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SPECIAL
REPORT

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RISKS

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Movement to stop sexual harassment
creates D&O exposures for companies
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COVER STORY

As the movement spotlighting workplace harassment shows no signs of slowing down, and as employee activism rises, lawsuits that could trigger coverage under directors and officers liability policies are adding a new dimension to corporate exposures arising out of the #MeToo campaign. Meanwhile, companies are making efforts to address the issues. **PAGE 18**

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Gloria Brosius, 2019 president of the Risk & Insurance Management Society Inc. and director of risk management for Pinnacle Agriculture Distributions Inc. in Colorado, discusses her priorities for RIMS, including expanding diversity within the organization, helping risk managers navigate complex cyber, climate and political exposures, and the advice she would give to aspiring and veteran risk professionals alike. **PAGE 14**



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Cyber rule creates big compliance challenge

BY MATTHEW LERNER

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The deadline for final compliance with cybersecurity regulations issued by the New York State Department of Financial Services is fast approaching, but a requirement that insurers certify their vendors' cyber standards has proven daunting, experts say.

But overall, the regulations are seen as benefiting the insurance sector and have propelled a regulatory movement to address cyber risk to the next level, experts say.

The department declined to comment on the March 1 deadline.

The third-party vendor requirement can be one of the major challenges of the regulation due to the scope that may be involved, said Jessica Robinson, CEO of technology consultancy PurePoint International in New York, who works with financial institutions, insurers and others to design and implement cybersecurity plans similar to those called for in the New York regulations.

“What New York did was very bold. It was a wake-up call to many of the other states to ask themselves: ‘What are we doing’. I think a lot of states recognize how important it is.”

Jessica Robinson,
PurePoint International

Vendor compliance is an “enormously more difficult task” than an organization's own compliance, said Scott Corzine, senior managing director with Ankura Consulting Group LLC in New York. “It may be hard enough to get a handle on your own internal cyber risks, but when



you have third parties, it's really tough.”

A company could have hundreds or thousands of vendors, Mr. Corzine said. “Think about how many third parties touch an underwriter's data or a broker's data,” from software providers to third-party administrators.

“As a service provider, we have to be able to understand what our customers' needs are going to be as far as the data owner,” said John Germain, chief information security officer for Duck Creek Technologies LLC. “They ultimately have the responsibility of protecting that data.”

Just as an insurer can have multiple vendors, a vendor can have many customers with different needs.

“The interpretation of the requirement can vary from company to company,” Mr. Germain said. “If each company interprets these things the same way, we have to think about that. If not, now we're introducing a ton of variation that we have to account for.”

Some see the New York law as seminal. “What New York did was very bold,” Ms. Robinson said. “It was a wake-up call to many of the other states to ask them-

selves: ‘What are we doing.’”

States with cyber regulations include California with an effective date of Jan. 1, 2020, and South Carolina, which became effective Jan. 1, 2019, according to Ms. Robinson. “I think that a lot of states recognize how important it is,” she said.

“I think that many in the industry would acknowledge that the DFS taking the steps it took helped push the (National Association of Insurance Commissioners) to complete its work on its model law related to cybersecurity,” said Scott D. Fischer, a New York-based partner with Morgan, Lewis & Bockius LLP and the former executive deputy superintendent for insurance at the department.

The feedback process employed by the department was productive, according to some experts.

“Frankly, I think that if you asked around the New York industry, stakeholders believe the regulation's development was a fairly collaborative process and resulted in a better product than the original draft,” Mr. Fischer said.

“The first draft DFS came out with was certainly more prescriptive and contained

more mandates,” said Matt McCabe, a senior vice president in New York within Marsh's U.S. cyber practice. “I think they listened to their regulated institutions saying that cyber requires flexibility.”

The New York regulations can also be seen against a broader backdrop of heightened regulatory scrutiny for cyber, experts say.

“There's an increased regulatory environment nationally and globally, so it's something many businesses are paying attention to,” said Ms. Robinson.

“There have been a whole host of jurisdictions and governments at the state and federal level and internationally that are rolling out new cyber regulations,” Mr. McCabe said.

“I think there's a trend among regulators to have interest in creating cybersecurity mandates,” Mr. McCabe added.

“There have been a lot of regulatory concerns that have come up lately; New York is one of them,” Mr. Germain said.

“When you talk about risk, this all comes down to risk and who's responsible,” he added.

Approaching the regulations and cyber risk in general requires input from a company's risk manager or he or she should at least be part of the firm's strategy, according to experts.

“Cybersecurity rises to the level of enterprise risk, especially for the financial industry,” Mr. Germain said. “From a governing perspective, the risk manager should be a part of the governing body around how these issues are addressed.”

“I would agree that risk management needs to be involved in the enterprisewide, cyber-risk discussion,” Mr. McCabe said.

Putting the risk manager in the communications loop “should be 101 stuff,” Mr. Corzine said. “How do you as a risk manager design a risk management process if you're in charge of enterprise risk management? How do you look at cyber from the ERM perspective?”

STATE'S 'ONEROUS' CYBER REGULATIONS VIEWED AS GOOD SECURITY PRACTICES

While the cyber regulations from the New York State Department of Financial Services have drawn comments such as “onerous” and “draconian,” some experts suggest the rules represent sound business practices likely underway at many insurers.

The New York regulation is “aligned with good security practices I would expect a company concerned about security would be doing anyway,” said John Germain,

chief information security officer for Duck Creek Technologies LLC. “These are good practices to have in place whether there is a requirement or not.”

“What I saw in this regulation are things that have always risen to the top,” Mr. Germain added. “Strong governance, the ability to manage access, and have an audit trail.”

Insurers are accustomed to regulation

and likely had cyber on the radar already, according to Matt McCabe, a senior vice president in New York within Marsh's U.S. cyber practice.

“I think most financial institutions already were examining what their cyber risks were,” Mr. McCabe said. “This is an industry that is used to dealing with a high degree of compliance.”

“I think that most companies were already establishing cybersecurity policies,” said Scott D. Fischer, a New York-based partner with Morgan, Lewis & Bockius LLP and the former executive deputy superintendent for insurance at the department. “The fact that there is now a regulatory requirement to make all companies take action is a good thing for the industry as a whole.”

Matthew Lerner

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Costly obstetric claims hit insurers

BY JUDY GREENWALD

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Childbirth-related medical professional liability claims have traditionally been a major problem for health care institutions and physicians, but better risk management is helping to reduce their impact, experts say.

Obstetric-related events are the fifth-largest category of medical professional malpractice claims and the fourth-highest category of indemnity payments, according to Boston-based professional medical liability insurer Coverys.

They account for 4% of claims and 8% of indemnity paid, according to an analysis published by the insurer in January.

Valentina Minetti, London-based focus group leader for U.S. hospitals with excess insurer Beazley PLC, said that while obstetrics risks are just 14% of total claims for Beazley's large hospital clients, they account for 38% of claims that total more than \$1 million, and 46% of claims above \$10 million.

"Plaintiff attorneys have a greater tendency to take obstetric cases because there's a greater value" to them, said Bradford J. Hinshaw, a medical malpractice defense attorney and partner with Hinshaw, Marsh, Still & Hinshaw LLP in Saratoga, California.

There may be a claim for a maximum of \$250,000 if a 75-year-old man dies, but if it's a catastrophic birth injury case and the infant could survive a number of years, the baby would require close to a million dollars of medical care annually, he said. "That case has an extremely high value, so a plaintiffs lawyer is willing to take on a little more risk," said Mr. Hinshaw.

His strategy is to "hire great experts on standard of care and causation" and "do everything you can to persuade plaintiffs counsel that if they take it to trial, they're probably going to lose," or be awarded lower damages than what they were seeking, said Mr. Hinshaw.

Of the claims closed by Coverys, 24% involved the death of the baby, mother or both.

"These are relatively rare events, but these are often high-tragedy events," said Robert



Hanscom, vice president of business analytics for Coverys and a co-author of the report. "Whether it's fetal death, maternal death or permanent fetal impairment, these are terrible, terrible cases. The issue for us is that many times we don't see the negligence in these cases. We see a very, very bad outcome and we defend these cases vigorously because we don't think the physicians were negligent."

Over the years, though, health care risk management has improved, said Steve Kahl, Denver-based senior managing director for Arthur J. Gallagher & Co.'s health care practice.

There have been improvements in techniques, training in anesthetics, policy procedures on how teams work with patient handoffs and communication with families, he said.

"Risk management is key," he said. Involvement when something goes wrong, and proactive attempts to mitigate exposure when there is an adverse event, have improved care for countless companies, he said.

"That doesn't mean we don't still see the significant lawsuit where there has been a failure in the delivery of care, or there has been a system breakdown in communication where the mother or the baby or both have had some level of harm," he said.

"I think that's when we get concerned, because that typically means there could be some very significant payout due to an adverse outcome," he said. "But I think our clients have gotten much better at keeping the family in the loop, communicating what they know when they know it, rather than sitting back and letting the patient get agitated because they don't have answers. If the health care system or the practitioner has those protocols in place ... it really does defuse the situation quite well."

Darrell Ranum, Columbus, Ohio-based vice president of patient safety for The Doctors Co., which suggests its physician policyholders follow the clinical guidelines of the Washington-based American College of Obstetrics and Gynecology, said over the past 10 years, the trend line of maternal injuries is down, "so we think physicians are doing a better job."

Ken Felton, Charleston, South Carolina-based senior vice president for national health care practice with Willis Towers Watson PLC, said that to manage risk, organizations should use "evidence-based care bundles," which involve three to five processes performed collectively to improve patient outcome.

Its applicability in obstetrics includes competency training for fetal heart rate interpretation. "Depending on the competency of individuals, they can come up with different conclusions based on their review of a fetal heart rate," said Mr. Felton. "This is where you can find indications the fetus may be in distress" and implement measures to address the risk more effectively, he said.

Virginia Jones, Chicago-based associate director and actuary for the U.S. with Aon PLC's actuarial and analytics unit, said, "The frequency of these types of claims has probably stabilized in recent years, so I do think a large number of clients" have put a lot of emphasis into their risk management efforts. "I would have to imagine there is some correlation there," although there is no data to directly support that, she said.

MED MAL PRICES SHOW SIGNS OF FIRMING

The overall medical malpractice insurance market has been soft, but it is showing some signs of hardening, say experts.

Medical malpractice insurance has mostly been in an extended soft market, said John Geisbush, Phoenix-based health care professional liability leader for Marsh USA Inc.

"This specialty area has been a higher-risk area with respect to what insurers look for as far as premium to provide coverage to physicians," he said.

But he does not see a restriction in capacity, with many insurers still interested in writing the coverage.

However, the overall med mal market shows some signs of hardening, said Valentina Minetti, London-based focus group leader for U.S. hospitals with Beazley PLC.

"I would say rates are slowly or marginally going up," with single-digit rate increases over the past 12 months. "We have seen years of tough markets, where rates have been declining quite steeply, and these years have combined with increased severity over the last few years," she said.

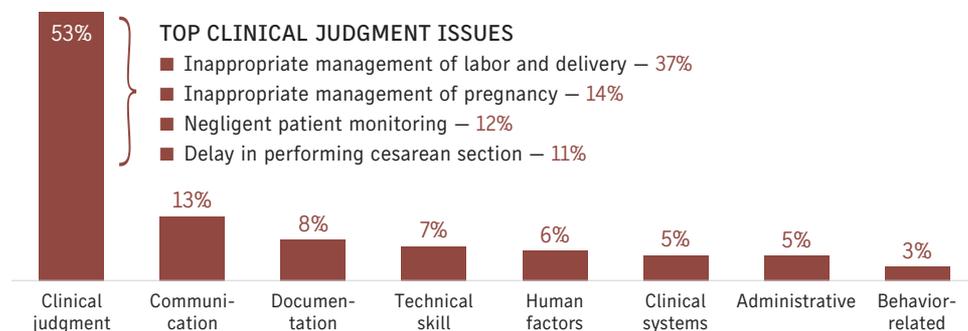
This combination of a soft market and severity is "triggering some increasing rates," although "we're still talking pretty modest increases," she said.

Darrell Ranum, Columbus, Ohio-based vice president of patient safety for The Doctors Co., which provides medical malpractice insurance to some 80,000 physicians, agreed that rates have begun to stabilize after decreasing over the last 15 years.

Judy Greenwald

TOP RISK MANAGEMENT ISSUES

Clinical judgment was cited as a factor in over 50% of OB-related claims. These issues were reflected in all phases of the perinatal process.



N = 486 claims with an OB-related allegation and a risk management issue identified; Claims may have more than one issue. Source: Coverys

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Year-end flurry seals record M&A deals

BY TIMOTHY J. CUNNINGHAM
AND DANIEL P. MENZER

With a strong finish to the year from a number of very active buyers as well as some first-time acquirers, the 2018 agency acquisition count reached a new high of 626 transactions in the U.S. and Canada, an increase from the 611 transactions reported in 2017.

For the fourth quarter of 2018, there were 148 reported transactions, the highest total ever for a fourth quarter, up from 143 in 2017. Moreover, four of the top 10 buyers reported their highest or tied for the highest number of transactions during the fourth quarter than any previous quarter. During the second half of 2018, there were 330 transactions reported, up from 278 in 2017. Until 2014, there had never been 330 agency acquisition transactions reported for the entire year.

Once again, private equity-backed Caledonia, Michigan-based Acrisure LLC reported the most activity with 101 closed transactions, not counting their reinsurance broker acquisition in London, an increase from the 92 transactions completed in 2017. Chicago-based Hub International Ltd. was second, completing 59 transactions, up from 49 in 2017 (see chart).

The PE/hybrid group remains the most active group of buyers, occupying eight of the top 10 buyer spots in the table above and 419 of 626 transactions for the year, or two-thirds of all agency acquisition transactions. The concentration of acquisitions by the top 10 buyers remained at 62% for the full year 2018 compared with only 56% in 2017.

Property/casualty brokers continued to dominate the sell-side mergers and acquisitions landscape, with 345 of the 626 transactions, or 55% of the total, up from a 51% share for all of 2017.

Thirty-two PE/hybrid firms completed one or more acquisitions in 2018, up from 29 in 2017. However, the number of these firms that completed five or more transactions dropped in 2018 to 14 firms compared with 17 in 2017. On the other hand, there were nine new buyers in this group in 2018, a slight increase from the eight new buyers in 2017.

TOP BUYERS

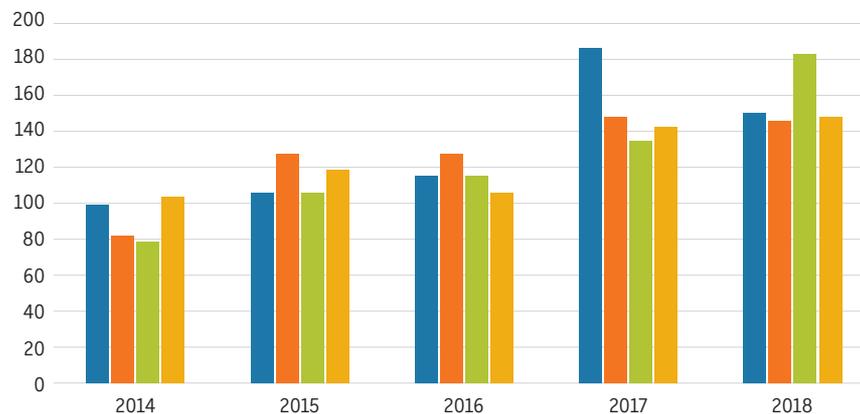
The top 10 most acquisitive buyers of insurance agencies and brokerages in the U.S. and Canada in 2018 with comparable totals for 2017 are shown in the table below:

Buyer	Company type	2017	2018
Acrisure LLC	Private equity/hybrid	92	101
Hub International Ltd.	Private equity/hybrid	49	59
AssuredPartners Inc.	Private equity/hybrid	26	37
Arthur J. Gallagher & Co.	Publicly held	30	36
BroadStreet Partners Inc.	Private equity/hybrid	32	34
Alera Group	Private equity/hybrid	38	28
OneDigital Health and Benefits	Private equity/hybrid	13	24
Seeman Holtz Property & Casualty Inc.	Private equity/hybrid	23	23
NFP Corp.	Private equity/hybrid	24	23
Brown & Brown Inc.	Publicly held	8	23
TOP 10 TOTALS		335	388
ALL OTHER		276	238

Source: Optis Partners LLC

HISTORY OF TOTAL DEALS — 2014-2018

Insurance agency and brokerage acquisitions by quarter:



Source: Optis Partners LLC

Privately owned brokerage acquisitions decreased to 112 transactions by 81 unique buyers in 2018 from 137 transactions by 107 unique buyers in 2017. Sixty-seven buyers completed only one transaction in 2018 compared with 94 in 2017. In 2018, 54 first-time privately owned buyers entered the acquisition fray compared with 76 first-time buyers in 2017.

