

D&O TRENDS: PG&E bankruptcy highlights rise in “event-driven” securities suits - PAGE 4

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**CEO**  
Adam Potter

**PUBLISHER**  
Keith Kenner  
(Chicago)  
kkenner@businessinsurance.com

**EDITOR**  
Gavin Souter  
(Chicago)  
gsouter@businessinsurance.com

**DEPUTY EDITOR**  
Gloria Gonzalez  
(Washington)  
ggonzalez@businessinsurance.com

**SENIOR REPORTER**  
Judy Greenwald  
(San Jose)  
jgreenwald@businessinsurance.com

**REPORTER**  
Angela Childers  
(Chicago)  
achilders@businessinsurance.com

**REPORTER**  
Louise Esola  
(New Orleans)  
lesola@businessinsurance.com

**REPORTER**  
Matthew Lerner  
(New York)  
mlerner@businessinsurance.com

**REPORTER**  
Claire Wilkinon  
(New York)  
cwilkinon@businessinsurance.com

**COPY CHIEF**  
Katherine Downing  
(Chicago)  
kdowning@businessinsurance.com

**COPY EDITOR**  
Brian Gaynor  
(Portland)  
bgaynor@businessinsurance.com

**ART DIRECTOR**  
Jeremy Werling  
(Cincinnati)  
jwerling@businessinsurance.com

**DIRECTOR OF RESEARCH,  
PLANNING AND INSIGHTS**  
Andy Toh  
(Chicago)  
atoh@businessinsurance.com

**MAJOR ACCOUNTS DIRECTOR -  
NORTHEASTERN U.S. & INTERNATIONAL**  
Ron Kolgraf  
(Boston)  
rkolgraf@businessinsurance.com

**HEAD OF SALES - EVENTS &  
WORKERS COMPENSATION MAGAZINE**  
Jeremy Campbell  
(Cincinnati)  
jcampbell@businessinsurance.com

**DIGITAL AD OPERATIONS MANAGER**  
Arielle Bassett  
(Chicago)  
abassett@businessinsurance.com

**DIGITAL MARKETING MANAGER**  
Jen Jonasson  
(Chicago)  
jjonasson@businessinsurance.com

**VICE PRESIDENT OF MARKETING**  
Brian McGann  
(Buffalo)  
bmcgann@businessinsurance.com

**DIRECTOR OF MARKETING & EVENTS**  
Katie Kett  
(Portland)  
kkett@businessinsurance.com

**MARKETING & EVENTS MANAGER**  
Brittany Collins  
(Lafayette)  
bcollins@businessinsurance.com

**REPRINT SALES MANAGER**  
Marie LaFerrara  
(New York)  
mlaferrara@businessinsurance.com

**SUBSCRIPTIONS & SINGLE COPY SALES**  
membership@businessinsurance.com  
954-449-0736

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#### ROBERT G. PETRIE

Robert G. Petrie helped Marsh & McLennan Cos. Inc., develop its risk management information systems business. Leaving in 2008, he and three partners started Origami Risk LLC, a risk management technology firm, where he remains CEO. Ten years after founding Origami, Mr. Petrie discusses changes in the RMIS business and the future of technology in insurance. **PAGE 16**



### OFF BEAT

A recent court ruling could presage stormy weather for exotic dancers and their hours. **PAGE 34**



## PG&E bankruptcy highlights growing trend

BY CLAIRE WILKINSON

cwilkinson@businessinsurance.com

Pacific Gas & Electric Co.'s unfolding Chapter 11 bankruptcy, triggered by its potential liability for the 2018 and 2017 California wildfires, highlights a concerning trend for directors and officers liability insurers: the rise of "event-driven" securities lawsuits.

Risk managers should be taking a close look at their D&O coverage to ensure their companies are adequately protected in the event of bankruptcy and need to be prepared to possibly pay more for the coverage and retain more of the risk, experts say.

"When you talk about PG&E and why they filed for bankruptcy, really the larger matter at hand from a D&O insurer perspective is the onset and heightened level of event-driven litigation," said Laura F. Coppola, New York-based regional head of financial lines, North America, with Allianz Global Corporate & Specialty SE, adding this trend is becoming "increasingly alarming" for the D&O market.

The D&O insurance market is being hit directly because PG&E's bankruptcy is a result of the California wildfires, said Ms. Coppola.

"Had PG&E not been implicated for those wildfires, (the company) probably wouldn't have filed for bankruptcy. That one specific event created that bankruptcy filing for PG&E," she said.

PG&E is facing securities class action litigation from shareholders alleging it made misleading statements regarding its wildfire safety practices and related to its involvement in the 2018, 2017 and earlier wildfires. The company also faces lawsuits from property owners and some insurers alleging that poor upkeep of its transmis-



REUTERS

Pacific Gas & Electric spokesman Paul Doherty, second from left, and San Francisco Fire Department Chief Joanne Hayes-White, second from right, spoke as firefighters battled a fire sparked by a ruptured gas line in San Francisco in February.

sion lines caused the 2018 fires.

No fewer than 121 liability and property insurance policies, including 23 excess liability insurance and reinsurance policies that were in place at the time of the November 2018 California wildfires, were listed in a standard court motion to maintain insurance filed by PG&E as part of the Jan. 29 bankruptcy protection. D&O liability insurers for PG&E, per the court motion, include ACE American Insurance Co.; Allianz Global Risks; Argonaut Insurance Co.; industry mutual insurers Associated Electric & Gas Insurance Services Ltd. based in East Rutherford, New Jersey, and Tampa, Florida-based Energy Insurance Mutual Ltd., both of which

PG&E is a member; Berkeley Insurance Co.; Endurance Risk Solutions Assurance Co.; Houston Casualty Co.; North American Specialty Insurance Co.; Starr Indemnity & Liability Co.; Twin City Fire Insurance Co., as well as Lloyd's syndicates Barbican, Hiscox (Alpha) and Munich Re at Lloyd's.

Event-driven claims are one of the "biggest trends" in the D&O space, said Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC's FINEX North America practice.

"An event-driven case could be something related to a cyber breach, it could be something that arises from one of the #MeToo-type situations," said Mr. Yellen.

"It's also possible in an event-driven claim that the reason we are seeing the securities claim, the class action or the derivative claim this year is because something on social media went viral."

California wildfires are also an example of event-driven claims, said Mr. Yellen. "It's a trend in our industry, and this fits the bill," he said.

Emerging trends such as the #MeToo movement, cyber risks and a proliferation of class action lawsuits are creating a landscape that is hard to price and underwrite, according to a recent report on the D&O market from A.M. Best Co. Inc.

"The sizable increase in federal securities class action lawsuits over the past few years has revealed a specific area requiring expert risk management from insurers of D&O coverage," according to a report by the Oldwick, New Jersey-based rating agency.

In such an environment, buyers of D&O insurance need to be prepared to pay higher prices for coverage and take greater self-insured retentions, depending on a company's individual exposures and risk characteristics, industry observers say.

For companies buying D&O coverage, rates are on an "upward trajectory" and self-insured retentions are "increasing," said Ms. Coppola.

By how much depends on different risk variables such as company size, industry, geography and different securities class action trends, she said.

On the primary side, rates are hardening, retentions are going up and terms are tightening, said Paul King, Dallas-based senior vice president and national technical director of executive and professional solutions for USI Insurance Services LLC. "Underwriting is actually happening again. The market is changing."

## Ensuring D&O coverage in bankruptcy context is key

The legal issues that arise when a company files for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code are complex and can create some uncertainty as to the extent of coverage available to both the entity and the directors and officers of the company, according to industry experts.

"From a broker's perspective, your first priority is to make sure the leaders, the executives, the directors and officers are covered in the context of bankruptcy," said Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC's FINEX North

America practice.

"There's also, in a D&O policy, coverage for the company. In the bankruptcy context, there can be tension between those two things," said Mr. Yellen.

Several key provisions in a D&O policy can help buyers ensure that they have adequate coverage in a bankruptcy setting, according to industry experts.

"Make sure the policy definitions are broad enough to provide coverage for any sort of claim or litigation or investigation that could be brought or commenced against a director or

officer," Paul Ferrillo, New York-based litigation shareholder, Greenberg Traurig LLP, said in written comments.

"Most important of these are claims brought by a bankruptcy or litigation trustee, liquidator or creditors' committee," said Mr. Ferrillo. "If there is coverage, it would typically be a 'carveout to the insured versus insured' exclusion," he wrote.

Another important D&O policy provision is a straightforward "priority of payments" clause that covers the directors and officers claims before any claims of the company are considered,

Mr. Ferrillo wrote.

If the economy moves into a recessionary environment in the second half of 2019, these different aspects of the D&O policy, including the Side A difference in conditions coverage, the priority of payments provision and extended reporting periods are going to "come to the fore very quickly," said Paul King, Dallas-based senior vice president and national executive professional solutions technical director, executive and professional solutions for USI Insurance Services LLC.

Claire Wilkinson

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Meanwhile, one of the key reasons why a company or its directors and officers should purchase D&O insurance is to protect individuals in the event of an issue such as bankruptcy, observers say.

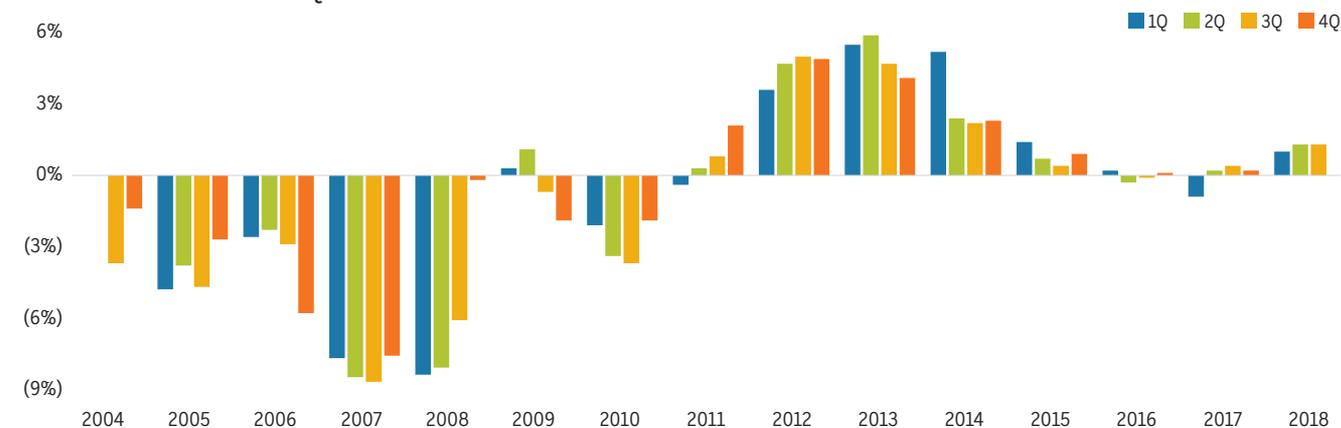
The way very large public companies structure their D&O insurance has changed quite a bit since back in the 1990s, said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty LLC, in Beachwood, Ohio.

“The biggest change is since that time, most large public companies buy not only traditional D&O insurance that has insuring agreements A, B and C, they will also get excess Side A insurance providing coverage for individuals in the event the company is unable to indemnify them either due to insolvency or legal prohibition,” he said.

Having the excess Side A difference in conditions insurance coverage over and above the traditional coverage is key in a bankruptcy, as this separate coverage is available to the individuals only and not the company, experts say.

“Companies and boards of directors should have this coverage as additional protection, as it would cover things like settlements of shareholder derivative actions and other nonindemnifiable loss that could arise in a bankruptcy proceeding,” Paul Ferrillo, New York-based litigation

## US D&O LIABILITY – QUARTERLY RATE CHANGES



Source: Council of Insurance Agents & Brokers

shareholder with Greenberg Traurig LLP, said in written comments.

Companies should also be asking if their policies cover regulatory investigation expenses such as costs incurred in connection with U.S. Securities and Exchange Commission probes, he wrote.

In the case of a large Fortune 500 public company, it would likely have, above a large self-insured retention, several hundred million dollars of traditional D&O insurance, and then on top of that anything in the range of \$20 million to \$50 million or more in Side A DIC insurance, industry experts say.

“It’s pretty rare that you come across a publicly traded company that doesn’t buy some Side A limits. We are generally seeing more insureds buy Side A than they did 10 years ago,” said Nora McGee, Atlanta-based chief underwriting officer for public company management liability at American International Group Inc.

In the bankruptcy context, one of the reasons the stand-alone Side A D&O coverage is so important is because if the entity is financially insolvent, there is no other pocket to resolve claims against directors and officers, leaving their personal assets exposed, said Ms. McGee.

Last year, AIG introduced a stand-alone Side A policy with dedicated limits for individual directors and officers, giving individuals their own personal limit that cannot be eroded by coverage for any other director or officer. “This provides an even greater level of protection for an individual director of a company,” she said.

Exactly how much Side A coverage a company buys would depend on its risk profile, but for a company with bankruptcy exposure, they might buy more, said Ms. McGee.

“It’s hard to say what is typical,” she said. “There isn’t a typical in this space.”

