Mike Rice, CEO of CAC Specialty.

"People are targeting anything where they think there's some rate," he said.

Gavin Souter


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NEWS ANALYSIS

Lyme disease offers clues on long COVID, but claims experience limited with both

BY LOUISE ESOLA
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Long-term issues with Lyme disease and COVID-19 infections are strikingly similar, and much can be learned from a disease that stems from a tick bite, medical experts say.

Symptoms of Lyme disease and COVID-19 have been described as equally debilitating and mysterious.

Long COVID is "similar to a Lyme disease type of situation, where you're seeing not just one condition," but possibly neurological, pulmonary and cardiac impacts, said Jennifer Laver, a partner in the Mount Laurel, New Jersey, office of comp defense firm Weber Gallagher Simpson Stapleton Fires & Newby LLP. "There are multiple layers, so it's a lot more complicated than normal" workers comp claims, Ms. Laver said.

In March 2020 — before some 20 states passed COVID-19 presumptions — Ms. Laver began drawing comparisons between COVID-19 and Lyme disease to explain how a COVID-19 infection might be compensable in workers comp, based on occupations and likely exposure to the pathogens.

However, despite the similarities, Lyme disease in comp "is very rare and only a few states allow for it. It's not something we see," said Mark Walls, Chicago-based vice president of client engagement at Safety National Casualty Corp.

> "It's a situation that is case by case and where you've got to have the evidence of the exposure, the right occupation, where that exposure could have taken place."
>
> Glenn Shor,
> University of California at Berkeley

Lyme disease was briefly in the spotlight in workers comp in April when New York lawmakers attempted to make it a compensable illness. That bill died in committee, as was the case in other states that attempted to create a presumption over the past few decades. For example, West Virginia legislation on the subject failed to advance in 2010.

California has had a presumption in place since 2002 for certain first responders, such as those working in areas where they are exposed to ticks, and for state Conservation Corps members.

While Lyme disease is compensable in some cases if the worker can show he or she was bitten by a tick at work, data and case management experiences are hard to come by, even in a presumption state such as California, according to experts. And the workers comp industry has little to go on in comparing Lyme disease and long COVID in terms of claim management and outcomes.

"It's the same problem for all of these long-tail diseases," said Lorraine Johnson, Los Angeles-based CEO of the advocacy group LymeDisease.org and principal investigator for its research arm, MyLymeData.

"The medical system does a pretty good job of handling acute illness — something that's easy to diagnose, easy to treat and then they send you on your way — but they do not do a good job with chronic diseases, or with a long-tail illness that persists after an infection. And that's the situation here," she said, adding that the lack of medical experience leads to a lack of understanding when it comes to insurance coverage such as workers comp and disability.

LYME DISEASE AND DISABILITY

25% of sufferers receive disability or public support, 37% of them for more than 5 years.

39% of those who applied for disability benefits were denied support based on disability guidelines.

65% of patients with chronic Lyme disease have had to cut back or quit work or school.

Source: Lymedisease.org

Lyme disease often goes undiagnosed, as there are no "good" medical markers for the long-term issues associated with it, and the availability of medical specialists attuned to the disease is scant, Ms. Johnson said.

The U.S. Department of Health and Human Services estimates that cases go underreported by a factor of 10, and LymeDisease.org, in a study published this year, found that 86% of the reason a Lyme disease sufferer's treatment is delayed is due to "inadequate physician education."

Whether attention to long COVID could lead to interest in Lyme disease remains to be seen, experts say.

"COVID changed everything," said Brian Allen, Salt Lake City-based vice president of government affairs, pharmacy solutions, for Mitchell International Inc., a subsidiary of Enlyte Group, which provides workers comp services.

Historically, it's been common for Lyme disease claims in workers comp to be denied on the premise that a person can be bitten by a tick anywhere, experts say.

LONG-TERM ISSUES ASSOCIATED WITH LYME DISEASE

- Post-treatment Lyme Disease Syndrome includes pain, fatigue or difficulty thinking that last for more than six months after treatment is finished.
- Long-term symptoms of untreated Lyme disease include severe headaches and neck stiffness; rashes; facial palsy; arthritis with severe joint pain and swelling, particularly in the knees and other large joints; intermittent pain in tendons, muscles, joints and bones; heart palpitations or an irregular heartbeat; episodes of dizziness or shortness of breath; inflammation of the brain and spinal cord; nerve pain; shooting pains, numbness or tingling in the hands or feet.

Source: Centers for Disease Control and Prevention

Several large workers comp insurers declined to speak on the issue, as did many third-party administrators.

State data is not readily available. Connecticut, a Lyme disease hot zone and one of the few states that tally occupational exposure, reported just 45 work-related tick bites that led to Lyme disease in 2021. The Maine Department of Labor last reported on Lyme disease in 2011, when there were 32 occupational cases; historically, the highest total reported in the state was 83 cases in 2006.

The lack of occupational illness claim activity likely stems from prepandemic reasoning, when infectious diseases were typically not covered for most workers outside of a hospital setting, experts say. That was before 2020 when a wave of states passed COVID-19 infectious disease presumptions that the industry had argued were flawed, as in many cases the virus could be contracted anywhere.

In 2016, a letter written by a Miami Beach, Florida, city manager made headlines when, referring to two denied claims for the then-common Zika virus contracted by two police officers, he called on the officers to provide proof that they contracted the virus while on duty and said they must "identify the specific infected mosquito" that caused their illness.

Referring to the relationship with Lyme

disease and similar illnesses, Glenn Shor, an adviser for the National Council for Occupational Safety and Health and a lecturer and researcher with the Center for Occupational and Environmental Health at the University of California at Berkeley, said, "How do you determine whether it's an occupational exposure that would be eligible for workers comp?

"It's a situation that is case by case and where you've got to have the evidence of the exposure, the right occupation, where that exposure could have taken place. … I don't think you're ever going to know it's 100% related to work, because people can be exposed, just like with COVID, in many places."

Workers comp claims that are denied rarely wind up in the courts, often because of a lack of medical evidence, experts say. When cases are litigated, the results are mixed.

In 2021, an appeals court in New York denied compensability on "insufficient medical evidence" for a security guard who filed a claim for Lyme disease six years after being bitten by two ticks while out on patrol. Conversely, in 2013, that same appeals court ruled that a construction worker's Lyme disease was compensable, as he had been working in a wooded area and "voluminous" medical evidence connected a 2008 tick bite to his muscle weakness and eventual total disability.

Also in 2013, an appeals court in New Jersey ruled that a park service worker's Lyme disease was compensable as she patrolled areas where ticks were and often pulled ticks off her clothing.

"It's always been case by case," said Steve Wurzelbacher, Cincinnati, Ohio-based manager of the U.S. Centers for Disease Control and Prevention's Center for Workers' Compensation Studies at the National Institute for Occupational Safety and Health. Data on Lyme disease is "pretty rare and we haven't had much that's been published in the review literature," Mr. Wurzelbacher said.

Data starts to emerge on 'mysterious' condition

The mystery of long COVID continues to baffle health care providers and the workers comp industry, though recent data and experience are shedding some light, according to experts.

The National Council on Compensation Insurance reported in October that 24% percent of COVID-19 workers compensation claimants have or have had long COVID. Overall, 20% of non-hospitalized and 47% of hospitalized workers with admitted COVID-19 claims developed long COVID, according to the Boca Raton, Florida-based ratings agency.

NCCI relied on claims data extending through the first quarter of this year for claims with accident dates between March 2020 and June 2021. The data "does not fully reflect the potentially longer-term impacts of long COVID," NCCI said.

It marked the first time the ratings agency studied an infectious disease such as COVID-19, and long-term issues that extend beyond the study

years will continue to be a focus, NCCI actuary Robert Moss said.

"This long COVID issue … is so mysterious, and there's nothing to compare it to," Mr. Moss said.

The report highlighted the number of medical specialties involved in caring for a patient with long COVID, which comprise more than 150 medical codes associated with the diagnosis and are grouped into eight symptom groups. The most common, in order, are pulmonary and cardiovascular, followed by neurological, systemic, endocrine, autoimmune, mood disorders and sleep disorders.

Mary Meagan Campbell-Pittman, a Dallas-based senior case manager for Genex, an Enlyte Inc. company that helps manage care for workers comp patients, has two long COVID patients in her caseload. Her patients see several specialists to manage issues that are pulmonary and cardiovascular in nature, and frequent scans are prescribed to monitor the physical effects of the virus, she said. But some symptoms are subjective, adding to the complexity of managing the disease, she said.

These "symptoms were not really able to be proven," such as fatigue, mental strain, forgetfulness and brain fog, she said.

"COVID is very strange in how it acts with someone; you can be doing very well, and you can be on a positive trajectory of healing and improving, and then you could have a really bad day and you take three steps back," she said.

Louise Esola

LEGAL BRIEFS

Students' COVID lawsuit reinstated

■ A federal appeals court reinstated putative class-action litigation filed by Tulane University students seeking partial reimbursement for the COVID-19-related cancellation of their in-person classes.

Sylvia Jones and John Ellis had filed suit against the private university in New Orleans, stating they had paid $2,199 per credit hour for in-person classes before they were canceled because of the pandemic, plus additional fees, while online students paid $476 for the equivalent credit hour, according to the ruling by the 5th U.S. Circuit Court of Appeals in New Orleans in *Sylvia Jones v. Administrators of the Tulane Educational Fund, et al.*; *John Ellis v. Tulane University*.

The U.S. District Court in New Orleans dismissed the litigation. In overturning that ruling, the federal appeals court held in a 2-1 opinion that the claim "is not barred as a claim of educational malpractice because the students do not challenge the quality of the education received but the product received."

The ruling said also, "We reject Tulane's argument that the breach-of-contract claim is foreclosed by an express agreement between the parties, because the agreement at issue plausibly does not govern refunds in these circumstances."

In remanding the case for further proceedings, the appellate court said the students had "plausibly alleged implied-in-fact promises for in-person instruction and on-campus facilities.

Fall not compensable due to marijuana

■ An appeals court in Mississippi found that a worker with marijuana in his system did not suffer a compensable fall at work on the presumption that the drug caused his accident.

While working as a steel connector-iron worker for Cheyenne Steel Inc., Miles Meek in 2018 tripped and fell 20 feet from a beam, striking a man-lift on the way down and suffering what was an "admitted injury during the course and scope of his employment," according to *Miles Meek v. Cheyenne Steel Inc. and American Interstate Insurance Company*, filed in the Court of Appeals of Mississippi.

Mr. Meek, who injured his shoulder, hip and back, was on temporary total disability until late 2019, when he reached maximum medical improvement. He was eventually assigned a 2% impairment rating, which he argued was incorrect.

A drug test taken at an emergency room after the accident showed that he had marijuana in his system, which the company said it did not discover until two years after the accident.

Despite paying benefits, Cheyenne argued in court against the nature and extent of the injuries and the disability, and pleaded intoxication as an affirmative defense to the claim.

In ruling against Mr. Meek, the appellate court said the law "clearly states that if a drug test shows 'the presence, at the time of injury, of any drug illegally used … it shall be presumed that the proximate cause of the injury was the use of a drug illegally.'

"Marijuana … was illegal at the time of Meek's accident and no mechanism existed by which he could have legally ingested it."

Insurer prevails in assault case

■ An insurer does not have to indemnify a customer who was injured by a gas station-convenience store employee in Austin, Texas, under an exclusion in its coverage, a federal appeals court said, in affirming a lower court.

In June 2019, Paul Semien became embroiled in a dispute with a clerk over Mr. Semien's entitlement to store credits based on awards he won from its video poker machines, according to the ruling by the 5th U.S. Circuit Court of Appeals in New Orleans in *Paul Semien v. The Burlington Insurance Co.*

The clerk left his post behind a glass-enclosed counter and hit Mr. Semien on the head with a metal pole, causing severe injuries, the ruling said. Mr. Semien sued the store owner, Houston-based T&T Global Enterprises Inc., and the clerk in state court.

At the time of the incident, T&T had a commercial general liability insurance policy issued by Burlington, North Carolina-based Burlington Insurance Co. that provided up to $100,000 in coverage for assault and battery. The policy excluded coverage when the assault and battery was committed by an insured, which was defined to include T&T employees "for acts within the scope of their employment."

Citing this exclusion, Burlington denied it had a duty to defend T&T and the clerk. Mr. Semien subsequently entered into a settlement with T&T and the clerk. As part of the settlement agreement, they assigned Mr. Semien the right to pursue claims against the insurer.

Mr. Semien sued Burlington in U.S. District Court in Houston, which ruled in the insurer's favor. A three-judge appeals court panel agreed, saying a "reading of the underlying pleading negates plaintiff's contention that (the clerk) was outside the scope of his employment at the time of the assault."

Fireworks firm loses coverage appeal

■ An Axa XL unit does not have to defend or indemnify a fireworks company in connection with two incidents in which volunteers were injured, a federal appeals court ruled.

In 2018, two volunteers, Timothy Olson and Todd Zdroik, suffered injuries while volunteering at Fourth of July fireworks displays in the Wisconsin towns of Rib Lake and Land O' Lakes, according to the ruling by the 7th U.S. Circuit Court of Appeals in Chicago in *T.H.E. Insurance Co. v. Trey D. Olson, as special administrator of the estate of Timothy L. Olson, et al.* Mr. Olson later died of unrelated causes.

Mr. Olson's estate and Mr. Zdroik sued the fireworks distributor, Bellevue, Wisconsin-based Spielbauer Fireworks Co., in Wisconsin state court.

Spielbauer's insurer, Axa XL unit T.H.E. Insurance Co., filed suit in U.S. District Court in Green Bay, seeking a declaration it had no duty to defend or indemnify the fireworks company based on a "Shooters Endorsement" exclusion in its general and excess liability policies. The endorsement said the policy would not provide coverage for injuries or deaths "to shooters or their assistant hired to perform fireworks displays or any other persons assisting or aiding in the display of fireworks."

The district court ruled in the insurer's favor and was affirmed by a three-judge appeals court panel, which agreed with the lower court that the reference to "any other persons" included volunteers.

DOCKET

UBER EATS DRIVER NOT ENTITLED TO COVERAGE

A New Jersey law that requires "transportation network companies" to provide at least $1.5 million in underinsured motorist coverage does not apply to food delivery services such as Uber Eats, a New Jersey appeals court ruled in a case involving a motorcyclist who was injured while delivering food. Scott C. Malzberg, who had enrolled with Portier LLC, an Uber Technologies Inc. subsidiary, to use his personal motorcycle to deliver food on behalf of Uber Eats, was injured when he collided with a car, according to the ruling in *Scott C. Malzberg v. Caren L. Josey, James River Insurance Co., et al.*

FOOD COMPANY MAY AMEND COVID SUIT

An organic and vegetarian food company should be allowed to amend its COVID-19 business interruption lawsuit to allege coverage under a communicable disease policy provision, a California appeals court held, in overturning a lower court ruling that dismissed the case. Petaluma, California-based Amy's Kitchen Inc., which has facilities in California, Oregon and Idaho, purchased a comprehensive property policy from Allianz SE unit Fireman's Fund for a one-year period ending in July 2020, according to the ruling by the California Court of Appeal in San Francisco in *Amy's Kitchen Inc. v. Fireman's Fund Insurance Co.*

COURIER TO PAY DRIVERS FOR MISCLASSIFICATION

The Department of Labor said a courier service will pay $575,000 in back wages and liquidated damages to 62 drivers under a consent order for allegedly misclassifying drivers as independent contractors and denying them their rights under the Fair Labor Standards Act. The DOL said the consent order followed a lawsuit filed by the department in January 2020 against New York-based USPack Logistics LLC and its chief operating officer, Frank Powell, in connection with drivers at the company's Shrewsbury, Massachusetts, location.

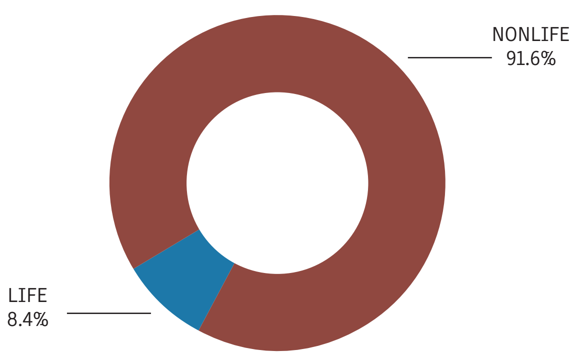

THINK
YOU KNOW
HUDSON?

PROFILE: GIBRALTAR

149
GLOBAL P/C MARKET RANKING

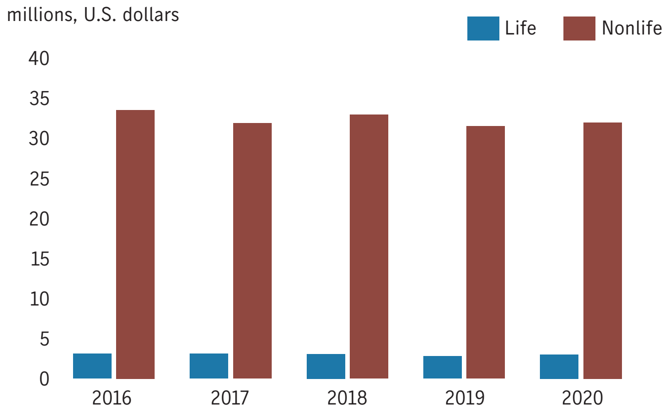
Brexit-related regulations that took effect Jan. 1, 2021, grant U.K. firms rights to establish a branch or provide services in Gibraltar, while the U.K. government intends to establish a new market access arrangement for Gibraltar-based financial services businesses, including insurers and reinsurers and intermediaries. Onshore insurance for Gibraltar inhabitants and their businesses, some of which are owned and operated by foreign interests, is provided by Argus Insurance Co. (Europe) Ltd., a locally registered subsidiary of a Bermudian group; a branch of a U.K.-registered subsidiary of a U.S. company; and a number of intermediaries and MGAs with U.K. company and Lloyd's facilities and connections. The market remains stable, with possible upcoming changes including a review of products available from the local offices and the upgrading of wordings to be more akin to the U.K., given the intense competition from London.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

AREA

2.7
square miles

POPULATION

29,573

MARKET CONCENTRATION

There are neither sufficient premium statistics nor enough nonlife companies to provide a ranking of the top 10 in terms of shares of premium.

2022 GDP CHANGE (PROJECTED)

N/A

MARKET DEVELOPMENTS

Updated October 2022

- Gibraltar is now virtually COVID-19 free, with few weekly reports of infections. From an insurance perspective, there was not a problem with non-damage business interruption claims despite lockdowns during the pandemic. Treaty renewals, and thus direct policy wordings, now carry a communicable disease exclusion clause for all classes.
- The Financial Services Act 2019 went into effect on Jan. 15, 2020, simultaneously with 41 regulations applicable to the various financial service sectors for which the Gibraltar Financial Services Commission is responsible. Among these are the Financial Services (Insurance Companies) Regulations 2020 specifically related to life and nonlife insurers and reinsurers and intermediaries. The FSA 2019 repealed and replaced all previous financial sector laws except for the Protected Cell Companies Act 2001.
- The U.K. government intends to pass legislation setting out the basis of a new market access arrangement for Gibraltar financial services companies, including insurance and reinsurance companies and intermediaries. The proposed new system, the Gibraltar Authorisation Regime, will depend on aligned legislation and regulatory practice between the U.K. and Gibraltar. It is expected that the Gibraltar government will need to enact further enabling legislation to meet U.K. alignment requirements.
- The limits for insurance intermediaries' compulsory professional indemnity cover have been increased to €1,300,380 ($1.56 million) for any one claim and €1,924,560 ($2.31 million) in the aggregate (or sterling equivalents thereof). Minimum capitalization has also increased to €19,510 ($23,424).