Property/casualty brokers continued to dominate the sell-side mergers and acquisitions landscape, with 345 of the 626 transactions, or 55% of the total, up from a 51% share for all of 2017. Employee benefits brokers were acquired in 146 transactions, or 23%, down from 28% in 2017.

Since June 30, 2018, there were several significant transactions:

- Marsh LLC announced the acquisition of Wortham Insurance & Risk Management in August.

- EPIC Insurance Brokers & Consultants announced the acquisition of Integro Group Holdings LP's U.S. operations in December.

- KKR & Co. Inc. sold its interest in Sedgwick Claims Management Services Inc. to The Carlyle Group in September.

- Altas Partners LP made an equity investment in Hub International in November.

- Three private equity firms — Blackstone Group LP, Partners Group AG and Harvest Partners LP — announced a new investment in Acrisure in December.

- TowerBrook Capital Partners LP acquired Gryphon Investors Inc.'s interest in Orchid Underwriters Agency LLC in December.

- Brown & Brown Inc. announced the

acquisition of Hays Group Inc., which does business as Hays Companies, in December.

The M&A activity in the insurance brokerage sector, both at the individual agency transaction level as well as from third-party capital and equity partners, remains extremely vibrant. Agency valuations and multiples seem to inch a bit higher for the best properties each year. With new private equity and lender-backed buyers still entering the broker world along with a large number of very enthusiastic buyers already, the demand for insurance agency acquisition opportunities is likely to remain strong for the foreseeable future, barring some external economic or geopolitical event, in which case all bets are off.

With new private equity and lender-backed buyers still entering the broker world ... the demand for insurance agency acquisition opportunities is likely to remain strong.

With all the active buyers constantly in search of quality opportunities, the pressure on the independent agency to consider selling is enormous. On top of that, with the pricing being put forth to prospective sellers, the decision to remain private and independent becomes much more financially difficult as the difference to internal perpetuation values continues to grow.



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Harassment claims raise concerns for comp

BY ANGELA CHILDERS

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Sexual harassment and assault have risen to the top of employment concerns for employers in the #MeToo era, but the question of whether such incidents constitute a compensable injury in the workers compensation context is unclear.

Employees who experience physical or mental trauma or both related to sexual harassment or assault can seek workers comp benefits in states such as North Carolina, Oregon and Delaware, while other states such as Alabama, South Dakota and Wyoming bar psychological-only trauma or significantly limit such recoveries. While exclusive remedy provisions in workers comp statutes generally prohibit recoveries for workplace-related injuries outside of the workers compensation system, there may be exceptions related to sexual harassment or assault, experts say.

"#MeToo has actually kind of spilled over into workers comp," said Robert Balkenbush, a partner in the Reno, Nevada, office of Thorndal Armstrong Delk Balkenbush & Eisinger P.C.

When it comes to sexual harassment, the general rule is if a charge is brought pursuant to state or federal antidiscrimination laws like Title VII of the Civil Rights Act, it generally doesn't fall within the exclusivity provisions of state workers comp statutes, but that's not a hard and fast rule, said Mr. Balkenbush.

Although tort claims are the most common method for resolving sexual harassment and assault claims, there are occasions when employees choose the workers comp system to recover for their injuries.

"An employee who chooses to pursue this type of claim through workers comp may perhaps have a bit of an easier time proving their case," said Courtney Britt, a partner in the Raleigh, North Carolina, office of Teague Campbell Dennis & Gorham LLP. "But there's a little bit of risk. Clearly, if the employee has a good



civil case, they have the potential for greater recovery, but they also run the risk that the case may not survive a motion to dismiss or a summary judgment motion."

But states have differing views of when sexual harassment may be considered compensable in the workers comp context.

Psychological and stress injuries arising out of sexual harassment at the workplace may be considered compensable in Delaware, Hawaii, Indiana, Iowa, Louisiana, Missouri, New Jersey, New York, Oregon, South Carolina, Texas, Utah and Wisconsin, according to data from the National Workers Compensation Defense Network, an organization comprised of workers compensation defense firms in 47 states. But states have different evidentiary thresholds for such injuries.

However, workers comp is not considered a good remedy for sexual harassment charges in Alabama, Arkansas, Connecticut, Florida, Kansas, Kentucky, Oklahoma, South Dakota, Washington, West Virginia and Wyoming because they require a physical injury or a physical injury to cause the manifestation of a psychological injury, for the injury to be compensable, according to members of the defense network.

Most of the time sexual harassment will fall squarely under employment practice rather than workers comp, said Sandy Little, director of enterprise risk management at Bar-S Foods Co. in Phoenix. But when intentional infliction of emotional distress is claimed, such intentional acts are often not compensable in insurance policies, leading to more ambiguity.

In *Phillips v. Exxon Mobil Corp.*, the U.S. District Court for the Northern District of Illinois held in July 2018 that a woman's intentional infliction of emotional distress charge stemming from sexual harassment at work could proceed but denied her negligent infliction of emotional distress claim under the exclusivity provision of the state's workers compensation statute.

In contrast, in the unpublished 2016 decision in *Hall v. Rockingham County*, the U.S. District Court for the Middle District of North Carolina held that a woman's claim of negligent infliction of emotional distress was barred by the exclusivity provision of that state's comp law.

When employers take the position that a state workers comp law doesn't apply in a sexual assault or sexual harassment case, they expose themselves to tort lia-

bility, according to Mike Fish, a partner at Fish, Nelson & Holden LLC in Birmingham, Alabama, and current president of the defense network. "On the flip side, if they do take the position that the sexual harassment is work related, the exclusivity doctrine may still not prevent them from tort liability."

Double recoveries do happen occasionally, and an employee may file separate claims for separate injuries and receive separate recoveries, experts say.

In June 2018, the California Court of Appeals in *Camacho v. Target Corp.* ruled in favor of an employee who claimed he suffered from digestive, psychological injuries and head and neck pain due to workplace discrimination and harassment based on his sexual orientation. The employee received \$12,000 for his workers comp claim and signed a claims release, but the appeals court found that he did not release his nonworkers compensation claims and reversed a trial court's decision to dismiss his California Fair Employment and Housing Act claims against Target.

In instances of sexual assault, the question of compensability often comes down to whether the injury or assault arose out of and in the course of employment, said Mr. Balkenbush, who also is chair of the USLAW Network Workers' Compensation Practice Group.

In January, the District of Columbia Court of Appeals ruled that mental and emotional injuries experienced by a female firefighter who was allegedly sexually assaulted in her firehouse bunk by three fellow firefighters did not occur in the performance of her duties, leading to her involuntary retirement and disability benefits funded at a lower annuity rate.

Ms. Britt of Teague Campbell said she has not seen any uptick in sexual assault or harassment workers comp claims. But "it has the potential, as with any social issue, to lead to more folks pursuing these kinds of (comp) claims," she said. "This area of workers comp is still developing."

PREVENTIVE STEPS HELP EMPLOYERS RESTRICT EXPOSURE IN NEW ERA

With so much uncertainty in how a state or court will handle or view a workers compensation claim stemming from sexual harassment or assault, the best protection is prevention.

Employees who are not happy about the way their comp claims are being handled may make additional claims such as filing complaints with state or federal agencies alleging discrimination or harassment, to use as "leverage to further their cause," said Sandy Little, director of enterprise risk

management at Bar-S Foods Co. in Phoenix.

While the #MeToo movement has made companies more socially aware of the problem of sexual harassment and assault, it is important that they are proactive about making employees understand that sexually harassing behavior will not be tolerated, and that they have a documented process in place on how to handle harassment and assault claims, Ms. Little said.

"Making sure processes are followed is really key," she said.

Up-to-date policies for investigating complaints — and ensuring that they're followed and implemented as written — are imperative, said Courtney Britt, a partner in the Raleigh, North Carolina, office of Teague Campbell Dennis & Gorham LLP.

When civil harassment and assault cases are pursued in federal court, those courts must decide whether the alleged injury falls under a state's workers compensation act, she noted. Accusations of mishandling claims of harassment by a supervisor or

co-worker have been more likely to lead to a finding of compensability in these federal court decisions, she said. "For some reason, the courts are attempting to address this by drawing this distinction of employer mishandling of the claims," Ms. Britt said.

Discouraging office relationships may help prevent future harassment or assault claims if a relationship sours, said Elizabeth Connellan Smith, counsel at Verrill Dana LLP in Portland, Maine.

Angela Childers

Formulary wave challenges comp payers

BY LOUISE ESOLA

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Workers compensation payers welcome the expanding trend of states adopting prescription drug formularies for their comp systems, but are challenged by sometimes stark differences among the states in the makeup of the formularies and enforcement of their provisions.

Many workers compensation payers have had drug formularies in place for several years, but state-required formularies add legal muscle to what medications can be prescribed or denied to injured workers. With 12 states already having a legislation-mandated formulary and three where one is pending or in development, the trend is keeping pharmacy benefits managers and other stakeholders busy understanding the intricacies of the formularies.

“The state initiatives are helpful, but PBMs are having to build to those specs, which is putting a burden on them,” said Dr. Paul Peak, Memphis, Tennessee-based assistant vice president of clinical pharmacy at Sedgwick Claims Management Services Inc.

Adding to the task of understanding individual state nuances, as many as 30 states have some version of treatment guidelines for their comp systems and various states have laws that put restrictions on opioid prescribing for all doctors, accord-



ing to Craig Prince, a Thornton, Pennsylvania-based pharmacist working for Coventry Workers Comp. Pennsylvania, for example, doesn't have a workers comp formulary in place but now limits opioid prescribing to seven days on the first fill.

Only 11 states have no drug regulations affecting workers comp, while every other state has some regulation or set of guidelines that PBMs and others have to understand and manage, according to a tally by Mr. Prince.

Simplifying the process for introducing regulations, most of the 12 states whose legislators voted to create a formulary have

adopted an Official Disability Guidelines drug list developed by an outside firm with Austin, Texas-based MCG Health LLC — which says its drug list combines evidence-based medicine with claims data analytics to create its list of appropriate drugs — being the most common across the states, according to experts.

Meanwhile, some states adopted guidelines published by the American College of Occupational and Environmental Medicine while some states have combined ACOEM and ODG guidelines.

California — dubbed by experts as the most robust and comprehensive of the state formularies — created its formulary based on ACOEM guidelines with enhancements such as the medical treatment utilization schedule, which instead of just a yes-or-no drug list uses injury guidelines to match ailments with appropriate drugs. That formulary is now in its second year.

While states using the ODG guidelines use the term “nonpreferred” for drugs deemed ineffective or not appropriate, California labels those drugs as “nonexempt” if they are not listed as a proven treatment for an injury. All opioids are listed as nonexempt, subjecting doctors and injured workers to an oversight process for all such pain medications outside

of the first emergency fill.

Adding to the challenge for payers, and the PBMs that oversee the drug programs, are the different ways states enforce their formularies, and how injured workers and their providers can override the system for drugs that are not approved by turning to medical reviews. For example, California itself oversees the utilization review process while other states such as Indiana, which launched its ODG-developed formulary on Jan. 1, give payers the option to override the drug restrictions, and appeals go to an independent medical review if necessary.

Linda Hamilton, Indianapolis-based chairwoman of the Indiana Workers' Compensation Board, attributed the state's approach to a manpower issue because the office that regulates workers comp for the state has 26 staff members.

“Other states that have done this have a lot more details than Indiana; Indiana keeps things simple,” she said. “We can't afford to be super-detailed and high on regulations (because) we are a very small agency.”

Meanwhile, Arkansas sends exemptions to a pharmacist for approval outside of the formulary, said Mr. Prince.

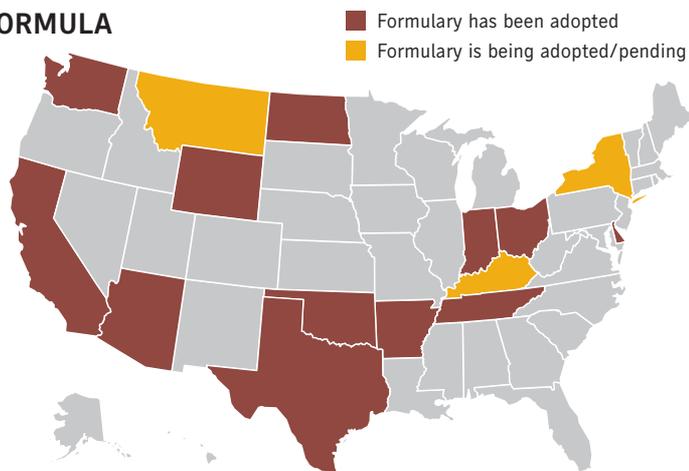
Different professionals have different perspectives on introducing and managing a state-mandated formulary, said Silvia Sacalis, a Tampa, Florida-based licensed pharmacist and vice president of clinical services for Healthsystems LLC, adding that she's a proponent of state formularies. “Each one has the right intentions. It's just a matter of how detailed and descriptive the (formularies) are.”

For states deciding on formularies and enforcement, “it has to do with what kind of administrative burden they want to put on themselves,” said Dr. Peak. “There might be a more comprehensive process, (and) it depends on what level of comfort that state has in taking that on,” he said.

Simple drug lists likely would not work because it's what payers previously had in place for years, Dr. Peak said. “If you don't have a way to enforce it or do it the right way, then the formulary doesn't mean that much,” he said.

THE RIGHT FORMULA

A dozen states have adopted prescription drug formularies for their workers compensation systems, while several others are considering doing so.



Source: Sedgwick Claims Management Services Inc.

COMPOUND MEDICATION PRESCRIBING HINDERS COST CONTROL EFFORTS

Although prescription drug formularies have been an industry mainstay at the payer level for years, state-adopted formularies can help with lingering obstacles to controlling medical costs such as compound medications.

“I think (states) did a great job of addressing the challenges that we have,” said Patricia Martin, Franklin, Tennessee-based assistant vice president of pharmacy

programs with Gallagher Bassett Services Inc. Compounds are packaged and sold at doctors' offices and often at a premium.

In some formularies such as California's, regulators addressed compound medications, physician dispensing and repackaging of drugs, described as “pain points” for payers trying to manage medications that are either expensive but ineffective, or effective but not more so than

a pain cream available over-the-counter at a pharmacy, according to Ms. Martin.

“It makes things a lot easier on my end” with state regulations prohibiting medications that payers and third-party administrators have been trying to avoid, she said. Gallagher Bassett had developed a program to manage compound medications, but some enforcement issues remained.

“When you now have a state come in and

say ‘no’ ... that gives us a lot of ability to manage those effectively,” she said.

“These things are topical pain creams in the thousands of dollars (sold by doctors),” said Craig Prince, a Thornton, Pennsylvania-based pharmacist working for Coventry Workers Comp. “And then you look at it and it's Ben Gay plus capsaicin that you can buy at Walmart.”

Louise Esola

Spike in fatal workplace overdoses puts focus on addiction prevention

BY GLORIA GONZALEZ

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Employers must shift their mindsets from disciplining workers with substance abuse problems toward prevention and treatment to address an alarming increase in the rate of fatal overdoses in the workplace, safety experts say.

The latest government figures showing another double-digit rise in fatal overdoses at work may encourage employers to ramp up efforts to ensure their health plans, wellness and employee assistance programs are more effective in aiding addicted workers, they say.

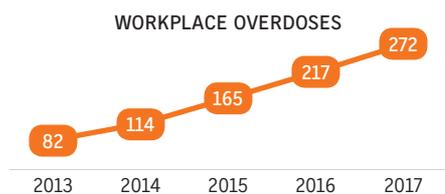
Unintentional overdoses due to nonmedical use of drugs or alcohol while at work increased 25.3% to 272 deaths in 2017, marking the fifth consecutive year in which unintentional workplace overdose deaths increased by at least 25%, according to data released in December by the Bureau of Labor Statistics.

“Employees are the at-risk population for drug overdoses,” said Ken Kolosh, manager of statistics for the National Safety Council in Itasca, Illinois. “(Employers) need to start recognizing that addiction is a chronic brain disorder and treat it as such. It’s not as much a disciplinary issue as an employee health and safety issue.”

“It’s a risk that employers are facing across the nation and it requires special attention,”

OVERDOSES SPIKE

Unintentional overdoses in the workplace due to nonmedical use of drugs or alcohol have increased at an alarming rate of at least 25% for the fifth consecutive year.



Source: Bureau of Labor Statistics

said Rixio Medina, president of the American Society of Safety Professionals and a vice president at safety consultancy Insight Risk LLC, based in Houston.

Substance abuse may also be a contributing factor to workplace fatalities in other categories, experts say, such as transportation, which remained the most frequent fatal event in 2017 with 2,077, or 40.4%, of fatal incidents, according to the BLS.