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## Regulators welcome conduct code as captive industry responds to tax court losses

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

State captive insurance regulators generally praised a new code of conduct that aims to guide captive managers in ethical business practices, although some regulators see ways the code could be strengthened.

One domestic domicile has asked captive managers if they have adopted the code, but none of the regulators speaking with *Business Insurance* plan to require managers to adopt its provisions. The code was also driven in part to stave off a formal effort to regulate captive manager activities, but none of the regulators indicated a desire to formally license managers operating in their states.

The Self-Insurance Institute of America Inc. on Jan. 22 released the *SIIA Captive Manager Code of Conduct*, which covers five topics: integrity, conflicts of interest, confidentiality, advertising and practice management. It is intended to provide ethical business conduct guidance and address some of the criticisms directed at captive managers in recent court decisions. Microcaptives, for example, have been targeted by the IRS in several lawsuits alleging they are being used as tax shelters rather than as true distributors of risk (see story, page 22).

“It’s not going to address every criticism of the captive space, but I think



it’s important for the industry,” said Ryan Work, SIIA’s Washington-based vice president of government relations. “Part of what we were looking for is not sitting here and letting others dictate what’s right or wrong — (but) to have the industry step up to the plate and be proactive about what some good practices are going to be.”

Regulators have noted for some time that there was no code or law that specifically addressed how captive managers

conduct business, said Kevin Doherty, a Nashville, Tennessee-based member of Dickinson Wright PLLC and a member of the working group.

“We were concerned there would be a regulatory effort started,” he said. “This was something that hopefully all captive managers would not have a problem endorsing and it helps stave off any kind of formal regulation.”

The captive insurance division of the Tennessee Department of Commerce

and Insurance has asked — but is not requiring — captive managers approved to operate in the state if they are adopting the code.

“When I heard that SIIA was championing this and a number of captive managers were part of the steering committee that brought this to the table, I said ‘Glory, hallelujah, this is great,’ because I think it’s the first step toward potentially creating a self-regulating organization in the captive management community, which I personally believe is something that should be on all captive managers’ radar,” said Michael Corbett, director of captive insurance with the Tennessee Department of Commerce and Insurance based in Nashville. “If they don’t do it, somebody else is going to do it.”

Tennessee’s statute does not give Mr. Corbett the authority to require captive managers to adopt the SIIA code, but many provisions mirror expectations that he has for captive managers, and whether or not a manager has adopted the code will be referenced on the state’s website, he said.

The code appears to be SIIA’s attempt at making captive manager practices more uniform and consistent, particularly when it comes to new managers entering the business, said Sandy Bigglestone, director of captive insurance for the Vermont Department of Financial Regulation in Montpelier.

## Microcaptive ruling spurs guidance for risk pool reinsurance arrangements

The Captive Insurance Companies Association has issued guidance on commonly accepted practices for risk pools in response to a controversial tax court decision — a move praised by a captive regulator in a top U.S. domicile.

In 2018, a U.S. tax court ruled in *Reserve Mechanical Corp. v. Commissioner of Internal Revenue* that an Anguilla-based captive for Reserve Mechanical, an Osburn, Idaho-based mining and construction equipment repair firm that paid few claims and participated in a quota share reinsurance pool, did not involve the true risk distribution needed to qualify as insurance. The court ruled

that the quota share arrangement involved “a circular flow of funds,” with the premium paid for stop-loss coverage via the pool being returned to the captive via reinsurance. The ruling is being appealed.

“Risk pools are an important element in both commercial and captive insurance, but unfortunately their use is often misunderstood,” Daniel Towle, president of the Minneapolis-based association, said in an emailed statement.

Travis Wegkamp, captive insurance director with the Utah Insurance Department in Salt Lake City, called the CICA document “a fantastic resource” and said he was glad to see

it specifically address some issues raised — “a bit unfairly” — in the *Reserve Mechanical* case.

“I like how they explained the relationship between the premiums paid and then the premiums retroceded back, that even though it’s dollar for dollar, it’s not necessarily a circular flow of funds,” he said.

In addition to captive owners, managers and service providers, CICA hopes the IRS and tax court will consider the document as “credible background information when reviewing risk pools in future audits and court proceedings,” Mr. Towle said.



“If managers and those involved with pools would follow this guidance and form arrangements in a prudent way, any issues that come up from the IRS would be soundly defeated or at least pass their test,” Mr. Wegkamp said.

Utah is considering improving the definition of pooling captives in its captive insurance code. “It’s entirely possible we could and will borrow some stuff from this paper,” he said.

Gloria Gonzalez

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## Martin Hughes

Executive Chairman of the Board of Directors

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“Reading it, I thought it seemed pretty generic,” she said. “These are things that certainly I would expect to see in a contract with a management company between the captive and the manager. The captive owner is not in the business of running an insurance company, typically, so captive managers do play an important role. (Captive owners are) hiring an expert to conduct day-to-day accounting, work with other (third-party administrators) in running the affairs of the captive insurance company, so having a code is probably not a bad idea, but the oversight of the captive manager has to be shared between captive owner and the board of the captive.”

Regulators need to play an important role in making sure they understand and approve who is managing the captives in their domiciles, but Ms. Bigglestone said she sees no need for regulations requiring licensing of captive managers.

“I don’t think we need to go that far, honestly,” she said. “We have an obligation to understand who our captive managers are hiring and that they’re qualified and that they have professional development opportunities within the captive management firms. I think there’s a good pool of talent and a lot of room for growth in that area, but I don’t think we have to go as far as licensing. Managers are service

providers. If you have a well-written contract, a clear, concise contract between the captive manager and the captive owner, and the captive owner is engaged in oversight of its captive insurance company and you’re not relinquishing control to a captive manager, which could cause a conflict of interest, I think that it’s going to work really well.”

*“We have an obligation to understand who our captive managers are hiring and that they’re qualified ... but I don’t think we have to go as far as licensing.”*

Sandy Bigglestone,  
Vermont Department of  
Financial Regulation

“If you go down the route of licensing, then you’re looking at the same level of service for a lot more money,” she added. “Captive management firms fees are going to go up. It’s going to be less feasible for captives to operate. That could be very problematic.”

Travis Wegkamp, captive insurance director with the Utah Insurance Department in Salt Lake City, said he “wholeheartedly agrees with everything” in the code and plans to publish it on the insurance department’s website so captive managers “know that we’re in agreement with it and that we would expect them to operate in accordance” with the provisions. “That said, we’re not interested in regulating captive managers and enforcing” the code’s provisions, he said.

In particular, he praised a provision in the practice management section that states service providers should be appointed by the board annually and one in the code’s integrity section that states captive managers should cooperate with the domicile regulators and inform their clients they have the obligation to do so.

But Mr. Corbett said he sees an opportunity to strengthen the code.

“The code of conduct is rifled with the word ‘should,’ and my hope is over time, on several of them, should will become must,” he said. “When you’re herding cats, using the word ‘must’ is not a good idea. This could go absolutely nowhere, or it could be the first step toward the management community realizing that they have to have some sort of standards by which they are all willing to be measured.”

Atlas Insurance Management in Char-

## CAPTIVE MANAGERS CODE OF CONDUCT

The Self-Insurance Institute of America Inc. released the SIIA Captive Manager Code of Conduct in January to guide captive managers in ethical business practices. The code covers five topics:



lotte, North Carolina, has pledged to adhere to the code, and Chairman Martin Eveleigh said he hopes it is adopted more widely. “I can’t honestly see anything in there that a reputable manager would find objectionable in terms of signing up to it,” he said.

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## Treating injured workers' whole health

BY LOUISE ESOLA

lesola@businessinsurance.com

**M**aking injured workers whole again has become a goal in workers compensation circles, with stakeholders trying to address injuries caused in the workplace together with other issues that might impede return to work.

But managing comorbidities is difficult, and workers comp insurers and employers remain reluctant to pay for medical issues that arise independently of a compensable injury, experts say.

The term “whole health” generally refers to programs that go beyond just paying for injuries, with an enhanced focus on the overall health of injured workers, according to a January report by the Boca Raton, Florida-based National Council on Compensation Insurance, which cited whole health as an emerging trend in the comp sector.

“The way people are thinking about whole health today is starting to gain more momentum than it ever has,” said Matt Zender, Las Vegas-based senior vice president of workers compensation strategy and product for comp insurer AmTrust Financial Services Inc.

Comorbidities ranging from diabetes and high blood pressure to depression and anxiety can complicate an injured worker's recovery, experts say.

“In the ideal world, we want to take care of everything, but this is a work comp system that doesn't really allow for that,” said Dr. Marcos Iglesias, Sunrise, Florida-based chief medical officer for Broadspire Services Inc., the third-party administrator unit of claims manager Crawford & Co. “The nature of a comp claim is time-limited, and a lot of the issues we have as human beings are chronic.”

Yet more insurers are paying attention to issues such as anxiety, depression, fear of pain and fear of reinjury that can complicate claims, he said. “Those things aren't part of the injury, but it behooves us to



### HEALTH CARE ACCESS IN 2018

- For full-time civilian, nongovernment workers, access to medical care benefits was **88%** and the takeup rate was **74%** in March 2018.
- For part-time workers, access to medical care benefits was **21%** and the takeup rate was **56%** in March 2018.

Source: Bureau of Labor Statistics, July 2018

help them overcome these barriers.”

Insurers and employers might end up paying less on an uncomplicated claim with a comorbidity that is better managed at the onset than a claim that malingers, often due to issues outside of the injury.

“Some of it (requires a) bigger view of what the total cost of risk is,” said Kimberly George, Chicago-based senior vice president of corporate development, mergers and acquisitions, and health care for Sedgwick Claims Management Services Inc.

NCCI found whole health to be an industry focus that could lead to less spending overall.

“Looking at it in the whole scheme of things and the whole cost equation, it's beyond what payments are made, it's successful outcomes,” said Bill Donnell, president and CEO of NCCI. “There

may be a greater investment in the short term, but in terms of the life of the overall claim and in terms of claim duration, there are improved outcomes there. The total focus on our product line and the industry, I believe, is in getting the injured worker back to work.”

The newer approach moves the advocacy model a few steps forward: asking questions and connecting the dots on a picture that won't improve unless a worker is healthy, experts say.

“I don't think the issue now is, is work comp going to be paying for this? Those are the comorbid (conditions) and they are not specific to the injury, but some of it might become embroiled in the claims, and how do we address those issues?” said Randi Urkov, Chicago-based managing director with Marsh Risk Consulting, a unit of Marsh & McLennan Cos. Inc.

The “progressive employers” are putting in place protocols with nurse case managers and adjusters so that “when these flags come up, (they) can say, ‘Did you know your employer has a program in place in disease management that can help you?’” said Ms. Urkov.

A simple push toward an employer's employee assistance program embedded in a group health plan offering can be used

to address issues such as depression and anxiety, she said, adding that the “critical (issue) is getting those linkages in place.”

The task could be as simple as reframing the approach and avoiding an upfront denial for care, said Mr. Zender of AmTrust.

When outside issues that are not a part of the compensable injury emerge, “rather than starting off with a denial, if that employer can say, ‘You are not eligible for this, but here's what you are eligible for,’ (that) gets the discussion going and it isn't negative,” he said.

“Many of these employers already have these programs in place” on the benefits side, said Carolyn Turpin, Rocklin, California-based vice president and regional manager for workers compensation claims with Liberty Mutual Insurance Co. “We have tried to be more helpful and cognizant... in getting the injured worker the health care they need.”

Larger insurers who have both benefits and workers comp in their programs and are contracted with the same employer have an advantage, said Dr. Adam Seidner, Hartford, Connecticut-based chief medical officer for Hartford Financial Services Group Inc., which is integrating models by flagging claims and introducing early interventions, often on the benefits side.

“It's not just what's compensable and what would be covered by the claim, but it's looking at what is going on with the individual,” he said. “We view this worker as a whole person.”

To insurers, that brings up the conversation about “silos,” or the challenge of workers comp falling under risk, which falls in line with finance, and benefits and wellness falling under human resources — and the lack of connections, said Mr. Zender.

Employers “are starting to realize that, if you think of this as a benefit as opposed to a spend, it changes the paradigm on how they recognize” the costs of getting an injured worker healthy, he said.

Claire Wilkinson contributed to this report.

## TREATMENT LIMITS, PRIVACY CONCERNS CREATE BARRIERS TO WIDER CARE

**W**orkers compensation insurers have to tread carefully when it comes to whole health and managing comorbidities, because such efforts come with inherent risks, experts say.

For example, a workers compensation adjuster might help medicate a worker who is found to have high blood pressure when he or she is injured at work. But experts say the questions that follow are plenty: When does the insurer stop paying for

the blood pressure medication? And what happens when a worker stops taking the drug, oftentimes, when the claim closes and comp is no longer paying?

It's a common example, said Dr. Marcos Iglesias, Sunrise, Florida-based chief medical officer for Broadspire Services Inc., the third-party administrator unit of claims manager Crawford & Co., who said a blood pressure spike following withdrawal could create problems for the payer and employer.

“Sometimes, even our good intentions can have bad consequences,” said Dr. Iglesias. “Where do we draw the line on case-by-case and condition-by-condition?”