COMPULSORY INSURANCE

- Auto third-party bodily injury and property damage
- Professional indemnity for insurance intermediaries
- Professional indemnity for intermediaries conducting investment business and for alternative investment fund managers
- Professional indemnity (or an equivalent financial guarantee) for health care providers
- Shipowners liability for marine oil pollution (a financial guarantee or insurance)

NONADMITTED

By law insurers must be locally authorized to carry on insurance business in Gibraltar. At the same time there is nothing in the law to indicate that insurance must be purchased from locally authorized 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/or an intermediary, but unauthorized insurers may not solicit business.

INTERMEDIARIES

Local intermediaries are required to be locally authorized to do insurance business. They are permitted to place business with nonadmitted insurers, with the exception of compulsory auto third-party insurance. Those involved in nonadmitted placements are not required to inform buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Market practice does not differ from the relevant legislation. Local brokers that place business outside Gibraltar tend to advise their clients that their insurer is not locally regulated.

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

Sierra Signorelli was named CEO of commercial insurance at Zurich Insurance Group Ltd. in March 2021. Based in Zurich, she joined the company in 2017 after spending 17 years at American International Group Inc., where she worked in Los Angeles, New York and Singapore. With a background in environmental and specialty underwriting, she heads the Swiss insurer's global commercial business. In 2019, she was named one of the *Business Insurance* Women to Watch. Recently, Ms. Signorelli spoke with *BI* Editor Gavin Souter about how risk managers can get involved with environmental, social and governance issues, challenges facing buyers and insurers, and the outlook for the market. Edited excerpts follow.

Sierra Signorelli

ZURICH

Q With ESG issues growing in importance, where do risk managers fit into the process?

A We see that more and more companies have to do reporting — particularly in the U.K., certain companies in the U.S., and we're starting to see it in Europe as well. There's an element around assessing the risk, especially when it comes to physical risk, so we often work with risk managers to help them. We do a lot of modeling of climate risks and natural hazard risks as it is, so we work with them to help them understand what those exposures are. And we've seen that it's really elevated the profile of the risk manager.

As companies make these commitments, it's really important to have reporting and transparency around how they're making progress, so risk managers can help with that and also as they think about insurance placements. Directors and officers liability is an area where we are very thoughtful about our approach — how we provide coverage and where there are big commitments being made. So, they can play a role in helping set the strategy with the companies that they work for, because it touches governance, it touches operations, it touches the strategy, but even more specifically, in areas such as physical risk they have that expertise in working with insurance companies to help quantify that.

Q What can insurers do to support risk managers as they start getting involved in these ESG initiatives and discussions?

A Many of our conversations are focused on understanding what a transition might look like and the new types of risk. For the most part, the coverages that exist provide coverage, but we want to make sure that we understand those risks, and instead of leading with an exclusion we provide the right solution.

And there's always the piece around working with companies to become more resilient, so we work with them to build resiliency, and we offer them risk engineering support to better understand their risks. That can be anything from things that they need to do to make their facilities more resilient to things that might not necessarily be covered by insurance, such as drought, to understand how do they future proof their operations and maybe shift locations or how they do things over time.

Then there are other, simple things, such as our experience with installing solar panels or battery storage. We've learned some very expensive lessons, so we're making sure our customers and risk managers understand there are things that you can do well and won't cause challenges, and you can also install a solar panel the wrong way and set your building on fire, which is not what you want to do.

Q&A

Q Looking forward over the next year or so, what are the key concerns of risk managers that you deal with?

A There's a number of concerns. The current economic and geopolitical environment certainly weighs on their minds. Understanding future capacity from insurance companies is also something that is on their minds. How predictable is coverage going to be, how predictable is price going to be? It's been a challenging couple of years for insurance companies and for risk managers, and the market has been evolving quite a bit. There's been lots of change and I think what weighs on their minds when I talk to them is how do they get more stability in the insurance that they have going forward.

Q And what about from your own perspective as an insurer, what are your concerns over the next year or so?

A Similar concerns. We expect that we'll continue to see quite a number of changes that we're going to have to navigate. As we think about what concerns us, inflation is something that we see coming through in our claims and that's something that we have to address. The industry lost a bit of discipline around making sure that building values were regularly updated and so we're spending time to make sure that we have appropriate valuations.

From a nat cat exposure perspective, we've been updating models and thinking about what our exposures are so that we can be more reliable over time.

We face new risks and, this may be more European-focused, as we think about the energy crisis we're trying to work with some larger companies that we insure. If there's a shortage of energy, a lot of industrial facilities can't be shut down. It takes quite a bit of planning upfront so we are working with them to think through what that means for them.

The other area is social inflation. Courts have been closed, which may have artificially quieted the storm that we saw brewing for a while. Courts are now opening, and we see some larger awards coming through. Understanding what that means is going to be something that we'll continue to have to watch and to understand.

Q And is that just a U.S. phenomenon or are you seeing that in Europe, too?

A You see it a little bit in Australia where you have the litigation funders as well, but not to the same extent. There are a couple of cases that are bubbling in Europe that we're watching, but for the most part it's a U.S. phenomenon.

Q Can policyholders expect any letup in the rate increases?

A We're always very committed to looking at individual risks and individual customers. We don't want to do things that are across the board, but there are a number of things that are working against us. Inflation erodes our margins if we don't address it. And the supply chain challenges that we see also create challenges. These challenges continue to drive increased costs and there's just not enough margin in what we do to absorb them. So, we'll take a more nuanced approach and we're not looking to do anything across the board that would mandate rate increases far into the future. But I would think that in 2023 we will continue to see strong rate.

It's been a challenging couple of years for insurance companies and for risk managers, and the market has been evolving quite a bit.

COVER STORY

CONSTRUCTION SECTOR HIT BY HIGHER COSTS, LABOR WOES

Tough market conditions, rising insurance rates add more complications to project management

BY MATTHEW LERNER
mlerner@businessinsurance.com

The construction sector is facing a one-two punch of rising material costs and shortages combined with an acute shortfall of skilled labor, from tradespeople to professional quality control positions at major contractors.

Reuters

Hurricane Ian caused widespread destruction in Fort Myers Beach, Florida, and the surrounding area. Rebuilding projects are expected to put more strain on the construction labor market.

And when seeking insurance coverage, project owners and contractors face a combination of still firming rates and capacity cutbacks.

The combination of rising insurance prices and the shortages can cause problems with project scheduling and can make securing coverage for construction projects a challenge.

In addition, demand is set to rise further with another half-trillion dollars of federally funded projects about to commence as a result of the federal infrastructure bill (see related story).

Global real estate manager CBRE Inc.'s Construction Cost Index forecasts a 14.1% year-over-year increase in construction costs by year-end 2022 as labor and material costs continue to rise.

According to Danette Beck, head of industry verticals and national construction practice leader for USI Insurance Services Inc. in Valhalla, New York, input costs for construction have risen 40.5% since February 2020, based on data from the Associated Builders and Contractors.

"The labor shortage, and in particular skilled labor, is by far the single largest struggle" construction companies face, followed closely by shortages of materials and equipment due to supply chain issues, she said.

"There's going to be a bigger demand for construction than supply of talent to do the work," said Gary Kaplan, Chicago-based president, North America construction, at Axa XL, a unit of Axa SA.

Mr. Kaplan also sees challenges in the firm property/casualty markets, where rates are still rising, albeit at a slower pace than in 2021. "There's nothing that would push the market into a soft environment," he said, as inflation and supply chain issues continue to vex the construction sector and wider economy.

"The construction space and property space is tough," said Kevin Bates, group head of risk and insurance for Australian construction company Lendlease Corp. Material prices from dry wall to glass have been spiking and the labor market is "a shocker at the moment," said Mr. Bates, who is also a board member of the Risk & Insurance Management Society Inc.

According to the Council of Insurance Agents and Brokers pricing survey, average construction insurance rates rose 4.2% in the second quarter.

Most sources agreed the toughest parts of the property insurance market are catastrophe-exposed properties, including in areas prone to wildfire, particularly in California, although Colorado and as far east as New Jersey have also seen blazes.

"The property market has remained very firm and demand for critical catastrophe capacity continues to outpace supply," said Kelly Kinzer, Schaumburg, Illinois-based head of construction for U.S. national accounts for Zurich North America.

Casualty

Policyholders also face challenges in the casualty market for construction risks. Line sizes have been cut back in the sector, and attachment points raised amid insurers' fears of so-called nuclear verdicts, which refer to jury awards running into the tens of millions or even billions, and cases that may still be unresolved since courts were closed during the pandemic lockdowns, according to sources.

"How much liability tower can you build? That's still a huge challenge," Mr. Kaplan said, adding that some policyholders do not always secure as much limit as they think they need or would like.

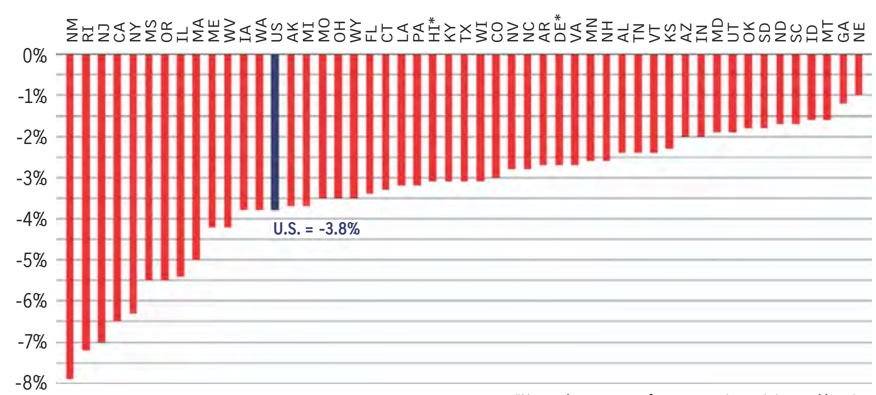
Helen Fry, vice president, E&S wholesale, brokerage construction at Nationwide Mutual Insurance Co. in Phoenix, said insurers need to be cautious about reducing rates in the face of headline verdicts and the potential uncertainties in the court backlogs.

Umbrella and excess casualty markets also continue to see steep rate increases

See **CONSTRUCTION** next page

CONSTRUCTION UNEMPLOYMENT RATE CHANGES

Year-over-year change in June 2022 estimated state construction unemployment rates



*Unemployment rate for construction, mining and logging

Source: Associated Builders and Contractors Inc.

Federal infrastructure spending to boost sector

The Infrastructure Investment and Jobs Act, signed into law a year ago, will provide roughly $550 billion in federal spending over the next five years, much of it aimed squarely at the construction sector in the form of civic improvement, infrastructure and other projects.

Insurance industry experts are keenly aware of the potential huge increase in demand for coverage related to the projects but say so far it has been mainly anticipation rather than participation. Substantial added construction activity could further challenge an already tight labor market, they say.

The infrastructure bill will have some effect on the construction sector, but "it's going to take some time," said Irvine, California-based Song Kim, senior vice president, construction, at CNA Financial Corp. "It just takes time for the money to get appropriated down to a state and local level."

Mr. Kim said that larger projects in geographical proximity to each other could further exacerbate an already tight labor market as projects compete for talent.

Rob McDonough, New York-based U.S. construction practice leader at Marsh LLC, said, "We knew it would take a while … but has been slower than we thought."

Mr. McDonough added, "We are seeing the early dollars come out around street and road work."

The added labor needed for the projects is likely to further strain an already challenged labor market and could lead to a project queue. "You can't do all the work with finite labor and resources," Mr. McDonough said, adding that planners will need to be "strategic" in deciding which projects to pursue.

"A historic shortage of skilled workers has the potential to lead to more workers compensation, liability, builders risk and other claims. And record inflation and supply chain disruption mean these claims will likely be more expensive," said Aldo Fucentese, Boston-based chief underwriting officer, construction, in Liberty Mutual Insurance Co.'s global risk solutions division.

Matthew Lerner

Reuters

Infrastructure and other construction projects throughout the country will increase demand for insurance.

CONSTRUCTION

Continued from previous page

and capacity constraints, said Russ Stein, Newport Beach, California-based area executive vice president at Risk Placement Services Inc.'s national brokerage, casualty practice. Lead lines have been drastically reduced during the hardening market to $5 million and $10 million, from $25 million previously.

In response to the market hardening, policyholders are "looking at their program and thinking a little bit differently in terms of structure than they have in the past," Ms. Kinzer said (see related story).

Project delays have become more common amid the labor and materials shortages, which can then lead to scheduling and sequencing challenges. The delays also can lead to the need to extend insurance policies beyond their scheduled expiration, which can be complicated.

An insurer or panel of insurers "may or may not have the appetite they had in the construction world at the time they originally bound the risk," Axa's Mr. Kaplan said. "It does get to be difficult."

Labor shortages and increasing raw material costs "have a huge impact" when extending coverages, RPS's Mr. Stein said. A lot of negotiation goes into determining how long coverage can be extended while contending with scheduling and other difficulties.

Multiple sources also pointed to Hurricane Ian's effect on the construction insurance market, which will lead to claims and capital leaving insurers' coffers. Rebuilding efforts will put additional strains on already depleted labor and materials availability.

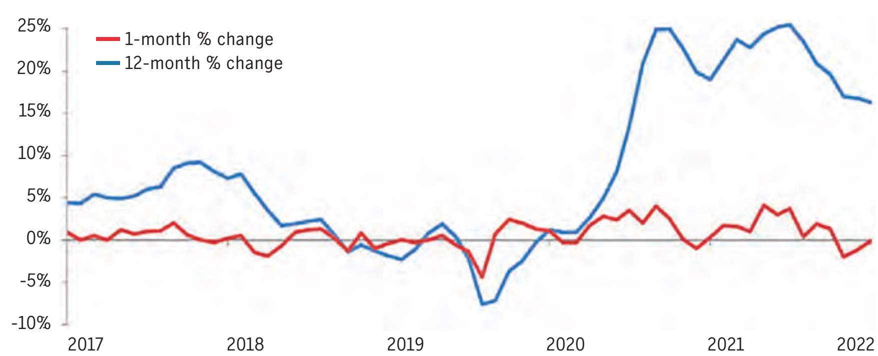
"There is still a question on Ian. Certainly, that bleeds over into other areas because the reinsurance market supports the entire market, not just one segment," Ms. Beck noted.

PRODUCER PRICE INDEX (SEPT. 2022)

	1-month % change	12-month % change	% change since Feb. 2020
Inputs to construction	(0.1%)	16.3%	40.5%
Inputs to nonresidential construction	(0.1%)	15.9%	40.8%
Plumbing fixtures and fittings	1.1%	11.6%	16.3%
Fabricated structural metal products	(0.2%)	14.0%	54.2%
Iron and steel	(5.4%)	(12.8%)	69.2%
Steel mill products	(6.7%)	(14.3%)	91.3%
Nonferrous wire and cable	(0.4%)	4.6%	41.7%
Softwood lumber	(4.6%)	14.5%	36.5%
Concrete products	1.0%	14.3%	23.1%
Prepared asphalt, tar roofing & siding products	0.8%	15.3%	36.2%
Crude petroleum	(3.4%)	29.1%	84.3%
Natural gas	3.1%	106.5%	497.6%
Unprocessed energy materials	0.5%	66.6%	193.3%

PRODUCER PRICE INDEX PERCENT CHANGE

Percent change inputs to construction industries Sept. 2017 through Sept. 2022



Source: U.S. Bureau of Labor Statistics

Captives offer solutions to capacity shortfalls

Facing rising commercial property rates and declining capacity in some coverages, construction industry companies are turning to captive insurers to help meet their insurance needs.

There is a greater focus on self-funding among contractors when looking at risk transfer, according to Chicago-based Adrian Pellen, who recently joined NFP Corp. from Marsh LLC to help lead NFP's North American construction and infrastructure group.

"We're seeing extraordinary activity in the captives sector for the construction market," from both owners and contractors, Mr. Pellen said.

Clients are working diligently to understand and achieve "risk financing optimization," said New York-based Rob McDonough, U.S. construction practice leader at Marsh LLC. "Increasingly, we are seeing the adoption of captives in the construction space."

"Where does it make sense to retain risk or to transfer risk?" Mr. McDonough said. Clients are using data and analytics to answer this question and make more informed decisions about risk management, including the use of captive structures, he said.

In the hardening markets, "clients are looking for multiple structure options with their renewals," said Kelly Kinzer, Schaumburg, Illinois-based head of construction for U.S. national accounts at Zurich North America.

"The continued hardening of the construction insurance market is leading to renewed interest in wraps, captives and larger deductible plans as ways to better structure risk programs," Adam Pancoast, senior underwriting executive, specialty, global risk solutions, at Liberty Mutual Insurance Co.

Matthew Lerner

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a. Total Number of Copies *(Net press run)*	40,695	41,765
b. Legitimate Paid and/or Requested Distribution *(By Mail and Outside the Mail)*		
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CYBER RISK & PROFESSIONAL LIABILITY

War exclusion gains traction in cyber market

BY JUDY GREENWALD
jgreenwald@businessinsurance.com

INSIDE

A requirement by Lloyd's of London that standalone cyber policies include exclusions for state-backed cyberattacks, beginning next March, will provide some clarity to insurers and policyholders, but significant areas of ambiguity remain.

Many observers say the question of when cyberattacks can be attributed to nation-states is inconclusive and may ultimately be resolved only after years of litigation (see story, page 23).

They say also that the exclusion comes against the backdrop of a hard cyber market and its ultimate effect on rates is unclear.

According to the Center for Strategic & International Studies, a Washington-based think tank that keeps a running tally of cyberattacks on government agencies, and defense and high-tech companies, or economic crimes with losses of more than $1 million, there were 96 attacks this year through September, with many cited as nation-state-related.

The Lloyd's Market Association in November 2021 introduced four model clauses designed to exclude coverage for war risks from cyber policies.

Lloyd's said in an Aug. 16 market

bulletin that while it remains "strongly supportive" of writing cyberattack cover, "if not managed properly it has the potential to expose the market to systemic risk that syndicates could struggle to manage," with losses potentially exceeding the market's ability to absorb.

Experts say the ongoing Russia-Ukraine conflict is lending urgency to the issue. Many point to the litigation that stemmed from the 2017 NotPetya ransomware attack, which was instigated by Russia against Ukraine.

The New Jersey Superior Court in Elizabeth ruled Jan. 13 in Merck & Co.'s favor in litigation filed against a Chubb Ltd. unit in which the pharmaceutical company sought coverage for damages sustained in the NotPetya attack, according to the ruling in *Merck & Co. v. ACE American Insurance Co.*

Other insurers have revised their war exclusions as well, including Chubb Ltd., Beazley PLC and Crum & Forster, experts say. The Lloyd's rule applies most directly to large corporations that go through its market.

Paul Bantick, head of global cyber and technology for Beazley, which introduced an exclusion compatible with Lloyd's on Oct. 1, said that in both cases, "it's not necessarily about restricting cover" but providing clarity and excluding war from cyber coverages just as it is already excluded from other policies. "It's bringing cyber language into the modern world," he said.

Roman Itskovich, San Francisco-based chief risk officer and co-founder of insurtech managing general agency At-Bay Inc., said the Lloyd's wording is "a pretty effective exclusion" that does not ask for a declaration of war and gives insurers the capability of deciding if it applies if governments are slow to declare war.

The exclusions have their detractors.

"I frankly disagree with the concept of excluding nation-state attacks against private enterprises," said Dan Burke, San Francisco-based national cyber practice leader for Woodruff Sawyer & Co.

Policyholders have had two years of significant rate increases, and now insurers are starting to pull back coverage, Mr. Burke said. "It's a slippery slope, taking away a lot of the value of the insurance policy," he said.

Many say attributing disruptions to nation-state attacks is a difficult challenge.

ATTACK VECTORS USED BY NATION-STATE MALICIOUS ACTORS

Nation-states are advanced enough to do reconnaissance on their victims and select the attack method that best suits each goal or intended outcome.

Source: Microsoft

"That is going to be tough to achieve," as various criminal groups disappear, regroup, rebrand or break off into smaller subsets, said Mark Lance, Richmond, Virginia-based senior director, cyber defense, at GuidePoint Security LLC.