“There could be a substance abuse issue that’s caused the accident, and we as a society struggle with that,” said Bill Spiers, Charlotte, North Carolina-based vice president, unit manager and risk control strategies practice leader for Lockton Cos. LLC.

Employers should train supervisors and



employees to recognize signs of drug addiction, ensure their health plans and wellness programs cover substance abuse — preferably for free — and work with health care providers so that pain management for injured workers does not revolve around opioid prescriptions, experts say.

“As an employer, you have to have an employee assistance program with specific programs for addiction treatment and counseling,” said Don Martin, senior vice president for Marietta, Georgia-based workplace safety consultancy DEKRA North America Inc. “Addiction is a real disease and we should recognize it as a real disease.”

Employers must step outside of their comfort zones to address this problem, lobbying policymakers for changes to reduce drug and alcohol dependency and working with social agencies within their communities where their workforces come from, he said.

“This is where it gets touchy or difficult for employers to do something because this requires them to get involved,” Mr. Martin said. “This is a big political and social problem. This is a reflection of what’s happening in society, and it finds its way into the workplaces. Employers have to get more involved politically and socially.”

Legislative efforts, to date, have focused on the recovery aspect of the opioids epidemic, “but when you look at the root causes, one of them is pain management, and workplace injuries are part of that,” said Mark Ames, director, government relations for the American Industrial Hygiene Association in Falls Church, Virginia.

Complicating employers’ ability to tackle the substance abuse issue was confusion about their ability to conduct post-incident drug testing due to a regulatory change by the U.S. Occupational Safety and Health Administration, Mr. Medina said. OSHA’s Improve Tracking of Workplace Injuries and Illnesses regulation, otherwise known as the electronic record-keeping rule, did not ban

drug testing of employees but prohibited employers from using drug testing or the threat of it as a form of adverse action against employees who report injuries or illnesses, according to the final rule, published in 2016.

“A lot of companies, to play it safe, just stopped” drug testing, he said. “That was another tool in the toolbox.”

But in October 2018, OSHA issued a memorandum clarifying that the rule does not prohibit employers from conducting post-incident drug testing.

Due to a worker shortage, employers cannot simply fire employees with addiction problems, Mr. Medina said. The U.S. unemployment rate rose to 3.9% in December 2018 from a 49-year low of 3.7% in the previous month, according to BLS data.

“There are more jobs than people available to perform the jobs,” he said. “We don’t have the luxury of eliminating people. If they have any problems that affect them, including substance abuse, we have to have systems in place that can help them recover and be effective workers and safe workers.”

“Discipline is not the answer,” Mr. Martin said. Employers “can get ahead of this problem and they need to start thinking about this now rather than waiting for (fatal overdoses) to get up into the thousands.”

But a heightened focus on drug addiction hazards should not draw attention away from the more established safety risks that continue to constitute the vast majority of workplace fatalities, experts say.

“I think that’s a real legitimate concern,” Mr. Kolosh said. “There’s still vastly more employees dying year after year from falls to a lower level or because of roadway motor vehicle incidents. But it’s also important to recognize this emerging trend. If we don’t start recognizing it as an issue, unfortunately ... the number of drug overdose deaths could start comparing to other more traditional concerns that safety professionals have been grappling with.”

WORKPLACE HOMICIDES, SUICIDES CONTINUE TO PLAGUE EMPLOYERS

Violence-driven fatalities remain a critical problem for employers contending with how to reduce deadly incidents at work, experts say.

The number of fatalities caused by violence and other injuries by persons or animals spiked to 866 in 2016, before falling to 807 in 2017, according to the latest data released in December by the Bureau of Labor Statistics. However, that number is still well above the 703 deaths that occurred in 2015.

“It’s just a reminder that it’s very much a prevalent issue that organizations still need to pay attention to and not put it on the back burner,” said W. Barry Nixon, Alpharetta, Georgia-based executive director of the National Institute for Prevention of Workplace Violence Inc., which works with private and public organizations to develop violence prevention and response plans.

Much of the focus related to workplace violence “mistakenly” revolves around active shooter incidents, but suicides are also an important risk to address, he said. In 2017, 351 workplace homicides were caused by intentional shooting by another person while 275 workplace suicides were recorded by the BLS.

“There is a pressing need for organizations to understand that suicides that occur in the workplace are a growing problem,” Mr. Nixon said. “We’ve seen a growth in active shooter programs that employers are putting in place ... but the practical reality is that we see very little movement in terms of employers putting in programs that address suicides in the workplace.”

Detection is the key to stemming workplace violence because it allows employers to intervene before an issue results in a violent incident, he said. This includes ensuring that supervisors and employees understand warning signs and bring them to the attention of the right personnel and that silos that may exist within an organization do not prevent early intervention.

“What we find is that many of the systems for reporting problematic behaviors are not integrated,” he said.

Gloria Gonzalez

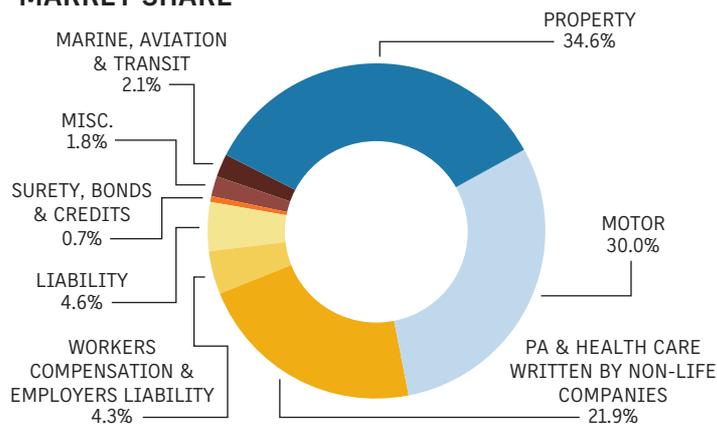
PROFILE: DENMARK

24

GLOBAL
P/C MARKET
RANKING

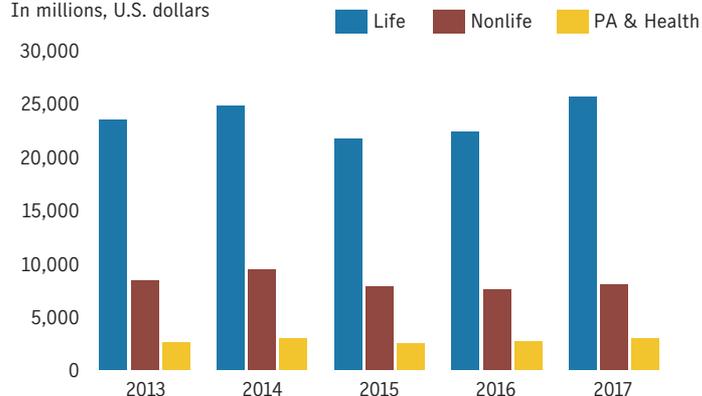
Despite its relatively small population, Denmark's insurance market is relatively large by international standards. The market is well developed with insurance penetration at a high level, above the EU average, and therefore the market is regarded as saturated. A weak economy in recent years has been reflected in the insurance market, with premium generally stagnating because of competition, although 2017 saw an increase in property/casualty premium to 68.56 billion krone (\$11.18 billion), up nearly 4% over 2016. Rates in some segments have been firm or eroding slowly, as insurers have seen the need for income stability to provide cover for any natural perils or other claims events. Windstorms have the potential to adversely affect the Danish market. The commercial insurance market is keenly competitive; while rates are characterized as stable for some sectors and policyholders, discounts are seen if loss experience has been good.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Mortgaged property (against fire and related risks, including terrorism)
- Liability insurance for operators of drones up to 25 kilograms (55 pounds) for commercial use in populated areas
- Shipowners liability against marine oil pollution
- Professional liability insurance for lawyers, accountants, estate agents, insurance agents and brokers, authorized building experts, energy and energy management consultants, and mortgage deed registrars.
- Liability insurance against injury or damage caused by dogs or loose horses

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Denmark. At the same time, there is nothing in the law indicating 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.

INTERMEDIARIES

Intermediaries such as brokers or agents have to be authorized to do insurance business. Intermediaries are allowed to place business with nonadmitted insurers. Intermediaries involved in nonadmitted placements do not have to be registered with the regulator. Where local risks are placed as part of a multinational insurance program, brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Given the sophistication of the local market, there is little need for risks to be placed outside the country unless this requirement is part of a multinational arrangement.

MARKET DEVELOPMENTS

Updated November 2018

- Following the recent insolvencies of Liechtenstein-based insurer Gable Insurance and Danish insurer Alpha Insurance, changes have been made to the country's guarantee fund to restrict its scope to risks located in Denmark written by insurers (Danish and foreign) in Denmark.
- Beginning Jan. 1, the guarantee fund covers Danish property/casualty insurers and branches in Denmark of foreign property/casualty insurers domiciled outside the European Union/European Economic Area. In addition, the fund covers insurers domiciled in other EU/EEA countries providing insurance through branches or freedom of services, and which have become members of the fund on a voluntary basis.
- In 2017, Tryg Forsikring's acquisition of seventh-largest insurer Alka was announced but was still to be finalized in fall of 2018. Chief among Topdanmark Forsikring's shareholders is Finnish Sampo Bank, which has increased its shareholding, now owning about 47%, and treats Topdanmark as a subsidiary alongside If Skade, its other insurance subsidiary. The move has renewed speculation over the longer term future of Topdanmark and If Skade in the Danish market.
- Even though the level of uninsured driving is relatively small with around 50,000 vehicles involved, Denmark has followed the example of its Nordic neighbors and introduced a new system that imposes a daily penalty fee for uninsured motor vehicles. The relevant law came into force Jan. 1.
- Keen competition is expected to continue across all classes of business, absent any individual market-changing claims or deterioration in loss experience. In commercial lines, premium rates are expected to be stable, with reductions for the best risks.



Information provided by Axco Insurance Information Services.
www.axcoinfo.com



Markel faces securities litigation

■ A putative class action lawsuit, *David Bergen et al. v. Markel Corp. et al.*, was filed in U.S. District Court in New York in mid-January against Markel and its officers in connection with the stock drop that followed the news Bermudian and U.S. authorities were investigating an investment unit of the firm.

The Richmond, Virginia-based insurer announced in December the inquiries related to loss reserves recorded in late 2017 and early 2018 by Market CATCo Investment Management Ltd. and its subsidiaries. Markel bought the unit, which provides collateralized coverage to reinsurers, in 2015.

Markel said at the time it was “fully cooperating” with the inquiries and they did not involve other Markel companies. Others named as defendants in the lawsuit include co-CEOs Thomas S. Gayner and Richard R. Whitt III.

According to the lawsuit, the company’s stock dropped more than 8% to close at \$1,048.23 per share on Dec. 6 “on unusually high trading volume” following news of the inquiries. It charges the defendants violated securities laws by failing to disclose its subsidiaries did not appropriately record loss reserves, which would result in the reserves having to be adjusted and/or restated, and investors’ financial loss.

Markel announced later in January that senior executives related to its Bermuda reinsurance unit left after an internal review uncovered violations of company policies “relating to an undisclosed personal relationship.” Anthony Belisle, Markel CATCo CEO, and Alissa Fredricks, Markel CATCo CEO-Bermuda, are no longer with the company, the company said in a statement.

AIG, Arch fined over firefighter rates

■ Units of American International Group Inc. and Arch Capital Group Ltd. will refund \$8 million in premiums to hundreds of New York volunteer firefighter companies and pay a combined \$2.2 million in fines after violating state insurance law, the New York Department of Finan-

cial Services said.

Separate DFS investigations found the insurers failed to comply with required minimum loss ratio standards in blanket accident and health insurance policies issued to hundreds of New York volunteer firefighter districts, departments and companies between 2011 and 2017, the department said in a statement.

Under New York insurance law, premiums must be reasonable in relation to claims paid under an insurance policy.

Maria Vullo, superintendent of the New York DFS, said in the statement the compliance failures “directly resulted in New York volunteer firefighter companies paying insurance premiums for coverage that did not bear a reasonable relationship to the benefits provided under the policies.”

New York-based Arch Insurance Co. will refund \$5.3 million in premiums to more than 600 companies and pay a fine of \$1 million to DFS, according to the order. Arch will also report claims data to DFS for the next five years.

New York-based AIG unit National Union Fire Insurance Co. of Pittsburgh was ordered to return almost \$3 million in premiums to about 400 companies and pay a \$1.2 million fine. It will also report blanket accident and health policy premium and claims data to DFS for the next five years.



Phishing ruling goes against Hartford unit

■ A Hartford Financial Services Group Inc. unit may be obligated to indemnify a chocolate company that was victimized by a phishing scheme, says the Vermont Supreme Court in a ruling overturning a state court decision.

According to the unanimous ruling by the Vermont Supreme Court in *Rainforest Chocolate LLC v. Sentinel Insurance Co. Ltd.*, Rainforest was insured under a business owner policy issued by Hartford unit Sentinel. In May 2016, a Rainforest employee received an email purporting to be from his manager directing him to transfer \$19,875 to a specified outside bank account through an electronic fund transfer, and the employee did so.

Rainforest learned the manager had not sent the email and contacted the bank,

which froze its account and limited the loss to \$10,261.36.

Rainforest sought coverage for its loss from Sentinel, which denied coverage on the basis of a “false pretense exclusion” in its policy, which excludes coverage “for physical loss or physical damage” stemming from “voluntarily parting with any property.” Rainforest sued Sentinel, and the state court in Addison, Vermont, ruled in the insurer’s favor.

On appeal, the state high court pointed to inconsistent policy language and said: “The policy uses two distinct phrases — ‘physical loss and physical damage’ and ‘loss and damage’ within different sections through the policy, sometimes switching between the two sentence to sentence ... But the policy itself does not define or explain the difference between the two phrases ... The trial court dismissed this as ‘sloppy drafting’ but sloppiness should not excuse an insurer from covering losses that a reasonable insured party would expect to be covered.”

The case was remanded to the trial court.

Electrocution fine, violation affirmed

■ An administrative law judge of the Occupational Safety and Health Review Commission affirmed a serious violation and \$11,408 penalty after an employee was hospitalized due to an arc flash.

The U.S. Occupational Safety and Health Administration dispatched a compliance safety and health officer to the worksite in Columbus, Nebraska, after learning of the February 2017 incident, according to documents in *Secretary of Labor v. Jacobs Field Services, North America*. After investigating, the officer concluded the electrical contractor had a work policy that permitted the injured employee to remove portions of his personal protective equipment after he had determined the load side — but not the line side — of an electrical disconnect box was de-energized. The officer determined that this policy violated the Occupational Safety and Health Act of 1970 and issued a serious violation and penalty, which Jacobs contested. The officer also found that this was not an isolated incident and determined that Jacobs placed too much reliance on the arc shield to guard against incidental contact with the line side’s energized components in the absence of complete de-energization.

The administrative law judge determined that Jacobs’ policies regarding electrical hazard assessment and personal protective equipment unnecessarily exposed employees to electrical shock and arc flash hazards, and rejected Jacobs’ unpreventable employee misconduct defense, finding that the injured employee’s exposure was not the product of him exceeding the scope of his assigned task.

DOCKET



GUN SUIT VS. TRUMP CAMPAIGN TOSSED

A state appeals court ruled it, rather than a workers compensation court, had jurisdiction over a suit alleging a Trump 2016 presidential campaign worker pointed his gun at a co-worker, causing emotional distress, but dismissed it anyway. Affirming a lower court ruling in *Vincent Bordini v. Donald J. Trump for President Inc. and Earl Phillip*, the Court of Appeals of North Carolina in Raleigh ruled Mr. Phillip was working under minimal direction as an independent contractor for the campaign and that liability for his conduct could not be transferred to it.

CITATIONS STAND DESPITE ‘REMORSE’

An administrative law judge of the Occupational Safety and Health Review Commission found an employer’s informal settlement agreement was enforceable despite subsequent “buyer’s remorse.” The ruling in *Secretary of Labor v. Wrangler Plumbing Inc.* said the employer waived its right to contest the citation and penalty when it signed the agreement despite a representative’s claim he was at the “mercy” of the area director of the U.S. Occupational Safety and Health Administration office in Lubbock, Texas.

SCOTTSDALE MUST PAY \$3M TO PENSION FUND

The 1st U.S. Circuit Court of Appeals in Boston affirmed a lower court ruling in *Scottsdale Insurance Co. v. Timothy L. Byrne et al* that the insurer must pay the policy limit to a plumbers pension fund under a business and management indemnity policy issued to a real estate fund. East Providence, Rhode Island-based Plumbers and Pipefitters Local 51 invested \$5 million in Wellesley Advisor Realty Fund I, which “mismanaged and squandered” the money. Scottsdale had issued a policy with a \$3 million limit to Wellesley. A unanimous appeals panel held “... we see no basis from which to relieve Scottsdale of its obligation.”