Privacy is another issue, according to Dr. Adam Seidner, Hartford, Connecticut-based chief medical officer for Hartford Financial Services Group Inc. Doctors treating injured workers and the adjusters looking at cases are often not a party to other facts about the worker such as mental health and

chronic health issues because of Health Insurance Portability and Accountability Act provisions that aim to protect health records and provider-patient relationships.

Obtaining patient releases for information is one solution, and insurers also can look at the health of populations to derive data on a particular type of worker's health, Dr. Seidner said. “The answers are out there for people who want to look at total worker health.”

Louise Esola

## Lower stress may lead to fewer injuries

BY ANGELA CHILDERS

achilders@businessinsurance.com

**M**ental duress can cause more than just frazzled nerves — stress can lead employees to make more mistakes, instigating workplace accidents and potential injuries.

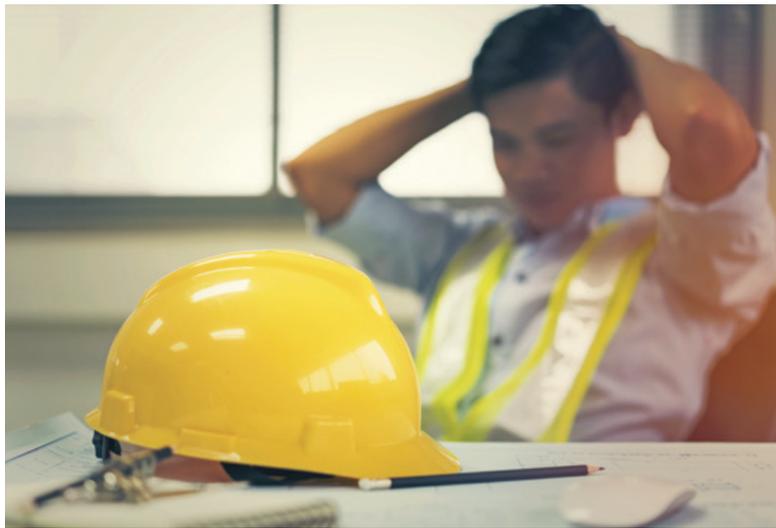
Stressed employees are more vulnerable to conditions such as fatigue and lack of concentration that increase the odds of a physical workplace injury, and employers should expand efforts to identify and help alleviate the stress and possibly lower their workers compensation claims, experts say.

There's a high correlation between stress and workers comp claims, said Michael Weier, an occupational epidemiologist and retired workers comp attorney based in Ashland, Oregon.

"It doesn't necessarily mean stress caused those claims, but stress is certainly associated with that," said Mr. Weier, a member of the International Epidemiological Association based in Chicago. "People who have much greater stresses at home would be more likely to file a claim than others. Workplace stress also has a significant correlation" to filing a comp claim.

According to the American Psychological Association's 2017 Stress in America report, 63% of Americans said they are experiencing a significant source of stress due to the uncertainty of the future of the nation, while 43% cited health care, 31% cited crime, and 22% cited wages as issues causing stress. In addition, 75% of Americans reported experiencing at least one symptom of stress over the past month in 2017 vs. 71% in 2016.

"Stress plays over into your ability to function at work," said Josh Klapow, a clinical psychologist and associate professor of public health at the University of Alabama at Birmingham.



"Now, is there a direct causation between that stress and an accident? No. But what we do know is that added stress increases the probability of accidents and injuries because added stress diminishes memory and concentration, can increase fatigue, leads to poorer muscle coordination and affects every aspect of our sympathetic nervous system."

The odds ratio of having a workplace accident is significantly increased for employees experiencing moderate to high psychological distress, according to a 2010 study of 60,000 employees at 58 large employers published by the International Archives of Occupational and Environmental Health.

"I think that if you look at work-related stress in general, it's the number one workforce health issue," said Anne Kirby, chief compliance officer and the vice president of care management at Chicago-based Rising Medical Solutions Inc.

In Rising's Macroeconomic & Social Factors' Impact on Claim Outcomes report in December 2018, the company found that programs that address

psychosocial issues such as stress, mental health and comorbidity had a positive impact on workers comp claim outcomes and costs, and found that psychosocial health, along with comorbidities, was the main barrier to achieving desired claim outcomes.

A survey released in February by Welltok Inc., a company that designs technology using social media and social analytics for the health care industry, found that 64% of employees said they feel stressed at work, and only a third felt that their companies provided them with tools or resources to reduce work stress.

Heidi Werth, the Denver-based company's director of solution design, said their research revealed a gap between what's offered at the workplace and what employees are aware of to help them manage their stress.

"Stress obviously has a lot of comorbidities associated with it," Ms. Werth said. "From an employer perspective, they want healthy employees. If people are less stressed or better able to cope with their stress, their comorbidities decrease, they're happier and

their claims costs trend down."

"Employers are really faced with a difficult situation," Mr. Weier said. "On the one hand, they want to help employees potentially suffering from a mental health problem. On the other hand, they need to maintain an employee's privacy and don't want to make it public, so to speak, that somebody is struggling."

But trying to improve the overall health of the workforce proactively and identify the issues affecting workers can make a difference, said Joe Galusha, group managing director of risk control and claims for Aon PLC in Southfield, Michigan.

Mr. Galusha said he's seen a steady increase in mental health claims, but he is uncertain whether it is more prevalent or just more acknowledged today. What he has seen, however, is a strong correlation between musculoskeletal disorders and mental health claims, many of them stress claims.

"I know it's trite, but I think surveying workers and regularly checking in on employee's health and wellness ... can point us in the direction we need to be focused on and lead us to corrective action," he said.

Offering stress reduction help through an employee assistance program is another option. Mr. Weier suggests employers remind employees of the availability of mental health help during regular safety training as a way to help alleviate any stigma.

Ms. Kirby said that while she hasn't studied workplace injuries at companies ranked on the "best of" workplaces lists, she noted that they typically have programs in place that focus on their employees and their well-being.

"I don't think it's any coincidence that those companies tend to have very low injury incidents and very high work satisfaction," she said.



### STRESS INDUCERS AND IMPACTS

Americans are increasingly stressed, with health care topping the list of the most common issues causing stress in the United States, followed by the economy and trust in government.

**45%**

of Americans said stress caused them to lie awake at night, compared with 40% in 2016

**75%**

reported experiencing at least one symptom of stress in the past month in 2017, compared with 71% in 2016

**36%**

reported feeling nervous or anxious due to stress

**35%**

reported stress-related irritability or anger

**34%**

reported stress-related fatigue

Source: American Psychological Association's 2017 report, Stress in America

### HELPING INJURED WORKERS THROUGH THE COMP PROCESS PAYS OFF

**S**tress can affect an employee's return to work after an accident, but employers can alleviate it by thoroughly explaining the workers compensation claims process to injured workers, experts say.

Stressful relationships may develop between injured workers and employers when the claim is underway — often because of the lack of communication between the employee and the employer about the comp claims process, said Matthew Fisher, a

shareholder at workers compensation defense firm Reinisch Wilson Weier PC in Portland, Oregon.

Most workers have no knowledge of workers comp or the system, he said, suggesting employers do a better job of ensuring that someone in human resources maintains a certain level of proficiency in workers comp and can explain what happens after an injury.

"You need to explain to the worker, 'Here's what the next few steps are going to look like as we submit this

to your insurance carrier, the adjuster is going to call you and go through these issues with you ...' so the worker doesn't feel overwhelmed," he said.

A well-trained supervisor is key, as demonstrated by a situation with a former client that was having 50% of its claims litigated, said Joe Galusha, group managing director of risk control and claims with Aon PLC in Southfield, Michigan. "When we dug into the issue, we found it was because of the trust level — nobody

was talking to the (injured worker)," he said. The company created a communication plan that included contacting workers after their injuries, sending them a brochure in the form of a "get well" card that explained the comp process, and having supervisors routinely make follow-up calls to update the employees and check on their well-being — measures that decreased the claims litigation rate to less than 10%, Mr. Galusha said.

Angela Childers

# Women gradually overcoming hurdles, making strides in safety roles

**MENTOR SUPPORT CRITICAL ELEMENT TO SUCCESS**

BY ANGELA CHILDERS

achilders@businessinsurance.com

The workplace safety industry may still be a man's world, but women are gradually moving into high-level safety jobs and narrowing the gender gap.

Between 2005 and 2018, the percentage of women in health and safety engineering professions increased from just under 14.9% to 23.0%, according to the U.S. Bureau of Labor Statistics. Yet issues like discrimination, harassment and bullying, stereotyping and pay disparities still persist, according to women working in the industry who spoke to *Business Insurance* about their career struggles and successes.

When Kelly Bernish entered the safety profession in the 1980s, she got used to being the only female at her workplace and at industry events.

"I was literally the only woman that had safety responsibility either at the facilities or the corporate level," said Ms. Bernish, president of safety consulting company Global SHE Solutions LLC in St. Petersburg, Florida, and founder of the American Society of Safety Professionals' Women in Safety Excellence group. "Being that one-off person was a little challenging and intimidating, but mostly by self-belief."

After a workplace injury sidelined her nursing career, Kathi Dobson took a job with a manufacturing firm that asked her to match up its policies and procedures with U.S. Occupational Safety and Health Administration requirements, leading her to the safety world. Now, more than 20 years later, she's a safety director at Alberici Constructors Inc., based in St. Louis, and the only woman among the 15 safety officers the construction company employs.

Ms. Dobson said at the beginning of her safety career — and being a woman in an authority position — she believed she needed to yell and be forceful to get her point across, but quickly learned that listening to workers on a jobsite could often lead to a creative safety solution.

Turning that dynamic into a partnership has also been key to Melissa Rohrer's success.

"I'm not a safety cop, I'm not an educator," said Ms. Rohrer, safety director at D&L Electric Co. in Houston, a company of about 150 employees. "I like to tell (the workers), 'I work for you. It's my job to help you work safe.'"

Christine Jay, the senior operational excellence coach at Club Car Distribution Center in Appling, Georgia, said that as a safety professional, she works toward being jobsite mayor, not the sheriff.

"I think it comes naturally as you're advancing in a safety career that there's going to be a time when you need to be that sheriff and have an iron fist from a compliance standpoint," she said. "But then you've got to transition into really being that business partner who helps find the solutions."

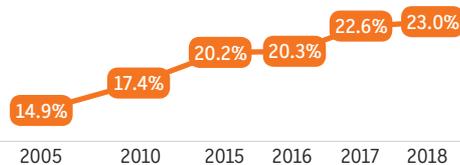
Educating oneself on the specifics of different positions is key to being taken seriously and becoming an effective safety professional, said



## SLOW PROGRESS

Men still constitute the vast majority of employees in the industrial engineering sector, which includes health and safety professionals, with the number of women in the industry slowly ticking upward.

PERCENTAGE OF WOMEN IN INDUSTRIAL ENGINEERING, INCLUDING HEALTH AND SAFETY



Source: U.S. Bureau of Labor Statistics 2018

Crystal Turner-Moffatt, safety and security manager at engineering firm WSP USA, based in New York.

"You have to know their vernacular, their terms," said Ms. Turner-Moffatt, who said she has experienced discrimination in her career not just because of her gender, but also because she is African-American. "Whether (the worker) is an electrician, a carpenter or a pipe fitter, you have to educate yourself on what they're doing ... to earn their trust."

But many women in safety said they haven't always been taken seriously and have experienced their share of discrimination.

"Harassment, bullying and intimidation are still pervasive in the construction industry on certain projects and within certain companies," said Ms. Dobson, recalling the graphic language and art that workers left on a beam at a worksite one day.

Supportive employers can help women persevere, but stereotypes held by superiors can occasionally be part of the problem.

Ms. Bernish, who has held senior safety positions at Anheuser-Busch InBev SA, SeaWorld Parks & Entertainment Inc. and Walt Disney World Resort, said that when a severe injury was reported at a theme park she worked at, her boss told her that "he didn't think I could handle the situation because I would become too emotional because I was a mom and it was a child that was injured," she said. "I took offense to that. I am able to separate my personal feel-

ings from my professional life, and I don't think that would have come up had I been a man."

Diana Stegall, a senior loss control specialist with United Heartland in Minneapolis and president-elect of the ASSP, has also dealt with outright bias, such as when a masonry contractor said he didn't allow "skirts" on his jobsites.

While progress has been made, more can be done to support women once they have entered the safety field, they say.

The lack of properly sized personal protective equipment for women presents a safety hazard. "A lot of women work in vastly oversized gloves, which give them no dexterity," Ms. Dobson said.

Ms. Bernish would like the industry to realize that women just want hardhats, gloves and boots made for them and "not pink or leopard print."

Equal salary is another common concern. Connie Muncy, one of six corporate safety managers for power industry service provider NAES Corp., based in Issaquah, Washington, said a supervisor told her early in her career that she was being paid less for her work because she was a woman. While Ms. Muncy believes she is being paid fairly for her work today, she said salary surveys and conversations with industry colleagues indicate that compensation in the safety profession is still imbalanced.

"When you're doing the exact same thing in an organization that men are doing, and you confront a supervisor with a salary disparity and you don't get any response, that's very sad, and it still happens," she said.

Kristen Peed, the director of corporate risk management at CBIZ Inc.'s Cleveland office, said that at a previous risk and safety position, a mentor made her realize how underpaid she was and gave her the confidence to negotiate when she applied for the next big position.