Parties are being asked to prove who conducted the cyberattack "and that's really hard," said Peter A. Halprin, a partner with Pasich LLP in New York. "It's a very, very complicated issue," he said.

> "I frankly disagree with the concept of excluding nation-state attacks against private enterprises."
>
> Dan Burke, Woodruff Sawyer & Co.

"It really will come down to parsing what language was actually put into the policy," how it applies, and whether the cyberattack coincided with a physical attack, said Scott Godes, a partner with Barnes & Thornburg LLP in Washington. It calls for an "old-fashioned look" at what the insurer is asserting and how it applies to the circumstances presented, he said.

The Lloyd's exclusion "makes the most noise" because of its large size and the number of participants, said Kyle Bryant, New York-based managing director and chief underwriting officer international for Resilience Cyber Insurance Solutions. "I do see some (other) carriers beginning to use their versions to test the market," he said.

Crum & Forster changed its war exclusion language to make it clearer about a year ago, and by and large it has not emerged as a major issue, said Nick Economidis, Houston-based senior vice president of cyber for the insurer.

Some see more insurers doing the same.

"You're seeing non-Lloyd's carriers taking a closer look at their own war exclusions to see if they're in line with what Lloyd's is proposing, as well as seeing a tightening industrywide of the war exclusion and much more focus on those exclusions," said Jes Alexander, senior research analyst, professional lines, for the International Risk Management Institute Inc. in Dallas.

However, Samantha Levine, Denver-based senior vice president, professional and cyber solutions, at CAC Specialty, an affiliate of brokerage Cobbs Allen, said that if no material impact or large incident emerges from the Ukraine war, "I could see some U.S. markets striving to maintain a leg up" from a competitive perspective by not making changes to their policies' war exclusions. "A lot of factors determine whether everyone does it," she said.

Experts predict the Lloyd's war exclusion will evolve further.

"I foresee that we will see additional changes coming," said Shannon Fort, London-based partner in McGill & Partners financial lines division.

The situation will continue to change, not just the policy wording but the political landscape and the nature of cyber warfare, said Michael S. Levine, a partner with Hunton Andrews Kurth LLP in Washington. "It's all evolving at such a rapid pace that the policy wording is going to have to evolve as well to keep up with it."

Courts likely to determine coverage for state-backed cyberattacks

Precisely when cyberattacks are not covered under the Lloyd's of London war exclusion for cyber policies may only be determined after years of litigation.

"Litigation will certainly happen, particularly around the question of attribution," said Kyle Bryant, New York-based managing director and chief underwriting officer international for Resilience Cyber Insurance Solutions.

"It's an uncertain area of law. We've seen courts go in a variety of different directions with respect to clauses like this in the past," said Alex Iftimie, a partner with Morrison & Foerster LLP in San Francisco.

"The cyber insurance market isn't something that's been around for 40 or 50 years, so a lot of these are new issues of first impression," without robust case law that addresses them, said Jennifer Beckage of the Buffalo, New York-based Beckage Firm PLLC.

At least some litigation may be filed because of war exclusions that differ from Lloyd's that are on the same coverage tower.

Litigation "is not unusual when you have a nonconcurrent tower," said Michael S. Levine, a partner with Hunton Andrews Kurth LLP in Washington.

"The language varies as you go up the tower and that often leads to problems," he said. A subtle difference between policies, such as a comma, can "end up being the impetus for huge litigation."

Dan Palardy, New York-based lead actuary for Cowbell Cyber Inc., said there is a broader movement toward overall uniformity in the insurance market, including in cyber insurance.

Judy Greenwald

Miscellaneous E&O market grows, diversifies

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

Demand for miscellaneous professional liability coverage continues to increase as businesses add services and recognize the limits of their other insurance policies, industry experts say.

Litigation, multiple access points to the insurance market and growing awareness of the need for coverage are some of the factors contributing to the uptick.

Businesses should, however, check the definition of professional services in their errors and omissions policies to ensure the type and scope of services they provide is covered, they said.

Over time, the variety of professional services that fall into the miscellaneous category has expanded, driving greater demand for the coverage, said Todd Cusano, Hartford, Connecticut-based senior vice president, professional liability at Ascot Group Ltd.

Diverse service professions are becoming "more aware that they need this coverage, so that they're not exposed beyond what their general liability may cover or what their businessowners policy may cover," Mr. Cusano said.

Depending on the market, miscellaneous professional liability programs can cover from 30 to more than 100 classes of business, Mr. Cusano said. These could include advertising professionals, arborists, claims adjusters, composers, consultants, tax preparers and translators.

Coverage for architects and engineers, accountants and lawyers, and other "traditional" professionals is provided on a standalone basis and not part of miscellaneous programs, he said.

Multiple access points are available to brokers, making it easier to obtain miscellaneous professional liability quotes, which is driving growth, said Steve Barbal, national managing director, underwriter for the retail open-brokerage professional lines team in the global specialty division at The Hartford Financial Services Group Inc.

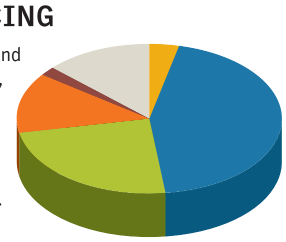
Online quotes are available for lower hazard risks, but for higher-hazard classes that require more in-depth underwriting, such as franchisors, third-party administrators, or trustees, the traditional paper application via a broker may be more appropriate, Mr. Barbal said (see related story).

Brokers and managing general agents are also looking to build out application programming interfaces that will capture miscellaneous professional liability business and potentially quote automatically if it fits within certain criteria, he said.

Businesses are buying miscellaneous E&O coverage in response to rising litigation costs, and the impact of so-called social inflation, or higher awards and settlements, said Rick Grimes, national financial lines practice leader at One80 Intermediaries Inc., the wholesale brokerage unit of Risk Strategies Co., headquartered in Boston.

E&O PRICING

During the second quarter of 2022, 44.4% of brokers saw no change in errors and omissions rates.



Decrease 1%-9%	3.7%
No change	44.4%
Increased 1%-9%	24.1%
Increase 10%-19%	13.0%
Increase 20%-29%	1.9%
Not sure	12.9%

Source: Council of Insurance Agents & Brokers

"Even when meritless claims could be settled for a few thousand dollars in the past, now we're seeing claims come in two, three, four or five times what historically they could have been settled for," he said.

Real estate services, such as agents, brokers and property managers, and non-standard consultants including mergers and acquisitions consultants, and elections and voting consultants, are among the harder-to-place risks because of the litigious environment, he said.

An increasing number of service businesses are contractually required to have E&O coverage, which is also boosting demand, Mr. Grimes said.

In the past five years, there's been an increase in contractual requirements for professional liability coverage, especially in the manufacturing sector, said Nick Kohlhof, a client executive at Holmes Murphy & Associates LLC, a brokerage in Waukee, Iowa.

Underwriting guidelines have also become stricter as insurers target professional liability as a specific exclusion on to general liability policies, "because that's not what they signed up to cover," Mr. Kohlhof said.

As a result, demand for miscellaneous E&O coverage among manufacturers has increased, he said.

It's important to review the definition of professional service within each policy to understand what it is meant to cover and what it is not, Mr. Kohlhof said.

The definition of professional services is less static in MPL than in other industry verticals like architects and engineers and accountants, said Michael Takigawa, head of commercial E&O, Americas, at Axa XL, a unit of Axa SA, who is based in San Francisco.

"In MPL, the definition depends on the underlying risk and can vary from account to account, so it's much more dynamic in terms of the underwriting process," Mr. Takigawa said.

From an underwriting standpoint, it is important to ensure the definition of professional services is appropriate, as well as the attendant coverages, whether it is in the base policy form, or an endorsement, he said. "Those all have to be properly articulated and understood in terms of what am I actually covering here," Mr. Takigawa said.

Marijuana-related risks, whether it is the production, distribution or packaging of marijuana, are typically a very hard placement, he said. And businesses that provide a multitude of complex services, would be less attractive, he said.

The complexity of the risk depends on the industry sector, the service provider, what services are being provided, its revenue size and loss history, and whether it is a consumer-facing business, said Marcia Blanco, San Francisco-based head of financial lines, at Munich Re America Inc.

For example, collection agents that service consumers will come under greater underwriting scrutiny because there's more propensity for a class action suit than for those working with a commercial vendor, Ms. Blanco said.

"It's single risk underwriting," she said.

MORE INSURERS USE DIGITAL PLACEMENT PROCESS FOR E&O COVERAGE

Online platforms are playing a growing role in the placement process for miscellaneous errors and omissions coverage.

Insurtech managing general agency At-Bay Inc. in August expanded into the miscellaneous professional liability market, adding customized coverage and pricing across more than 50 classes of business via its automated platform. The coverage is backed by Markel Insurtech Underwriters, a Markel Corp. unit.

The focus is on providing wholesale brokers with a customized insurance solution at a fast pace, said Austin Martin, head of professional liability at San Francisco-based At-Bay.

On average, brokers usually need to answer about seven questions per submission via the platform, depending on the applicant, Mr. Martin said. From the start of the process to when they receive a quote is usually a matter of minutes, he said.

In circumstances where a risk needs extra customization, the underwriting team is available to provide support, Mr. Martin said.

For lower hazard miscellaneous professional liability classes such as bookkeepers, marketing consultants, tax preparers and leadership development consultants, brokers can get quotes easily online, said Steve Barbal, national managing director, underwriter for the retail open-brokerage professional lines team in the global specialty division at Hartford Financial Services Group Inc.

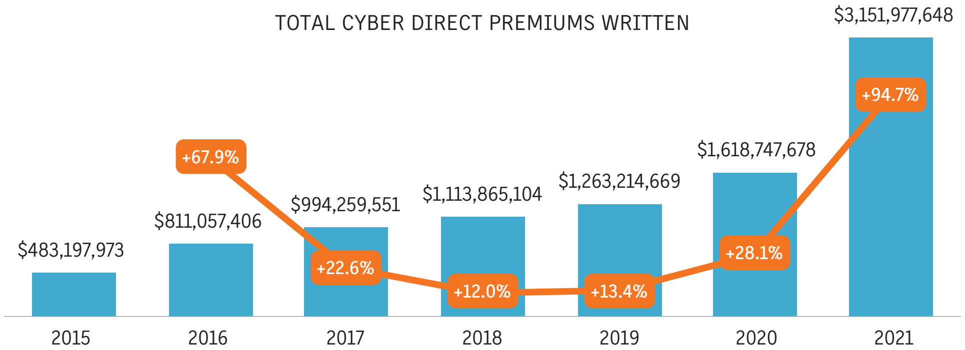
Hartford's online quoting portal enables brokers to log in, plug in some basic information, answer a few questions and in a matter of minutes generate a quote and even bind a policy, Mr. Barbal said.

It also allows them to easily generate quotes for other coverages that a service business might need, such as a management liability, or businessowners policy, he said.

Claire Wilkinson

STAND-ALONE CYBER INSURANCE MARKET*

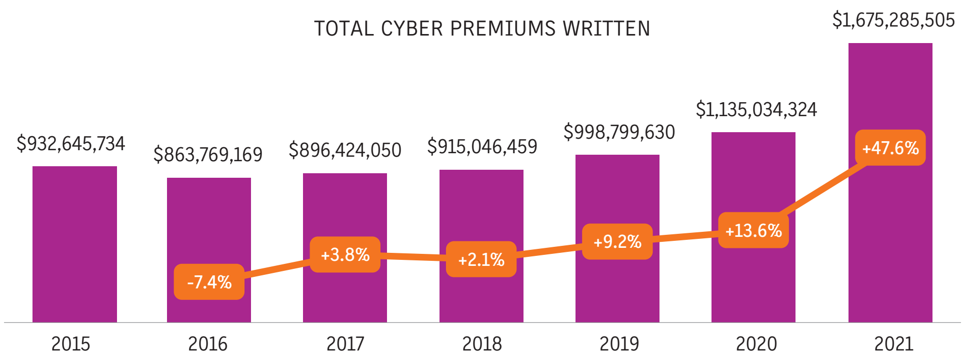
Stand-alone cybersecurity insurance coverage in the U.S. increased 94.7% to $3.2 billion in 2021 from 2020.



*U.S. domiciled insurers

PACKAGE CYBER INSURANCE MARKET*

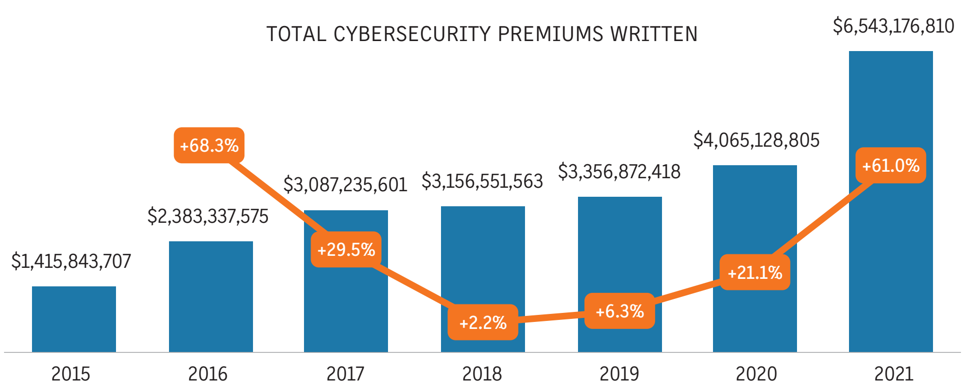
Cybersecurity package policies in the U.S. increased 47.6% to $1.7 billion in 2021 from 2020.



*U.S. domiciled insurers

CYBER INSURANCE MARKET*

The total U.S. market for cybersecurity insurance increased 61.0% to $6.5 billion in 2021 from $4.1 billion in 2020.



*U.S. domiciled insurers and alien surplus lines insurers

LARGEST CYBER INSURERS

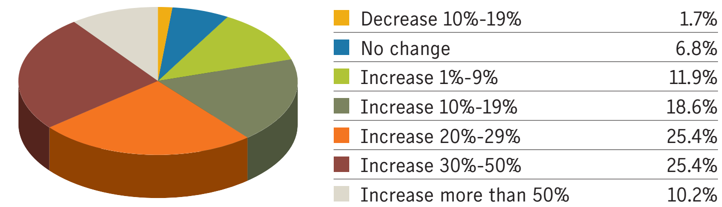
The top 10 U.S. groups wrote 57.4% of the cyber insurance, totaling $2.8 billion in 2021.

2021 rank	2020 rank	Company	Direct written premium	Market share
1	1	Chubb Ltd.	$473,073,308	9.8%
2	8	Fairfax Financial Holdings Ltd.	$436,447,801	9.0%
3	2	Axa Insurance Group	$421,013,729	8.7%
4	11	Tokio Marine Holdings Inc.	$249,785,218	5.2%
5	3	American International Group Inc.	$240,613,748	5.0%
6	NR	Travelers Cos. Inc.	$232,276,831	4.8%
7	5	Beazley Insurance Co. Inc	$200,877,555	4.2%
8	7	CNA Financial Corp.	$181,382,785	3.8%
9	NR	Arch Capital Group Ltd.	$171,944,995	3.6%
10	6	Axis Capital Holdings Ltd.	$159,059,212	3.3%

Source: National Association of Insurance Commissioners

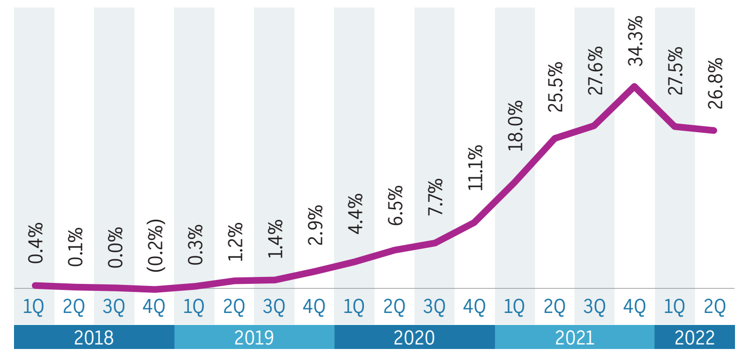
CYBER PRICING

During the second quarter of 2022, 91.5% of broker survey respondents saw increases in premium rates for cyber coverage.



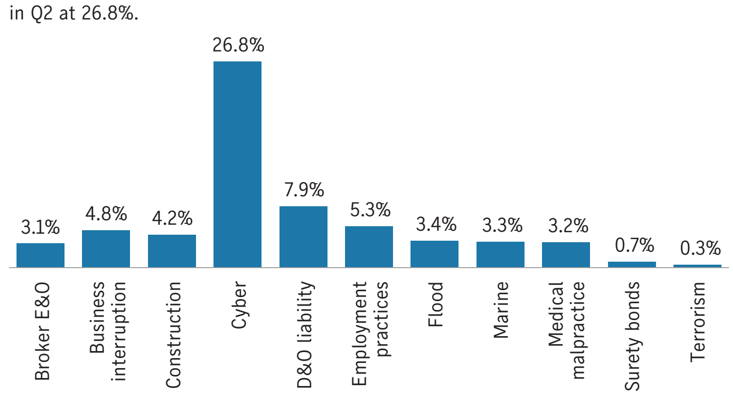
RENEWAL PRICING

Q2 of 2022 marked the fifth consecutive quarter that saw an average premium increase of more than 25%.



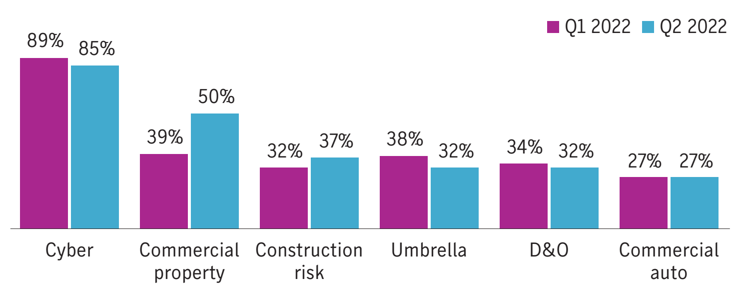
PREMIUM RATE INCREASE BY LINE OF BUSINESS

Cyber had by far the highest average price increase of all commercial lines in Q2 at 26.8%.



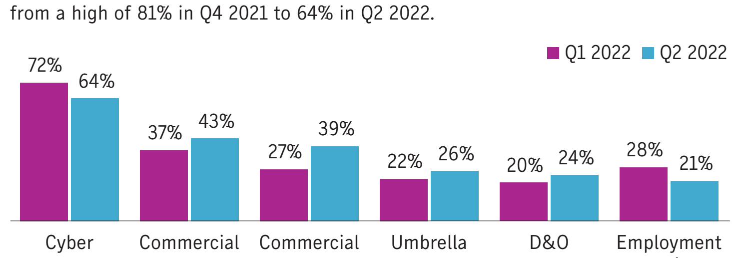
DEMAND INCREASE

Demand was again highest for cyber insurance in Q2 2022, with 85% of brokers noting they had seen an increase in demand for that particular line.



CLAIMS INCREASE

The number of cyber claims has been on a downward trend for the past few quarters, with the number of brokers reporting an increase in claims decreasing from a high of 81% in Q4 2021 to 64% in Q2 2022.