Gloria Brosius, director of risk management and insurance for Pinnacle Agriculture Distributions Inc. in Loveland, Colorado, assumed the presidency of the Risk & Insurance Management Society Inc. effective Jan. 1. Ms. Brosius, who has been a member of RIMS for 22 years and joined the RIMS board of directors in 2014, discussed her priorities for the group, including expanding diversity within the organization, helping risk managers navigate complex cyber, climate and political exposures, and the advice she would give to both aspiring and veteran risk professionals, with *Business Insurance* Deputy Editor Gloria Gonzalez. Edited excerpts follow.

Gloria Brosius

RIMS

Q What are your priorities for the year?

AIn addition to building on the successes of my predecessors, I want to make sure that we have a diverse and inclusive organization. We have a lot of things going on in the D&I purview. We've got a new taskforce that was formed last year, and we will probably be making that into a D&I advisory council in the near future.

I want to make sure that we continue to promote mentoring within the organization. I'm very passionate about mentoring, as my success in the industry can really be directly correlated to the mentoring that I received from my first risk management boss. I want to make sure that we are learning from the new generation that's coming in.

Q What do you see as the key risk for risk managers on a global level?

AThe global risks are very similar to what our domestic risks are going to be. I think that cyber concerns are a tremendous concern for everyone, both domestically and globally. I think that there's a lot of political uncertainty, both domestically and globally. I think that with many of our businesses being global or at least doing business globally, the political uncertainty can really have an impact on our supply chains and the different government models and rules that we need to be aware of.

And I think that ethics that have come about recently from the #MeToo movement have a huge impact on our directors and officers and on our workplace culture that risk professionals can really help with education and training on.

Finally, I'd say that climate risk is a big change that we have to be aware of going forward, that there's been an increase in natural disasters, and we need to be doing some strategic planning for climate change.

Q I'm curious about your thoughts about how climate change can be an opportunity.

AThe opportunities come from being able to use our resources more efficiently, using our power more efficiently, using our water resources more efficiently. Those are all opportunities for us, but there are also great risks if we don't use them efficiently.

Q One of the big things that RIMS has been focused on is the National Flood Insurance Program. Where do you see things as they stand? Obviously, there was a short-term extension right before the holidays, but there's still quite a bit of uncertainty about the future of the program.

AThere certainly is, and that's definitely a hot topic for RIMS. The program has been extended now through May 31, which is good. But RIMS is looking for a longer-term extension, and we will continue to focus on that with our regulators. We hope that we can come to a long-term solution down the road. The NFIP is very important. It provides a lot of financial support and confidence in the marketplace, and there are so many real estate agreements that require some type of flood insurance. If the NFIP dissolves, those agreements would become void, so there's a big economic impact as well.



Q Where do you see things going on the cyber front? What do risk managers need to know to deal with the cyber risks from their perspective?

AWe really need to be more proactive, and we need to be able to adapt and address the continual changes with cyber. Every day, it seems that there's a new attack or ransomware out there. It's definitely a global issue, and it really focuses around how companies store and collect data. Of course, there is the new (General Data Protection Regulation) compliance that's just in effect with the EU.

It's really reshaping the way organizations across that region approach data privacy. And then recently there was the California Consumer Privacy Act. It essentially protects Californians' data, but it doesn't really matter where the organization is based. It's those that are living and residing in California that it's helping protect. And I would think that we would see more of that across the nation and probably across the globe — more regulations being put into place. Risk professionals will need to be right on top of that and making sure that their organizations are following those new regulations.

Q For the risk managers who want to raise the profile of their positions or their departments within their companies, how can they go about doing that?

AI think that they need to have a high degree of organizational knowledge, and they need to know who they can approach within their organization to further their profession within their own organizations. I would also encourage them to seek out mentors within their chapter or globally who have seats in the C-suite or who have seats at the board table and ask them how they approached it. Ask them what their methods were to raise the profile of risk management within their organization. I think mentoring goes a long way, and it's not just for new risk professionals. Experienced risk professionals can always learn from others as well.

Q What's the best advice you ever received from a mentor? And what advice would you give to a young risk professional?

AProbably the best advice that I ever got was to never stop learning. And that certainly holds true today. Every day there seems to be new risks or the risks that we're facing are more complex. I think the RIMS-CRMP certification is key because it does provide for continuous learning. I would encourage new risk professionals to seek out the mentors. Find somebody they admire and want to be like down the road, and see what they have to offer and what advice that they can seek.

With many of our businesses being global or at least doing business globally, the political uncertainty can really have an impact on our supply chains and the different government models and rules that we need to be aware of.

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R!SK

PERSPECTIVES



Patrick Schmid, Ph.D.,
vice president of The
Institutes RiskBlock Alliance



Adam Carmichael, CPCU,
vice president of assessments,
The Institutes

Blockchain offers benefits for risk, insurance professionals

By Patrick Schmid and Adam Carmichael | The Institutes

Can you imagine your professional life without the Internet? Probably not, if you use e-mail or are reading this article on a mobile device. For nearly every industry, including insurance, the Internet's impact has been profound. Now, the insurance industry is beginning to embrace the next big technology game-changer: blockchain.

Consider some facts about distributed ledger technology, popularly known as blockchain:

- Sixty percent of global financial retail services executives believe blockchain is the most significant tech development since the Internet, according to a study by Marketforce.
- Worldwide, property and casualty insurers using blockchain could reduce their combined ratios by five to 13 percentage points and add up to \$200 billion to their technical margin, a Boston Consulting Group analysis shows.
- The “smart contracts” capability through which blockchain can automate and accelerate certain processes, such as claim payments, is estimated to cut expenses in the personal automobile insurance market alone by \$21 billion, according to Capgemini. Additional smart contract savings in other lines would also be significant.
- In the past year, 31 leading insurance companies have come together in consortium through The Institutes RiskBlock Alliance to explore blockchain applications.

Blockchain is already making an impact in industries where distribution, transactions and supply chains are critical.

- Shipping. Shipping giant Maersk and others are using blockchain to manage risks associated with supply chain management, includ-

ing monitoring data for temperature control and container weight.

- Agriculture. Blockchain can track the journey of crops and livestock from farm to table, which can be critical in the wake of fast-moving food safety scares. Walmart is requiring suppliers to use the blockchain to track key food products like lettuce.
- Pharmaceuticals. By leveraging blockchain to track and trace medicines, pharmaceutical companies are finding ways to cut costs, elevate security and trust, eliminate error-prone data movements and achieve real-time supply chain transparency.

Insurance is primed to be the next big industry where blockchain will make an impact. Blockchain is expected to create big opportunities for insurers, reinsurers, agents and brokers.

Use Cases Highlight Opportunities for Improved Efficiencies

Industry experts have spent the past few years exploring exactly how blockchain can improve a complicated and regulation-heavy industry, and the results are exciting.

Certificates of insurance. Organizations of all sizes frequently need to provide proof of insurance to meet contractual and regulatory requirements. But obtaining and managing certificates of insurance is time-consuming, often requiring multiple calls and manual processes. Blockchain can simplify this with a shared, immutable record of information that is maintained in a decentralized database. Proof of insurance for commercial lines is already available on blockchain.

Claims. Every policyholder grappling with a claim wants faster notification — and settlement. Up to now, the claims process has been largely manual and inefficient: file the First Notice of Loss, exchange information

on the claim with one or more insurers, assign loss adjusters to inspect and assess the claim, and obtain payment. Blockchain can accelerate virtually all those steps and may even eliminate some of them. Smart contracts stored in blockchain could automate filing, verify losses through trusted third-party data sources and issue payment according to defined parameters in the contracts. What could previously take days or weeks can be reduced to minutes through blockchain.

Policy documentation. Two of blockchain's characteristics — a single, accurate source of information that can be easily shared — can significantly improve policy documentation and record-keeping. Commercial insurance policies frequently involve manuscript wordings and layered coverages involving multiple insurers. If a change is not updated in all copies of a policy, coverage disputes may arise, potentially creating errors and omissions liability for agents and brokers. Blockchain can reconcile coverage changes, keep track of endorsements, additional insureds and exclusions, and enable all interested parties to view the data they need to handle renewals, coverage changes and claims — in real time.

Reinsurance. A PwC study estimates blockchain can generate savings of more than \$5 billion for the reinsurance industry by increasing efficiency in placement, premium and loss cessions, and claims processing and settlement. Blockchain in reinsurance offers a single source of truth and can replace manual information sharing among primary insurers or captives, reinsurers and retrocessionaires. Accelerating processes in reinsurance ultimately can put claim payments in policyholders' hands much faster.

Moving past misconceptions

Blockchain's first big market play — cryptocurrency, and specifically Bitcoin — has resulted in some misconceptions about the security and capacity of the technology. But blockchain is far more than Bitcoin.

The technology can provide a single, trusted source of information that is highly secure. While the distributed ledgers that store transaction data for cryptocurrencies are often public, blockchain can and does function in private, permissioned environments using digital keys. Hybrid environments permitting authorized users to read data and make changes also are possible with blockchain.

Sensitive information such as insurance policies and financial data can be stored in such environments without fear of exposure to hackers. The nature of distributed ledgers makes it nearly impossible for hackers to breach stored data, which is one more reason so many industries are interested in using it.

Take the next step to be ready for blockchain

Blockchain is much more than a new technology that promises to save time, effort and money. It has the potential to drastically change both the way risk and insurance professionals perform their jobs and the process of insuring risks and paying claims.

To prepare risk managers and insurance professionals for the changes and opportunities that are coming with the onset of blockchain, The Institutes has created an online course. The four-hour course provides both historical context and practical applications, enabling professionals to understand the impact that blockchain will have on their businesses.

Unlock the Power of BLOCKCHAIN

Explore the potential of blockchain's industry-changing technology with The Institutes' new online course, **Blockchain and the Insurance Industry**. This critical course for risk management and insurance professionals will help you:

- Understand blockchain: from bitcoin and beyond
- Apply blockchain solutions to real-world situations
- Understand industry application through use cases
- Apply blockchain concepts to your role

Get ready to unleash the power of blockchain.
Learn more and register today at TheInstitutes.org/Blockchaincourse

#METOO CLAIMS JUST GETTING STARTED

As movement spotlighting harassment changes workplaces, D&O exposures loom in addition to employment practices risks



BY JUDY GREENWALD
jgreenwald@businessinsurance.com

With the #MeToo movement still gaining momentum, more companies are coming to grips with the financial consequences of fighting or settling allegations of sexual abuse, discrimination, harassment and other misconduct, including the effect on their directors and officers liability coverage.

While claims related to such allegations may be explicitly covered under employment practices liability insurance policies, D&O-related lawsuits also are being filed, experts say.

D&O insurance rates are already hardening, although it is difficult to attribute them solely to the #MeToo movement, they say.

Meanwhile, experts say the #MeToo movement may lead to more gender equality litigation filed on women's behalf (see related story, below).

Companies, though, are making efforts to address the situation, say observers (see related story, page 21).

"By no means do we think it's reached its peak," said Cathy Padalino, Washington-based senior vice president in Aon PLC's financial services group, of the #MeToo movement.

"In many ways, we think it might be a new normal, a new environment in which workplace harassment or other inappropriate workplace behavior is just not going to be tolerated," she said.

"It's over a year since the movement really got national media attention, and since then we continue to see ongoing cases, some of them legacy cases from many years ago," said Ms. Padalino.

The #MeToo movement took off after sexual assault allegations against movie mogul Harvey Weinstein surfaced in October 2017. Since then, the hashtag term has been used on social media and elsewhere to bring attention to sexual assault and harassment in the workplace.

In the D&O context in particular, "I really do think we've only started to see (claims) unfolding," said Sarah Downey,

New York-based FINPRO and D&O liability product leader for Marsh USA Inc. "This is just the beginning."

"This bell cannot be unring," said Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC's FINEX North America practice. "It will continue. While it will ebb and flow, it will also expand beyond" the industries that have been involved so far, he said. "It's not even close to over."

Mr. Yellen added: "The reality is, this has opened the door to a new kind of employee activism we haven't seen before. This is really about (women) taking matters into their own hands" on a collective basis and with the internet's help.

Observers say D&O-related claims include breach of duty, failure to monitor harassment, allegations of turning a blind eye or enabling harassment, or violating securities law by making misleading statements about workplace misconduct. Experts note securities litigation often follows a stock drop.

Generally speaking, sexual harassment claims in high-profile cases have focused on allegations of an environment or culture that promoted obviously inappropriate relationships among staff members, said Laura F. Coppola, New York-based regional head of financial lines, North America, for Allianz Global Corporate & Specialty SE.

Experts say litigation stemming from the #MeToo movement is part of a more general trend toward "event-driven" securities lawsuits, where plaintiff attorneys react to negative news by filing litigation, a trend that has affected cyber litigation as well.

"When you look at the event-driven

litigation, there's definitely a number of high-profile cases," said Beth Goldberg, New York-based chief underwriting officer for financial lines for Starr Cos., referring to D&O.

Ms. Goldberg pointed to the U.S. Equal Employment Opportunity Commission's 2018 year-end statistics, which show an increase in the number of harassment charges filed with the agency (see chart).

Experts say particularly significant cases include the putative class action lawsuit filed against Hamilton, Bermuda-based Signet Jewelers Ltd., which charges the company misrepresented the nature of the allegations against it.

The U.S. District Court in New York denied defendants' motion to dismiss the case, *In Re: Signet Jewelers Ltd. Securities Litigation*, in a Nov. 26 ruling.

"Clearly, disclosure allegations as exemplified by Signet could be very dangerous," said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty LLC, in Beachwood, Ohio.

Observers say another significant case is *Shiva Stein et al. v. Philip H. Knight et al and Nike Inc.*, in which the Beaverton, Oregon-based company is charged with having a systemic "boys' club" culture that negatively affected its female workers.

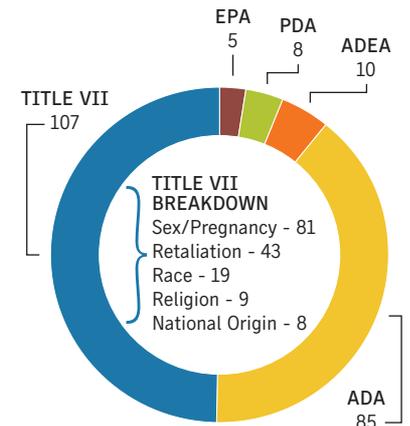
"Absolutely as a result of #MeToo, that is the type of case that is popping up and that we're going to continue to see," and there will have to be changes at the corporate level "if we want these cases to go away," said Marie-France Gelot, New York-based senior vice president and insurance claims counsel for Lockton Cos. LLC.

Meanwhile, D&O underwriters are asking questions generated by the #MeToo movement. "It's making its way to the list of topics to be explored" and is a particular concern in the mergers and acquisitions environment, with acquiring companies concerned about taking on legacy issues, Mr. LaCroix said.

"It's changing the way that D&O underwriters are doing their underwriting," said Phil Norton, Chicago-based

CASES FILED BY STATUTE FOR 2018

As with prior years, Title VII and the ADA consumed the heavy majority of EEOC-initiated filings. In 2018, these statutes accounted for 195 total filings. The EEOC displayed a clear priority for gender-based discrimination and harassment, with 81 filings including such allegations.



Source: Seyfarth Shaw LLP

president of Arthur J. Gallagher & Co.'s professional liability division.

"Nobody's going to have a hard time getting coverage," but "the companies that are under duress will pay a lot more. They're under duress for past policies that were either unfair, discriminatory or downright illegal," Mr. Norton said.

The #MeToo movement's effect on rates, though, is difficult to tease out, say experts.

"It's one of many factors contributing to an increase both in frequency and severity of D&O Claims. #MeToo is one of many event-driven litigation themes that we are seeing drive D&O losses – and there is a need for smart underwriting, for limits management, and for higher D&O pricing in response," said Nora McGee, Atlanta-based chief underwriting officer for public company management liability for American International Group Inc., in an email.

See #METOO next page

Calls for gender equality an outgrowth of #MeToo

Litigation demanding more equal treatment for women may be the natural next phase of the #MeToo movement, observers say.

"Gender equality, as well as gender pay disparity, will take a more prominent role at some point," said Beth Goldberg, New York-based chief underwriting officer for financial lines with Starr Cos.

"I see a little bit of that tension already going on there," said Phil Norton, Chicago-based president of Arthur J. Gallagher & Co.'s professional liability division.

"Equal pay is something for corporations to pay attention to, because it has the possibility of a class action, and therefore can be quite dangerous," he said. "It's one of the many things that have evolved out of this movement."

It is too early to tell, though, whether the equal pay movement will be significant, he added.