Women "can feel ashamed to talk about salaries and money, and there is a gender pay gap," she said. "Being able to have more power at the negotiating table and understanding that I was worth a lot more than what my company was paying me really did change my (career) trajectory at that point."

Mentorship is key to helping women thrive in a workplace safety industry that still has far too few female leaders, experts say. "Women (in safety) have to stand up, they have to be strong, and if they're not strong, they need to get a network of people around them to get that strength," said Connie Muncy, a corporate safety manager for construction engineering firm NAES Corp. who attributes much of her career trajectory to the positive influence of a former female supervisor who was also a retired Army Lieutenant Colonel.

"I learned so much from her ... and I emulate her a lot of the time," she said. Her mentor's influence led her to begin mentoring other women in the field.

Rebecca Severson, vice president and corporate safety director for Providence, Rhode Island-based Gilbane Building Co., said a number of mentors, both in safety and in her pre-safety military career, provided support and helped her accomplish her goals.

"I learned pretty early on to get involved in organizations and to expand my network and rely on them for mentorship," she said.

Angela Childers



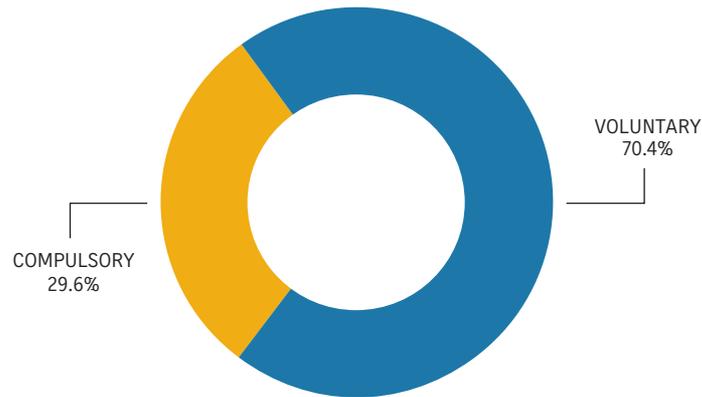
## PROFILE: UZBEKISTAN

# 116

GLOBAL  
P/C MARKET  
RANKING

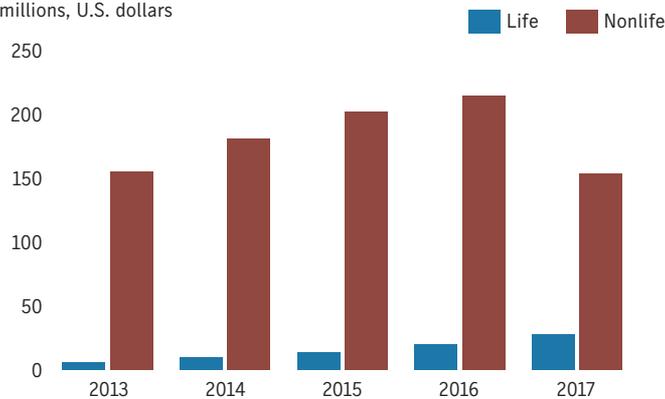
Uzbekistan's economy is dominated by state-owned enterprises, largely dependent on cotton, natural gas and gold exports, and remains one of the world's most challenging business environments because of pervasive corruption and bureaucracy. The insurance market — and Uzbekistan itself — have been in flux since the start of the presidency of Shavkat Mirziyoyev in December 2016. The market is likely to undergo significant change if the raft of new initiatives that are planned come to fruition. The disruption caused to the economy by the currency liberalization of late 2017 has subsided to a degree, while the economy is becoming more open and business-friendly. The signs are that the insurance market is poised for strong growth in the near to medium term, if reforms do not stall.

### MARKET SHARE



### MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

### COMPULSORY INSURANCE

- Auto third-party liability
- Employers liability
- Carriers' third-party liability (death, bodily injury and property damage of passengers)
- Professional liability for valuers, customs clearing agents, financial services consultants, auditors, real estate agents and notaries.
- Ecological insurance
- Third-party liability for hazardous cargo transportation

### NONADMITTED

Nonadmitted insurance is not permitted in Uzbekistan because the law provides that insurance must be purchased from local authorized insurers with some exceptions.

### INTERMEDIARIES

Intermediaries are required to be authorized to do insurance business. Intermediaries are not permitted to place business with nonadmitted insurers, with the exception of insurance of imports on CIF terms and auto third-party liability for drivers leaving Uzbekistan.

### MARKET PRACTICE

The legislation appears to be broadly complied with and fronting is possible subject to compliance with minimum retention requirements. Some global coverages for multinationals may include coverage for Uzbekistan, but as long as premiums and claims are settled out of the country, these are difficult to police.

### MARKET DEVELOPMENTS

Updated January 2019

- The Uzbekistan insurance market remains relatively small, with a low premium expenditure per capita and an insurance culture that is still developing. The property/casualty market grew by almost 25% in 2017, but the liberalization of the exchange rate and devaluation of the som, the country's unit of currency, meant that the market contracted by 27.8% in U.S. dollar terms.
- The insurance market continues to be quite crowded with 24 property/casualty insurers registered in October 2018 and rates for many lines are either flat or reducing.
- Foreign exchange policy was liberalized in September 2017 following Presidential Decree No. 517. The exchange rate of the local currency against the U.S. dollar approximately doubled as the som was allowed to devalue. The Central Bank of Uzbekistan fixed the official exchange rate at 8,100 som to \$1 effective Sept. 5, 2017. Uzbekistan insurers can now freely purchase foreign currency without limitation for their reinsurance purchases.
- Presidential Decree No. 5197 dated Sept. 29, 2017, introduced restated capital requirements for insurers/reinsurers as follows: property/casualty insurers — 7.5 billion som (\$947,207); insurers writing compulsory classes — 15 billion som (\$1.9 million); those offering exclusively reinsurance — 30 billion som (\$3.8 million).
- In 2018, the project "On measures to reform and ensure accelerated development of the insurance market of the Republic of Uzbekistan" was announced. This wide-ranging and ambitious project aims to encourage the development of the market by reforming insurance laws and regulation, increasing confidence in and the resilience of the insurance market, encouraging the introduction of new insurance products, enhancing the use of technology and more.

### AREA

# 164,248

square miles

### POPULATION

# 32.6

million

### MARKET CONCENTRATION

# 61.9%

market share of top five insurers

### 2019 GDP CHANGE (PROJECTED)

# 4.4%

Information provided by Axco Insurance Information Services.  
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## Arch awarded \$39M in coverage dispute

■ A Connecticut construction firm must indemnify an Arch Insurance Group Inc. unit for \$39.1 million in connection with the building of a minor league baseball stadium, the U.S. District Court in Hartford, Connecticut, ruled in *Arch Insurance Co. v. Centerplan Construction Co. et al.*

Arch Insurance Co. had issued surety bonds to North Haven, Connecticut-based Centerplan Construction Co. in connection with its construction of the Hartford Stadium, aka Dunkin' Donuts Park, home field of the Hartford Yard Goats of the Eastern League baseball team.

General indemnity agreements were issued in connection with the surety bonds that obligated Centerplan and its related companies to indemnify Arch for any losses and expenses it sustained because of the bonds. In June 2016, Hartford terminated Centerplan's design-build agreement for the stadium's construction, citing "continued defaults," according to the ruling. Arch entered into a takeover agreement with Hartford and the Hartford Stadium Authority to complete the stadium's construction.

Arch sued the defendants in the District Court in November 2016 on charges including contractual indemnification.

The indemnity agreements govern Arch's right to indemnification, said the ruling. "Because the Defendants have failed to provide evidence from which a jury could reasonably conclude that Arch acted on the Hartford Stadium and performance bonds in bad faith, there is no dispute as to an issue of material fact, and Arch is entitled to indemnity for payments on these claims as a matter of law," the ruling said, in awarding the insurer the \$39.1 million.

## Fired executives sue Markel

■ Two former Markel Corp. executives at its troubled insurance-linked securities unit who were fired for an having "undisclosed personal relationship" sued the insurer, alleging they were denied more

than \$70 million in incentive payments as a result of the terminations and defamed in the process.

In suits filed in federal courts, Anthony Belisle, who was CEO of Markel CATCo in Bermuda, and Alissa Fredricks, who was Markel CATCo CEO-Bermuda, allege Markel improperly searched their cellphones as part of an internal investigation into loss reserves, discovered they were in a personal relationship, then amended corporate documents to bar such relationships before firing them.

Markel announced in December that U.S. and Bermuda authorities had made "inquiries" related to the unit's loss reserves. The insurer began an internal review and on Jan. 18 announced that Mr. Belisle and Ms. Fredricks had left the company after the review uncovered violations of company policy related to their personal relationship.

In his suit filed in U.S. District Court in Concord, New Hampshire, Mr. Belisle alleges Markel refused to pay him vested incentives of nearly \$66 million after he was fired and "tarnished" his reputation "to prevent him from competing with Markel or Markel CATCo in the future."

In her suit filed in U.S. District Court in Boston, Ms. Fredricks makes similar allegations and says Markel refused to pay her nearly \$7.5 million in incentive payments after she was fired.

Markel said in a statement it believes "the claims in these complaints have no merit and (we) intend to vigorously defend against them."



## Volunteer firefighter due disability benefits

■ A volunteer firefighter does not need to have outside employment to qualify for disability compensation, the Supreme Court of New Jersey held in *Kocanowski v. Township of Bridgewater*, reversing a state appeals court.

Jennifer Kocanowski worked as a volunteer firefighter for 17 years, serving 15 of those years at the Finderne Fire Department in the Township of Bridgewater, New Jersey. She usually had outside paid employment. But in October 2013, she quit her job to care for her dying father

and took a six-month leave of absence from firefighting to settle his estate and care for her mother. She returned to the fire department in July 2014 but not to outside employment.

In March 2015, she slipped on ice during a fire, breaking her right fibula, tearing several ligaments and damaging her ankle. After several surgeries and physical therapy, she continued to experience issues that impeded her ability to return to volunteer firefighting or her previous work. She received \$125 per week in benefits from the fire department for one year after the accident, with no other sources of income.

In December 2015, she filed for temporary medical benefits. A New Jersey Division of Workers Compensation judge denied them, saying the temporary disability benefits were intended as wage replacement, and that because she had not been employed at the time of her accident, she was not entitled to those benefits. She appealed, but the New Jersey Superior Court Appellate Division affirmed the decision.

The state high court reversed, holding that the state legislature intended to increase temporary disability coverage for volunteer firefighters injured in the course of their duties, "not create barriers to coverage." The court found that the statute authorized all volunteer firefighters to "receive the maximum compensation permitted, regardless of their outside employment status at the time of the injury."

## No comp benefits for violating safety rule

■ In *Jones v. Crothall Laundry*, the Virginia Court of Appeals in Alexandria affirmed a state Workers Compensation Commission decision that an employee's claims were barred because he violated a known safety rule.

Andre Jones worked as a team leader in the Manassas, Virginia, plant of Crothall Laundry Services Inc. A chain-link fence surrounded dangerous machinery, and employees were instructed to enter through the interlock gate in the fence, designed to deactivate the machinery upon opening. In October 2017, Mr. Jones bypassed the gate and entered the area through a separate opening, and his leg became pinned against a conveyor belt by a moving piece of machinery.

He filed a claim for medical and disability benefits, which his employer rejected. A deputy commissioner found that Mr. Jones' action was the proximate cause of his injury and denied him benefits. Mr. Jones requested a review by the commission, which unanimously affirmed the deputy commissioner's ruling. He appealed, but the Virginia Court of Appeals affirmed the commission's decision.

## DOCKET



### BIAS CLAIMS BASED ON RUMORS REINSTATED

The 4th U.S. Circuit Court of Appeals in Richmond, Virginia, reinstated sex bias and retaliation claims filed by a woman allegedly fired as a result of a false rumor she had slept with her male boss. Said the ruling in *Evangeline J. Parker v. Reema Consulting Services Inc.*: "(B)ecause traditional negative stereotypes regarding the relationship between the advancement of women in the work place and their sexual behavior stubbornly persist in our society ... it is plausibly alleged that Parker suffered harassment because she was a woman."

### SOVEREIGN IMMUNITY TRUMPS JURY AWARD

An injured railroad worker can't recover damages in his negligence case, the 3rd U.S. Court of Appeals in Philadelphia held, as his employer is entitled to sovereign immunity. According to *Robinson v. New Jersey Transit Rail Operations Inc.*, he worked for the railroad when injured in 2011. He filed a negligence complaint under the Federal Employers Liability Act, which compensates injured railroad workers, and was awarded \$824,153 by a jury. The 3rd Circuit held it was bound by precedent that prohibits individuals from suing New Jersey Transit and vacated the judgment.

### STAFFING AGENCIES SETTLE EEOC CHARGES

Four staffing agencies under common ownership agreed to pay \$475,000 to settle a U.S. Equal Employment Opportunity Commission lawsuit charging them with abusing Latino workers in an Alabama poultry processing plant. Lewisburg, West Virginia-based East Coast Labor Solutions, East Coast Labor Solutions of West Virginia, Labor Solutions and Labor Solutions of Alabama recruited the workers, who were then subjected to threats and ethnic slurs, paid less than promised, put in more hazardous positions, denied bathroom and lunch breaks, and given fewer hours than non-Latino counterparts, the EEOC said.