Source: Council of Insurance Agents and Brokers

SPECIAL REPORT

LARGEST DIRECTORS AND OFFICERS LIABILITY INSURERS

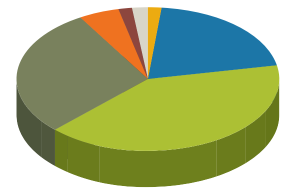
Ranked by direct premiums written in 2021, in millions of dollars

Rank	Insurer	Direct premiums written	Percent increase (decrease) vs. 2020	Direct incurred losses	Direct loss ratio	Market share
1	Axa SA	$2,284.0	57.2%	$1,116.3	56.9%	15.3%
2	Chubb Ltd.	$1,356.6	24.8%	$320.5	27.1%	9.1%
3	American International Group Inc.	$1,208.0	23.1%	$648.0	60.9%	8.1%
4	Tokio Marine Holdings Inc.	$970.6	28.8%	$593.4	65.1%	6.5%
5	Fairfax Financial Holdings Ltd.	$861.6	67.3%	$297.9	44.2%	5.8%
6	Berkshire Hathaway Inc.	$605.9	47.6%	$298.0	61.3%	4.1%
7	W.R. Berkley Corp.	$597.4	70.3%	$340.8	70.4%	4.0%
8	Sompo Holdings Inc.	$551.5	27.2%	$314.4	65.8%	3.7%
9	Zurich Insurance Group Ltd.	$523.6	42.0%	$343.6	76.4%	3.5%
10	CNA Financial Corp.	$523.2	19.3%	$242.8	53.3%	3.5%
11	Alleghany Corp.	$495.4	33.6%	$109.8	25.1%	3.3%
12	Arch Capital Group Ltd.	$475.5	87.1%	$190.9	46.7%	3.2%
13	Travelers Cos. Inc.	$471.1	11.5%	$357.1	79.8%	3.2%
14	Axis Capital Group Ltd.	$363.3	44.2%	$184.2	59.6%	2.4%
15	Old Republic General Insurance Group Inc.	$334.8	35.3%	$166.4	56.5%	2.2%
16	Great American Insurance Group	$319.9	12.8%	$102.2	34.5%	2.1%
17	Markel Corp.	$319.9	56.7%	$130.1	52.9%	2.1%
18	Nationwide Mutual Group	$294.5	8.3%	$190.2	67.8%	2.0%
19	Hartford Financial Services Group Inc.	$269.7	16.6%	$185.2	75.3%	1.8%
20	Allianz SE	$209.5	2.3%	$133.9	69.2%	1.4%
	Top 20 total	$13,036.1	36.7%	$6,265.7	55.4%	87.3%
	Industry total	$14,930.8	38.5%	$7,055.1	54.7%	100.0%

Source: S&P Global Market Intelligence based on National Association of Insurance Commissioners statutory P/C statement filings. U.S. filers only, compiled Sept. 28. 2022.

D&O PRICING

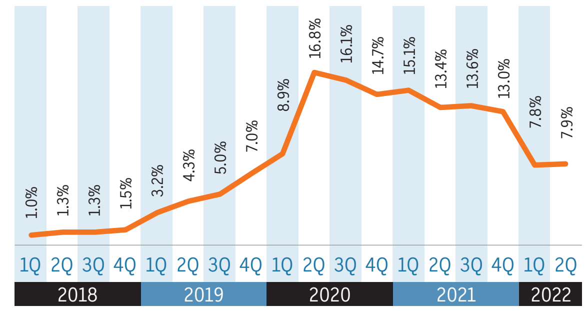
During the second quarter of 2022, more than three quarters of brokers said premium rates increased.



Source: Council of Insurance Agents & Brokers

RENEWAL PRICING

Average D&O renewal pricing changes by quarter since 2018

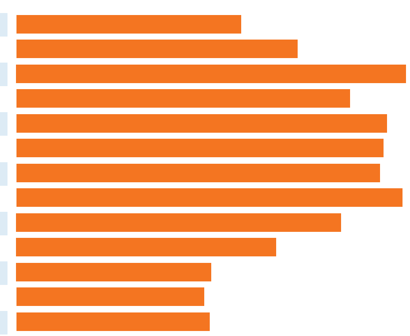


Source: Council of Insurance Agents & Brokers

CLASS ACTIONS

Total filing activity was almost the same in the first half of 2022 as it was in the same period last year.

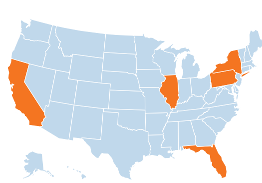
Year	Filings
2016 H1	128
2016 H2	160
2017 H1	222
2017 H2	190
2018 H1	211
2018 H2	209
2019 H1	207
2019 H2	220
2020 H1	185
2020 H2	148
2021 H1	111
2021 H2	107
2022 H1	110



Source: Cornerstone Research Inc.

TOP STATES

States with the most direct premiums written for medical professional liability insurance in 2021

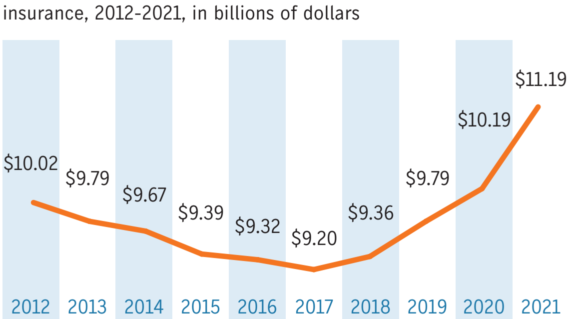


State	Direct premiums written	Number of insurers
New York	$1,676,001,054	123
California	$932,215,649	125
Florida	$886,987,596	125
Pennsylvania	$782,879,247	151
New Jersey	$509,293,517	123

Source: National Association of Insurance Commissioners

PROFESSIONAL LIABILITY COVER

Direct premiums written for U.S. medical professional liability insurance, 2012-2021, in billions of dollars



Source: National Association of Insurance Commissioners

LARGEST MEDICAL PROFESSIONAL LIABILITY INSURERS

Ranked by direct premiums written in 2021, in millions of dollars

Rank	Insurer	Direct premiums written	Percent increase (decrease) vs. 2020	Direct losses incurred	Direct incurred loss ratio	Market share
1	Berkshire Hathaway Inc.	$1,944.1	13.4%	$906.3	48.7%	17.4%
2	The Doctors Co.	$1,070.7	11.2%	$474.8	46.8%	9.6%
3	ProAssurance Corp.	$739.2	(7.2%)	$431.5	56.2%	6.6%
4	CNA Financial Corp.	$638.7	4.9%	$321.0	50.3%	5.7%
5	Coverys Insurance Group	$574.7	10.0%	$374.1	65.0%	5.1%
6	Mag Mutual Insurance Co.	$417.6	13.2%	$203.3	52.0%	3.7%
7	MCIC Vermont Inc.	$385.0	(9.4%)	$364.0	94.6%	3.4%
8	Liberty Mutual Holdings Co. Inc.	$307.7	17.1%	$196.7	71.5%	2.8%
9	Chubb Ltd.	$201.4	33.2%	$185.3	103.8%	1.8%
10	MMIC Insurance Inc.	$187.8	8.7%	$66.5	36.9%	1.7%
	Top 10 total	$6,466.90	8.0%	$3,523.50	56.2%	57.9%
	Industry total	$11,178.4	10.1%	$5,884.7	54%	100%

Source: S&P Global Intelligence based on National Association of Insurance Commissioners statutory P/C filings. U.S. filers only, compiled Sept. 28, 2022.

SPECIAL REPORT

WORKERS COMPENSATION UPDATE

Claims experts mull mental disability changes

INSIDE

BY LOUISE ESOLA

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The elimination of a metric for diagnosing mental disorders from the American Medical Association's guide on disability ratings is a welcome change for workers compensation professionals addressing mental injury claims, experts say.

An analysis released this fall by the National Council on Compensation Insurance said the effects of changes made last year to the AMA's guide are "uncertain" when it comes to diagnosing and determining disability. The Boca Raton, Florida-based ratings agency said that "the only significant content and methodology changes were for mental and behavioral disorders."

The changes appear in the sixth edition of the guide, which had last been updated in 2008. The new version aligns with the "most current (guidelines) in medicine and provides a basis for fair and consistent evaluations and impairment ratings."

Most states are required to use the AMA guide to determine comp-related disability.

The overhaul was proposed by the American Psychiatric Association and the American Psychological Association to align with the "Diagnostic and Statistical Manual of Mental Disorders," or the DSM, considered the authoritative guide to the diagnosis of mental disorders, according to the AMA.

The new guidelines, in both the DSM and

See **MENTAL HEALTH** page 28

SPECIAL REPORT

MENTAL HEALTH

Continued from page 27

the AMA guides, eliminated the so-called global assessment of functioning scale as a means of determining impairment.

The GAF provides a score between zero and 100 based on a person's function — the higher the score the higher the function — and the ratings are grouped in tens. Experts say the GAF is too imprecise and creates confusion and conflict when determining disability.

"From a clinician perspective, the GAF was always problematic," said Mark Debus, Chicago-based clinical manager of behavioral health with Sedgwick Claims Management Services Inc., adding that he expects little to no changes in comp claims as a result of its removal. "When they removed it the therapist community had a huge sigh of relief because it's just kind of a silly score. To begin with, it's extremely subjective."

Les Kertay, a psychologist who helped draft the latest AMA guide and senior vice president of behavioral health with Axiom Medical in Chattanooga, Tennessee, said the GAF was removed from the DSM because it "had some significant reliability problems" and that "taking it out, especially because it was no longer in the DSM, made some sense. If it's bad enough that the American Psychiatric Association doesn't want to use it anymore then we probably shouldn't use it."

"You and I might have rated someone quite differently on the GAF," he said, adding that the AMA still relies on other measures for diagnosis and disability determination for mental injuries.

As part of their research, Mr. Kertay and other medical professionals examined what disability ratings would be without the GAF measurement. There were little to no differences in diagnoses and ratings without the GAF, he said.

While most states require medical professionals to rely on the most recent AMA guide, California is holding on to the previous version, according to Ron Heredia, a psychologist and director and founder of Los Angeles-based Good Mood Legal, which specializes in reviewing psychology reports in insurance claims.

The GAF score is "another piece of information" for a claim and one of the reasons for the state's adherence to the 5th AMA guide, he said.

Mr. Heredia agreed that the score's subjectivity is a concern. When so-called "psych claims" are challenged, medical records are often found lacking in concrete details — such as what the injured worker is experiencing — and the GAF score leaves much out, he said.

"The GAF score is essentially the doctor picking a number zero to 100, and if they wanted to, they could very well just pick a number out of a hat and say that's the GAF score," Mr. Heredia said.

"And when challenged by either an attorney or even a claims examiner about the GAF score that they assigned, all the doctor really has to do is say, 'Well, I gave that score because it's my clinical judgment.' And they could just repeat that like a broken record. There's really no rhyme or reason, or formula the doctor has to follow to come up with the GAF score."

Predominant cause at issue as mental health claims rise

Mental health-related workers compensation claims continue to rise, many fueled by the COVID-19 pandemic, relatively new presumption laws countrywide that broaden workers compensation eligibility for post-traumatic stress disorder and other mental injuries, and greater awareness of mental health issues, experts say.

Yet traditional mental injury claims can and are being defended, as legal experts report a rise in such claim activity among those who, unlike first responders in some states, are not provided a presumption.

Michael Gaston, associate at Cipolla, Calaba, Wolman and Bhatti in Long Beach, California, said "there are certain hurdles that the injured worker must get over to find it compensable."

The first issue considered is predominant cause, or "when the doctor examines the applicant, he must take into consideration the alleged injury, and any other potential psychological contributors," Mr. Gaston said.

This involves digging into the applicant's past. "If the applicant was abused or killed someone or was divorced, anything that could cause psychological instability has to be considered," he said.

The doctor then decides whether the cause of the psychological disability is due predominantly to the incident, or if the injured worker does not meet predominant cause. "If the applicant can't meet predominant cause, there's no psych claim," Mr. Gaston said.

If predominant cause is met, he said, the employer still has several defenses that can be applied. One is the six months rule: "If the injured worker hasn't worked for the company for at least six months, a psyche claim cannot be filed against the company," he said.

There is also a post-termination defense. If the applicant files a claim after being fired, "There are rules about whether there was evidence before being fired, and whether they reported it," he said. "It's possible that the claim can be dismissed if it's filed post-termination."

Probably the most common defense is called the good faith personnel action, he said, which says that an employer or supervisor is allowed to do their job despite allegations that an adverse action caused a worker mental injury.

"Say I'm a supervisor. I tell you to do your job and work harder to improve," Mr. Gaston said. "However, I'm such a jerk that you file a claim for psychological injury." Assuming predominant cause is met, the question becomes whether the actions taken by the employer were personnel actions done in good faith, he said.

To determine this, the supervisor's reasons for his or her actions must be known — such as whether the worker was underperforming. "If those two burdens are met, then regardless of whether the applicant suffered psychological disability, it would not be compensable," he said.

However, "if I make fun of you because of your gender or ethnicity, those are not personnel actions," he noted, adding that, "If the employer is hiding behind personnel actions to retaliate against the injured worker and the worker can show that, obviously it's not done in good faith."

Caroline McDonald

BURDEN OF PROOF SHIFTS TO EMPLOYERS

Presumption laws vary by state, with some states allowing mental injuries to be included in a claim only if there is a physical injury, and some only applying to first responders with post-traumatic stress disorder, such as police officers, firefighters and, in some states, emergency medical personnel.

The purpose of presumption laws, now in more than a dozen states, "is to remove the stigma associated with filing a psychiatric injury claim for post-traumatic stress disorder," said Vicki Lindquist, partner in the Oakland, California office of Laughlin, Falbo, Levy & Moresi LLP. "The goal is to help get these claims accepted and to give people the treatment they need, to recover sufficiently to get back to their work and to their lives,"

The laws are typically directed towards firefighters and police officers, "because they are the protectors of our communities, and they are also, more than the general public, exposed to a lot of trauma and tragedy," she said.

While presumption laws did have the intended effect of encouraging people to file claims, the claims are not always accepted. "The presumption itself does not require the employer to accept it," Ms. Lindquist explained. "But because it basically removes the claimant's burden of proof, for an employer to deny these claims, they must have some information that would suggest the injury would not be related to their work."

The pandemic has also added fuel to claim activity, said Omar Behnawa, managing partner of the Anaheim, California office of Laughlin, Falbo, Levy & Moresi LLP. In the case of COVID-19, he said, "if there is an outbreak in the workplace and someone tested positive within a two-week period, it's presumed you contracted the virus through work. And there are psych claims filed because of it."

He added that "medical examiners are giving credence to some allegations with the pandemic and the stresses people are having to face just going back to the workforce."

Caroline McDonald

PERSPECTIVES

OSHA penalties put focus on safe practices

The Occupational Safety and Health Administration is significantly increasing its enforcement response for repeat and willful workplace safety citations, and not only are six-figure fines becoming more common, but a series of recent million-dollar fines, as well as criminal prosecutions, underscore the seriousness with which OSHA under the Biden Administration is enforcing workplace safety rules.

Consequently, employers with prior OSHA citations need to be particularly vigilant to ensure compliance with their health and safety programs.

The conduct driving these large enforcement cases involves repeat or willful allegations. OSHA's Field Operations Manual defines a repeat violation as occurring when an "employer has been cited previously for the same or a substantially similar condition or hazard and the citation has become a final order." Willful violations may be cited by OSHA for either an intentional disregard for the requirements under the Occupational Safety and Health Act or plain indifference to employee safety and health.

Under current OSHA penalty authority, the agency may impose a fine of $145,027, per violation, for each separate repeat or willful citation. Congress significantly enhanced OSHA's enforcement position by adjusting fines upward for inflation in 2015, the first increase since 1990. As a result, OSHA's penalty authority increased by 78%. While the skyrocketing trajectory of 2022 penalties is due in part to the inflation adjustment, OSHA is aggressively pursuing enforcement for repeat and willful citations and frequently combining multi-count items per citation with separate maximum penalties for each item.

Construction fall protection cases appear to be where the agency is particularly focused on citing repeat and willful violations. According to OSHA, more than one-third of all construction-related fatalities were due to falls from heights in fiscal year 2021. In October 2022, OSHA announced a $1.1 million fine stemming from six willful, five repeat, and one serious citation for an Ohio construction contractor, Charm Builders Ltd., that had been cited 11 times previously for fall protection violations. Similarly, in late August 2022, a New York roofing and siding contractor, ALJ Home Improvement Inc., was fined over $1.3 million for OSHA fall protection violations involving a second fall-from-heights fatality in the past three years. Another construction case involving willful allegations stems from a floor collapse with a demolition contractor in Boston. OSHA fined JDC Demolition $1.2 million in late September 2022, with violations imposed for inadequate training and operating heavy equipment with unsafe loads on partially demolished floors.

General industry enforcement has also seen a series of recent million-dollar fines. Lockout/tagout violations involving willful and repeat conduct for New Jersey auto parts seller The Auto Store LLC led to the issuance of a $1.2 million fine following an employee hand injury in March 2022. And, of course, OSHA has had a well-publicized campaign directed at repeat violations at discount retail stores over the past five years in connection with blocked fire exits and fire extinguishers, along with unstable stacks of merchandise. These repeat issues resulted in a $1.2 million fine for Dollar Tree associated with two Family Dollar stores in Ohio as reflected in the agency's August 2022 press release.

The Biden Administration's effort to double down on repeat and willful conduct is also evidenced by OSHA's update and re-issuance of its Severe Violator Enforcement Program. Although in existence since 2010, the agency updated the SVEP in September 2022, "to focus inspection resources on employers that have demonstrated indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations." Employers with two or more willful or repeat violations are subject to the SVEP, and just one willful or repeat violation can subject a business to the SVEP if it involves a workplace fatality or catastrophe causing three or more hospitalizations. Once OSHA places a company in the SVEP, those employers are subject to further inspections and follow-up referrals.

Criminal enforcement

In addition to the recent significant increase in civil monetary fines, the Biden Administration is also increasing criminal prosecutions as reflected by enhanced coordination and referrals between the Department of Labor and the Justice Department. Several recent criminal cases demonstrate the willingness of DOJ to charge employers with OSH Act crimes for workplace safety violations, notwithstanding the fact that federal prosecutors have historically not pursued criminal cases for a variety of reasons. The OSH Act's penalty for a willful workplace fatality is a misdemeanor, and jail time has rarely been imposed because most employers are corporate entities, not individuals.

In August 2022, Alabama-based ABC Polymer Industries LLC, was charged with two OSH Act crimes for machine guarding after a worker was pulled into unguarded moving rollers as part of a manufacturing process involving plastic extrusion assembly lines. Also in August 2022, the U.S. Department of Justice issued a press release when Tampa Electric Co. was sentenced for an OSH Act crime involving the failure to brief employees of hazards of the job and related workplace precautions.

The Justice Department also continues to pursue cases under its Worker Endangerment Initiative, a program where federal prosecutors seek to couple Title 18 crimes, such as obstruction of justice, false statements, conspiracy, etc., to enhance criminal prosecution for workplace safety crimes. This is particularly evident in cases that may not involve a worker fatality when the OSH Act's criminal provisions do not apply.

In May 2022, for example, DOJ announced the indictment of Didion Milling and six company officials following a dust explosion that killed multiple workers and injured 15 others. In addition to OSH Act criminal charges, federal prosecutors indicted individuals for falsifying entries in a cleaning logbook, as well as false and misleading testimony regarding knowledge about combustible dust hazards. OSHA's press release stated that the employer had not installed a venting or dust collection system and failed to develop and implement a written program to effectively prevent and remove combustible dust.

The trend of the U.S. Department of Labor and Justice Department aggressively pursuing OSHA workplace health and safety compliance with both increased civil fines and criminal enforcement is likely to continue throughout the remainder of the Biden Administration. Businesses should carefully evaluate their training, operating procedures, safe work practices, and related programs in meeting their regulatory duties for a safe workplace.

Andrew Brought is a partner in the Kansas City, Missouri, office of Spencer Fane LLC. He counsels manufacturers, industrial clients and businesses with complex environmental and workplace safety/OSHA matters. He can be reached at abrought@spencerfane.com.

SPECIAL REPORT

Court rulings address wrongful termination, adverse employment claims in workers comp

BY GREG JONES AND SHERRI OKAMOTO

Drug tests following an injury, questions on immigration status and discrimination against workers who file claims are among the topics in recent court decisions that shed light on questions the workers compensation system has long sought answers to.

California

For example, California's 6th District Court of Appeals in an Aug. 26 decision in *Manuel v. Superior Court (BrightView Landscape Services Inc.)* held that an employer can't force an injured worker to provide discovery responses to questions about his immigration status.