Equal pay issues "existed well before" the #MeToo movement and have not yet become a directors and officers liability issue, but could "well turn into" another event-driven corporate mismanagement issue, said Marie-France Gelot, New York-based senior vice president and

insurance claims counsel for Lockton Cos. LLC.

Meanwhile, experts point to a California law, which other states may follow, that says companies headquartered in the state must have at least one female director by year-end 2019.

The legislation, which modifies the California Corporations Code, was signed into law by former Gov. Jerry Brown in September. "It could be a source of increased gender discrimination claims," said Ms. Gelot.

"I'd like to think the #MeToo movement would help encourage conversations about diversity in the boardroom," said Denise Kuprionis, president of The Governance Solutions Group LLC, based in Cincinnati.

In the past, the excuse for not having board diversity was "we didn't find anybody qualified," she said. "That just doesn't fly anymore."

Judy Greenwald

LARGEST D&O INSURERS

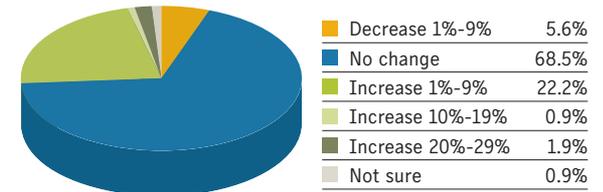
Ranked by direct premiums written through the third quarter of 2018, in millions of dollars

2018	2017	Insurer	Direct premiums written	% increase (decrease) vs. 3Q 2017	Direct incurred losses	Direct loss ratio	Market share
1	1	American International Group Inc.	\$613.8	(8.4%)	\$463.6	67.7%	13.4%
2	2	Chubb Ltd.	\$541.9	(3.8%)	\$286.4	49.8%	11.8%
3	3	Axa SA	\$462.7	5.2%	\$289.3	58.0%	10.1%
4	4	Tokio Marine Holdings Inc.	\$439.3	8.0%	\$250.5	59.2%	9.6%
5	5	CNA Financial Corp.	\$314.9	11.7%	\$138.8	45.8%	6.9%
6	6	Travelers Cos. Inc.	\$230.9	4.4%	\$109.4	47.3%	5.0%
7	7	American Financial Group Inc.	\$202.7	7.6%	\$61.6	31.5%	4.4%
8	8	Zurich Insurance Group Ltd.	\$143.8	(7.0%)	\$112.7	74.9%	3.1%
9	11	Sompo Holdings Inc.	\$125.9	16.4%	\$47.7	36.6%	2.7%
10	10	Alleghany Corp.	\$121.4	6.6%	\$67.9	58.3%	2.6%
11	14	Fairfax Financial Holdings Ltd.	\$114.2	17.8%	\$60.5	54.5%	2.5%
12	13	Berkshire Hathaway Inc.	\$112.4	10.8%	\$81.7	69.9%	2.4%
13	12	W.R. Berkley Corp.	\$110.6	8.6%	\$89.8	77.5%	2.4%
14	16	Nationwide Mutual Group	\$91.1	8.4%	\$86.4	86.4%	2.0%
15	17	Arch Capital Group Ltd.	\$82.1	(1.5%)	\$31.7	37.6%	1.8%
16	15	Axis Capital Holdings Ltd.	\$78.8	(9.2%)	\$44.3	48.8%	1.7%
17	18	Old Republic International Corp.	\$72.3	15.9%	\$35.9	52.0%	1.6%
18	28	Allianz SE	\$67.7	132.7%	\$48.6	78.0%	1.5%
19	22	Hartford Financial Services Group Inc.	\$54.3	11.1%	\$28.5	55.2%	1.2%
20	19	ICI Mutual Insurance Co., a RRG	\$53.4	(1.8%)	\$17.6	33.1%	1.2%
Top 20 total			\$4,034.3	3.5%	\$2,352.8	56.5%	87.8%
Industry total			\$4,594.2	2.1%	\$2,622.2	55.4%	100%

Source: S&P Global Market Intelligence, based on National Association of Insurance Commissioners statutory P/C statement filings, compiled Jan 9, 2019

D&O PRICING

Of survey respondents, 74.1%, up from 73.3% same period last year, saw no change or a decrease in premium rates for directors and officers liability coverage during the third quarter of 2018.



Source: Council of Insurance Agents and Brokers

RENEWAL PRICINGS

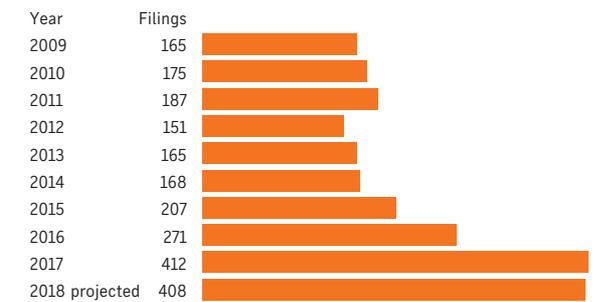
Average D&O renewal pricings changes by quarter since 2015



Source: Council of Insurance Agents and Brokers

CLASS ACTIONS

The number of 2018 federal class action filings is projected to be 408 cases.



Source: Cornerstone Research Inc.

TOP STATES

States with the most direct premiums written for medical professional liability insurance in 2017



State	Direct premiums written	Number of insurers
New York	\$1,549,238,557	133
California	\$760,302,111	129
Pennsylvania	\$646,129,908	144
Florida	\$590,429,824	123
Illinois	\$442,152,424	125

Source: National Association of Insurance Commissioners

PROFESSIONAL LIABILITY COVER

Direct premiums written for U.S. medical professional liability insurance, 2009-2017, in billions of dollars



Source: National Association of Insurance Commissioners

LARGEST MEDICAL PROFESSIONAL LIABILITY INSURERS

Ranked by direct premiums written through the third quarter of 2017, in millions of dollars

2018	2017	Insurer	Direct premium written	Percent increase (decrease) vs. 3Q 2017	Physicians	Hospitals	Other health care professionals	Other health care facilities
1	1	Berkshire Hathaway Inc.	\$1,293.1	3.9%	\$852.2	\$156.1	\$163.0	\$121.8
2	2	Doctors Co. an Interinsurance Exchange	\$538.7	(0.2%)	\$480.1	\$8.6	\$19.1	\$30.9
3	5	CNA Financial Corp.	\$407.9	10.5%	\$48.4	\$74.0	\$177.2	\$108.2
4	4	ProAssurance Corp.	\$373.0	0.4%	\$243.1	\$41.0	\$79.2	\$9.8
5	6	Coverys Insurance Group	\$344.3	6.8%	\$252.5	\$42.8	\$14.4	\$4.6
6	8	NORCAL Mutual Insurance Co.	\$275.8	1.6%	\$269.2	\$0.3	\$3.8	\$2.5
7	7	MCIC Vermont Inc.	\$274.7	(6.1%)	N/A	\$274.7	N/A	N/A
8	9	MAG Mutual Insurance Co.	\$213.9	9.2%	\$190.7	\$19.3	—	\$3.9
9	10	Hospitals Insurance Co.	\$211.8	21.5%	\$109.8	\$101.9	—	—
10	12	Controlled Risk Insurance Co. of Vermont	\$158.3	4.6%	N/A	\$158.3	N/A	N/A
Top 10 total			\$4,091.5	4.0%	\$2,446.0	\$877.1	\$456.7	\$311.7
Industry total			\$7,646.6	1.7%	\$4,218.8	\$1,601.6	\$997.9	\$828.3

N/A = Not available

Source: S&P Global Market Intelligence, based on National Association of Insurance Commissioners statutory P/C statement filings, compiled Jan 9, 2019

“It’s hard to isolate just the #MeToo’s impact on the D&O market because this has been a year for sure where so many things have hit the D&O base,” including class action activity and event-based claims, said Mr. Yellen.

“It’s hard to know which of those levers is the one that underwriters are taking into account more than the others, but we are definitely seeing underwriters exercise more discipline and price differentiation” and deploying capital more carefully, and #MeToo “is certainly one of the things driving that,” Mr. Yellen said.

Meanwhile, coverage issues may arise with respect to behavior that happened years ago, said Mr. Yellen. In cases

where there is a string of behavior that has lasted years, “You are going to have a real problem, potentially, in terms of what policy might apply.”

Observers note there are often parallel D&O and EPLI, with the D&O suit sometimes following the EPLI litigation.

“The vast majority of the suits are going to remain on the EPLI side and only the select few, possibly the more egregious ones, will transfer into a D&O lawsuit,” said Mr. Norton.

“We’re certainly managing that aggregation risk because the potential is there” for EPLI-related claims, along with cyber claims, said Ms. Coppola. “It’s something we’re incredibly mindful of as we continue to build our book.”

#METOO D&O LITIGATION

The Weinstein Co. LLC is one of several companies that face directors and officers liability lawsuits stemming from the #MeToo movement. Others that have recently been sued include:

- | | | | |
|---------------------------|---|----------------------------------|---|
| ■ Alphabet Inc. (Google) |  | ■ Papa John’s International Inc. |  |
| ■ CBS Corp. |  | ■ Signet Jewelers Ltd. |  |
| ■ Liberty Tax Inc. |  | ■ Teladoc Health Inc. |  |
| ■ National Beverage Corp. |  | ■ Twenty-First Century Fox Inc. |  |
| ■ Nike Inc. |  | ■ Wynn Resorts Ltd. |  |

Source: News reports, legal blogs



DIVERSITY EFFORTS RECEIVE A BOOST FROM #METOO

Companies are responding to the #MeToo movement by seeking to create better workplace environments, say experts.

“What we’re seeing is a much stronger willingness to promote diversity in the workplace, promote female leadership in the workplace and afford opportunities for women to seek additional challenges” as well as equal and fair compensation, said Laura F. Coppola, New York-based regional head of financial lines, North America, with Allianz Global Corporate & Specialty SE.

In addition, “More companies are having executives leave for personal conduct issues than you have had in the past,” said David L. Wales, a partner with Bernstein Litowitz Berger & Grossmann LLP in New York.

If a company has an employment practices liability problem, “don’t sweep it under the rug,” and if senior management is involved, “the board needs to confront it,” said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty LLC, in Beachwood, Ohio.

Directors “need to be asking what would happen if an issue arises,” said Denise Kuprionis, president of The Governance Solutions Group LLC, based in Cincinnati. “Who does it go to? What resources does an employee have? Do we have an anonymous help line? What if it’s the CEO?” she asked.

She suggested that board members invite employees out to dinner: “It’s amazing what folks might say.”

“They have to have a firm (human resources) department that is directing good training with follow-through,” and the training must be for all employees, including managers, said Phil Norton, Chicago-based president of Arthur J. Gallagher & Co.’s professional liability division.

Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC’s FINEX North America practice, suggested companies conduct a culture survey. Based on its results, “they will be able to do proactive things to change the culture and improve their risk profile,” he said.

Judy Greenwald



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EMERGING & SPECIALTY RISKS

Parametric policies confront climate risk

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

INSIDE

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Intellectual property risks gain a higher profile with shift toward intangible assets. **PAGE 24**

▶ ROBOTS MAKE PRESENCE FELT

As Rosie the Robot replaces Rosie the Riveter, safety risk horizons are expanding. **PAGE 25**

▶ EMERGING & SPECIALTY RISKS

Data and information on the expansion of intellectual property and robotics risks. **PAGE 26**

Parametric insurance products are being deployed to support the transition to a low-carbon economy and address a growing concern for the risk management community: the challenge a shifting climate presents for the insurability of their assets.

Policies revolving around parametric coverage triggers are being used to support the financing of clean energy projects that are often challenged by extreme weather events. Capacity at the moment outstrips demand, but that is expected to change as awareness of such policy solutions expands to nonenergy sectors facing increasing threats posed by climate change and as corporations utilize these products in support of their environmental, social and governance goals.

“Parametric insurance has been around

as a concept for a generation or more, but it does seem to be having a moment now,” said Nigel Brook, a London-based partner with law firm Clyde & Co LLP.

The U.S. clean energy sector significantly expanded under the Obama administration, which provided more than \$90 billion in loan guarantees, tax incentives and other mechanisms to support the deployment of low-carbon technologies through the American Recovery and Reinvestment Act of 2009. But the clean energy sector was still hampered by a lack of familiarity and

comfort with the projects by banks and other investors, so parametric insurance is being deployed to ease the financing for such projects, which is often the most expensive cost, experts say.

“Insurers can play that really valuable role in driving down the cost of renewables,” Mr. Brook said.

For example, Hartford Steam Boiler Inspection and Insurance Co., a unit of Munich Reinsurance Co., offers a product that includes lack of sunlight as a parametric trigger, with the insurer compensating the policyholder for financial losses if solar irradiance falls below a predefined threshold. A similar product aimed at energy efficiency projects includes a form of parametric coverage triggered by a project failing to save a predetermined amount of energy over the course of the policy term.

“The pricing is commensurate with the risk. The pricing and the approach is very actuarial. Some other industries ... are hard to model because you don’t have enough data. We have access to data, more and more so, globally.”

Tom Markovic, MMC Securities

“Investors don’t have a tremendous amount of experience putting their money behind these types of projects, so anytime they see the opportunity to transfer the investment risk onto the plate of someone like an insurance company, someone with that level of financial strength, it’s almost a no-brainer for an investor, assuming that the price is right,” said John Stokes, an Atlanta-based vice president with expertise in specialty products and solutions for the energy sector with HSB.

Parametric solutions are also being deployed to address problems for clean



energy projects created by extreme weather events, experts say. For example, extreme heat waves and low wind speeds are a bad combination for a wind farm, because power prices spike but the wind farm isn’t producing electricity, said Lee Taylor, CEO of data and analytics provider REsurety Inc. in Boston.

Rather than simply being a tool to mitigate the symptoms of climate change, insurers can play a role in tackling climate change by offering these products, he said.

“By more intelligent risk management of projects enabling more wind farms and more solar farms to get built and run profitably and securely, that reduces the climate change impact in the first place,” he said.

Beyond the clean energy sector, parametric insurance can also be a solution to manage climate risks in other industries, experts say. In the Midwest, for example, trends toward warmer, wetter and more humid conditions challenge a region probably best known for its agricultural production, according to the Fourth National Climate Assessment released on Nov. 23 by the U.S. Global Change Research Program. The Midwest also has “vibrant” manufacturing, retail, recreation/tourism

and service sectors that could be disrupted by the changing climate, the report said.

Parametric insurance can be deployed to cover climate-related business interruption losses in a variety of sectors, said Karina Whalley, marketing and business development manager for Axa SA’s global parametrics in Paris. For example, a hurricane could prevent people from going to a movie theater or result in hotel cancellations, but these events wouldn’t trigger payouts under typical indemnity policies because the buildings have not been damaged. A parametric policy designed with a trigger at a certain wind speed, however, could cover such losses.

A growing source of demand for parametric coverage are corporations such as large technology and other companies that have committed to secure 100% of their power from clean energy sources because these products take the risk of potential shortfalls, said Tom Markovic, senior vice president, weather and energy specialty products at Marsh LLC’s MMC Securities in New York.

Currently, though, the supply of parametric insurance capacity for these risks outstrips demand, experts say.

GREENER PASTURES

- Global clean energy investment totaled \$332.1 billion in 2018, down 8% compared with 2017, but still the fifth consecutive year that such investments exceeded the \$300 billion mark.
- Total investment in solar dropped 24% to \$130.8 billion due to declining capital costs and sharp changes in policy in China, while offshore wind investments rose 14% to \$25.7 billion.
- The U.S. was the second-largest investing country, at \$64.2 billion, up 12%, as developers rushed to finance wind and solar projects to take advantage of tax credit incentives before they expire. China was again the leader in clean energy investments, but the total investment of \$100.1 billion was down 32% from a record set in 2017 because of a plunge in the value of solar commitments.

Source: Bloomberg BNEF

“We would much prefer to take this kind of risk that’s parametrically defined because we can model it much more easily,” Ms. Whalley said. “I think it’s just a matter of time before it’s much more widespread.”

The number of insurers participating in this space depends on the sophistication of the product, Mr. Markovic said. If a wind project developer is looking for a few years of coverage, 10 or more insurers are willing to write a policy; but if the project has a longer tenor of 10 to 15 years or is combined with insurance protection against power price volatility, that narrows the field to three to five insurers.

“But this is a developing space, so I’m sure in a few years we will see 10 of them offering all these complex products or more,” Mr. Markovic said.

Capacity has not been an issue because typical limits could range from \$5 million to \$50 million annually, which is usually available on a project basis, he said.

“The pricing is commensurate with the risk,” he said. “The pricing and the approach is very actuarial. Some other industries like cyber are hard to model because you don’t have enough data. We have access to data, more and more so, globally.”

Resilience project helps environment, bottom line

Insurers are experiencing a two-fold impact from climate change as both underwriters and investors, and some insurers are investing in environmentally and socially responsible projects that also mitigate the risk of significant insurance payouts from future catastrophes.