Robert G. Petrie got his start in the insurance business after he sold a small software business he established as a college student and took a technology position at brokerage Johnson & Higgins. He remained with the firm through its purchase by Marsh & McLennan Cos. Inc., where he helped develop its risk management information systems business. In 2008, he and three partners started Origami Risk LLC, a Chicago-based risk management technology firm, where he remains CEO. In 2018, the founders sold a minority stake in Origami to Spectrum Equity Management LP, a Boston- and San Francisco-based private equity firm. Ten years after founding Origami, Mr. Petrie recently spoke with *Business Insurance* Editor Gavin Souter about changes in the RMIS business, the influx of capital into insurtech and the future of technology in insurance. Edited excerpts follow.

## Robert G. Petrie

### ORIGAMI RISK

**Q** How has the RMIS business changed over the past few years with the emergence of insurtech?

**A** Well, it has attracted a lot of institutional capital, which has obviously transformed the RMIS business. In the last five years, there really were four major vendors, two of which were owned by big brokers, two of which were independent. Today there are three major vendors, two of which are controlled by private equity and one of which has a private equity investor, us, in a minority position. I think that development is entirely related to the fact that the investing community now sees the enormous potential and expansion of insurtech, particularly after watching what's happened with fintech over the last 10 years or so.

The other big driver has been technology itself. So innovations like the cloud and (software as a service) have changed cost structures, improved value propositions, brought new buyers that might not otherwise have had the bandwidth to support a local install using older technology. And I think the world of risk is ever more important.

**Q** Insurtech companies are also looking to take a piece of the insurance technology business. How does that dynamic work with existing technology providers?

**A** We're working with new entrants. So a good example of that is predictive analytics. There's a lot of entrepreneurial activity in that market, and we don't believe that there is a clear natural winner. There's no data that shows that any one set of models is better than any other, and clients have different preferences based on their different needs, so our approach is to work with whatever vendor our clients are interested in and to support that function. And there's a variety of other ways that we deliver value throughout, where we're working together with other tech companies.

The entire focus of the way that clients picked brokers and insurance companies 20 years ago was mostly around service and the cost of risk transfer. I think today with risk management departments being smaller and being asked to do more, and with the cost of risk being higher than it was because of medical inflation and other factors, the interest of risk managers in looking for vendors that have good technology is much higher than

it was 20 years ago, or 10 years ago.

**Q** How have the systems changed?

**A** RMIS, when I got in the business, was mostly about allowing clients to combine loss data from multiple carriers and (third-party administrators). So it was claims-focused, and it was useful mostly to companies that had a lot of claims and had a lot of providers where those claims were managed. Today, claims is still an important part of RMIS, but it uses data and has tools and capabilities that are useful to the rest of the risk manager's job — from managing the policy and renewal life cycle to values collection, to fleet and asset and safety — and we've added a new range of tools around risk and compliance.



**Q** What role can technology play in developing risk management techniques, such as enterprise risk management?

**A** The whole point of ERM is to look for risk that you can't see very well because there aren't a lot of historical precedents for those risks, so it fits fairly naturally within RMIS because you've got the high-frequency and low-severity risks and you've got the low-frequency, high-severity risks coming together in a single system. But what we particularly do is facilitate the communication with the entire management team of a company in an automated way to update those risks, get them categorized and cataloged in the right way.

It's not a central planning exercise in ERM, so the automation of the communication across the parts of the organization

and the collection of data is critical in order to administer an enterprise risk management program in a cost-effective way.

**Q** Have you seen the risk management profession developing?

**A** I have been amazed by the number of RMIS presentations where there's intense interest in ERM and other nontraditional functionality. And often there are different participants in the meetings and in the buying process (than before).

**Q** Who are some of the new participants in the meetings?

**A** New participants include internal audit, senior financial officers, legal officers, sometimes it's somebody designated by the board to look at risk from the board level. It's definitely a different group than the risk manager and whoever is charged with managing the technology platform they use.

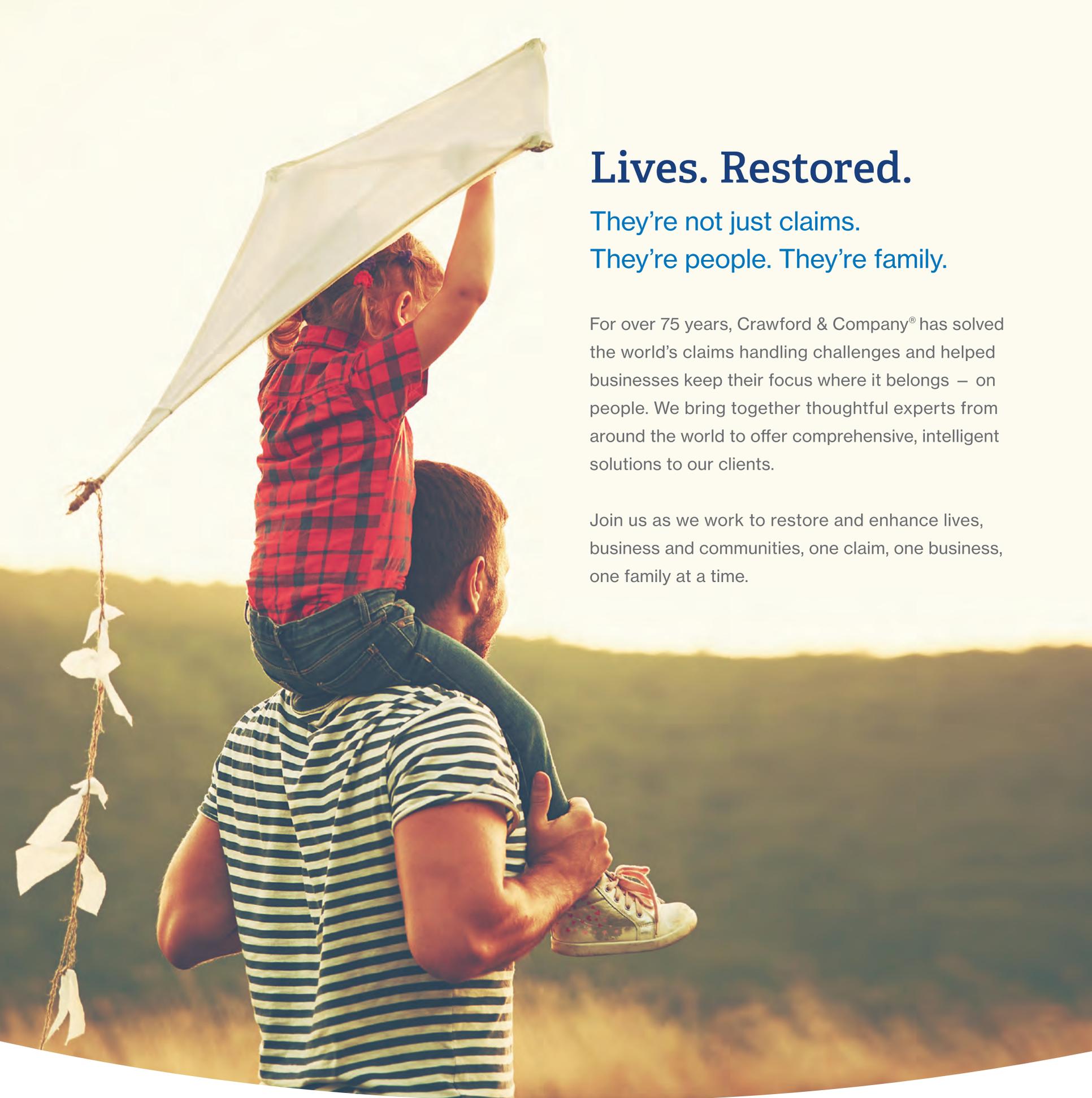
**Q** What future developments do you see in the RMIS and insurance technology area?

**A** RMIS systems are mostly used by insureds today. I think that the trend of additional functionality and expanding using risk management, but not necessarily insurance, as a theme to expand the functionality of these systems will continue. And I also think that what you'll see is more co-use of these systems by TPAs, brokers, insurance companies and risk managers, rather than everybody working on their own silos and data. I think it'll be a move toward a common platform where everybody sees the data in the same place, which is far more efficient and accurate than sending spreadsheets to each other by email.

**Q** But aren't people protective of their own data?

**A** Right, but you can set security protocols that allow people to see just what they want to see. So there's a real value in having all the data in a single place and then providing access to individuals to just what they need to see or change. The idea of where you just pull out a piece of it and you send it to somebody on a spreadsheet and it's stale the minute that it arrives — that is already changing and will continue to change.

I think it'll be a move toward a common platform where everybody sees the data in the same place.



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# INSURANCE CATCHES UP WITH THE TIMES

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BY MATTHEW LERNER  
mlerner@businessinsurance.com

**E**stablished insurance industry firms and newcomers increasingly are selling commercial insurance coverage through digital channels as the explosion in insurtech initiatives continues to transform the sector.

Largely limited to insurance coverage for small and midsize businesses, the online underwriting and placement platforms allow buyers to review and bind coverage for a wide variety of risks with many industry participants saying the efforts lead to an improved insurance purchasing experience for buyers.

Independent agents and brokers often are included in the buying process, while many administrative tasks have been automated, experts say.

While efforts to digitize large commercial placements are also developing, most of those projects do not use digital underwriting and binding technology that is openly accessible online.

From insurers rooted in the 300-year-old Lloyd's of London market, such as Hiscox Ltd., to tech startups such as CoverWallet Inc., there is an increasing variety of insurers and technology firms offering commercial coverage online.

"We've seen a number of different plays" to meet customer needs and to sell insurance to small business more effectively, said Michael Reilly, managing director in Philadelphia with Accenture PLC's

insurance practice.

Kevin Kerridge, executive vice president for small business direct and partnerships and a partner with Hiscox USA, said when he first moved to New York in 2009, he was amazed there were "no digital capabilities whatsoever in the small commercial space."

"Everything else in life in the U.S. was in the same place as, or ahead of, where Europe was, whether its banking, books or even car insurance," Mr. Kerridge said.

Hiscox built and launched its digital capability for small businesses in 2010 and now has 340,000 policyholders, he said. The insurer focuses on businesses with annual revenue of \$5 million or less — Mr. Kerridge said 95% of policyholders are "five-employee businesses or under" — and offers policies including

some professional liability coverages.

Independent tech startup CoverWallet has an onboarding process for insurers that includes discussions about product mix and structure prior to the insurers' products going on the portal. Small businesses may then bind coverage on the CoverWallet site, even using a credit card to pay.

"We are an online platform," said Rashmi Melgiri, co-founder of CoverWallet in New York, which provides users with quotes from multiple insurers on a variety of property/casualty products for small businesses. "We focus on property/casualty insurance for small business, including business owners policies, general liability, worker compensation, professional liability and more."

In other online placement and underwriting efforts, leading commercial insurers partner with insurtech firms.

Axa XL, a unit of Axa SA, partnered with New York-based insurtech startup Slice Labs Inc. to establish an online portal selling cyber insurance with limits up to \$3 million, said John Coletti, Axa XL's chief underwriting officer for cyber and technology in New York.

"Our target customer is small and medium-sized enterprises," Mr. Coletti said. "We're focusing on any insured of \$50 million and below in annual revenue,"

initially targeting U.S. businesses after launching in October.

"Using an (application programming interface) that has data and analytics built into it, we can actually do the underwriting on an automated basis," Mr. Coletti said. "We can rate, quote and bind a product in minutes without an underwriter touching the product."

**"Using an API that has data and analytics built into it, we can actually do the underwriting on an automated basis. We can rate, quote and bind a product in minutes."**

John Coletti,  
Axa XL

The process involves a data-driven scoring approach together with algorithmic underwriting, according to Tim Attia, co-founder and CEO of Slice Labs.

Other emerging technologies, including distributed ledger technology, or blockchain, and artificial intelligence learning,

See **INSURTECH** next page



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## INSURTECH

Continued from previous page

are also being tested and deployed for automated underwriting and placement functions for larger commercial risks, but those projects usually are not accessed openly via the internet.

Some large insurers have also taken stakes in startups; CoverWallet, for example, has backing from Starr Cos. and Zurich Insurance Group Ltd.

As they move online, insurers and insurtech companies are looking to other online industries for cues.

Customers' experiences in their personal lives "drives the expectations they have in the commercial market," Mr. Reilly of Accenture said.

"Being where the customer is, is probably the most important thing on the engagement side," said Sastry Durvasula, chief digital officer and chief data and analytics officer for Marsh LLC in Phoenix.

*"Technology eliminates many of the administrative tasks that often fill up brokers' days, allowing them to focus their efforts on risk identification and mitigation."*

Ralph Blust,  
Insureon Solutions

"The small businesses are more like consumers than they are businesses," Mr. Kerridge said. Insurers should think about small businesses as a consumer and "think like a marketing technology consumer business that just happens to sell insurance."

"There is very little I can think of from a customer standpoint that you can't buy online," Ms. Melgiri of CoverWallet said.