Rigoberto Jose Manuel injured his back in January 2018 while working for BrightView Landscape Services. He went to an occupational medical clinic and saw a doctor who released him to work.

Mr. Manuel completed one full shift before his supervisor told him not to return and BrightView terminated his employment.

The parties disputed whether BrightView terminated Mr. Manuel's employment in retaliation for his injury or whether he failed to return to work because federal immigration authorities questioned his eligibility to work in the U.S.

BrightView filed a motion to compel Mr. Manuel to disclose his immigration status. A trial court granted the motion in November 2020.

The appeals court, however, ruled the trial court's order was an error. The plain language of Labor Code Section 1171.5 establishes immigration status as irrelevant for the purposes of enforcing state labor laws unless the party requesting the information has shown clear and convincing evidence that the inquiry is necessary to comply with federal immigration law.

The court said BrightView did not meet its burden to show by clear and convincing evidence that inquiry into Mr. Manuel's immigration status was necessary to comply with federal immigration law.

The court said federal immigration law prohibits a worker from seeking reinstatement or post-discovery back pay, but Mr. Manuel did not seek reinstatement or lost wages as remedies. Thus, the court said, BrightView was prohibited from requesting discovery into Mr. Manuel's immigration status for his retaliatory firing claim.

Nebraska

The Nebraska Supreme Court in its Sept. 9 decision in *Dutcher v. Department of Correctional Services*, held the exclusive remedy of workers compensation prohibited a woman from suing her employer for wrongful termination under the state's Fair Employment Practice Act.

Suzette Dutcher worked for the Department of Correctional Services and injured her right knee in a training exercise in April 2015. The department fired her in December 2016 when it could not find another position that accommodated her physical restrictions.

Ms. Dutcher sued the department alleging violations of the Nebraska Fair Employment Practice Act. A state trial court granted the Department of Correctional Services' motion for summary judgment, dismissing the case on the basis of exclusive remedy.

Nebraska's highest court noted this was the first time it addressed exclusive remedy in the context of a civil claim brought under the Fair Employment Practice Act.

The state Supreme Court said exclusivity provisions in the Workers' Compensation Act are broadly worded, while the Fair Employment Practice Act is silent on its application to disabilities arising from compensable injuries. Without additional guidance from lawmakers, the court concluded the discrimination claim arose from her covered injury and was, therefore, prohibited by exclusivity.

"To allow Dutcher additional relief in a civil action in district court under the (Nebraska Fair Employment Practice Act) would be to judicially interfere with the quid pro quo determined by the Legislature through the Nebraska Workers' Compensation Act," the court said.

Nevada

In another case addressing a wrongful termination claim, the Nevada Supreme Court affirmed the right of employers to fire workers for using recreational cannabis, despite state-licensed businesses selling the drug for recreational and medicinal use.

The court said in its Aug. 11 decision in *Ceballos v. NP Palace LLC* that cannabis remains illegal at the federal level, so a state law prohibiting adverse employment actions against people who use products that are legal in the state does not protect cannabis use.

Danny Ceballos slipped and fell in the Palace Station break room near the end of his shift in June 2020. He was forced to take a drug test and was fired when the test came back positive for cannabis.

The court said the law creating a private right of action for workers fired for the use of lawful products doesn't apply to cannabis because it is illegal under federal law and, state law notwithstanding, it is illegal in Nevada, too.

At the same time, the court said state law allows employers to prohibit or restrict employees from using recreational marijuana, so an employee fired after testing positive at work does not have a common-law tortious discharge claim.

"If the Legislature meant to require employers to accommodate employees using recreational marijuana outside the workplace but who thereafter test positive at work, it would have done so," the court said. "It did not."

Alaska

More recently, Alaska's high court faced a similar question about intoxication and upheld an award of benefits to a worker who admitted to using cocaine and drinking on the job and who tested positive for drugs and alcohol after his accident.

Virgil Adams fell about 30 feet while working on a roof. The property owner did not have comp coverage and the Workers' Compensation Benefits Guaranty Fund was joined as a party to the case.

Mr. Adams admitted to partaking in the illicit substances he said were readily available at the job site he characterized as "a revolving frat house." A post-accident drug test showed he had used cocaine within 48 to 72 hours. The test also revealed his blood alcohol level was .049.

The Workers' Compensation Board said the evidence supported a conclusion that Mr. Adams fell because the supports for the ladder he was on gave way. Since that would have caused anyone to fall, the board said intoxication was not a proximate cause of the accident.

The Workers' Compensation Appeals Commission and state Supreme Court both affirmed.

The high court said in its Oct. 7 decision that intoxication is an affirmative defense that requires the employer, or in this case the fund, to prove an injury was proximately caused by the worker's use of drugs or alcohol.

Greg Jones is senior editor and Sherri Okamoto is legal reporter for Work Comp Central, a sister publication of Business Insurance.

BUSINESS INSURANCE U.S. INSURANCE AWARDS

Celebrating Today. Creating Tomorrow.

The 2022 *Business Insurance* U.S. Insurance Awards celebrate teams working across the insurance and risk management sector that are providing solutions to problems faced by commercial insurance buyers and supporting the industry.

Finalists and winners include risk management teams improving return-to-work programs, brokers finding new capacity for their clients, underwriters providing coverage that responds to the evolving economy, and efforts by various companies to support their communities and improve their work environments.

The centerpiece of the awards event, which was held in New York in September, was the presentation of the 2022 Lifetime Achievement Award to J. Patrick Gallagher Jr., chairman, president and CEO of Arthur J. Gallagher & Co., who was also inducted into the *Business Insurance* Hall of Fame (see profile page 33).

The team awards recognize the achievements of groups of insurance and risk management professionals who collaborated on specific projects.

The nomination period for the awards opened in April, and we received more than 150 nominations. *Business Insurance* staff selected finalists in 10 categories.

The winners were selected by a panel of more than 30 risk managers who independently assessed each of the finalists.

The awards event also raised funds for the *Business Insurance* Scholarship, which was founded to help address the talent shortage facing the insurance sector and is administered by the Spencer Educational Foundation Inc. This year's recipients are Sebastian Czerwinski, a mathematics and actuarial science major at Illinois State University in Normal, and Sienna Sigmon, a risk management and insurance major at Appalachian State University in Boone, North Carolina.

Profiles of the winning teams begin on page 35.

Gavin Souter, editor

THE 2022 WINNERS

Broker Team of the Year
Willis Towers Watson PLC
Page 35

Community Outreach Project of the Year (Donations)
Lockton Cos. LLC
Page 35

Community Outreach Project of the Year (Pro Bono and Volunteer)
USI Insurance Services LLC
Page 36

Diversity & Inclusion Initiative of the Year
Gehring Group Inc., a Risk Strategies company
Page 36

Insurance Consulting Team of the Year
Corporate Risk Solutions
Page 37

Insurance Underwriting Team of the Year
Burns & Wilcox
Page 37

Legal Team of the Year
Liberty Mutual Insurance Co.
Page 38

Risk Management Team of the Year
Bass Pro Shops/CorVel Corp.
Page 38

TPA Team of the Year
Broadspire, a unit of Crawford & Co.
Page 39

Wholesale Brokerage Team of the Year
Ryan Specialty Holdings Inc.
Page 39


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BUSINESS INSURANCE LIFETIME ACHIEVEMENT AWARD

J. Patrick Gallagher Jr.

BY GAVIN SOUTER
gsouter@businessinsurance.com

After 50 years in the insurance business, J. Patrick Gallagher Jr. has seen a lot of change in both the sector and at the company that bears his family name.

Joining the market when it was common for large corporations to buy first dollar coverage, Mr. Gallagher participated in and later led Arthur J. Gallagher & Co.'s drive to provide a more sophisticated approach to insurance purchasing for its commercial clients.

The evolution also included the growth of claims administration services for buyers, which the firm first developed in the 1960s.

> "Our industry, in general, is an industry where people either fall into the business or they're born into it. However you get here, you're lucky."

Mr. Gallagher also led one of the most successful expansions ever of an insurance brokerage, helping as a producer and later as an executive grow the company from a largely Midwestern middle-market broker into a multinational risk management and professional services organization.

In 1972, when Mr. Gallagher joined the firm as an intern, it reported $3.5 million in revenue and had 141 employees, according to *Business Insurance*'s directory of insurance agents and brokers, and it did not make the ranking of the 20 largest brokers in the United States. In 1995, when he was named CEO, Gallagher was the 8th largest broker in the world, with $412 million in revenue and 3,739 employees. Last year, Gallagher reported nearly $7 billion in brokerage revenue — more than $8 billion for the whole company — and ranks as the world's 4th largest broker, with about 40,000 employees, over half of whom are based outside the United States.

J. Patrick Gallagher Jr.

In recognition of his achievements at Gallagher and his leadership position in the industry, Mr. Gallagher was presented with the *Business Insurance* Lifetime Achievement Award during the U.S. Insurance Awards event in New York in late September.

Mr. Gallagher puts his start in the insurance sector down to good fortune.

"Our industry, in general, is an industry where people either fall into the business or they're born into it. However you get here, you're lucky," he said. "I look back and I go, 'How lucky was I?' I got born into a business that my grandfather absolutely loved."

His grandfather, Arthur Gallagher, worked as a bookkeeper for a larger agency, before setting up his own shop in Chicago in 1927 selling insurance for the Hartford. His three sons all went into the business and developed the company into a commercial brokerage.

One of the pivotal moments in the company's history came in 1962 when it established its third-party administrator Gallagher Bassett Inc. and developed a pioneering self-insurance program for Beatrice Foods Co., a client it had won from a much bigger broker five years earlier.

Mr. Gallagher first worked at the brokerage at age 14 during his summer vacation in 1966 as a file boy, traveling into the office in Chicago with his father; he immediately liked the working environment and the people he worked with.

Later, he attended Cornell University, where he majored in political science and government, and returned to the brokerage as an intern in 1972.

In 1974, he graduated, got married and started at the company full time as a commercial lines producer, focusing mainly on middle market business. He was assigned a small book of business, which covered his salary, and set about building it up.

"It was tough, but I began to get traction," he said. "It's a story that remains today: you have to put in your dues, you learn your craft, learn how to qualify prospects and understand what the prospect actually needs instead of just trying to sell them a product."

In 1977, Mr. Gallagher returned to Cornell in his professional capacity and won the university's account. He still has the line slip on his office wall, he said.

> "We have to recognize that an entrepreneur that's built a $10 million business is damn good at what he or she is doing, and for them to want to join us I try to call every one of them to thank them for picking us."

"I'd gone back to Cornell and had a chance to call on their treasury department. They were buying all their coverage first dollar — it was kind of crazy — and we were successful at showing them how to use retentions, which in those days were still kind of modern thinking, and utilize a TPA," he said.

Forty-five years later, the university is still a client with a multiline retention and Gallagher Bassett as the third-party administrator.

The TPA continued to evolve and in the 1980s it developed into a company that offered its services on a standalone basis, beyond its core base of Gallagher brokerage clients.

See **LIFETIME AWARD** page 34

ABOUT THE AWARD

The *Business Insurance* Lifetime Achievement Award recognizes an individual whose outstanding contributions have had a lasting impact on the insurance and risk management sector. The honorees are also inducted into the *Business Insurance* Hall of Fame. The award was first presented in 2017 to Patrick G. Ryan, chairman and CEO of Ryan Specialty Group Holdings Inc. The 2018 honoree was Maurice R. Greenberg, chairman and CEO of C.V. Starr & Co. Inc; the 2019 honoree was Martin P. Hughes, executive chairman of Hub International Ltd.; the 2020 honoree was Kevin Kelley, retired vice chairman of Liberty Mutual Insurance Co.'s Global Risk Solutions business; and the 2021 honoree was Brian Duperreault, who retired as executive chairman of American International Group Inc. later that year.

LIFETIME AWARD

Continued from page 33

In addition to developing large retention business, during the 1970s Gallagher developed expertise in nonprofit, public sector and religious institutions business, which it maintains today, and enjoyed rapid organic growth.

Mr. Gallagher also progressed, becoming a unit manager with a handful of producers under him before he was named branch manager of Gallagher's Chicago operation. He held that position when Gallagher went public in 1984.

At the time of the initial public offering, the broker had $63 million in revenue and the offering raised about $13 million. The capital allowed the company to pay out some long-term equity holders who were retiring and start its now long-standing acquisition strategy.

"The driving force was to give those who had contributed to our growth their due and to give us a currency to grow the company with acquisitions," he said.

Since the IPO, Gallagher has made more than 500 acquisitions. While the deals have included some large companies, hundreds were tuck-in deals involving small brokers.

"We were growing pretty quickly with acquisitions, and we were plugging people into positions that many of us weren't necessarily trained and ready for. It was learning on the job: learn how to do acquisitions, learn how to manage them," he said.

Mr. Gallagher took on increasing levels of executive responsibility after the IPO. In 1986, he was made vice president of operations. In 1990, he was promoted to president and chief operating officer and took over from his uncle Bob Gallagher as CEO of the company five years later.

> "I'm very proud of the fact that the company had 500 interns this summer; I think there's clearly a day when we will have 1,000."

The acquisition strategy was and remains simple, Mr. Gallagher said. "Let's go out and find people that run really good businesses in our industry and, if we like them, let's try to convince them to sell to us and nobody else. That's it," he said.

The company has always been focused on culture — the 25 tenets of "the Gallagher Way" outline the company's approach to business ethics — and attracting the right firms into the culture has always been key, he said.

"We have to recognize that an entrepreneur that's built a $10 million business is damn good at what he or she is doing, and for them to want to join us I try to call every one of them to thank them for picking us," he said.

In more recent years, the acquisition strategy has seen the company grow a significant international business.

Gallagher began its international operations in London in 1974, and about 10 years ago it began targeting some big companies in other English-speaking countries. Among other deals, in 2013 and 2014 Gallagher bought Australian conglomerate Wesfarmers Ltd.'s insurance brokerage operations for more than $900 million and Canadian brokerage Noraxis Capital Corp. for nearly $400 million, in addition to Giles Group of Cos. in the United Kingdom for about $360 million.

"All those markets are comprised of a lot of small trading brokers, agents. We thought we could make a good home for them and do what we've done in the United States there, which has proved to be true," Mr. Gallagher said. "It was not an exercise in planting flags, it was an exercise in building out our earnings with an international component."

It's biggest deal to date was also international — the 2021 purchase of Willis Towers Watson PLC's reinsurance business.

The deal transformed Gallagher's reinsurance intermediary business from a mid-sized broker to the world's third largest. It also assisted its retail operations, providing insights into the dynamics of the wider insurance and reinsurance markets and the capital available in the sector, Mr. Gallagher said.

Insurance brokerage remains a great business that facilitates the operation of all other businesses, he said. But it's surprising how many companies have exited the sector, he added.

In 1985, a year after its IPO, Gallagher was the 11th largest U.S. brokerage and Marsh & McLennan Cos. Inc. was the largest. All the other firms in the top 20 have since exited or been absorbed by competitors, with several combined to form what is now Aon PLC, he noted.

"They all gave up, which is crazy. It's the greatest business on the planet," Mr. Gallagher said.

And there are great opportunities for young people to enter the sector, he said. Gallagher's internship program has grown into one of the largest in the industry.

"I'm very proud of the fact that the company had 500 interns this summer; I think there's clearly a day when we will have 1,000. We're looking at ways to be more proactive with the community colleges, but my goodness this business is terrific," he said.

Broker Team of the Year

Willis Towers Watson

A U.S.-based global retail pharmacy chain wanted to use analytic tools to look at its risks in a different way when it changed its insurance broker to Willis Towers Watson PLC in 2020.

The company, with annual revenue of more than $100 billion, wanted to take a strategic approach in a hard insurance market and get better value from its insurance program, which covers everything from property/casualty and professional liability to marine cargo and cyber risks, said Amy Mattle, Chicago-based executive vice president, global client advocate and co-retail industry practice leader for North America at Willis Towers Watson.

The pharmacy retailer wanted to "understand what insurable risks it was facing and how self-insuring portions of them would impact its balance sheet or operating margin," Ms. Mattle said.

The WTW broking team began a risk optimization study of the organization's insurable risks, using its analytics expertise and interviews with the company's C-suite executives in risk, finance, treasury, legal and tax to better understand its risk tolerance.

Through those conversations, the broker gained insight into what the executives viewed as the company's largest risks and how they felt if something was uninsured.

Amy Mattle

The complexity of the company, because of its retail pharmacy and health care focus, means that it faces different risks than other retailers, Ms. Mattle said.

In addition to being a brick-and-mortar space where people can buy shampoo, it dispenses drugs, provides vaccinations and offers general health advice, she said. Druggist liability and cyber liability are among its biggest risks, and the company is also making many acquisitions in the health care sector.

Using its analytics program, WTW ran thousands of potential scenarios, analyzing the company's exposures and losses across different coverage lines and applying different deductible and retention structures to its projected losses.

The broking team developed different options to deliver the most efficient insurance program for the company's 2021 renewal. As a result, the company decided to self-insure more of its risks — including business interruption and some of its professional liability — significantly increased its retentions and made greater use of its captive insurer, so that only catastrophic risks were being transferred to the insurance market.

The changes recommended by WTW resulted in more insurers being open to providing capacity and led to cost savings of several millions of dollars for the retail pharmacy at renewal, Ms. Mattle said.

Claire Wilkinson

> The client wanted to "understand what insurable risks it was facing and how self-insuring portions of them would impact its balance sheet or operating margin."
>
> Amy Mattle, Willis Towers Watson

FINALISTS

- **Aon PLC** — Aon used a multiteam approach to solve a large transportation company's issue with legacy liabilities and secured reinsurance support to take on the exposures.
- **Baldwin Risk Partners** — The BRP Inc. unit's management liability team created a National Center of Excellence that provides resources throughout the brokerage.
- **CAC Specialty** — The brokerage's transactional liability team created a contingent risk market for portfolio litigation risks, developed a market for judgment preservation insurance and extended a market for tax insurance.
- **Marsh LLC** — Marsh's excess casualty team developed a new policy wording, added capacity available to clients and created a consortium of insurers that are aligned on claims handling.

Community Outreach Project of the Year (Donations)

Lockton

Lockton Cos. LLC's annual golf tournament benefiting Move United's Warfighters program, which provides wounded and disabled veterans with free adaptive sports programming and rehabilitation, has raised more than $1 million since 2016, making it one of Warfighters' most successful fundraisers.

Held each September at the Trump National Golf Club in Bedminster, New Jersey, the Warfighters Sports Charity Challenge Golf Tournament was started by Hartford, Connecticut-based Lockton President Josh Olson, Managing Executive Gary Giuletti and Vice President and Managing Executive David Giuletti.

Mr. Olson said they were inspired to create the tournament after attending a Move United ski event several years earlier. They hoped to raise $50,000 the first year and instead raised $180,000. In 2021, Lockton reached a new milestone, raising $500,000 for Warfighters at the one-day tournament.

Josh Olson

The money supports Move United's more than 100 free Warfighters events each year. Since 2003, Warfighters has served more than 16,000 veterans, providing sports programs, equipment, transportation and accessible facilities.

"They use sport to help injured veterans do something that they never thought they would be able to do again," Mr. Olson said.

More than 228 industry representatives participate in the golf tournament each year, Mr. Olson said, including insurer executives, brokers, agents and clients, as well as 50 veterans who are members of the Warfighters program. Participants play in teams of four plus one veteran.

Many Warfighters participants have been part of the event every year, Mr. Olson said, including one veteran who lost both of his hands and legs. It's remarkable to see their strength and progress each year, he said.

"You get to really know the warriors and hear their stories," Mr. Olson said. "These people were injured in the course of battle while defending our freedom. It's really a moving event."

The tournament also includes a donation drive with PGA golf pros Pat McGovern, Tommy Hug and Andrew Eigner, a silent and live auction, and dinner. Though the pandemic forced some changes in 2021, like holding the dinner and auction outside, Mr. Olson said the industry still came out to show its support.