One such project launched in November: a forest resilience bond developed by Blue Forest Conservation and the Washington, D.C.-based World Resources Institute to finance a \$4.6 million restoration project in Tahoe National Forest in California. The private capital will pay for upfront costs of a project targeting 15,000 acres of forestland in the North

Yuba River watershed via activities such as tree thinning, meadow restoration, prescribed burning and invasive species management.

One of the project investors is Walnut Creek, California-based CSAA Insurance Group, which offers auto, home and other personal lines insurance to AAA members through AAA clubs in 23 states.

Linc Walworth, vice president of investments at CSAA, had a “heightened sensitivity” to the damage caused by forest fires because his company has about a 17% market share in the burn area affected by the devastating wine country fires of 2017 in Northern California. The “immediate attraction”

of the pilot project was its multiple benefits, including promoting the health of the forests, thereby reducing the risk of forest fires and reducing its risk as an insurer. He also liked the idea of CSAA being part of an investor group getting this concept off the ground and proving its effectiveness, with the intention of encouraging additional insurers and other investors to finance the scaling of similar projects.

“I’d love to get more insurers involved,” Mr. Walworth said. “This is an investment with a double bottom line. You’re going to earn a good market rate of return, and you’re helping the environment.”

The investors will be paid back by

beneficiaries of such mitigation efforts, said Todd Gartner, director of WRI’s Natural Infrastructure initiative.

“The basic premise is that when these events happen — and unfortunately they are going to happen more frequently and more intensely in the face of climate change — there are downstream beneficiaries who have a lot to lose,” he said. “Even though there is generally a huge return on investment for these entities to be part of the solution, very few can cover the full freight of the work, (and) even fewer have the amount of money upfront to begin to pay for the work.”

Gloria Gonzalez

Intellectual property amps up the risk factor

BY MATTHEW LERNER

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Intellectual property and the associated risks are gaining attention as global economies and company valuations shift toward intangible assets.

High-profile patent clashes among international technology giants illustrate the potential for costly litigation and judgments, which can include injunctions.

To help cover the changing exposures of companies operating in these new economies, intellectual property insurance coverage may be set to grow as brokers and insurers put more resources into the area and interest in such coverage appears to be increasing, according to industry sources.

Brokers especially are gearing up to reach out and school clients on intellectual property in an intangible asset economy.

“We’ve become a global, innovation-driven economy,” said Lewis Lee, Chicago-based CEO of Aon PLC’s intellectual property solutions group, which formed in mid-2018 and has grown to about 60 people. “Markets have rotated from tangible to intangible assets.”

“The value in modern organizations is wrapped up in intangible assets,” said Matthew Hogg, intellectual property specialist for Liberty Specialty Markets, a London-based unit of Liberty Mutual Insurance Co.

Last year, Aon launched a \$100 million facility with Tokio Marine Kiln Insurance Ltd. while Liberty Specialty Markets brought to market a new product aimed at contract liability and offering limits of up to \$15 million.

There are now some “very positive signs” that the market for intellectual property cover is set to grow, said Kimberly Cauthorn, intellectual property leader for Willis Towers Watson PLC in London.

“The proof will be in the pudding in the next 36 months in where growth will be with this product,” Mr. Hogg said.

Increased interest in the coverage is in



part coming from technology companies, said Julie Hawkinson, a partner with Clyde & Co US LLP in Los Angeles.

“The increased demand has caused insurers to start thinking about different ways they can insure this type of risk,” Ms. Hawkinson said.

Historically, commercial buyers have been slow to embrace intellectual property coverage due to its complexity and price, but that may be changing, experts say.

Intellectual property “as an umbrella term has not been a product that our client base has been able to get their arms around, for a variety of reasons,” including limitation in the scope of coverage and an expensive price point, said Jack Flug, managing director in Marsh USA Inc.’s FINPRO practice in New York.

Mr. Flug added, however, that Marsh has seen an uptick in inquiries in the area

CYBER THEFTS

According to the 2018 Global Economic Crime and Fraud Survey ...

32%

of U.S. respondents reported that asset misappropriation was the theft facilitated via a cyber-attack

23%

suffered intellectual property theft

Source: PricewaterhouseCoopers

over the past year or so.

“It is a subject which has maybe scared people a little bit and they would say, ‘that is the domain of the legal department, not the risk management department,’” Mr. Hogg said.

Intellectual property coverage can be a complex product, according to Susan Hiteshew, a member of the Risk & Insurance Management Society Inc.’s board of directors and senior director of insurance for the Americas with Marriott International Inc.

“In procuring intellectual property insurance, the determining factor is generally the scope and materiality of the asset you’re looking to protect,” she said. “For example, patent insurance for a large company with an extensive number of intellectual property exposures globally could be quite tough.”

Willis Towers Watson issued a report on intellectual property litigation risk in July.

“The primary audience for that report is risk managers, because IP is one of those areas where the risk managers, because they don’t see much coverage for it, they don’t think about it as much and they assume the lawyers in the business are taking care of those risks,” Ms. Cauthorn said.

And brokers are showing more interest in intellectual property coverage, Liberty Specialty Market’s Mr. Hogg said.

Interest for intellectual property coverage comes from all industries, said Jason Sandler, vice president in Marsh USA’s FINPRO practice in New York.

“Now, even traditionally tangible-asset focused industries realize the importance of intangibles.”

“Looking at the market, \$50 million is a figure that makes sense in terms of limits,” for the coverage, Mr. Flug said.

“I think for the majority of clients, our \$100 million facility adequately addresses 80% of the marketplace,” said Nick Chmielewski, head of intellectual property broking for Aon’s intellectual property solutions group in Chicago.

“The challenge is for some of the larger organizations. You’ve seen damage awards in excess of \$1 billion.”

Aon has seen a mix from a client perspective, according to Mr. Chmielewski. “We’ve seen banks interested in buying this solution,” as well as technology and financial services companies, he said.

There are also lower limits in the marketplace, according to Ms. Hawkinson.

“It’s not uncommon for me to see stand-alone intellectual property insurance offering limit of liability anywhere from \$500,000 to \$1 million,” Ms. Hawkinson said.

Midsized software companies which are being required to provide intellectual property indemnity to their customers is where Willis Towers Watson is placing the most coverage, Ms. Cauthorn said. But many others are buying as well, including “everything from niche manufacturing to consulting firms,” she said.

INTELLECTUAL PROPERTY LAWSUITS REVEAL DATA GOLD MINE

While there is a dearth of claims data on intellectual property losses, other data surrounding the risk is available, and technology is helping to find it, industry sources say.

“When people talk about a lack of historical information, they’re thinking about claims data, and they’re not thinking about all of the data that does exist, the vast amount of information which has to do with IP litigation and

is available with respect to the cost of litigation, settlements and judgments,” said Jason Sandler, vice president in Marsh USA Inc.’s FINPRO practice in New York.

“There’s a lot of data that can be found if people are looking in the right places,” he said.

Technology can help in data mining intellectual property risk, said Matthew Hogg, intellectual property specialist

for Liberty Specialty Markets, a unit of Liberty Mutual Insurance Co. in London.

“There is increased sophistication around the use of technology to analyze litigation and litigation trends,” Mr. Hogg said. “It does suffer from poor actuarial data with regard to what’s being collected by insurance companies, but there is actuarial information around if you choose to go and find it.”

The insurance sector is looking to

add intellectual property expertise and trying to enhance its command of the intellectual property space, said Nick Chmielewski, head of IP broking for Aon PLC’s intellectual property solutions group in Chicago.

“Across the board, the insurance industry is trying to evolve and create more expertise in this intangible asset space,” he said.

Matthew Lerner

Robotics exposures reboot risk

BY CLAIRE WILKINSON

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Whether it's robot assistants helping grocery stores watch out for spills, robots that allow surgeons to perform procedures with greater precision or a fleet of robotic snakes and insects that can inspect airplanes, robotic technology is constantly advancing, making for a rapidly shifting risk landscape, experts say.

As the use of robotics in industrial and other settings grows, the potential for robotic-related claims involving bodily injury, property damage and financial loss rises, though industry experts say they haven't seen an increase in claims to date. However, these claims have the potential to be complex as insurers try to determine the cause of a robot-related accident, whether it arises from the manufacturer or the company implementing the technology.

The global robotics industry is expected to grow from an estimated \$52.7 billion in worldwide revenues in 2018 to \$500 billion in revenues in 2025, according to Boulder, Colorado-based market intelligence firm Tractica.

In many ways, this is "a golden age" where "companies are looking to implement robotics to streamline their operations and workforces, and to supplement human workers and to remove hazards," said Morgan Kyte, New York-based national communication, media and technology casualty placement leader at Marsh LLC.

Because robots are becoming increasingly sophisticated, in some cases acquiring artificial intelligence capabilities, this will add to the complexity of claims, experts say.

The courts are going to have to grapple with these liability issues, particularly with respect to artificial intelligence, said Natalie Pierce, San Francisco-based co-chair of the robotics artificial intelligence and automation industry practice group at employment law firm Littler Mendelson.

"When AI systems are increasingly using their own self-learning rather than pre-programmed instructions, the courts are going to have to grapple with a lot of issues around ensuring accuracy, legality and fairness of AI decisions," said Ms. Pierce.

But just because the risk landscape is changing, it doesn't mean that losses are increasing, said Jens Alkemper, Norwood, Massachusetts-based research area director for insurer FM Global. "When I look through our loss history, I don't see a particular spike in losses related to robotics. It's not that the loss history is causing us to worry that much," Mr. Alkemper said.

"That said, the risk is changing, and that means we have to pay careful attention to what is happening here," he added.

For example, as a growing number of



manufacturers and warehouses automate their processes and systems, FM Global is looking closely at the robotics-related property risks that can arise.

Risk managers must understand their companies' dependence on robots and manage their risks, including by properly inspecting and maintaining robots just as they would any other piece of machinery, he said.

"As we introduce robotics in different settings, we have to understand our exposure to these robots. Robots can break, robots can cause other things to be affected. One of the worst-case scenarios is a robot can cause a fire and that can spread," said Mr. Alkemper.

Cybersecurity is also an important consideration for risk managers, industry experts say.

Cyber risks arise from the basic operation of industrial robots because they are connected devices operated remotely, and also arise from the manufacturers of robots, especially if they are monitoring the robots remotely, said Michael Standard, industrial and materials practice leader for Aon PLC in Detroit.

"Data could get stolen," he said. "Valuable production data could get intercepted through the connectivity of the robotics and the analysts using the information."

Cyber coverage is provided within FM Global's all-risk policy, so if a cyberattack targeted a robot and caused damage to an insured's essential business equipment and business interruption, the loss would be covered, a spokesman at FM Global said.

American International Group Inc. has offered coverage for businesses making or operating robots since 2016. The New York-based insurer's coverage provides robotics errors and omissions coverage, general liability and products liability insurance and specialized risk management services, albeit on separate policies, said Jeanmarie Giordano, New York-based chief underwriting officer for professional liability at AIG.

Current buyers of AIG's robotics E&O

coverage are software and technology product developers, mainly existing technology E&O clients, whose business is evolving into the AI space, Ms. Giordano said. "We sell products to companies in the (tech) space who have a track record and produce revenue off it," she added.

The automobile industry has traditionally accounted for the lion's share of North American robotics technology purchases, but interest is now growing across other sectors such as life sciences, food and consumer goods, plastics and rubber and electronics. A total of 28,158 robots valued at \$1.4 billion were shipped to North American companies in the first nine months of 2018, up 9% by number of units, the Ann Arbor, Michigan-based Robotics Industry Association reported in November 2018.

In the next year to 18 months, as the use of robotics becomes more widespread, AIG expects takeup of the E&O coverage to grow, especially as startup companies currently still in the research and development phase go to market, Ms. Giordano said. The insurer can offer total capacity of \$75 million on the E&O side, but typically provides up to \$10 million in any given layer.

From the perspective of the manufacturers of robots, there is ample coverage available and insurers are "more than happy" to write the risk, Marsh's Mr. Kyte said.

Essential coverages for manufacturers of robotics technology include an E&O policy to cover financial losses arising from failure of the product, and a general liability policy to cover losses if a robot-related accident occurs causing property damage or bodily injury, and a cyber liability policy to cover cyberattack and hacking threats, Mr. Kyte said.

Having a single product available for robotics manufacturers would ensure there were no gaps in coverage if a claim occurs, Mr. Kyte said.

"The policies need to work in sync, but there are not a ton of carriers out there that have policies that are well synced," he said.

ROBOT SAFETY WORKS BOTH WAYS

The National Institute for Occupational Safety and Health sees potential for robots to address some safety risks encountered by employees, but the agency has tracked several dozen robot-related workplace fatalities in the United States.

NIOSH researchers reported 61 robot-related workplace deaths between 1992 and 2015. While updated statistics are not currently available, the agency is aware of two robot-related incidents in Washington state last year, said Hongwei Hsiao, chief of the protective technology branch at NIOSH and co-director of the Center for Occupational Robotics and Research in Morgantown, West Virginia. One incident related to an autonomous forklift that struck workers who were creating a piece of plastic that interfered with the operation of the robot, while another case involved remote control demolition machines, also known as demolition robots, Mr. Hsiao said. The NIOSH fatality and injury investigation team is "working closely with Washington state to understand the incidents and come up with recommendations to prevent similar incidents," he said.

But with advancements in robotics technology and capabilities, NIOSH sees "good potential" for robots to address workplace safety risks and injuries such as the reduction of repetitive, tiring and dangerous tasks that workers used to perform, often causing lower back pain or pain in upper extremities, said Mr. Hsiao.

He said "we see a need to address the safety of today's workers, who use, wear and work nearby robots. This is in particular true if workers are unfamiliar with the systems or risks they may encounter with the robots, when medical issues or social risk issues arise."

In 2017, NIOSH launched the research center to assess the potential benefits and risks of robot workers and develop guidance for safe interactions between humans and robots.

There have been very few fatalities or major accidents involving robots although "even one is too many from our standpoint," said Jeff Burnstein, president of the Ann Arbor, Michigan-based Robotics Industries Association.

Part of the reason why industrial robots have been safe is because employers are adhering to the voluntary safety standards, he said. The association developed the first American national robot safety standard in 1986, a standard that now incorporates American National Standards Institute and International Organization for Standardization standards.

A new standard that addresses the risks associated with mobile robots is being developed and should be ready by the end of 2019 or early 2020, and the association has just launched a strategic initiative to determine what safety concerns exist related to artificial intelligence, said Mr. Burnstein.

Claire Wilkinson

SPECIAL REPORT

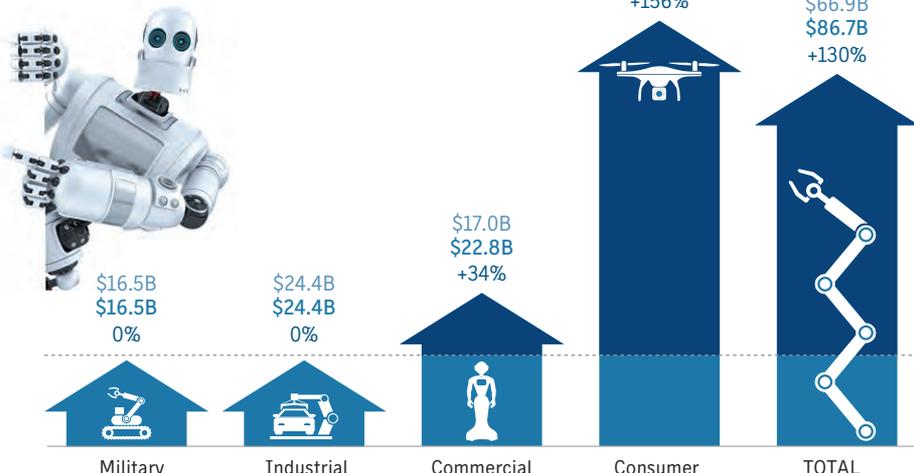
EMERGING & SPECIALTY RISKS DATA

ROBOTICS MARKETS ARE GROWING FASTER THAN EXPECTED

In 2014, Boston Consulting Group Inc. projected that the global market for robotics would reach \$67 billion by 2025. In 2017, the estimates had to be revised to \$87 billion by 2025, mostly because of soaring consumer demand.