From buying airline tickets to cars through digital platforms, "that experience has to trickle into the commercial space," Mr. Durvasula said.

"Ultimately, it all comes down to the approach, which is customer first ver-

## ONLINE PLACEMENTS TARGET SMALLER BUSINESSES

Most online digital channels for commercial insurance are aimed at smaller businesses, mainly those with annual revenue of \$5 million or less, and some insurers and brokers say they have no plans to scale much past that level, if at all.

"In my view, not far beyond," said Kevin Kerridge, executive vice president for small business direct and partnerships for Hiscox USA, a unit of Hiscox Ltd., in New York. "I could see it up to \$10 million in annual revenue,

but I do think there's a point where the specialist agents really start to add a lot of value for a bigger business. So I do not see this as the thin edge of the wedge. There's probably a cap around \$10 million in revenue."

Other sources spoke similarly. "We're very much focused on the (small and medium-sized enterprises) market for this product and have no plans to move it into the larger segment," said John Coletti, chief underwriting officer for cyber and technology in New York for

## What about the brokers?

the platform and making it accessible to independent agents."

As well as direct to consumer, a large part of what we do now is using this platform for agents who process small business traffic on our technology," Mr. Kerridge said.

Dovetail Managing General Agency Corp., part of Victor Insurance Holdings — Marsh's underwriting management unit — is specifically for brokers, said Brian McDermott, chief information officer at Victor in Hoboken, New Jersey. He called it a "choice platform" as it provides brokers with a range of offerings from different insurers.

He said the growing use of platforms was "certainly inclusive of the broker."

At the end of 2017, Victor also launched V Squared, which now features a digital real estate insurance product in the United States, according to Mr. McDermott, and has plans to expand offerings on that channel.

"Digital platforms will not disintermediate insurance agents or brokers. In fact, it will have the opposite effect," Ralph Blust, president of online insurance agency Insureon Solutions in Chicago, said in an email. "Technology eliminates many of the administrative tasks that often fill up brokers' days, allowing them to focus their efforts on risk identification and mitigation, consulting their insureds and helping them better manage the financial exposures their clients face."

The value of the broker will be enhanced as they focus less on administrative tasks

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The value of the broker will be enhanced as they focus less on administrative tasks

Axa XL, a division of Axa SA.

"We've seen the introduction of underwriting platforms to some of the small and midsize space, and even more so, for these automated solutions, in that micro- and mini-segment" of less than \$5 million in revenue, said Erica Davis, senior vice president for cyber with JLT Re (North America) Inc. in New York. "There's a lot of opportunity that remains in that micro/mini business community," she added.

Matthew Lerner

and more on the strategic components a client faces in building a business," he added.

## All about the data

In addition to providing a new channel through which to sell commercial insurance to small and midsize businesses, digital online platforms represent a two-way data highway that can enrich insurers' caches of information.

The data collection capabilities of the platforms "are a gateway for the carriers to learn more about that segment," said Erica Davis, senior vice president for cyber with JLT Re (North America) Inc. in New York. Insurers can "learn more about the (small business) segment — what products are most helpful, what sort of claims exist in that segment — all helpful to drive growth and establish access to new markets."

"Those that can harvest data and use technology to access the data in an intelligent manner can build the best product for the future," Mr. McDermott said.

The risk management community appears to be embracing this and other moves toward technology, according to Audrey Rampinelli, who most recently served as a risk manager for Loews Corp.

"There is an appreciation for the solutions that are being brought to the table," from the risk management community, she said.

"If you look at universities that have risk management disciplines, many are including insurtech courses," she added.

## HIRING OF 'DIGITAL NATIVES' EXPECTED TO HASTEN INSURTECH TAKEUP

People familiar with technology who use it regularly in their daily lives — the so-called digital natives — will likely accelerate the takeup of technology as they continue to enter the workforce, according to industry sources.

"There are digital native customers, and there are digital native risks, and there are digital-ready products," said Sastry Durvasula, chief digital officer and chief

data and analytics officer for Marsh LLC in Phoenix. "So, bringing digital-ready products that address digital native risk to the digital native customer is the most conducive traffic we can accelerate through these new digital platforms. The sharing/gig economy, cyber, mobility and crypto are good examples of that."

Such digitally savvy people are likely to be comfortable with online purchases,

according to John Coletti, chief underwriting officer for cyber and technology in New York with Axa XL, a division of Axa SA.

"We definitely went with the theory that businesses would be comfortable purchasing their cyber insurance online, not unlike how they purchase a lot of their other technology online, such as software suites and storage backup," Mr. Coletti said.

There could even be chances

for cross-learning.

"Having the more digitally fluent professionals coming into the workplace gives a brilliant opportunity for organizations" to increase their knowledge throughout the workforce, said Audrey Rampinelli, who most recently served as a vice president of risk management for Loews Corp.

Matthew Lerner

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Winners will be announced online in April and their profiles published in the June 2019 issue of *Business Insurance*. The program culminates with **Break Out Awards** recognition events in New York (June 11); Chicago (June 13); and San Francisco (June 18).

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- Nominations must be submitted online at [businessinsurance.com/BreakOut/Nominations](http://businessinsurance.com/BreakOut/Nominations)
- Nominations must include three (3) recommendations from clients, managers and/or co-workers.
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# CAPTIVES REPORT



## IRS chalks up wins against microcaptives

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*Business Insurance's* 2019 rankings of the top captive managers. **PAGE 28**

BY GAVIN SOUTER  
[gsouter@businessinsurance.com](mailto:gsouter@businessinsurance.com)

**M**icrocaptives continue to come under fire from tax authorities as the IRS aggressively audits captive insurers that take advantage of long-standing rules that allow captive owners to reduce their tax bills.

The IRS is emboldened by two key tax court victories over the past 18 months and continues to demand more information from captives that elect to be taxed under Section 831(b) of the tax code, which are taxed only on investment income, captive experts say.

As a result, fewer 831(b) captives were formed over the past year as prospective owners wait to see how other cases involving microcaptives are resolved, they say. Meanwhile, at least one captive manag-

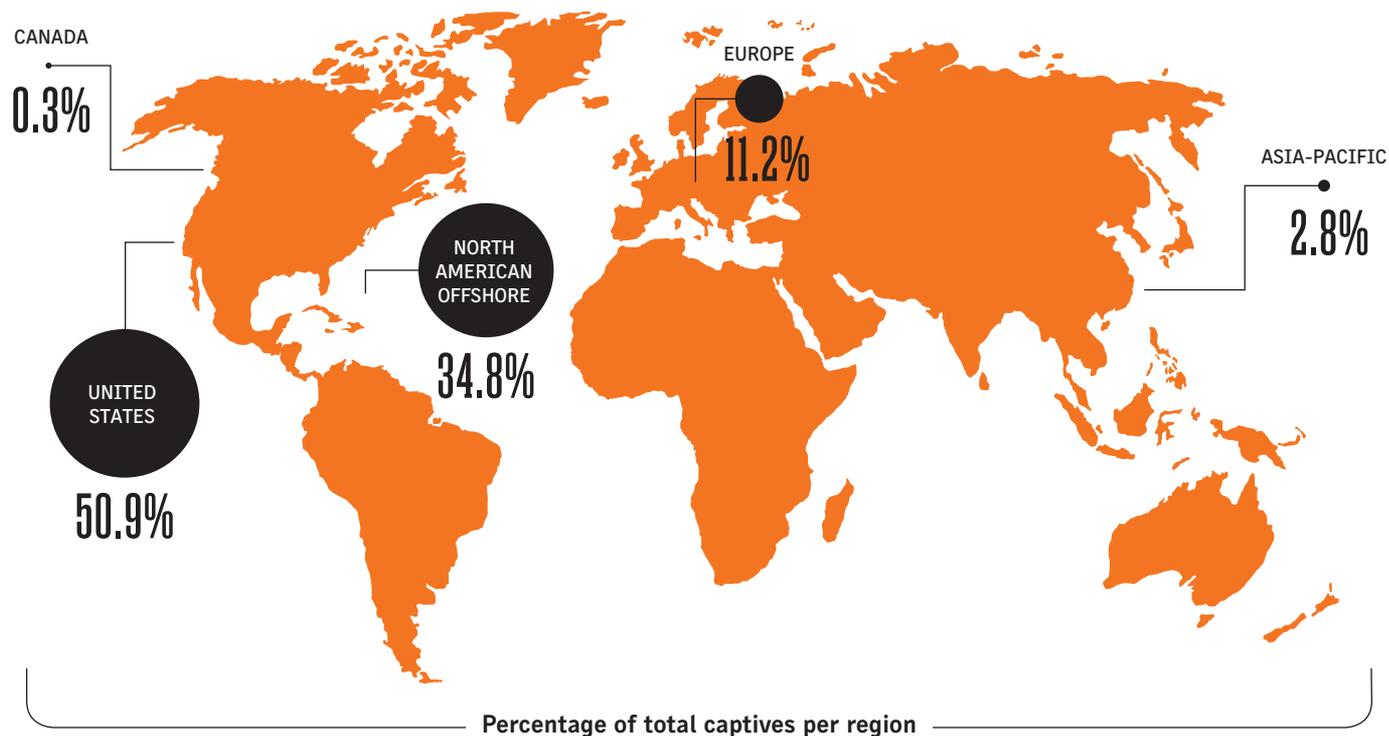
er faces a class action lawsuit from 831(b) captive owners alleging its promotion of 831(b) captives resulted in captive owners illegally reducing their tax bills.

831(b) captives, which are formed under laws passed in the 1980s, have become increasingly popular over the past 10 years. While many have been formed to cover warranties offered by auto dealerships, others have been formed in U.S. and offshore domiciles to cover a wide range of risks. The limit on premiums for

# ONSHORE/ OFFSHORE BY THE NUMBERS

There were 6,337 captives in 2018, not including microcaptives, series captives or individual cells or cell members in protected cell companies.

Source: BI survey



the captives is \$2.3 million.

A big advantage of captives electing to be taxed under Section 831(b) of the Internal Revenue Code is that they are taxed only on their investment, not their underwriting income, effectively lowering their tax liabilities compared with other captives and commercial insurers.

The 831(b) captives are often used by small and midsize firms that are too small to establish conventional captives, but many observers say they have also been used by wealthy individuals, their family members and others to create the appearance of insurance coverage while being used to avoid tax.

In 2017 and 2018, the IRS won two key tax court victories in the so-called *Avrahami* and *Reserve Mechanical* cases, where they argued that the captives were not established for legitimate insurance purposes. The *Reserve Mechanical* case is being appealed and rulings in three other key cases are pending (see box below).

In addition, the IRS has singled out

831(b) captives in various documents that raise concerns about potentially abusive tax structures, has demanded more information from organizations involved in the formation of the captives and has stepped up its audit of the captives (see box right).

**“There are three other tax court cases that have been tried that will present their own fact situations.”**

Charles Lavelle,  
Bingham Greenebaum Doll LLP

Also, a group of microcaptive owners in December filed a lawsuit seeking class action status against Arthur J. Gallagher & Co. and its captive management unit Artex Risk Solutions Inc., alleging they were fraudulently induced into 831(b) transactions and now face paying penalties, back taxes and interest to the

IRS. Gallagher says the case has no merit, and it is due to file its response by early March.

The increased scrutiny has hit 831(b) formations over the past year, several experts say.

Captive formations have slowed in general, but the increase in IRS audits of captives making the 831(b) tax election appears to have deterred companies from establishing 831(b) captives in particular, said Steve Kinion, director of Delaware’s Bureau of Captive and Financial Insurance Products, based in Wilmington.

More than 50% of Delaware’s captives make the 831(b) tax election, he said.

However, formation of all types of captives has slowed in recent years, Mr. Kinion said.

Not all domiciles report 831(b) captives in *Business Insurance’s* annual survey, but the number of captives worldwide excluding 831(b)s fell 1.8% to 6,337 in 2018 fol-

See **MICROCAPTIVES** on next page

## UNDER THE MICROSCOPE

For the past several years, the IRS has increased its audit of captives making an 831(b) tax election. In addition, the captives have been formally called out by authorities in various documents.

**DIRTY DOZEN** — For the past four years, the IRS has included 831(b) captives on its “Dirty Dozen” list of tax scams. In its 2018 announcement, the IRS said that some captive promoters, accountants and wealth planners persuade owners of closely held companies to “participate in schemes that lack many of the attributes of genuine insurance.”

**NOTICE 2016-66** — In 2016, the IRS issued a notice saying that microcaptives were a “transaction of interest” and had “a potential for tax avoidance.” The IRS required taxpayers linked to 831(b) captives to file a Form 8886 disclosing the transactions.

**CAMPAIGN ISSUE** — In 2017, the IRS Large Business and International division listed microcaptives as one of 13 compliance “campaign” issues, essentially singling out 831(b) captives for closer examination.

## IRS TAKES 2-0 LEAD

The IRS has scored legal victories in two of five closely watched U.S. Tax Court cases involving captives that made an 831(b) tax election.