"The veterans are there thanking us for having this amazing place to play golf, and we're the ones that really want to thank them for their service and do whatever we can to help," he said.

Amy O'Connor

> "They use sport to help injured veterans do something that they never thought they would be able to do again."
>
> Josh Olson, Lockton

FINALISTS

- **AssuredPartners Inc.** — After a series of tornados ripped through Bowling Green, Kentucky, last year, the brokerage contributed to organizations providing relief to displaced families and rebuilding efforts.
- **Harford Mutual Insurance Co.** — The insurer's Gives Back Program partners with more than 70 charitable organizations to provide volunteer and financial assistance.
- **IAT Insurance Group** — The insurer supports Wreaths Across America, an organization that lays wreaths on the graves of soldiers.
- **IMA Financial Group** — The brokerage created the IMA Foundation nearly 40 years ago, and, after the company's rapid growth in recent years, the fund increased by more than 170% in 2021.

Community Outreach Project of the Year (Pro Bono and Volunteer)

USI

USI Insurance Services LLC's decision to celebrate its 20th anniversary in August 2014 with an extended community service program was so popular with employees that it has become an annual event.

"In April of 2014 I started planning how we were going to celebrate our birthday," said Kim Van Orman, senior vice president and chief human resources officer at the Valhalla, New York-based brokerage.

"We came up with the idea to have our entire organization spend the month of August 2014 giving back to our communities," she said. Because they would be dedicating 20 days of the month to volunteering, they named the event 20 for 20.

Employees in offices around the country volunteered in their communities during the first 20 days of August. Since there were 21 workdays in August 2014, the 21st day was given to them as a holiday, Ms. Van Orman said.

Kim Van Orman

"One of the groups volunteered to help a local zoo. They ended up cleaning out the elephant enclosure, so a handful of elephants are included in the number of animals we have helped."

Kim Van Orman, USI

Employees embraced the program, and the company has continued to do it ever since, she said.

Employees have also been encouraged to incorporate the values of USI's diversity, equity and inclusion program into their nonprofit partnerships to help underrepresented or marginalized groups, she said.

In 2021, 60% of their 238 volunteer events supported one or more diverse or underrepresented groups, "and we're hoping to expand that even further," Ms. Van Orman said.

Since the program's inception, there have been more than 1,500 volunteer events at which USI employees have helped more than 2.5 million people. Office teams have volunteered with local food banks and depositories, senior care centers, mentorship programs and outdoor beautification projects.

Over the years, they have also helped 31,000 animals by volunteering at local animal shelters — walking dogs, helping at adoption events and cleaning facilities.

"One of the groups volunteered to help a local zoo," Ms. Van Orman said. "They ended up cleaning out the elephant enclosure, so a handful of elephants are included in the number of animals we have helped."

Volunteering became very challenging during the month that fell during the worst of the COVID-19 pandemic, she said. "We did things virtually and did things like making gift baskets. So, we kept things going," she said.

Outdoor group volunteer events were resumed in 2021. USI has also extended the duration of its volunteer campaign to run throughout August and September, to give local office teams more flexibility to plan their events while adhering to COVID-19 safety measures.

Caroline McDonald

FINALISTS

- **American International Group Inc.** — The insurer's pro bono program provides free legal advice to individuals and nonprofits.
- **CNA Financial Corp.** — The insurer's Thurgood Marshall Early Innovators Program teaches high school students to devise plans to solve community challenges and provides scholarships.
- **ICW Group Insurance Cos.** — The insurer started a six-week Black Youth Initiative Intern Program, in which ICW staff worked with and coached students.
- **Midwest Employers Casualty Co.** — The insurer's staff tutored and mentored local school students to forge community connections that give educational and social support.

Diversity & Inclusion Initiative of the Year

Gehring Group

Employees at Gehring Group Inc. were shaken when they learned about the death of George Floyd in Minneapolis in 2020.

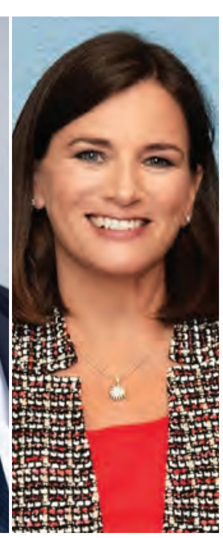
"The nation was alarmed and shocked at the gravity and inhumanity. We all saw it and felt the same thing," said Rodney Louis, senior risk management consultant at the Palm Beach Gardens, Florida-based unit of Risk Strategies Co.

Kate Grangard, managing director, national public entities practice, wanted to provide an opportunity for employees to get together as an organization and not ignore what had happened.

They held a town hall in early 2021, "where many people spoke and were extremely moved," Mr. Louis said. "A lot of us were sharing experiences with regards to discrimination or lack of inclusivity."

At the end of the town hall, the decision was made to form a committee to raise awareness about diversity and inclusion.

Rodney Louis



Kate Grangard

"More than 60 people out of 94 employees volunteered to join, to be a part of 'Culture of Inclusion,' which is what we called it," Mr. Louis said.

"Just because we're from a different place, or have an accent, doesn't make us separate from one another. We want to honor and celebrate those differences."

Rodney Louis, Gehring Group Inc.

The decision was made on what they should concentrate on, and they broke into three groups, focusing on education, awareness training and communication.

The education group decided "to give an unbiased history lesson about legislation and court doctrines from 1865 until today," Mr. Louis said. "They focused on the legislation that created where we are today."

They then worked with a production company to make a film. "We used footage and video, and had it narrated," he said. "It ended up being 40 minutes of U.S. history that you never learned in school."

These employees also participated in a privilege walk. "Everyone lines up and several questions are asked about advantages," Ms. Grangard explained.

Questions were asked such as "Did you have more than 20 books in your home?" and "Is English the first language spoken in your home?"

"If you had a positive situation you took a step forward. If not, you took a step back," Mr. Louis said.

"Most participants kept their eyes down, and when they looked up and saw where their coworkers were, they were surprised," Mr. Louis said. "Some broke down in tears."

Looking forward, the goal is for people to understand that "just because we're from a different place, or have an accent, doesn't make us separate from one another. We want to honor and celebrate those differences," he said.

Caroline McDonald

FINALISTS

- **Alliant Insurance Services Inc.** — The brokerage launched the Alliant Insurance Foundation to promote diversity and broaden access to the insurance industry to underrepresented people.
- **CNA Financial Corp.** — The insurer implemented its Company of Allies program to advance a culture of inclusion through training and education programs.
- **Falvey Insurance Group** — The agency introduced Women at the Helm, the company's first-ever speaker series, which spotlighted challenges facing women.
- **Guidewire Software Inc.** — The software company implemented a company-wide diversity and inclusion strategy that seeks to embed inclusiveness throughout the organization.

Insurance Consulting Team of the Year

Corporate Risk Solutions

An analysis of the total cost of risk, coverage, contractual gaps and overlaps, as well as insights into a company's risk management program and operational path, was the beginning of a risk management makeover for a multinational transportation and logistics company.

New York-based Corporate Risk Solutions, an independent risk and insurance adviser, was engaged to review the company's insurance structures, which included a significant real estate portfolio. Within the resulting analysis, CRS unearthed various operations that had been discontinued or incorrectly protected. This resulted in adjustments to accurately reflect location values, thereby reducing insurance costs.

"Our goal in every engagement is to identify tailored strategies to streamline risk management, maximize protection and mitigate cost."

Jim Fay, Corporate Risk Solutions

Danielle Lenzi Jim Fay

CRS also negotiated a reduction in the company's collateral obligations, freeing up working capital.

"This is an example of the kind of results we can achieve for our clients," Danielle Lenzi, senior vice president at CRS, said in an email. This is accomplished, she said, by working closely with and actively listening to clients' needs and goals identified by executive teams and safety and risk experts.

The company also coordinates cost benefit analyses to advise on alternative risk transfer options such as risk retention groups, captive insurers or other structures "to allow clients to have greater control over insurance purchasing decisions to reap the rewards of loss control efforts," Jim Fay, managing director at CRS, said in an email.

CRS' approach also enhances market competition, he said.

"In this case, the client saved more than $15 million in premium expense on its casualty coverage alone and achieved other needed operational efficiency," Ms. Lenzi said.

"Our goal in every engagement is to identify tailored strategies to streamline risk management, maximize protection and mitigate cost," Mr. Fay said.

Caroline McDonald

FINALISTS

- **BDO USA LLP** — BDO assisted a client in selecting an insurance broker, restructuring its risk department, evaluating its risk management information system and other tasks that resulted in multimillion-dollar savings.
- **Galway Strategic Solutions** — This unit brings real-world expertise to Galway's portfolio companies to develop solutions to problems, including creating a turnkey digital platform targeting the small-business commercial insurance sector.
- **Paragon Risk Engineering** — Paragon worked with steel industry clients to evaluate risks through a severity study that eliminated inefficiencies and drove improvements.
- **Xceedance Inc.** — Xceedance was tasked by a top specialty insurer to boost underwriting profitability and productivity by reducing work repetition and improving processes.

"In this case, the client saved more than $15 million in premium expense on its casualty coverage alone and achieved other needed operational efficiency."

Danielle Lenzi, Corporate Risk Solutions

Underwriting Team of the Year

Burns & Wilcox

The COVID-19 pandemic created significant disruption in the construction sector, which affected the types of risks the industry faced and companies' insurance needs.

To help meet those changing needs, Burns & Wilcox developed ProConstruct, said Michael Muglia, Farmington Hills, Michigan-based national underwriting director within the underwriting manager's professional liability practice.

The program had its first full production year in 2021 and Burns & Wilcox has written "hundreds" of policies, which are backed by Lloyd's of London syndicates, Mr. Muglia said.

"We're an internal program division within Burns & Wilcox, and we really create programs based on brokers' needs and needs we see in the marketplace," he said.

Design and construction professionals' jobs have evolved to include tasks such as making sure materials arrived on time, checking to see they were not damaged in transport, or adjusting for something that may have changed at the jobsite after the original order, he said.

Michael Muglia

"We really create programs based on brokers' needs and needs we see in the marketplace."

Michael Muglia, Burns & Wilcox

Other policy forms were silent or "gray" on a lot of things, "and from the brokerage side, we know some carriers have denied claims" in areas "that we very much thought should have been covered, based on what we knew the contractor was doing" at the time of the underwriting, he said.

In addition, as the pandemic hit, projects were shut down, contractual wording came under scrutiny, and there were time delays and material shortages because of the global disruption, Mr. Muglia said.

This created an opportunity, he said. As Burns & Wilcox personnel transitioned to working from home, the underwriting team could "really work on something without a ton of disruptions," he said.

The whole program fell into place in about a month and a half. It was "lightning fast, but it really speaks to the expertise of underwriting that we have on the team," Mr. Muglia said.

The program reflects the pandemic's impact. With the work stoppages, for instance, construction professionals and contractors were storing chemicals on site because they could not access disposal sites due to unusual hours, lack of staffing or others trying to use them, Mr. Muglia said. But insurance had covered only delivery services.

The Burns & Wilcox form addresses this issue, Mr. Muglia said, adding that competitors have since followed its lead in offering this coverage. "It's flattering, but it's aggravating," although it also shows "we've got it right," he said.

Judy Greenwald

FINALISTS

- **American International Group Inc.** — The insurer devised an insurance program for the complex risks that come from special purpose acquisition companies, or SPACs.
- **Ascot Insurance Co.** — Ascot's ocean marine team scaled up its operations to meet increased demand in a difficult market and provide responsive services to policyholders.
- **Constellation Affiliated Partners** — The CRC Insurance Services Inc. unit launched a technology-enabled large fleet commercial trucking program.
- **Westchester** — The Chubb Ltd. unit worked with wholesale brokers to institute changes that improved products and distribution strategies.

Legal Team of the Year

Liberty Mutual

The COVID-19 pandemic forced Liberty Mutual Insurance Co.'s 900-person field legal department to drastically adjust claims litigation handling as courtrooms across the country went virtual, from case depositions to trials and everything in between.

While the insurer had technology to respond when the world shut down in March 2020, said Arlene Zalayet, senior vice president and general attorney for Boston-based Liberty Mutual, the legal team wasn't necessarily prepared to handle all court business outside of a courtroom or office.

"Nobody could be in the same room, even the lawyer and the client. … This was a whole new way of lawyering," she said.

In response, the insurer's legal training program was quickly expanded to include skills for virtual advocacy, Ms. Zalayet said. The mandatory trainings covered how to conduct virtual proceedings such as depositions and mediations with virtual simulations by senior attorneys. A mentor and buddy system, as well as checklists, were also created to help attorneys keep up with the constantly changing rules across jurisdictions.

"Nobody could be in the same room, even the lawyer and the client."

Arlene Zalayet, Liberty Mutual


Arlene Zalayet

As courts responded to the evolving pandemic, so did the training program. New training was introduced when virtual jury trials started in the summer of 2020, Ms. Zalayet said. It was challenging, as trials operated differently in different venues, with jurors in the courtroom with the judge and lawyers in some places and at home in others, she said.

In one instance, Ms. Zalayet said, the attorneys had to stand with their backs to the judge while facing the jurors on a giant screen.

"Our lawyers had to be trained on how you connect and make your points effectively in these strange physical settings," she said.

Other departments were brought in to help, including Liberty Mutual's actuarial team, which analyzed the situational data's effect on case outcomes. According to that data, the team's trial defense success rate was consistent with that of pre-pandemic.

The legal team also detailed its winning cases in a podcast series called "The Way We Win."

Ms. Zalayet said the experience was a team-building and learning opportunity.

"We still have ongoing monthly meetings with the claims leaders, the actuary leaders and the national training coordinator because we didn't want to let that synergy go," she said.

Most courts will continue to have virtual case components going forward, Ms. Zalayet said, so the virtual advocacy training program will operate alongside the company's in-person training program indefinitely.

"Everyone still needs virtual skills in their toolbox. From now on, our view of training is it's not either or," she said.

Amy O'Connor

FINALISTS

- **Anderson Kill P.C.** — The firm helped secure coverage victories for commercial policyholders in cases ranging from COVID-19 business interruption disputes to asbestos-related liability claims.
- **Cohen Ziffer Frenchman & McKenna LLP** — Cohen Ziffer is a recently formed law firm that has attracted numerous corporate policyholder clients to work on pandemic-related claims and complex liability claims.
- **Covington & Burling LLP** — The firm successfully represented policyholders in disputes including coverage for cyberattacks, pollution and losses related to COVID-19 shutdowns.
- **Pasich LLP** — The boutique insurance recovery law firm scored numerous wins for policyholders, including securing event cancellation coverage for concerts canceled during the pandemic.

Risk Management Team of the Year

Bass Pro Shops/CorVel

Bass Pro Shops, a privately held specialty retailer focused on hunting, fishing and other outdoor activities, wanted to improve its return-to-work and temporary total disability tracking.

David Jones, director of risk management at the Bridgeport, Connecticut-based company, enlisted the help of risk management consultants and workers compensation administrator CorVel Corp. to help implement the recommendations of Bass Pro's risk management team.

"They wanted to assemble a dedicated team of nurses that would essentially perform as an extension of the risk management department and ensure that injured workers received the most appropriate and best level of care possible," said Aurora, Illinois-based Bill Koerner, vice president, national accounts at CorVel.

The period between the original vision and the implementation of the program was about 90 days, "but the program has evolved over time," Mr. Koerner said. "It took about a year to realize that additional nursing resources were needed to make the program truly successful."

The program was designed to improve the tracking of temporary total disability claims and workers' return to work while lowering medical costs and ensuring that injured workers received the appropriate level of care with the appropriate treating providers.


Bill Koerner

Taking the initiative companywide involved several different Bass Pro and CorVel teams, including risk management, safety, human resources, operations, workers compensation coordinator teams, and dedicated CorVel adjusters and nurse case managers.

Weekly temporary total disability meetings were held to help track workers compensation claims more diligently, Mr. Koerner said

Bass Pro now has a dedicated team of CorVel nurses and coordinators working with adjusters, providers and employees to promote effective and timely return to work with maximum medical improvement. Mr. Koerner said.

"Early intervention and communication — starting with the intake process and continuing 24/7 — are getting patients to the right providers at the onset of the claim," Mr. Koerner said.

Follow-up by the nurses and the support team helps injured workers achieve more timely return to work and lower medical costs.

Program results also include a decrease in case management costs and the number of injured workers on the temporary total disability report, Mr. Koerner said. There has also been a decline in litigated claims since the program began, he added.

Matthew Lerner

"Early intervention and communication … are getting patients to the right providers at the onset of the claim."

Bill Koerner, CorVel

FINALISTS

- **The town of Greenwich, Connecticut, and Greenwich Public Schools** — The risk management department spearheaded a cybersecurity program for the public entities and implemented procedures to ensure contractor compliance with insurance programs, among other initiatives.
- **Carpenter & Co.** — The company partnered with CorVel to improve claim closure rates for a workers comp trust.
- **KKR & Co. Inc.** — KKR's risk management team has brought innovation to developing a suite of programs to support the investment firm's portfolio of companies, including cross-portfolio programs.
- **Walgreens Boots Alliance Inc.** — The company's insurable risk team worked with internal and external partners to develop and implement a new strategy and insurance program to tackle the evolving risks facing the company.

TPA Team of the Year

Broadspire

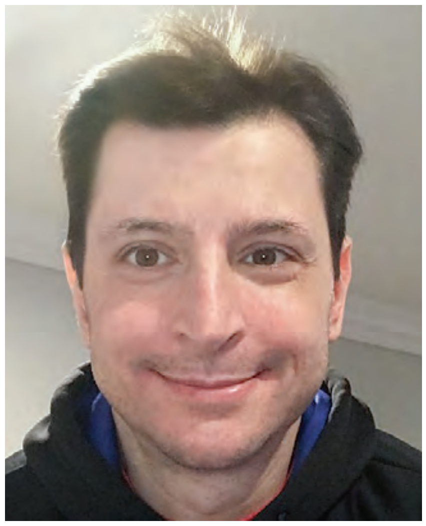
Managing workers compensation claims for New York's largest health care organization during the COVID-19 pandemic was unlike any challenge the Broadspire Services Inc. team had experienced before, said John Lastella, vice president of claims.

Broadspire, the third-party administrator arm of Crawford & Co., has handled Northwell Health's workers compensation program since 2013. The health care system has more than 80,000 employees across 23 hospitals, said Hauppauge, New York-based Mr. Lastella.

"When the pandemic hit, Northwell was hit really hard," he said. "A lot of their employees were exposed to COVID, and they didn't have a choice but to take care of people."

Broadspire worked with Northwell to determine how many employees were exposed to the virus on the job, which amounted to about 7,000, Mr. Lastella said. Workers comp claims were then opened for each employee who contracted the virus, totaling about 2,500, to compensate for missed work time and any medical needs.

> "COVID was something that was totally new, and they had to learn really quick and use their best judgment … . They were just tremendous."
>
> John Lastella, Broadspire



John Lastella

To improve the efficiency of the claims-handling process, Broadspire built a database to track COVID-19 exposures, testing and claims across Northwell's hospital system. Each claim was categorized by seriousness of exposure. Workers with significant illness, or long COVID, were assigned Broadspire nurse managers who ensured they received proper medical care.

"Each claim had a different approach, and we tried to categorize them and provide whatever resources, depending on the severity of the case, as quickly as possible."

There were also health care worker claims related to mental and physical exhaustion, as well as other physical injuries.

"Everybody was pulling double or triple duty — I don't know how they did it," Mr. Lastella said.

Today, about 40 to 50 claims remain open. Though the experience didn't compare to what Northwell's health care workers endured, Mr. Lastella said, it took a toll on Broadspire adjusters, many of whom worked 16-hour days, five to six days a week for several months straight.

"COVID was something that was totally new, and they had to learn really quick and use their best judgment in a lot of scenarios. They were just tremendous," Mr. Lastella said.

Most of the 2,500 claims occurred between March and August 2020, when there were a lot of unknowns. It was a scary time, but Mr. Lastella said he's proud of how his team came together to support Northwell's health care workers through compassion and cooperation.