- Original estimate
- Updated estimate
- % change in estimate

SIZE OF 2025 MARKET
(IN BILLIONS OF DOLLARS)



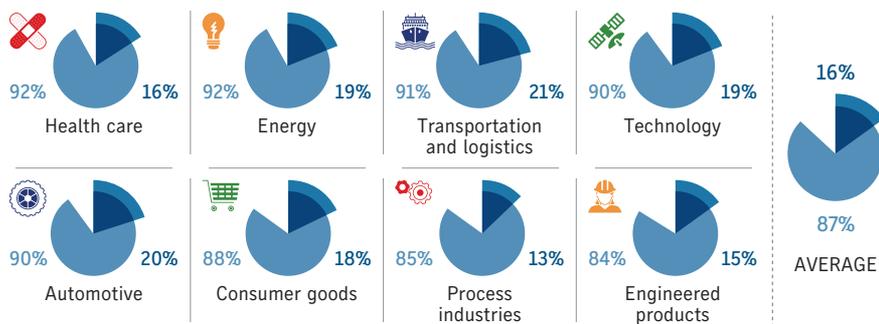
Note: Because of rounding, not all numbers add up to the totals shown.
Source: Boston Consulting Group Inc.

A LARGE GAP EXISTS BETWEEN AI AMBITION AND REALITY

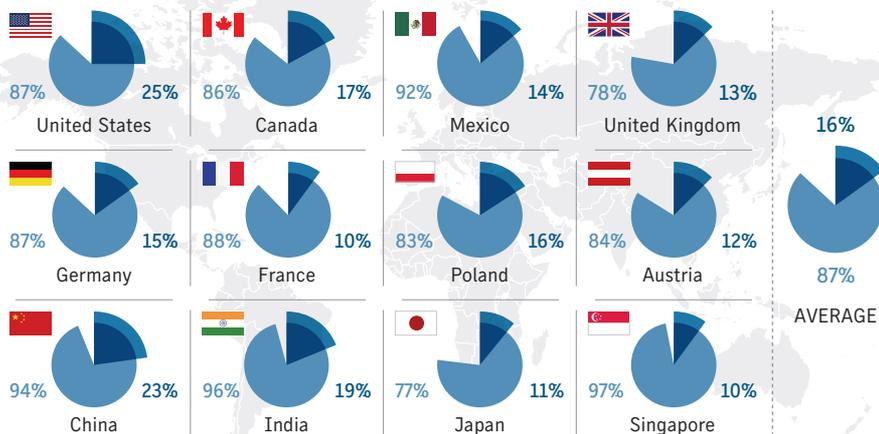
The BCG Global AI survey asked respondents whether their company is planning to implement artificial intelligence and whether the company has already implemented AI use cases in its production processes.

- Percentage of companies planning to implement AI within the next three years
- Percentage of companies that have fully implemented more than one AI use case (early adopters)

BY INDUSTRIES



BY COUNTRIES



Source: BCG Global AI Survey, February-March 2018

GLOBAL IP FILING ACTIVITY IN 2017

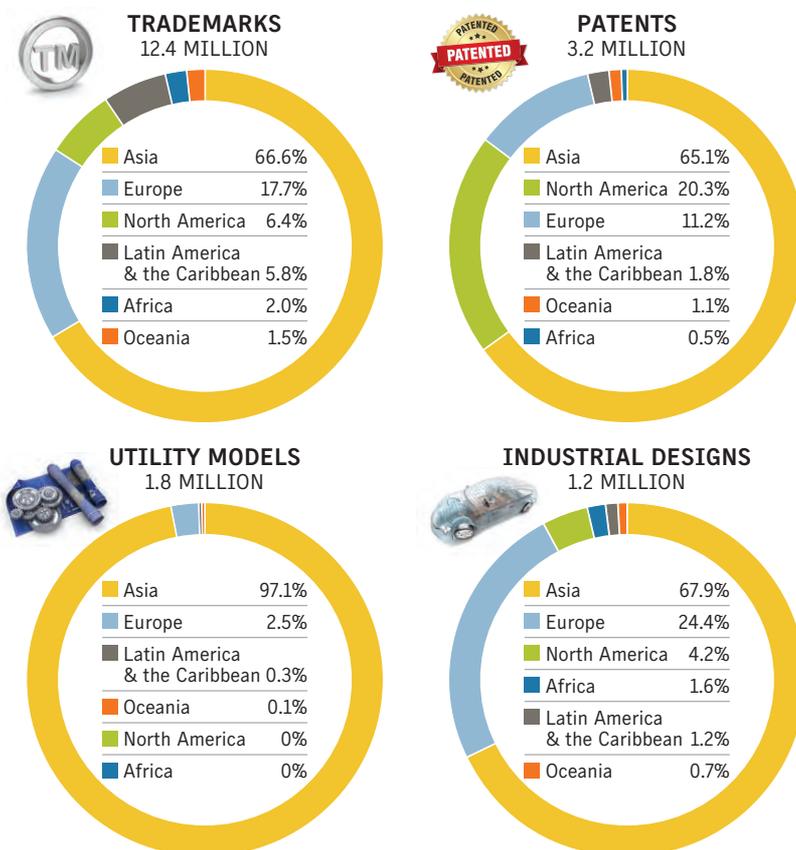
Total intellectual property applications and growth in applications

	2017	2016	Growth rate
Patents	3,168,900	3,125,100	N/A ¹
Utility models	1,761,200	1,553,280	N/A ¹
Trademarks ²	12,387,600	9,771,400	26.8%
Industrial designs ³	1,242,100	1,240,600	N/A ¹

¹ Due to a new way in which the IP office of China counts applications received in 2017, the 2016 and 2017 data for patents, utility models and industrial designs are not comparable. Therefore, it is not possible to calculate meaningful worldwide growth rates for these three IP rights; ² Refers to class counts, the total number of goods and services classes specified in trademark applications; ³ Refers to design counts, the total number of designs contained in industrial design applications.

Source: WIPO Statistics Database, November 2018

SHARES OF IP FILING ACTIVITY BY REGIONS



Source: WIPO Statistics Database, November 2018

TOP 10 COUNTRIES WITH THE HIGHEST PATENT APPLICATIONS

Rank	Country	2017	2016	Growth
1	China	1,381,594	1,338,503	N/A ¹
2	U.S.	606,956	605,571	0.2%
3	Japan	318,479	318,381	0.0%
4	South Korea	204,775	208,830	(1.9%)
5	EUIPO (EU office)	166,585	159,358	4.5%
6	Germany	67,712	67,899	(0.3%)
7	India	46,582	45,057	3.4%
8	Russia Federation	36,883	41,587	(11.3%)
9	Canada	35,022	34,745	0.8%
10	Australia	28,906	28,394	1.8%

¹ Due to a new way in which the IP office of China counts applications received in 2017, the 2016 and 2017 data for patents, utility models and industrial designs are not comparable. Therefore, it is not possible to calculate meaningful worldwide growth rates for these three IP rights.

Source: WIPO Statistics Database, November 2018

Swiss Re launches river parametric policy

■ Swiss Re Corporate Solutions Ltd. launched a parametric insurance product that offers up to \$50 million in coverage to European companies for financial losses resulting from high or low river levels.

An index-based product, FLOW covers lost revenue due to business interruption, or increased costs due to risk mitigation measures, the Swiss Re Ltd. unit said in a statement.

“The very dry and warm summer of 2018 left the water levels of most rivers in Europe at record lows,” Thomas Keist, head marketing innovative risk solutions EMEA for Swiss Re, said in the statement.

The insurer devised an index that references water levels at various river gauges in Belgium, France, Germany, Italy, Luxembourg, the Netherlands, the Nordic countries, Portugal, Spain, Switzerland and the United Kingdom. The index tracks the water-level exposure of a business regarding revenues and costs, the statement said.

Payouts are made within 21 days of an event that triggers coverage, and policy terms go up to three years, according to a Swiss Re spokeswoman.

AmWINS, Axis partner on fraud coverage

■ Wholesaler AmWINS Group Inc. has partnered with Axis Insurance Co., a unit of Bermuda-based Axis Capital Holdings Ltd., to offer social engineering fraud coverage and risk mitigation services.

The policy will cover social engineering losses including when insureds are fraudulently persuaded to transfer money or securities following a telephone, written or electronic instruction from a supposed client, vendor or employee, Charlotte, North Carolina-based AmWINS said in a statement.

Limits of \$100,000 to \$10 million are available under the policy, which is offered in 47 states and the District of Columbia, according to the statement.

Everest adds to life sciences cover

■ Everest Insurance, a unit of Bermuda-based insurer and reinsurer Everest Re Group Ltd., has expanded its life sciences product to include property, commercial auto and workers compensation coverage.

In a statement, New York-based Everest said the multiline package policy is designed to address the unique expo-



AAIS makes blockchain platform update

■ The American Association of Insurance Services has launched an update of its openIDL blockchain platform.

The latest iteration of the platform, which was launched last year by the insurance statistics and advisory organization, includes additional capabilities to communicate with insurers over proposed data calls for information on catastrophe losses and other issues, said Joan Zerkovich, senior vice president of operations at Lisle, Illinois-based AAIS.

With the additions, regulators can put out “draft” data calls to insurers and others to assess whether sufficient information is available on events such as the recent California wildfire insurance claims, among other things, she said.

The facility allows for more transparency of data while protecting the privacy of the insurers contributing the data, she said.

sures found in the life sciences property, auto and workers compensation areas, including biocontamination and business interruption.

Limits up to \$1 million on auto, \$100 million on property and \$10 million on products are offered, said Andy Faber, head of life sciences at Everest.

CFC offers cyber cover for business interruption

■ CFC Underwriting Ltd., a London-based specialist insurance provider, has introduced cyber-related business

interruption coverage as well as expanded coverage for a variety of cyber crime activities.

Under the updated policy, coverage is triggered by information technology system failure as well as malicious cyber events, CFC said in a statement. It also provides full supply chain business interruption coverage that extends to events that affect the policyholder’s systems and the systems of their technology and non-technology suppliers.

CFC is also adding crime coverages for cryptojacking, where hackers hijack the victim’s computer network’s processing power to mine cryptocurrency for their own benefit, leaving the victim to pay for the increased bandwidth use. The new cyber policy adds coverage for hardware replacement as well.

Alliant unveils MGU for reps and warranties

■ Alliant Insurance Services Inc. launched ASQ Underwriting, a managing general underwriter headed by former Allied World Assurance Co. underwriters that offers cover for risks related to corporate mergers and acquisitions.

In a statement, the Newport Beach, California-based brokerage said ASQ will underwrite representations and warranties insurance, tax liability insurance and contingent risk insurance.

New York-based ASQ is headed by Jeff Anderson and Wayne Datz, directors and co-founders who joined from Allied World earlier this year; its underwriting staff includes Ryan Anderson, also from Allied World, and Andrew Belisle, who previously was a transactional risk underwriter at Beazley PLC.

Vermont blockchain pilot targets captives

■ Vermont Secretary of State Jim Condos and Department of Financial Regulation Commissioner Michael Pieciak signed a memorandum of understanding outlining collaborative efforts to explore the use of blockchain technology in the digital record-keeping practices of the captive insurance industry.

The pilot program will help the state identify areas where the use of blockchain technology in regulatory and other government business may increase data security and reduce costs for residents and those doing business in Vermont, the DFR said in a statement.

“This pilot will allow us to examine whether or not the application of blockchain technology for digital record-keeping can improve aspects of the state regulatory process,” Mr. Condos said in the statement.

DEALS & MOVES

Marsh & McLennan unit to buy Florida brokerage

Marsh & McLennan Agency LLC agreed to acquire Clearwater, Florida-based brokerage Bouchard Insurance Inc. for an undisclosed sum.

Bouchard serves midsize agribusiness, community association, construction, education, health care, hospitality, staffing and social services clients in Florida. Its offices in Clearwater, Fort Myers, Kissimmee, Maitland, Sarasota and Tampa, Florida, will be operated as Bouchard Insurance, a Marsh & McLennan Agency company.

Doug Bishop, CEO of Bouchard, will continue to lead the company, according to a statement.

AmWINS agrees to buy Lexington flood unit

Wholesaler AmWINS Group Inc. agreed to acquire The Flood Insurance Agency, a program administrator for Lexington Insurance Co.

Terms of the deal, expected to close in February, were not disclosed.

Based in Gainesville, Florida, the agency provides access to its Private Market Flood program, an alternative to the National Flood Insurance Program, Charlotte, North Carolina-based AmWINS said in a statement.

AssuredPartners acquires three aviation agencies

AssuredPartners Inc. continued its push into the general aviation insurance brokerage market with the purchase of three aviation agencies.

The Lake Mary, Florida-based brokerage announced the purchase of Airpower Insurance LLC in Phoenix, AirSouth Insurance Inc. in Dothan, Alabama, and Weber Insurance Services Inc. in Eden Prairie, Minnesota.

Gallagher acquires Canadian brokerage

Arthur J. Gallagher & Co. acquired Canadian property/casualty insurance brokerage Jones Brown Inc.

Terms of the deal were not disclosed.

With about 70 employees, Vancouver, British Columbia-based Jones Brown places an array of commercial coverages and has offices in Calgary, Alberta, Hamilton, Ontario and Toronto.

Jones Brown staff will operate from their existing locations under Steve Bryant, president of Gallagher’s Canadian retail property/casualty operations.

COMMENTARY

Abuse suits trigger array of coverages

In the same way that #MeToo has spread beyond the confines of Hollywood, liability issues related to sexual harassment and abuse claims are expanding into new areas, testing the risk management protocols of many organizations.

The hashtag movement, which took off after allegations against movie mogul Harvey Weinstein came to light in 2017, quickly grew into a national campaign against mistreatment of women in all industries.

Inevitably, lawsuits seeking damages followed, and often the insurance product seen as the most likely to respond to financial losses has been employment practices liability insurance.



Gavin Souter
EDITOR

The coverage, which was first widely promoted more than 20 years ago, was not an immediate success when it was launched. But over the years, EPLI has made its way into the mix of policies that most large organizations would consider as part of their standard liability protections. While it's not always bought as a stand-alone policy, various versions of the coverage are often found wrapped up in other commercial liability coverages.

But it's been clear, pretty much from the start of the #MeToo movement, that coverage against

the allegations being made won't be restricted to EPLI.

As we report on page 8, workers compensation insurers are seeing claims related to sexual abuse and harassment, and in our cover story on page 18 we explore the implications of #MeToo-related lawsuits that could trigger directors and officer liability claims.

From a comp perspective, some states already allow workers who have experienced physical or mental trauma related to harassment or assault to file claims, and various cases seeking comp benefits have made it to court. While it seems unlikely that comp coverage will be the main target of abuse and harassment claims, given that higher liability awards would likely be paid under other coverages, #MeToo claims are already a reality for some workers comp payers.

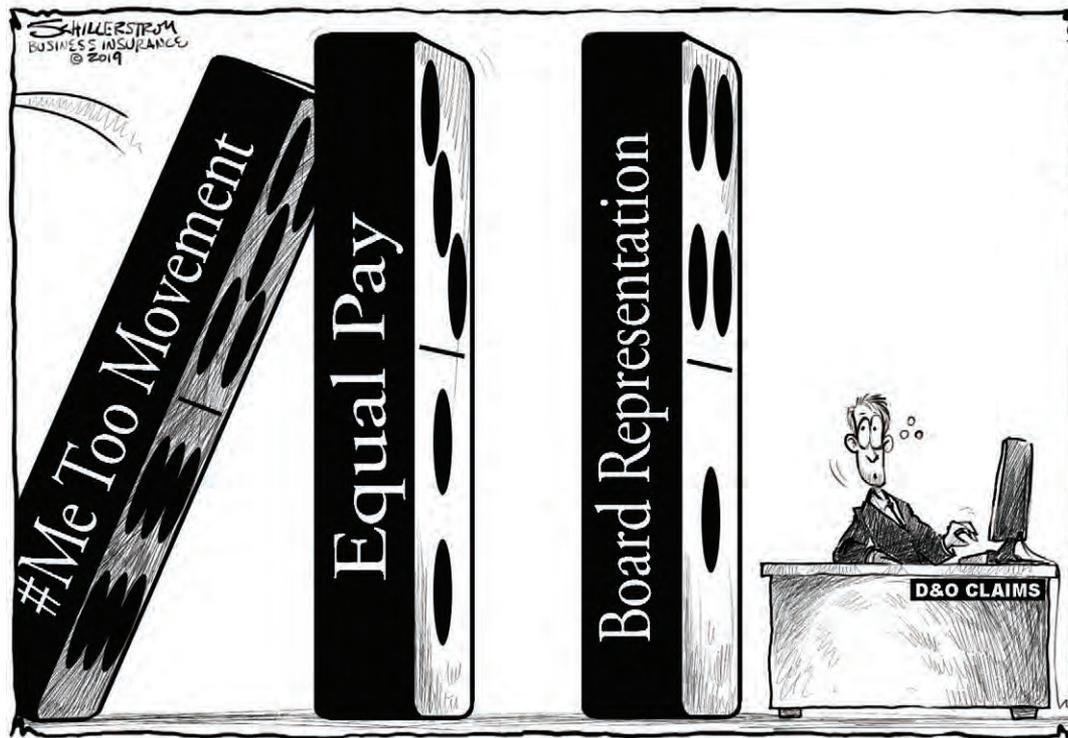
#MeToo-related D&O claims are in their infancy, but suits have already been filed. Experts expect allegations such as breach of duty, failure to monitor harassment or making misleading statements about workplace conduct could lead to D&O claims.