- In 2017, Judge Mark V. Holmes ruled in *Benjamin Avrahami and Orna Avrahami v. Commissioner of Internal Revenue* that a St. Kitts-based microcaptive created for a Phoenix-based owner of jewelry stores, which provided terrorism insurance and other coverages but paid few claims and entered into a pooling agreement with other captives, did not meet criteria to be viewed as an insurer. Among other things, court papers show that the captive owners’ premium increased substantially after it moved from the commercial insurance market into the captive and dividends were later paid out to the owners.
- In 2018, Judge Kathleen Kerrigan ruled in *Reserve Mechanical Corp. v. Commissioner of Internal Revenue* that an Anguilla-based captive for an Osburn, Idaho-based mining and construction equipment repair firm that paid few claims and participated in a quota share reinsurance pool did not involve the true risk distribution needed to qualify as insurance. Among other things, the court ruled that the quota share arrangement involved “a circular flow of funds,” with the premium paid for stop loss coverage via the pool being returned to the captive via reinsurance. The ruling is being appealed.

- *Caylor Land & Development Inc. v. Commissioner of Internal Revenue* is being heard by the same judge that ruled in the *Avrahami* case and involves a brother-sister captive arrangement, which refers to companies owned by the same parent, such as a captive insurer and operating subsidiaries, rather than a risk pool captive.
- *Szyggy Insurance Co. Inc. v. Commissioner of Internal Revenue* involves a Delaware-domiciled captive — the only case among the five involving a captive in a U.S. domicile — and focuses on a layered pooling arrangement.
- *James L. Wilson & Vivien Wilson et al. v. Commissioner of Internal Revenue* involves a captive for a Tucson, Arizona-based dietary supplement firm that was in the same pool as the captive in the *Avrahami* case and is being ruled on by the same judge.

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST (ChD) No. CR-2018-009151

IN THE MATTER OF  
ROYAL & SUN ALLIANCE INSURANCE PLC  
- and -  
IN THE MATTER OF  
THE MARINE INSURANCE COMPANY LIMITED  
- and -  
IN THE MATTER OF  
MERCANTILE INDEMNITY COMPANY LIMITED  
- and -  
IN THE MATTER OF  
THE FINANCIAL SERVICES AND MARKETS ACT 2000

Notice is hereby given that on 17 January 2019 an Application was made under section 107 of the Financial Services and Markets Act 2000 (the "Act") in the High Court of Justice of England and Wales by the above-named Royal & Sun Alliance Insurance plc ("RSAI") and The Marine Insurance Company Limited ("MIC") (together the "Transferors") and Mercantile Indemnity Company Limited (the "Transferee") for Orders:

(1) Under section 111 of the Act sanctioning a scheme (the "Scheme") for:  
(a) the transfer to the Transferee of certain direct and reinsurance business of the Transferors, namely certain UK-based commercial general insurance business; and

(b) the making of ancillary provisions under section 112 of the Act for implementing the Scheme.

The following documents are available and may be obtained by any person free of charge by downloading them from the website ([www.rsagroup.com/RSATransfers](http://www.rsagroup.com/RSATransfers)) or by making a request by email to [RSATransfers@equiniti.com](mailto:RSATransfers@equiniti.com), or in writing at RSA Insurance Group, 20 Fenchurch Street, London EC3M 3AU, United Kingdom (Attention: Jonathan Colson) or by calling the Scheme helpline on +44 121 415 0966 at any time until the making of an order sanctioning the Scheme:

- a copy of the Scheme document;
- a copy of the report on the terms of the Scheme prepared by an independent expert in accordance with Section 109 of the Act;
- a communications pack, which includes a statement setting out the terms of the Scheme and a summary of the independent expert's report.

Anyone who has any questions regarding the proposed Scheme or would like further information should contact us using the above details.

The specific nature of the transferred business differs between RSAI and MIC, but in both cases constitutes part of their respective commercial general insurance businesses.

It is intended that the Scheme will transfer from RSAI to the Transferee certain commercial general insurance policies that include liability cover and that were either: (i) written by or on behalf of RSAI prior to 2006, or (ii) written by or on behalf of another insurer prior to 2006 and transferred to RSAI prior to 7 February 2017. Policies that relate exclusively to marine or motor liabilities, or were underwritten by a branch or agency incorporated or domiciled outside the UK are excluded from the Scheme, as are certain other specifically excluded policies.

It is intended that the Scheme will transfer from MIC to the Transferee the following categories of commercial general insurance policies that were either written: (i) by or on behalf of MIC, or (ii) written by or on behalf of another insurer and transferred to MIC prior to 7 February 2017:

- (A) all marine energy policies written prior to 2004;
- (B) all other marine policies written prior to 1997; and
- (C) all aviation policies written prior to 2009.

The Scheme will also transfer various business contracts from each of RSAI and MIC to the Transferee, including all or part of certain outward reinsurance contracts. The business of the Transferors, comprising policies and business contracts, and associated assets and liabilities, that is to be transferred to the Transferee by the Scheme forms the "Transferred Business".

The Scheme will transfer the Transferors' rights and obligations under the commercial general insurance policies forming part of the Transferred Business (referred to as the "Transferred Policies") without alteration to Mercantile. The holders of the Transferred Policies (and any persons entitled to beneficial rights under such Transferred Policies) will, with effect from 00.01 BST (British Summer Time) on 1 July 2019 (or at such other later time and/or such other date as the Transferors and Transferee may agree) (the "Effective Date"), become entitled, to the exclusion of any rights which they may have had against the Transferors under a Transferred Policy, to the same rights against the Transferee. Similarly, the holders of the Transferred Policies shall be liable to account to the Transferee for any further or additional premiums or other sums attributable or referable thereto, as and when they become due and payable. Responsibility for handling all claims under the Transferred Policies, which are currently being handled by, or on behalf of, the Transferors will transfer to the Transferee. The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under the Transferred Policies, which would have been available to the Transferors prior to the Effective Date.

Subject to certain exclusions, at and with effect from the Effective Date, all assets and liabilities that are comprised in, arising from or in connection with the Transferred Business shall transfer to the Transferee. Various business contracts will also transfer so that they will become agreements between the Transferee and the relevant third party. The Scheme will be valid and binding on counterparties to such contracts notwithstanding any restriction on transfer or assignment contained in any such contract.

The Application is due to be heard at the High Court of Justice of England and Wales (High Court), 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL, United Kingdom on 13 June 2019. Any person who considers that he or she may be adversely affected by the Scheme has the right to make representations and/or to appear at the Court hearing. It is requested that any person intending to make representations (either in writing or by telephone) and/or appear at the hearing (either in person or using legal representation), please contact RSA on +44 121 415 0966 or in writing at the email address below as soon as possible and before 13 June 2019 to set out the nature of their representations. This will enable the Transferors and the Transferee to provide notification of any changes to the hearing and, where possible, to address any concerns raised in advance of the hearing. If the requested notice is not given, attendance at the Court hearing, either in person or using legal representation, will still be permitted.

Jonathan Colson  
RSA Insurance Group  
20 Fenchurch Street, London EC3M 3AU, United Kingdom  
[RSATransfers@equiniti.com](mailto:RSATransfers@equiniti.com)

## MICROCAPTIVES

Continued from previous page

lowing a 3.7% decline in 2017 (see chart).

Tennessee has also seen a slowdown in 831(b) formations, said Michael Corbett, director of captive insurance for the Tennessee Department of Commerce and Insurance based in Nashville.

"The average size of captives in Tennessee are around \$8 million in premium. Most of our captives do not fall in (the 831(b) category, but, yes, we have seen some slowdown," he said.

"The IRS is clearly emboldened by the decisions in *Reserve Mechanical* and *Avrahami*, and I don't expect that to change anytime soon. When a captive case is won by a taxpayer, we may see a change then, but I don't expect the IRS posture to change until that happens," said John Dies, Houston-based managing director of tax controversy at tax consulting firm Alliantgroup LP.

*"The IRS is clearly emboldened by the decisions in Reserve Mechanical and Avrahami, and I don't expect that to change anytime soon. When a captive case is won by a taxpayer, we may see a change then, but I don't expect the IRS posture to change until that happens."*

John Dies,  
Alliantgroup LP

While the tax victories for the IRS and the increased audits is deterring owners from forming new 831(b) captives, the structures themselves are not inherently problematic for captive owners, tax experts say.

831(b) captives that were entered into primarily to achieve tax benefits are encountering problems, but "most of the 831(b) captives that I've seen are true insurance arrangements, so just because the IRS is going through all this scrutiny does not mean that they are all bad," said Sheryl B. Flum, a tax expert and managing director at KPMG LLP in Washington.

"The IRS is trying to separate the captives that lack good insurance characteristics and appear to be entered into without intending to use them for a true insurance reason from captive insurance companies that are exactly that — captive insurance companies," she said.

Mr. Dies said almost all 831(b) pooling arrangements are differently structured, and he is advising clients that have what they believe to be a valid captive not to concede to the IRS if it challenges them.

In addition, as the *Avrahami* and *Reserve Mechanical* cases focus on captives that were formed more than a decade ago, captives being challenged today are often structured differently, he said.

"Many of the issues that you see raised in these cases don't even exist for captive insurance providers anymore. The industry has grown and advanced, and a 2018 insurance pool looks very different to the pools that *Avrahami* and *Reserve Mechanical* were dealing with," Mr. Dies said.

The cases that have been ruled on so far include captive programs that likely won't be mirrored in other microcaptives, said Charles Lavelle, senior partner in the tax and employee benefits department of Bingham Greenebaum Doll LLP based in Louisville, Kentucky.

"*Avrahami* had a stand-alone terrorism pool, and there are probably few other stand-alone terrorism pools, and the court had some harsh statements for some of the *Avrahami* facts, which might not be present in a lot of the other programs used by companies electing section 831(b)," he said.

"Broadly, the conversation among my peers has been that those have been anomalies," said Mr. Corbett at the Tennessee insurance department.

"We've looked very carefully at those captive management firms and captives that we're aware of in the state of Tennessee that are 831(b)-type captive managers, and have worked very hard with them to make sure that some of the trip points that *Avrahami* and *Mechanical* (had), which we think were glaring, are not issues for some of the 831(b) captives that we've seen here in the state," he said.

The remaining three 831(b) rulings will likely further clarify the position of the tax court, said Mr. Lavelle.

"There are three other tax court cases that have been tried that will present their own fact situations ... We'll know a little bit more about what the court thinks about that tax situation and see whether or not they make broader statements that may relate to brother-sister arrangements or domestic captives," he said.

Going forward, captive managers and the captive industry are adapting to the tax rulings, experts say.

The Captive Insurance Companies Association released a document on commonly accepted practices in late January that addresses issues raised by the *Reserve Mechanical* decision on risk pooling, premium calculations, quota share reinsurance arrangements and other issues (see story, page 8).

The release of the document is "a clear effort by the industry" to explain how captives are legitimate risk-financing vehicles, said Mr. Dies.

The legal disputes over 831(b) captives will likely play out over several years, in the same way that legal battles over other types of captives took place in the 1970s, 1980s and 1990s when the IRS won some initial cases but captive owners went on to win other cases, Ms. Flum said.

"I think the same thing will happen on the microcaptive front. There will come a time when the IRS overreaches and tries to find a problem with a captive that is more likely than not going to pass muster and win a court case. Once the tide starts turning, there will be an easier way to differentiate the wheat and the chaff," she said.

Gloria Gonzalez contributed to this report.

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# Will tax reform stunt captives?

GLORIA GONZALEZ

ggonzalez@businessinsurance.com

The reduction in the U.S. corporate tax rate has had the most impact on 831(b) captive insurers to date, but the effects of other provisions of the 2017 tax overhaul are less clear as industry stakeholders await key guidance from the IRS and possible legislative fixes from the U.S. Congress to mitigate the law's unintended consequences.

There has not been a decline in captive formations or major shifts in where captives are domiciled as a result of the tax overhaul, but stakeholders continue to watch for such potential results, particularly when it comes to new formations.

In December 2017, President Donald Trump signed the Tax Cuts and Jobs Act, which replaced the graduated corporate income tax structure and its previous top rate of 35% with a 21% rate. The changes to the corporate tax rate have had the most impact on 831(b) captives, also known as micro-captives, so far because those captives paid an alternative tax based only on taxable investment income, with underwriting profits exempt.

"It's really clear that the value of the tax deduction for premium paid to the captive is less than what it was, and I suppose that might affect some people's thinking, particularly for those people looking to take an 831(b) election," said Martin Eveleigh, chairman of Atlas Insurance Management in Charlotte, North Carolina. "But I can honestly say that between 2017



REUTERS

Former Speaker of the House Paul Ryan, foreground, spearheaded the Tax Cuts and Jobs Act, which has affected some captives.

and 2018, our new business in 831(b) elected captives was flat."

The tax revamp did not directly change how insurers are taxed or change the definition that affected whether or not an insurance company qualified as an insurance company for federal tax purposes, but "interestingly, it has the most impact on 831(b) because you will tend if you have an 831(b) to pay more tax in '18 than you would have in 2017," Charles Lavelle, senior partner in the tax and employee benefits department of Bingham Greenebaum Doll LLP based in Louisville, Kentucky, said during 2019 World Captive Forum in Miami, sponsored by *Business Insurance*.

But specific guidance is needed on provisions pertaining to controlled foreign corporations, passive foreign

investment companies and the Base Erosion Anti-Abuse Tax provision, experts say.