"That was the focus — there was nothing else. It was just how do we get them through this and what is the best route," Mr. Lastella said.

Amy O'Connor

FINALISTS

- **Cannon Cochran Management Services Inc.** — CCMSI implemented artificial intelligence in its claims operations, enabling the company to identify complex claims earlier and automate tasks.
- **CorVel Corp.** — The company worked with a retailer client to improve its claims process, including its pharmacy program.
- **Gallagher Bassett Services Inc.** — The company developed its Waypoint Litigation Solution, an artificial intelligence tool that identifies problem claims.
- **Helmsman Management Services** — The Liberty Mutual Insurance Co. unit uses its early severity model to identify workplace injury claims that are likely to be more complex and expensive.

Wholesale Brokerage Team of the Year

RT Specialty

What started as a need to fill a capacity void in the cyber liability insurance market in 2013 has become a rapidly growing segment for RT Specialty. So much so, that a team was formed to handle the business and identify other areas in the market where coverage is needed.

Jonathan Reiner and Patrick Richmond, executive vice presidents at RT Specialty, a unit of Chicago-based Ryan Specialty Holdings Inc., head this team within the RT Professional and Executive division.

The team combined their cyber experience with the knowledge of former cyber underwriters and data analysts to form an RT-exclusive facility backed by five insurers.

"We worked together with a few key trading partners at the facility to replenish some of the supply of the cyber catastrophes market," he said. "That had been due to hardening conditions that drove the supply and the market down quite a bit."

They have since seen rapid growth, with a premium growth rate of 96.3% in 2021, following a 137% rate in 2020.

This expansion has necessitated a larger staff. "RT Specialty is an amazing platform," Mr. Reiner said. "It has allowed us the freedom and the resources to go from a staff of two to more than 80."

Jonathan Reiner

Patrick Richmond

The team's success can be attributed to these personnel, he said. "They have come in with passion, desire and value," he said.

Of the new employees, about half were underwriters before entering broking. "We also have success hiring people from outside the industry, most often right out of college," he said.

There is one trait they all have in common, however, "and that is heart," he said. The team shows this by giving back to the community, supporting Laugh Your Face Off, a Chicago-based comedy fundraiser devoted to finding a cure for trigeminal neuralgia and neuropathic face pain.

"It's very challenging to live with and it wasn't getting the proper funding," Mr. Reiner said. "We wanted to help raise awareness and funds for research." Over the past several years they have raised more than $300,000.

Looking ahead, the team's strategy is to find gaps in the market. "We spend time with and talk to our clients," Mr. Reiner said. "When they tell us they are having pain somewhere, our goal is to figure out a way to help and take pressure off them so they can be better for their clients."

Caroline McDonald

FINALISTS

- **Pathpoint Inc.** — The wholesaler Pathpoint developed an online excess and surplus quoting, binding and policy issuance process for retailers.
- **PL Risk Advisors Inc.** — The Axis Management Group Holdings Inc. division developed specialty expertise for hard-to-place risks, including cyber, professional liability, cannabis and transactional liability.
- **SolePro Inc.** — SolePro developed an insurtech platform for the workers compensation industry that provides retailers with multiple quotes and comparisons.
- **Synapse Partners LLC** — Synapse designed a proprietary data management platform that provides insights into the specialty market and benchmarking analysis.

> "When (clients) tell us they are having pain somewhere, our goal is to figure out a way to help and take pressure off them so they can be better for their clients."
>
> Jonathan Reiner, RT Specialty

COMMENTARY

Diversity hiring key to growing industry

Attracting people to work in insurance remains a challenge for many organizations, but it appears to be one that more and more companies are rising to.

Programs directed at pulling a wider variety of people into the sector — whether in terms of education level or race and ethnicity — are making progress.

At the *Business Insurance* Diversity & Inclusion Institute's recent conference, several companies shared the success of their alternative recruitment initiatives. By discarding the notion, for example, that all jobs previously set aside for college graduates really need someone who has a four-year degree, companies are able to access people that they had not previously considered. Such apprenticeship programs need a commitment from the companies involved, because they require additional training resources, but they turn out committed and engaged employees.

Gavin Souter
EDITOR

Internship programs are also being adapted to accelerate the process of attracting interested workers to the industry. While many insurers and brokers have longstanding programs for college students and graduates, some are extending these programs to high school students with positive results. In addition to bringing future workers into the sector, the programs have the added benefit of getting the word out early that insurance can be a varied, interesting and lucrative career.

Companies sponsoring these programs also report that they are excellent avenues to connect the industry with a more diverse pool of candidates — which is another area that the industry has struggled with.

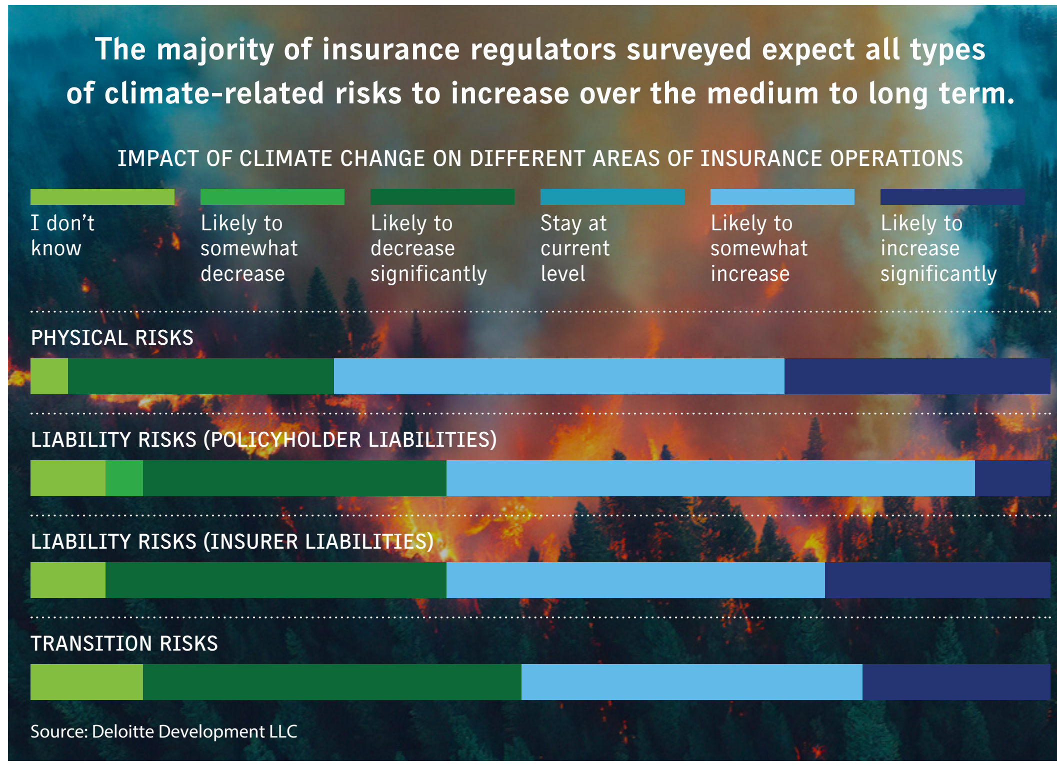
BI's research, though, shows that there are signs of improvement with diversity, too. According to respondents to our 2022 survey on diversity in the insurance workplace, 64.3% say their organization recognizes diversity as a priority, compared with 59.7% last year, and 64.3% say their company has made an effort to improve diversity practices, compared with 51.3% in 2021.

And people are hopeful that more change is coming. While only a narrow majority of all people working in the industry are optimistic about the prospect of diversity-related change, 61% of millennials have a positive outlook on the issue.

At the conference, it was clear that many people are working hard to attract more people in general to the industry and to target more diverse candidates, and that they are sharing best practices on how to improve the diversity of the sector.

Dropping the "b" word to help dispel the myth that the insurance sector is made up of nothing but boring jobs is a good place to start, but there are many smart and layered strategies being employed.

Encouraging more diverse people to enter the insurance sector is not only the right thing to do, but also a practical necessity as other sectors battle the industry for talent. There's still a long way to go, but many in the industry clearly have the drive and the ideas in place to make a meaningful difference.



VIEWPOINT

Resilience takes investment

BY CLAIRE WILKINSON
cwilkinson@businessinsurance.com

As southwest Florida continues its recovery from Hurricane Ian and the insurance and risk management sector debates ongoing concerns about capacity, availability and cost of coverage, the message to policyholders to invest in resilience measures to protect their properties from a changing climate is louder than ever.

Whether it's upgrading roofs and windows, raising properties on stilts in flood-prone areas, or clearing brush to create defensible space around buildings to slow or stop the spread of wildfire, the strong advice from brokers and insurers is for property owners to take seriously the importance of taking preventive steps. The latest hurricane bears this out.

Despite Ian's devastation, and the estimated insured losses of $50 billion-plus across the global property/casualty insurance and reinsurance industry, brokers report that newer construction, including metal and tile roofs, proved more resistant to the storm.

At the community level, measures such as upgraded building codes are critical. A 2021 report by the Insurance Institute for Business and Home Safety ranked Florida and Virginia highest in the adoption and enforcement of building codes.

Another story of resilience following the Category 4 storm was that of a little-known 100% solar-powered community — Babcock Ranch — just 12 miles northeast of Fort Myers. Ian, with its record-breaking storm surge and winds up to 150 mph, severely damaged infrastructure such as roads and bridges and parts of the electric grid in local communities. However, according to news reports, the energy-efficient homes and properties of Babcock Ranch survived the storm intact and did not lose power, water and internet. Eco-conscious city living may not yet be accessible or a practical solution for everybody, of course, but it clearly has benefits.

Insurers gradually have been offering incentives to policyholders that invest in mitigation measures, but with inflation pushing up insured values across the board and property rate increases showing no sign of relief, they will need to turn up the volume of their messaging on these efforts. FM Global, for example, in October added to its well-publicized $300 million climate credit for policyholders by launching two climate reporting tools also designed to incentivize investments in climate mitigation.

Regulators, meanwhile, have started to add to the pressure on insurers to reward policyholders for their efforts. In California, the Department of Insurance in October introduced new rules requiring insurers to provide discounts to property owners who take wildfire safety and mitigation steps. Under the rules, insurers are required to submit new rate filings within 180 days incorporating wildfire safety standards set by the department and to establish a process for releasing wildfire risk determinations to businesses and residents. Such regulatory mandates are likely to become more widespread as the risks of severe weather events increase and affordable insurance becomes less available in catastrophe-prone areas amid the changing climate.

Many large corporate insurance buyers are already self-insuring to substantial levels, while dealing with even more costly and restrictive coverage, and nobody wants a market that is stymied by regulatory intervention. A mindset of rebuild and recover is not enough. Insurers need to engage proactively with policyholders in order to incentivize them to invest in offsetting climate-related risks so as to avoid the need for regulations telling them how to act. The more transparent this process is, the better insurers and risk managers will be able to mitigate the impacts of climate change.

MARKET PULSE

PRODUCTS & SERVICES

Lockton rolls out digital asset insurance

■ Lockton Cos. LLC said it is offering digital asset custody insurance.

The facility is supported by Lloyd's of London syndicates, giving Lockton access to London market capacity estimated to be in excess of $850 million for custody coverage, a Lockton statement said.

The coverage was developed by Lockton's emerging asset protection team, which is managing the underwriting process, and features programs with various limits and cost structures, the statement said.

Custody insurance, sometimes called cold storage coverage, provides indemnity in relation to private keys stored in secure locations, including those that are part of a multiparty computation solution or entirely offline.

Neil Daly, head of Lockton's U.K. emerging assets team, said that securing such cold storage coverage has historically been difficult.

Lockton's emerging asset protection team focuses on providing coverage for companies operating in the blockchain and digital asset sector.

Dutchie.com adds cannabis insurance

■ Dutchie.com, an online technology platform offering e-commerce services to the cannabis industry, said it has launched Dutchie Insurance.

The company said in a statement that it plans to offer coverage, including property, physical products and lawsuits, for cannabis growers, manufacturers and wholesalers, medical dispensaries and recreational retailers.

Mauricio Comi, head of insurance at Dutchie, said in the statement that cannabis businesses need appropriate insurance coverage.

Its other services include Dutchie POS and Dutchie Pay.

RB Jones unveils solar coverage program

■ RB Jones, a managing general underwriter unit of H.W. Kaufman Group, said it is introducing a solar commercial insurance program for developers, independent power producers and small utility companies.

The Farmington, Michigan-based MGU said limits of up to $10 million are available for property and up to $5 million for umbrella, with coverage offered at each stage of the renewable energy lifecycle, from site preparation and transportation to installation, operation and decommission.

Energy coverage options include utility ground mount, rooftop commercial community solar, carports and battery energy storage systems that are ancillary to a solar project.

RB Jones said coverage can be tailored to individual projects as well as large-scale portfolios and offered as a standalone product or a package.

FM Global offers pair of climate reporting tools

■ FM Global launched two climate reporting tools designed to help policyholders prioritize their investments in climate risk mitigation.

The climate risk report scores a policyholder based on the actions it takes to address climate risk and its exposure to events such as flood, windstorms, hail and wildfire, FM Global said in a statement.

The report is based on billions of property-risk data points collected in more than 60,000 engineering visits each year to policyholder sites, the Johnston, Rhode Island-based insurer said.

FM Global will also provide policyholders with a climate reporting aid to help them disclose acute and chronic climate-related financial risks to investors and the public according to widely adopted frameworks such as the International Task Force on Climate-related Financial Disclosures.

FM Global in August said it would offer a 5% premium offset to policyholders to help them invest in climate mitigation. The credit totals around $300 million across its policyholder base.

Mosaic offers E&O cover for technology firms

■ Bermuda-based insurer Mosaic Insurance Holdings Ltd. said it is offering excess technology errors and omissions coverage for cyber-related risks.

Mosaic will offer limits up to $15 million above a $10 million attachment point.

Underwritten through Mosaic's Lloyd's of London syndicate, the coverage will be offered globally to businesses such as artificial intelligence, virtual reality, information technology consulting companies and other technology companies, a Mosaic statement said.

Berkley expanding product recall business

■ W.R. Berkley Corp. said it is broadening its Berkley Global Product Recall business and changing its name to Berkley Product Protection.

The insurer said in addition to product recall coverages, it will offer product liability, general liability and excess liability coverages that will be available for various medium to high hazard risks, including manufacturers, wholesalers and importers.

The new coverages will be primarily offered on an admitted basis with targeted effective dates beginning Jan. 1, 2023, the insurer said.

Joining Luis Rivera, who has served as president of Berkley Global Product Recall since May 2022, will be Ken Shoop, senior vice president and product liability chief underwriting officer, and Allison Daly, senior vice president and chief claims officer.

Mr. Shoop was previously with Hartford Insurance Group, according to his LinkedIn profile, and Ms. Daly was previously with Marsh & McLennan Cos. Inc.

Specialty Underwriting offers real estate cover

■ Specialty Underwriting Insurance Solutions, an excess casualty managing general agent, said it is introducing coverage targeted at real estate owners and real estate investment trusts with large apartment unit portfolios.

There is coverage under HABX for market-rate apartments, for-rent family housing, contingent liability and lessors' risk for retail, commercial, office, hotels and motels, warehouses and shopping centers, among others, according to the statement issued.

Information on limits was not available.

New York-based Specialty Underwriting, a unit of Summit, New Jersey-based Specialty Program Group LLC, was formed in January.

DEALS & MOVES

Risk Strategies buys Relation education business

Risk Strategies Co. has bought rival brokerage Relation Insurance Inc.'s education insurance division.

Terms of the deal were not disclosed.

Walnut Creek, California-based Relation, which has been one of the most acquisitive brokerages over the past several years, said it plans to focus on its national property/casualty insurance and employee benefits businesses.

NFP purchases UK broker Bentley

NFP Corp. said it has acquired Leek, England-based commercial and personal lines brokerage Mason James Insurance Services Ltd., which does business as Bentley Insurance Services.

Terms of the deal were not disclosed.

Founded in 1922, Bentley, which has 14 staff, provides auto and home insurance, commercial insurance, industrial insurance and coverage for tradespeople, according to its website.

Aon makes data and analytics acquisition

Aon PLC said it has acquired data and analytics capabilities for reputational risk from Pentland Analytics Ltd., a provider of advanced analytics and advisory services.

Terms of the deal were not disclosed.

The acquisition includes Pentland's reputation crisis database, proprietary modeling algorithms and a cloud-based web application for clients. The reputation crisis database contains data on 340 corporate events, spanning the last 40 years, across all regions of the world and all major industries, a statement said.

Hub acquires Kentucky brokerage

Hub International Ltd. said it has acquired Peel & Holland Holdings Inc., Peel & Holland Inc., Riddle Insurance LLC, Hartin Dynamics LLC and Bluegrass Premium Finance LLC, all collectively known as Peel & Holland.

Terms of the transaction were not disclosed.

Benton, Kentucky-based Peel & Holland has six additional locations and provides property/casualty insurance, surety and bonding, family insurance and employee benefits plans with a focus on the public entity, marine, construction and health care sectors, a statement said.

PEOPLE

“The battlefield will be in data, how we use data to build and drive cultures and better serve our clients. Right now, the industry relies too much on process versus people, talent and true salesmanship.”

UP CLOSE

Jeff Lang

NEW JOB TITLE: Los Angeles-based executive vice president, national retail services practice leader, Venbrook Group LLC.

PREVIOUS POSITION: Los Angeles-based executive vice president, property/casualty, West region, USI Insurance Services LLC.

OUTLOOK FOR THE INDUSTRY: The battlefield will be in data, how we use data to build and drive cultures and better serve our clients. Right now, the industry relies too much on process versus people, talent and true salesmanship. Going forward, there will be a trend toward more entrepreneurial approaches to using data to bring relevant solutions to our clients, which is exactly the culture I found at Venbrook and one which I will continue to foster.

GOALS FOR YOUR NEW POSITION: My No. 1 goal is to empower our sales teams, our producers and their support teams to do what it takes to take care of our clients. If you take care of your people, they will take care of your clients.

CHALLENGES FACING THE INDUSTRY: The single biggest issue we face is an industrywide mature workforce. There’s a talent gap between the folks coming out of college and the folks retiring in the next 5-10 years, which will play a significant role in the way business is done. Middle-market companies will be hit first. Those companies generating $50 million to $1 billion in revenue don’t have in-house risk managers to address their unique, sophisticated risk management needs. Our industry needs to address that gap and work toward transferring knowledge from more experienced talent to new and hungry talent to serve those companies.

FIRST EXPERIENCE: Back in 1993, I started as a trainee at Alexander & Alexander in the surety department.

ADVICE FOR A NEWCOMER: First, network until you are exhausted and then network some more. Next, find a mentor and grow that relationship and seek out new mentors every 18 months or so, both inside and outside of the industry. Last, get professional designations and never stop learning.

DREAM JOB: Flight instructor, but head chef at a restaurant is a close second.

COLLEGE MAJOR: Double major in communications and business marketing, with a minor in geophysics.

LOOKING FORWARD TO: Working with a great team at Venbrook. I have more resources at my fingertips here than I’ve ever had and that’s exciting.

FAVORITE MEAL: Anything Italian or Asian.

FAVORITE BOOK: Dante’s “Inferno.”

HOBBIES: Cooking and spending time with my kids.

TV SHOW: Depending on the mood, “Billions” or “Seinfeld.”

ON A SATURDAY AFTERNOON: In the fall, cook, watch college football and hang with my family and friends.

SEE MORE ONLINE

Visit *www.businessinsurance.com/ComingsandGoings* for a full list of this month’s personnel moves and promotions. Check our website daily for additional postings and sign up for the weekly email. *Business Insurance* would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to *editorial@businessinsurance.com*.

ON THE MOVE

Canopius Group Ltd. hired former Liberty Mutual Insurance Co. executive **Coleman V. Johnson** as chief underwriting officer, U.S. and Bermuda. Mr. Johnson had been senior vice president and CUO, middle market.