Regardless of the coverage that responds, the #MeToo movement has prompted swift reactions by many organizations as they seek to improve — or in some cases institute — safeguards against sexual misconduct in the workplace.

The long-term solution to the issue should include sincere efforts to improve diversity and inclusion at all levels in organizations. Those processes, however, can be painfully slow.

In the nearer term, corporate and organizational responses to the problems require expertise from many areas, including risk management. The value of good risk management is not always fully appreciated, but as the financial consequences of employee mistreatment fully surface, processes that tackle risks on an enterprise-wide scale have a chance to show their worth.

SCHILLERSTROM



VIEW FROM WASHINGTON

Safety at risk in shutdown

All that pain for nothing.

The longest government shutdown in U.S. history finally came to a temporary end on Jan. 25 when President Donald Trump agreed to reopen the government for three weeks, paving the way for the U.S. Congress to pass two continuing resolutions: one to fund the government without the \$5.7 billion the president insisted he needed to secure the borders against illegal immigration and another to allow for negotiations on border security.

"If we don't get a fair deal from Congress, the government will either shut down on Feb. 15th again or I will use the powers afforded to me under the laws and the Constitution of the United States to address this emergency," the president said.

That's not something you want to hear. The lengthy shutdown created numerous risk management and safety challenges and vulnerabilities. While the U.S. Occupational Safety and Health Administration and the Mine Safety and Health Administration were operational, the Chemical Safety and Hazard Investigation Board — an independent agency tasked with investigating incidents such as the 2013 explosion at the West Fertilizer Co. facility in West Texas that killed 15 people, and the Hurricane Harvey-caused rainfall that caused equipment to flood and fail and stored chemicals to decompose and burn, releasing fumes and smoke into the air from Arkema Inc.'s Crosby, Texas, facility — was essentially shut down.

Similarly, efforts to ensure the safety of the U.S. food supply by the U.S. Department of Agriculture and the Food and Drug Administration took a hit during the extended shutdown. Inspections stopped when the government shutdown began on Dec. 22, until some inspectors returned to work — without pay — on Jan. 15. And the vast majority of

the 14,000 employees of the U.S. Environmental Protection Agency — home of the Risk Management Program, which implements and enforces provisions of the Clean Air Act that require facilities that use extremely hazardous substances to develop a risk management plan — were furloughed for weeks.

During the 35-day shutdown, 800,000 federal employees were locked out of their jobs or forced to work without pay. Some of these people are my friends and neighbors, working for federal or inde-



Gloria Gonzalez
DEPUTY EDITOR

pendent agencies such as NASA or for companies that provided services to these agencies. While some federal employees will receive back pay, many in the contracting community are out of luck and paychecks for that time.

Reopening the government doesn't make the pain and fear go away for these federal employees, contractors and others affected by the shutdown, especially with another clock ticking in their faces. Some tough conversations were being and are still being had, including whether they must sell their homes or seek jobs in the private sector before they find themselves out of work again through no choice of their own. Many of my friends and neighbors love their jobs and don't want to leave them, but can't risk or afford another extended run on their bank and retirement accounts.

For their sake, let's hope we're not in the same mess again on Feb. 15.

How a misunderstanding of GDPR could heighten cyber exposure



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Joshua A. Mooney is partner and co-chair of the cyber law and data protection group with White and Williams LLP. He can be reached at 215-864-6345 or mooneyj@whiteandwilliams.com.

Cyber vulnerabilities and incidents are rarely organization-specific. A security breach into one organization's network can provide hackers with the ability to breach another organization's network by using the same tactics, techniques and procedures. Thus, a security breach into one organization may initiate a chain of security breaches compromising multiple networks of numerous organizations. Threat information sharing can short-circuit, if not prevent, chain security breaches by providing real-time information to patch vulnerabilities and thwart further attacks targeting those vulnerabilities.

However, a critical misunderstanding has stifled this efficient and cost-effective means to combat cyberattacks, which in turn may be causing real and long-lasting damage. The General Data Protection Regulation is intended to protect the fundamental rights of EU individuals, called data subjects in the EU. However, GDPR has led some to question whether threat information sharing is permissible under the regulation, notwithstanding that sharing threat information advances fundamental tenets of GDPR for the protection of personal data and privacy as a fundamental right. This uncertainty is not an academic question. It potentially has deprived organizations, including banks, brokerages, insurance companies and other critical infrastructure, of an essential tool to both better protect their network and consumers from cyber crime and comply with regulatory requirements for effective data security.

The General Data Protection Regulation has led some to question whether threat information sharing is permissible under the regulation.

The short answer is that threat information sharing can be lawful. Organizations, including Information Sharing Analysis Centers, or ISACs, should look to Article 6(1)(f) of GDPR to model information-sharing programs. (Privacy notices can account for transparency requirements under Articles 13 and 14.) In fact, Financial Services Information Sharing Analysis Center, or FS-ISAC, has led the way with this analysis in a recent white paper.



Article 6(1)(f) of GDPR states that processing personal data is lawful when it "is necessary for the purpose of the legitimate interests pursued by the controller [loosely, the organization collecting the information] or by a third party." The inclusion of third-party interests is critical. The effect is that the interests of the organizations combating cyber risks, as well as the interests of governments, persons and the general public at large, are all relevant for determining the lawfulness of the processing. Establishing lawfulness of processing personal data must meet a three-step test: legitimacy, necessity and a balancing of interests.

Legitimacy: As described in the Article 29 Working Party, or A29WP, guidance on legitimate interests, Opinion 06/2014, an entity can establish "legitimacy" of the interests being served by showing that its conduct is lawful, clearly articulated, and real and present (i.e., not speculative). Organizations such as ISACs can demonstrate legitimacy of interests in sharing threat information when taken under a legal directive, such as for public welfare, and when using internal confidentiality controls to help meet Article 6's balancing test, discussed further below. Organizations should have little difficulty demonstrating the third prong: Cyberattacks and the interests to thwart them are real and present.

Necessity: An entity may establish "necessity" by showing that the processing of personal data is necessary and proportionate to the pursuit of the legitimate interest. To be necessary, sometimes referred to as "strictly necessary," there must be no viable or practical alternative method to achieve the purpose behind the interest. For example, the organization sharing threat information should confirm that it cannot achieve the goal of sharing the threat information (i.e. data and network security, and the prevention of fraud) in a more obvious or less intrusive way. This should be an easy test. Sharing certain personal data such as IP or email addresses can be essential for rapidly identifying and preventing chain

security breaches and further exploitation of discovered network vulnerabilities in organizations. Information sharing also can prevent further crime against an individual whose data is stolen. An organization may show proportionality by the impact of the processing on the individual whose personal data is shared. The balancing test discussed below is an effective tool to demonstrate that proportionality.

Balance: The Article 6(1)(f) balancing of interests weighs the legitimate interests of the entity collecting and analyzing the information, or the interests of a third party, against the interests and fundamental rights of the individual whose data is processed. In the context of threat information sharing, the purpose and interest behind threat information sharing should not be outweighed by the individual's interests. Threat information sharing is not arbitrary or punitive. It is done with specific goals of network security, and to prevent fraud and crime, with the ultimate effect of protecting persons from harm. For instance, the processing of stolen/victim personal data to prevent further fraud against that person would not be outweighed by the individual's interests because such processing would advance the person's interests by preventing further harm, or him or her, to validate a loss to provide an opportunity for recovery. The interests of the threat actors also would not override the processing of personal data, because such processing should not be disproportionate to the threat actor's rights and freedoms. Although the processing could lead to legal actions taken against the threat actor, including incarceration, threat actors do not have the right to evade justice, and the administration of justice would have its own checks and balances to ensure proportionality.

Hopefully, the contention that GDPR does not permit threat information sharing is exposed as a misunderstanding. Threat information sharing is an essential tool in cybersecurity arsenal that enables organizations to achieve the very goals GDPR is intended to advance: data security and individual privacy.



“Never say no to a task. For my part, I never said no to any task, which more often than not meant figuring out how to do something on my own. Regardless of my knowledge, I took hold of a task and educated myself along the way.”

UP CLOSE

Geraldine DelPrete

NEW JOB TITLE: Woodbury, New York-based director of programs, senior vice president, SterlingRisk Insurance

PREVIOUS POSITION: New York-based partner, TigerRisk Partners LLC

OUTLOOK FOR THE INDUSTRY: The outlook is differentiated by line of business. I'm feeling very upbeat on the casualty side. Many companies no longer have duplications in their reserves, causing attention to, and a targeted focus toward, underwriting and pricing. Property seems to be moving slower as there is still a great deal of capacity in catastrophic and non-catastrophic exposures. Rates are heading slightly upward and underwriting is tightening slightly, but not as quickly as casualty. The industry is making huge strides on the technology side and moving toward providing newer product to the various commercial segments with the introduction of insurtech.

GOALS FOR YOUR NEW POSITION: My goals at SterlingRisk are to triple the size of the program group in revenue, create multiline programs across business segments, and provide a level of service that is nonexistent in the industry via technology/underwriting. One of the reasons I joined SterlingRisk is the commitment David Sterling has toward new products and servicing of his clients. I also like being back on the frontline insurance side.

CHALLENGES FACING THE INDUSTRY: A significant challenge in our area is an inability by insurers to provide flexible solutions on a multiline basis. Overall, the industry is also struggling in the area of underwriting talent, as a lot of the talent has left the industry, which diminishes the ability to recruit, retain and motivate new talent.

FIRST EXPERIENCE: I was fortunate to have some really outstanding mentors in the beginning of my career during my large-firm experience at American International Group Inc., Marsh & McLennan Cos. Inc. and Aon PLC. One boss told me that there is no such thing as a problem. I always remember that. There are only opportunities.

ADVICE FOR A NEWCOMER: Never say no to a task. For my part, I never said no to any task, which more often than not meant figuring out how to do something on my own. Regardless of my knowledge, I took hold of a task and educated myself along the way.

DREAM JOB: My dream job in another industry would be something in the not-for-profit world. I am passionate about the mission of Covenant House and have been active with the organization in New York and New Jersey. Homelessness breeds a host of other problems and I can't abide with the fact that there are young people who don't have a chance for a full life.

LOOKING FORWARD TO IN YOUR NEW JOB: I'm looking forward to creating a program group that offers a multiline solution to its clients supported by a high level of technology to help manage risk.

COLLEGE MAJOR: Finance and economics

FAVORITE MEAL: Pasta, especially with my own homemade tomato sauce.

FAVORITE BOOK: “My Brilliant Friend,” by Elena Ferrante. While telling a compelling story, Ferrante's book illustrates how women historically have been kept back, regardless of their intellect, by tradition and cultural bias.

HOBBIES: I can be found surfing the East End of Long Island in Amagansett when weather and time permit.

ON A SATURDAY AFTERNOON: Saturdays are for exercise. Yoga heads the list, but I love to bike and work out at the gym. Exercise keeps my mind fresh, reduces stress and keeps me fit.

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ON THE MOVE



American International Group Inc. named London-based **Edward Levin** to be global head of accident and health, general insurance, also in charge of distribution and underwriting

strategy. Previously, Mr. Levin was group digital business officer for Chubb Ltd.



Health care management services provider CorVel Corp. promoted **Michael Combs** to CEO. He will continue in his role as president. He succeeds Gordon Clemons, the company's founder, chairman and CEO, who will continue to serve as chairman.



Jason Meador was named the head of group captives for alternative markets for Zurich North America. Previously, he was chief operating officer for alternative markets. He

replaces Terry McCafferty, who became president and CEO of Falls Lake Insurance Cos. He is based in Schaumburg, Illinois.



Preferred Employers Insurance Co., a W.R. Berkley Corp. unit, named **Mino Bhatia** to the newly created position of senior business development underwriter for the

company's workers compensation underwriting team. Based in San Diego, she previously was a senior workers comp underwriter for Employers Holdings Inc.



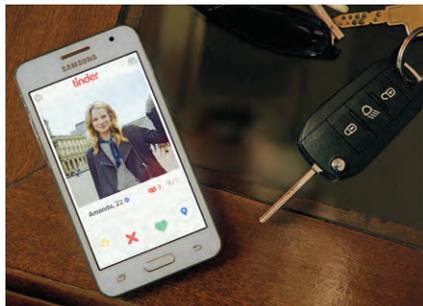
Former CNA Financial Corp. chief **Tom Motamed** has been named to the board of American International Group Inc. and to its risk and capital committee and its

compensation and management resources committee. He retired from CNA in 2016.



Willis Towers Watson PLC has hired former Jardine Lloyd Thompson Group PLC executive **Steve Arrowsmith** to lead business development at its Bermuda

captive operations and named former JLT Specialty USA broker **Jonathan Oppenheim** as construction leader for the Southeast Region in Atlanta.



Lack of insurance can't hinder Tinder

That must have been some profile picture.

A man pulled over by police during a routine traffic stop in Dorset, England, was forced to admit the car was not insured, and apparently the promise of romance was no match for such legal requirements, according to an article posted in on the Dorset Echo website.

He told authorities he drove without insurance because he had met a potential mate on the online dating site Tinder, according to the article, which reported on traffic stops made in the English countryside over the previous weekend.

Robots deployed as risk managers

First, they came to replace the supermarket checkout person. Now they've come for the risk managers. Technology and automation, that is.

Carlisle, Pennsylvania-based Giant LLC will be deploying an army of robot assistants at its grocery stores through Pennsylvania to help watch for spills, hazards, inventory and other monitoring activities that will help with the large supermarket chain's bottle line.

"Marty," the tall, gray robot on wheels, has been operating at Giant stores in two cities since 2017, and by the middle of this year the chain expects to have one of the devices patrolling the aisles at each of its 172 stores, according to an article on LancasterOnline.com.

The primary function of the in-store robot, which the newspaper said resembles the offspring of Cookie Monster and a tackling dummy, is to move around scanning for spills and other customer hazards to which it can alert store employees, according to the article.



COULD FACEBOOK PHOTO CHALLENGE LEAD TO HIGHER INSURANCE RATES?



A cute way to see whether or how you've aged in 10 years could influence insurance premiums later on, a technology consultant told NPR last month. Kate O'Neill warned that data-mining from the "10-year Challenge," a side-by-side picture display of before and after images that is fast spreading on social media, could be used by companies like Facebook Inc. or Amazon.com Inc. to train facial recognition algorithms, which could determine your insurance risk later on.

Possible age progression recognition technology would be used in health care and health insurance assessments, Ms. O'Neill warned.

"For example, if you seem to be aging faster than your cohorts, perhaps you're not a very good insurance risk. You may pay more or be denied coverage," Ms. O'Neill wrote in an article in Wired magazine.

An off-field NFL coverage concern

Insurance could do to football what a meteorite likely did to the dinosaurs.

"From the NFL to rec leagues, football is facing a stark, new threat: an evaporating insurance market that is fundamentally altering the economics of the sport, squeezing and even killing off programs faced with higher costs and a scarcity of available coverage," ESPN reported in January.



Gone away already is general liability insurance covering head trauma, according to multiple sources reporting to ESPN. And only one insurer is willing to provide workers compensation coverage for NFL teams, according to the report.

The downfall? Concussion litigation. In 2011, about a dozen insurers occupied the insurance market for pro football, according to ESPN.



Customer files whopper of a suit

A Portland, Oregon, man who was locked in a Burger King restroom for more than an hour now wants Whoppers for life, according to a KPTV 12 news report.

Curtis Brooner, 50, who filed his lawsuit in January, went to the Burger King restroom on Dec. 15 after he finished his favorite meal. When he tried to leave, the door would not open, the station reported.

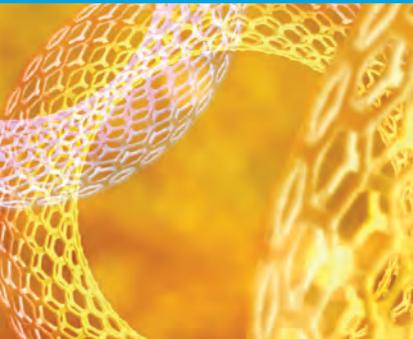
A locksmith was later called to the rescue and a manager promised Mr. Brooner "a lifetime supply of Burger King meals at no cost," according to the suit.

Yet "Burger King reneged and told Mr. Brooner that it no longer intended to honor the agreement," the lawsuit states.

Now he wants Burger King to either honor the agreement or pay him \$9,026.16, a figure that amounts to one Whopper meal a week until his life expectancy of 72 years old, KPTV 12 reported.



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