Zurich Insurance Group named **Penny Seach**, current chief underwriting officer for Europe, Middle East and Africa, as group CUO, effective Jan. 1, 2023. She will succeed Hayley Robinson, who is stepping down at the end of the year.

Marsh & McLennan Cos. Inc. said **John Q. Doyle** will take the helm of the company as president and CEO, effective Jan. 1, 2023, succeeding Daniel S. Glaser, who is retiring at the end of this year. Mr. Doyle was named group president and chief operating officer of Marsh McLennan in January 2022.

Everest Re Group Ltd. said **Shawn Austin**, former American International Group Inc. head of North American accident and health, has been named senior vice president, head of accident and health, for North America. Mr. Austin, based in New York, succeeds Lou Monteagudo, who will be retiring in December.

Axa XL promoted Atlanta-based **Michael McKinley** to lead construction primary casualty insurance in North America. Mr. McKinley replaces Bryan Stevenson, who took a position at CNA Financial Corp.

Willis Towers Watson PLC hired former Marsh LLC executive **Jamie Lee** as managing director, head of upstream energy, North America, in its natural resources business, a newly created role. Mr. Lee, based in Houston, had been managing director of the energy team at Marsh Wortham.

BUSINESS INSURANCE®

BEST PLACES TO WORK 2022

Best Places program lists leading insurance industry firms

Best Places to Work in Insurance is an annual feature presented by *Business Insurance* and Best Companies Group that ranks the agents, brokers, insurers and other providers with the highest levels of employee engagement and satisfaction.

The 2022 report features 100 companies of various sizes, from 25 employees to nearly 9,000. What these honorees have in common is a commitment to attracting, developing and retaining great talent through a combination of culture, benefits and other programs that their employees value.

Harrisburg, Pennsylvania-based Best Companies Group identifies the leading employers in the insurance industry by conducting a free two-part assessment of each company. Through an employer questionnaire on policies, practices and demographics and a confidential employee survey, Best Companies Group assembles the data points and analyzes them according to eight core focus areas:

- Leadership and planning
- Corporate culture and communications
- Role satisfaction
- Work environment
- Relationship with supervisor
- Training, development and resources
- Pay and benefits
- Overall engagement

The program divides employers into the categories of small, or those with 25-249 employees; medium, for organizations with 250-999 employees; and large, those with 1,000 or more employees. The 2022 overall winners, by employer size, are:

- **S** **Cavignac**
- **M** **Captive Resources**
- **L** **Lockton Companies**

The following report highlights what makes these and other companies in the insurance industry among the best places to work.

LOCKTON

CBIZ

Higginbotham

CAPTIVERESOURCES

HIG Houchens Insurance Group

M3 INSURANCE

Cavignac

worthy INSURANCE

Burnham A BALDWIN RISK PARTNER

LARGE EMPLOYER CATEGORY (1,000+ U.S. Employees)

Rank	Company	U.S. Employees
1	Lockton Companies	5,783
2	CBIZ Benefits & Insurance Services Inc.	1,537
3	Higginbotham	1,785
4	IMA Financial Group Inc.	1,719
5	Marsh McLennan Agency	8,944
6	USI Insurance Services	8,689
7	OneDigital	3,050
8	Philadelphia Insurance Companies	1,781
9	NFP	4,591
10	West Bend Mutual Insurance Company	1,459
11	Risk Strategies	3,120

MEDIUM EMPLOYER CATEGORY (250-999 U.S. Employees)

Rank	Company	U.S. Employees
1	Captive Resources	297
2	Houchens Insurance Group	314
3	M3 Insurance	368
4	Riskonnect Inc.	419
5	Hylant	885
6	Origami Risk	542
7	Sterling Seacrest Pritchard	303
8	Starkweather & Shepley	293
9	TMNA Services LLC	468
10	Holmes Murphy	984
11	Society Insurance, a mutual company	332
12	Brown & Riding	333
13	Simply Business	273
14	Cadence Insurance, formerly BXS Insurance	738
15	Horton Group	397
16	The Word & Brown Family of Companies	537
17	Amerisure Mutual Insurance Company	724
18	INSURICA - Florida	649
19	Ascot Group	316
20	Allianz Trade in Americas	383
21	SageSure Insurance Managers	462

SMALL EMPLOYER CATEGORY (25-249 U.S. Employees)

Rank	Company	U.S. Employees	Rank	Company	U.S. Employees
1	Cavignac	65	35	Reliance Partners	247
2	Worthy Insurance	28	36	Company Nurse LLC	61
3	Burnham Benefits Insurance Services LLC	143	37	Public Entity Partners	36
4	Obie	56	38	Plastridge Insurance	88
5	Virtus LLC	75	39	SullivanCurtisMonroe Insurance Services LLC	145
6	Questpro	33	40	Hoffman Brown Co.	53
7	Fee Insurance Group	37	41	Starke Agency	31
8	Coastal Wealth	44	42	IPMG	111
9	RBN Insurance Services	33	43	Falvey Insurance Group	118
10	McConkey Insurance & Benefits	107	44	Nottingham Insurance	54
11	C3 Risk & Insurance Services	80	45	G&G Independent Insurance	35
12	Christensen Group	173	46	Connor & Gallagher OneSource (CGO)	99
13	VAST	58	47	Tokio Marine Highland	207
14	Carisk Partners Inc.	147	48	Sahouri Insurance Agency & Financial Services Inc.	49
15	GIA Insurance	27	49	Liberty Insurance Associates Inc.	27
16	Socius Insurance	104	50	Rockford Mutual Insurance Company	86
17	Lipscomb & Pitts Insurance, a Higginbotham Partner	128	51	Rich & Cartmill Inc.	116
18	American Global	97	52	Transtar Insurance Brokers Inc.	48
19	Associated Insurance and Risk Management	144	53	Preferred Employers Insurance	121
20	Rathbone Group LLC	83	54	Blue Star Claims LLC	54
21	At-Bay	144	55	Velocity Risk	147
22	QEO Insurance Group	108	56	White & Associates Insurance	91
23	LineSlip Solutions Inc.	25	57	Continental Western Group	213
24	DSP Insurance Services	68	58	Bold Penguin	236
25	Employee Benefit Services of Maryland	32	59	The Plexus Groupe	120
26	American Integrity Insurance Company	242	60	USG Insurance Services Inc.	212
27	Berkley Agribusiness	62	61	The Jacobson Group	97
28	SET SEG	80	62	CR Solutions	30
29	Coterie Insurance	137	63	VGM Insurance Services	66
30	MGIS	60	64	Verus Specialty Insurance	67
31	The Partners Group	191	65	Odell Studner Group	69
32	Apex Benefits	70	66	Rockingham Insurance Company	129
33	Delta Dental of Kansas	113	67	Berkley Mid-Atlantic Group LLC	97
34	ECBM Insurance Brokers & Consultants	86	68	Prime Insurance Company	232

Large employer (1,000+ employees)

Lockton Companies

One of Best Places to Work in Insurance's perennial honorees, Lockton Companies earned the top spot among large employers in 2022. Founded more than 50 years ago, Lockton is today the world's largest privately owned, independent insurance broker and consulting company. Lockton is committed to excellent service to clients, associates and communities. Its more than 5,700 U.S. associates highly value Lockton's entrepreneurial

Culture and support. A prime example is LocktonLife, a program encompassing all aspects of the associate lifecycle and features career development opportunities, rewards and recognition, and positive work/life fit for all associates.

Runner-up in the large employer category is **CBIZ Benefits & Insurance Services Inc.**, a benefit brokerage and consulting firm based in Cleveland, Ohio. CBIZ's more than 1,500 U.S. employees especially appreciate the company's flexible work arrangement program, relaxed dress code and opportunities for volunteering.

Higginbotham, a Fort Worth, Texas-based independent insurance brokerage, placed third in the large employer category. Founded in 1948, Higginbotham today is Texas' largest broker, with nearly 1,800 employees serving clients and communities across the nation. Its employees value the firm's people-first focus, employee ownership, and support for charities.

Lockton associates enjoy participating in an open house event. Social events throughout the year enable associates to come together and reinforce the Lockton culture.

1 **Lockton Companies**

2 **CBIZ Benefits & Insurance Services**

3 **Higginbotham**

Medium employer (250-999 employees)

Captive Resources

Among medium size employers, Captive Resources earned first place in Best Places to Work in Insurance for the second straight year. The Itasca, Illinois-based company was founded more than four decades ago and specializes in advising member-owned group captives. Captive Resources has grown to become an organization that today has nearly 300 employees. The company's employees especially value its work-from-home options and flexible start times, opportunities for all to share ideas and participate in key projects, and generous medical benefits.

Runner-up in the medium size category was **Houchens Insurance Group**, a retail agency in Bowling Green, Kentucky, with more than 310 employees. The company was founded over a century ago as a small agency in 1921, growing to serve clients nationwide with complex property/casualty insurance and risk management services. HIG's employees especially value its 100% Employee Stock Ownership Plan, the agency's Enhanced Employee Experience program of flexible, work/life offerings, and its family-focused atmosphere.

Third place in this category was **M3 Insurance**, a full-service insurance brokerage based in Madison, Wisconsin. The company was founded in 1968 and has grown into an independent, privately owned risk management firm. M3 has more than 360 employees, who appreciate the firm's dedication to employee wellbeing, its social events throughout the year, and professional development opportunities.

Captive Resources encourages teamwork through sports and other events. Here employees celebrate after a softball win.

1 **Captive Resources**

2 **Houchens Insurance Group**

3 **M3 Insurance**

Small employer (25-249 employees)

Top honors in the small-employer category of Best Places to Work in Insurance went to **Cavignac** (see profile on next page).

In second place among small employers was **Worthy Insurance**, a Skokie, Illinois-based retail insurance agency with 28 employees. Placing third was **Burnham Benefits Insurance Services LLC**, a benefit brokerage and consulting firm based in Irvine, California, with 143 employees.

1 **Cavignac**

2 **Worthy Insurance**

3 **Burnham Benefits Insurance Services**

Captive Resources encourages teamwork through sports and other events. Here employees celebrate after a softball win.

BUSINESS INSURANCE® BEST PLACES TO WORK 2022

Insurers/Providers

American Integrity Insurance Company

The top insurance company in the 2022 Best Places to Work in Insurance is American Integrity Insurance Company, a Tampa, Florida-based property and casualty insurer with more than 240 employees. American Integrity's culture is dedicated to having fun, helping others and giving back. Its core values are integrity, commitment, teamwork, humility, passion and fun. The company's employees appreciate weekly opportunities to connect with each other, in the office and remotely, through games, social events or casual conversations. Employees also enjoy themed quarterly town hall meetings and American Integrity's support for charities with events such as the Annual Gratitude Gathering.

American Integrity President and CEO Robert Ritchie led a celebration of the company's 15th anniversary with the insurer's employees.

BEST PLACES TO WORK IN INSURANCE 2022: INSURERS/PROVIDERS

Rank	Company	U.S. Employees
1	American Integrity Insurance Company	242
2	Berkley Agribusiness	62
3	SET SEG	80
4	Delta Dental of Kansas	113
5	Public Entity Partners	36
6	Society Insurance, a mutual company	332
7	Rockford Mutual Insurance Company	86
8	Amerisure Mutual Insurance Company	724
9	Continental Western Group	213
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Agents/Brokers

BEST PLACES TO WORK IN INSURANCE 2022: AGENTS/BROKERS

Rank	Company	U.S. Employees
1	Cavignac	65
2	Houchens Insurance Group	314
3	Worthy Insurance	28
4	Burnham Benefits Insurance Services LLC	143
5	Obie	56
6	Virtus LLC	75
7	Fee Insurance Group	37
8	Coastal Wealth	44
9	RBN Insurance Services	33
10	McConkey Insurance & Benefits	107
11	M3 Insurance	368
12	C3 Risk & Insurance Services	80
13	Christensen Group	173
14	VAST	58
15	GIA Insurance	27
16	Hylant	885
17	Socius Insurance	104
18	Lipscomb & Pitts Insurance, a Higginbotham Partner	128
19	American Global	97
20	Associated Insurance and Risk Management	144
21	Lockton Companies	5,783
22	At-Bay	144
23	QEO Insurance Group	108
24	Sterling Seacrest Pritchard	303
25	DSP Insurance Services	68
26	Employee Benefit Services of Maryland	32
27	Starkweather & Shepley	293
28	Coterie Insurance	137
29	MGIS	60
30	The Partners Group	191
31	Apex Benefits	70
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39	Brown & Riding	333
40	Starke Agency	31
41	IPMG	111
42	Falvey Insurance Group	118
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67	Odell Studner Group	69
68	OneDigital	3,050
69	NFP	4,591
70	SageSure Insurance Managers	462
71	Risk Strategies	3,120

Cavignac

San Diego-based insurance agency Cavignac is the top agent/broker in the 2022 Best Places to Work in Insurance. The agency, which has provided risk management advice and insurance for more than 30 years, emphasizes a culture of collaboration and team support. Its 65 teammates especially appreciate Cavignac's prioritization of employee education and professional growth, benefits and career development programs, and culture of caring — for employees as well as the community. Cavignac empowers its team to "belong," by supporting each other, "grow" their knowledge and skills, "give" to the community where they live and work, and "thrive" with comprehensive benefits that enable them to live their best lives.


Cavignac's Matthew Slakoff, left, and Jim Schabarum, right, volunteered to help a disabled athlete learn to surf. The program is an example of Cavignac's commitment to serving the community.

On National Donut Day, employees of Houchens Insurance Group (runner-up in the agents/brokers category) take time out to enjoy some sweet treats.

How insurance firms attract talent

What does it take to join the list of the Best Places to Work in Insurance? A number of attributes set apart the companies on the 2022 list. One frequently cited quality is flexibility, which honorees increased offering during the pandemic and have kept going. While many of the Best Places to Work in Insurance have flexible work policies for years, others have extended or made such policies permanent, recognizing the importance of remote working options for employees.

Employees appreciate perks and amenities, though a longer-lasting component of satisfaction stems from honorees' focus on cultures of employee engagement and career development.

Best Companies Group analyzes the responses to confidential employee surveys in eight core areas. These areas show significant differences between the best employers and those that did not make this year's list:

Leadership and planning. This area includes understanding of the company's strategy, confidence in leadership, adequate planning and follow-through and care about employees' well-being. For all companies on the 2022 list, the number of positive responses in this area averaged 92%, vs. 85% for companies that failed to make the list.

Corporate culture and communications. Components of this area include clear and frequent communication, trust, a spirit of cooperation, a feeling that employees are valued and a culture of diversity. Positive responses averaged 90% for companies on the list, and 82% for other companies.

Role satisfaction. This area looks at how employees like the work they do, their ability to balance work and life, and whether they feel valued and part of a team. Positive responses averaged 92% for the top employers, vs. 87% for others.

Work environment. Positive responses about physical working conditions, comfort and safety averaged 95% for the top employers and 92% for others.

Relationship with supervisor. Fairness, respect, trust and feedback are elements of this area. For the Best Places to Work, positive responses averaged 94%, vs. 91% for other employers.

Training, development and resources. Initial and ongoing training, adequate and dependable equipment, room to advance and promotions and rewards for good work are among the components of this area. Positive responses for the top employers averaged 89%, vs. 82% for others.

Pay and benefits. Fair compensation and satisfaction with benefits such as paid vacation, health care, dental and retirement plans are among the components of this area. For the Best Places to Work in Insurance, positive responses averaged 87%, and 82% for other employers.

Overall engagement. This area includes employees' overall satisfaction with the employer, a sense of pride in working there, willingness to give extra effort, willingness to recommend the employer's products or services, and recommend working there to others. Positive responses here averaged 92% for the Best Places to Work in Insurance, and 87% for employers not on the list.

Sowing hope in the Garden State, CBIZ employees volunteered at a New Jersey food pantry with its own vegetable garden.

M3 Insurance employees support Heart Health Awareness.

Worthy Insurance employees give back to the community during the December holidays.

HOW TO GET INTO BPTW

To participate in the Best Places to Work program, an organization must:

- **Be a for-profit or non-profit business**
- **Be publicly or privately held**
- **Have a facility in the United States**
- **Employ at least 25 people in the United States**
- **Be in business for at least 1 year**

Eligible insurance organizations are: retail agents/brokers, wholesale brokers/managing general agents, reinsurance intermediaries, claims services companies, benefit brokers and consultants, property/casualty insurers, group life/health insurers, and reinsurers. Non-profit insurance associations or service organizations aligned with the commercial insurance industry also are eligible.

For more information and to participate in the 2022 program, please contact Susan Stilwill at 312-636-7222 or sstilwill@businessinsurance.com, or visit www.bestplacestoworkins.com.

VIEW THIS YEAR'S FULL LISTING AT
BusinessInsurance.com/BPTW2022

Trending in the workplace: Napping

The technology industry takes the top spot for the sleepiest industry in America where employees take the most naps on the clock, followed by construction, according to a study by mattress company Amerisleep, which surveyed 1,001 workers.

Overall, 70% and 68.2% of workers in those fields, respectively, admit to catching up on z's while on the clock.

Coming in third are those working in government and public administration, at 63.5%. Finance and insurance workers took the fourth slot, with 58.9% of workers admitting to napping on the job.

Meanwhile, employees in the arts, entertainment and recreation field take the least number of naps on the job, at 34.6%.

´Winning´ claim returned to sender

Looks like the late Dick Clark can rest easy, as a New York man's $11 million lawsuit has been tossed out like junk mail, again.

This time by the 2nd U.S. District Court of Appeals, which ruled against Andres Bryan's claim that in 1998 he had won millions — using American Family Publishers' infamous mailers as proof — and was never paid. The U.S. District Court for the Eastern District of New York had earlier dismissed the lawsuit as "frivolous."

The appeals court wrote that although Mr. Bryan "alleged that he was informed that he was the 'winner' and that he had the 'winning number,' he appears to be referring only to those mailings, and he does not allege that his number also matched the 'secretly preselected winning number.'"

The man also alleged that he had a conversation with Mr. Clark, "but Clark's alleged statement — that 'he's the one' — was vague, and does not reflect a promise" to Mr. Bryan.

THE RACE TO SUE OVER LEGGINGS CONTINUES

A federal judge in New York dismissed Peloton Interactive Inc.'s lawsuit against sports fashion brand Lululemon, which had sued the exercise equipment maker, accusing it of infringing on its clothing patents for its bras and exercise leggings.

Lululemon, which sent a cease-and-desist letter and later filed a lawsuit in 2021, appears in the lead over accusations that Peloton created and marketed lookalike apparel, according to Reuters. That lawsuit is still in the race.

In the countersuit, which was dismissed last month, Peloton sought a declaration that it had not violated any trademarks. In the ruling, the federal judge described the countersuit as "an anticipatory action that warrants dismissal," according to the wire service.

Peloton declined to comment.

Survey: Insurance a fetching career

Breeze, a provider of insurtech products, surveyed 1,000 college-graduated and employed adult Americans between the ages of 22 and 30 and found that most in insurance are leaning toward a long career in the field.

Specifically, of current insurance professionals surveyed, 92% see themselves remaining at their current insurance job for the next year, 78% expect to remain in insurance at their next job and 61% want to be in insurance for the next 20 years.

Insurance professionals gave their current jobs higher ratings for "opportunity" and "sexiness" compared with noninsurance professionals. Both groups gave equal ratings for "satisfaction" and "stability."

The heat is on for return to work

Interest in going back to the office is heating up as a surge of workers now admit they want to go back to the office to save money on energy and internet costs, according to a survey.

Coupon site CouponBird surveyed 2,809 employees nationwide, finding that "while working from home means many employees have been able to save on commuting amid sky-high gas prices, having a home office certainly isn't free."

In a state-by-state comparison of those seeking to return to the office, between 15% of workers in Washington and 67% in Oklahoma are admitting they miss the free amenities. Overall, 35 states fell in the 30% to 60% range.

Among rising energy costs for air-conditioning or heating, internet, printing amenities, stationery, groceries and other home office necessities, working from home isn't a money-saver, CouponBird found.


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