"I still think this is an evolving issue," said Ryan Work, vice president of government relations for the Self-Insurance Institute of America Inc. in Washington. "This is going to take a number of additional years to get all the information, the guidance, the clarification that everybody needs to get through all the various changes."

The rule determining what constituted a controlled foreign corporation was changed during the tax overhaul. A CFC is generally defined as a foreign corporation in which U.S. persons owned more than 50% of the corpora-

See **TAX ACT** page 27

## COUNTING CAPTIVES

Ranked by number of captive licenses at year-end 2018

Rank	Domicile	2018	2017
1	Bermuda	711	739
2	Cayman Islands	674	669
3	Vermont	580	578 <sup>1</sup>
4	Utah	443	481 <sup>1</sup>
5	Delaware	421	391
6	Barbados	276	266
7	North Carolina	240 <sup>2</sup>	220
8	Hawaii	231	230
9	Guernsey	206	217 <sup>1</sup>
10	Luxembourg	198	204 <sup>1</sup>
11	South Carolina	171	172
12	Tennessee	169	155
13	Anguilla	165	188 <sup>1</sup>
14	Nevada	156	172 <sup>1</sup>
15	Nevis	155	151
16	Montana	129	141 <sup>1</sup>
17	Arizona	124	121
18	District of Columbia	105	102
19	Isle of Man	103	109
20	Dublin	78	83
21	British Virgin Islands	73	111
22	Singapore	72	69 <sup>1</sup>
23	Oklahoma	66	75
23	Turks and Caicos Islands	66	71 <sup>1</sup>
25	Kentucky	64	65 <sup>1</sup>
26	New York	55 <sup>2</sup>	58 <sup>1,3</sup>
27	Missouri	54	50 <sup>1</sup>
28	Labuan	48	43 <sup>1</sup>
29	Alabama	44	50
30	Texas	42	38
30	Sweden	42	44 <sup>1</sup>
32	St. Lucia	35	38
33	Switzerland	27 <sup>3</sup>	27 <sup>1</sup>
34	Micronesia	25	22 <sup>1</sup>
35	Michigan	23	22
35	New Jersey	23	21 <sup>1</sup>
37	British Columbia	21	21
38	Georgia	20	20
39	Bahamas	18	18 <sup>1</sup>
40	Connecticut	15	14
40	South Dakota	15	34
42	Puerto Rico	14	13
43	Denmark	10	11
43	Gibraltar	10	10
43	Malta	10	10
46	Curaçao <sup>4</sup>	9	9
46	New Zealand	9 <sup>2</sup>	6 <sup>2</sup>
48	Liechtenstein	8	10
48	Ohio	8	15
50	Australia	7 <sup>2</sup>	5 <sup>2</sup>
50	Colorado	7	5
52	Norway	6	6 <sup>1</sup>
52	Arkansas	6	4
52	Germany	6	6 <sup>1</sup>
52	Vanuatu	6	5
56	Illinois	5	3
56	Panama	5 <sup>2</sup>	10 <sup>2</sup>
56	U.S. Virgin Islands	5	4
59	Guam	4	3
59	Hong Kong	4	3
59	Nebraska	4	4
62	Maine	3	2
62	Jersey	3	2 <sup>2</sup>
63	Mauritius	2	2 <sup>1</sup>
63	Dubai	2 <sup>2</sup>	2 <sup>2</sup>
66	Kansas	1	1
67	Rhode Island	0	0
68	Virginia	0	0
69	West Virginia	0	0
	<b>TOTAL</b>	<b>6,337</b>	<b>6,454<sup>1</sup></b>

<sup>1</sup> Restated. <sup>2</sup> BI estimate. <sup>3</sup> From annual report.

<sup>4</sup> Formerly Netherlands Antilles. Source: BI survey

## Vermont hopes to woo captives onshore

Mapfre Re became the first affiliated reinsurer to form in Vermont under 2018 legislation that regulators hope will position the domicile as a viable domestic alternative for U.S. companies reinsuring offshore, but now subject to the Base Erosion Anti-Abuse Tax that could make such arrangements less attractive.

Prior to the passage of the 2017 tax overhaul, U.S. tax law allowed the investment of reinsurance premiums raised overseas without tax ramifications. Under the BEAT provisions, such investments are now taxed in an amount equal to the base erosion minimum tax amount for the taxable year. An applicable taxpayer as defined by the legislation would pay the excess of a certain percentage — 10% from 2019 through 2025,

and 12.5% thereafter — of modified taxable income for a taxable year over a base erosion minimum tax amount.

"Many of the large (property/casualty) insurers have offshore affiliates that they utilize for reinsurance. So when they were performing analysis of the impact of the Base Erosion Anti-Abuse Tax, many of them became very concerned about the amount of money that they would have to pay because of that change to the tax reform laws," said Sandy Bigglestone, director of captive insurance for the Vermont Department of Financial Regulation in Montpelier.

Vermont regulators have had conversations with other companies about utilizing the alternative, but "nothing has materialized yet," she said. "We don't expect a huge influx

of applications, but you never know," she said.

"Maybe the impact will draw more attention to these vehicles," Ms. Bigglestone said. "But having the affiliated reinsurance company solution is not the only solution. It only applies to payments to foreign affiliates. It could have the impact of increasing the demand for unaffiliated reinsurance, but if the entity enjoyed having control of the underwriting, they understand the business and if they wanted to utilize an affiliated reinsurance arrangement, they can certainly do that because it affords a certain level of operational control, consistency, effective capital management and obviously continuity of the availability of reinsurance if they have their own affiliate."

Gloria Gonzalez

# Vermont blockchain test could expand use

BY MATTHEW LERNER

mlerner@businessinsurance.com

Captives are investigating the use and deployment of blockchain technology along with the wider insurance industry, seeking ease of administration, efficiencies and enhanced security, but it remains a nascent concept for the sector, experts say.

Insurers, regulators and others are looking at the emerging technology, known generically as distributed ledger technology, in some cases devoting enhanced resources to their efforts.

“The practical application of blockchain technology into insurance operations has been a hot topic for the last couple of years,” said Michael Pieciak, commissioner of the Vermont Department of Financial Regulation in Montpelier, which regulates banks, securities, traditional insurance and captive insurers. His department, together with the office of the Vermont secretary of state, in January launched a pilot program for the use of blockchain that will use the state’s robust captives industry to evaluate distributed ledger technology.

Allianz Global Corporate & Specialty SE in late 2017 created a blockchain prototype for a global captive insurance program focusing on professional indemnity and property insurance for a customer with a captive insurance program.

“In one of our current exploratory projects, we are investigating the use of digital tokens to facilitate and accelerate money transfers as part of captive management,” Munich, Germany-based Fernanda Navarro, head of global innovation, AGCS, said in an email. “The idea is to make automated end-to-end payments to significantly increase the speed, efficiency, and reliability of premium handling and claims payments for captive programs.”

“Based on the results of this and some other proofs of concept, we are currently investigating where blockchain is adding the most value,” she said. “For each area we explore, we are identifying whether it’s



a game-changer, a nice-to-have, or simply some overengineering.”

“It’s not a surprise that insurance organizations, including captives, are inspecting a variety of digital technologies including blockchain and digital ledger technology to try to improve the operational efficiency of their organization,” said Patrick Schmid, vice president of The Institutes RiskBlock Alliance, based in Malvern, Pennsylvania.

RiskBlock members have expressed an interest in a captives use case, and it is something the alliance may examine further as it develops more applications for the technology, Mr. Schmid added.

Blockchain could be useful in addressing some of the main challenges of running a captive, experts say.

“The primary disadvantages people talk about with owning a captive are the operating costs and the time commitments” involved, said Rocco F. Mancini, consultant for captive solutions at Marsh USA Inc. in Norwalk, Connecticut. “Blockchain is a technology with the potential to mitigate some of those disadvantages.”

“Particularly with large multinationals’ captives, there are multiple service providers and multiple interested parties, with fronting companies, multiple insurers and reinsurers, brokers, claims teams, actuaries, auditors, captive managers and ultimately the captive owner,” said Alexandra Gedge,

London-based business development and captives executive for JLT Insurance Management Ltd. “Sharing information more effectively can reduce time and administration and speed up claims payments; particularly where there is a lot of regulation around captives, this can be invaluable for the captive owner to operate their main business as usual.”

“I could see the potential use of this in the group captive context, where a single captive structure is engaging with 30, 40 or more entities which have common retentions or common reinsurance programs,” said San Francisco-based Ward Ching, a managing director in Aon PLC’s captives insurance management division who also consults on alternative risk transfer.

“There may be opportunities for more efficient claims handling and processing and claims automation” as well as reinsurance transactions, Mr. Mancini said.

But the use of blockchain in captives is still developing, said Mr. Ching.

“I think we are at the early stages and people are trying to figure out ‘How do we make this work? Does it have a value in terms of speed, accuracy and security, and how do we compare that against the systems we already have. What are the costs and benefits?’” he said.

Should Vermont’s program yield such advantages or others, use of the technol-

ogy could be expanded, Mr. Pieciak said. “As we actually implement the pilot program, and we do see there’s opportunity for efficiency and ease of administration, we can also take this small pilot program to something larger,” such as the traditional insurance market, he said. “This is an opportunity to better understand the technology and its ability to be scaled up in government and in the private sector.”

“There’s potential operational improvement for the regulatory community or state government as well as from leveraging this technology,” Mr. Schmid said.

Blockchain could also reduce friction in the regulatory process itself, experts say.

“Where captives may operate in tightly regulated locations, a shared ledger can really assist with fulfilling regulatory requirements by reducing time on administration with smoother transfer of information,” Ms. Gedge said.

“A solid blockchain-enabled solution makes the process of managing an insurance program more efficient and more transparent,” Zurich-based Damian von Doderer, head of business intelligence and senior account manager, alternative risk transfer for Allianz, said in an email. “It becomes much easier to monitor compliant execution, implement new rules, and access large volumes of nicely-organized portfolio data to investigate the relevance or magnitude of a given regulatory topic or impact of a planned regulatory change.”

Captives may be exposed to or become involved with blockchain as a result of parent company activities, experts say.

The largest user of captives in Vermont is the health care sector, according to Mr. Pieciak. “Certainly, there’s a lot of discussion about digitizing records,” and maintaining confidentiality through the use of blockchain, he said.

“I could also see this in industry verticals like health care where there’s a tremendous amount of information that needs to be passed back and forth and needs to be secure,” Mr. Ching said.

## BLOCKCHAIN MAY NOT BE THE SOLUTION TO EVERY PROBLEM

While many in the insurance community and beyond see great promise in blockchain, also known as distributed ledger technology, they also recommend a prudent and deliberate path forward with no rush to judgment, executives said.

“Can it be used for this?” is only part of the question,” said Patrick Yu, who leads the commercial property/casualty actuarial team in Aon PLC’s San Francisco office.

“Another important question is, ‘Is

blockchain the only way to do that thing?’” Mr. Yu said. “There are areas where you could argue that you could use blockchain, but there might be a much simpler, nonblockchain way to accomplish the same thing.”

“The places where blockchain really shines are places where you need to authenticate” identification and activities, Mr. Yu said. “If your use case isn’t necessarily aligned with that, then maybe there’s a nonblockchain way to do the

same thing.”

A Vermont pilot program announced in January will use the state’s captives industry to test drive the emerging technology. The program “allows us to get more intimate without making a big investment and allows us to see how the whole blockchain movement shakes out over the next 18 months,” said Michael Pieciak, commissioner of the Vermont Department of Financial Regulation. “It’s important to be engaged with it, but not

to oversubscribe yourself.”

“Where there are established methodologies in place that are working, the question is: Does blockchain provide any additional value?” said San Francisco-based Ward Ching, a managing director in Aon’s captives insurance management space division who also consults on alternative risk transfer. “The issue is, does it create a more effective way of transmission? We’re not sure yet.”

Matthew Lerner

# TAX ACT

Continued from page 25

tion's stock, with the standard for insurers being that the combined voting power of all classes of stock had to exceed 25%. However, the definition of U.S. shareholder, which had been defined as a U.S. person who owns 10% or more of the voting stock of a foreign corporation, was expanded to include U.S. persons who own 10% or more of the value of the stock of the foreign corporation.

"It's made non-CFCs into CFCs," said Thomas Jones, Chicago-based counsel on tax, regulatory and legal matters involving captives for McDermott Will & Emery LLP in Chicago. This has led to some efforts to help offshore group captives avoid CFC status, which is "an ongoing challenge," he said.

Meanwhile, the passive foreign investment company rules were essentially designed to prevent U.S. persons from investing in corporations with a view toward not reporting the earnings and profits, as they were earned in a foreign corporation, with penalties imposed on the taxes that must be paid on this income. A company is defined as a PFIC based on either income, meaning that

at least 75% of the corporation's gross income is "passive" income that is derived from investments rather than from the company's regular business operations; or assets, meaning at least 50% of the company's assets are investments that produce passive income or held for the production of passive income. Companies in the "active conduct" of the insurance business were exempt under the old law and can remain so under the new law, but they must now meet a test that their active insurance assets constitute more than 25% of the insurer's total assets.

The CFC and PFIC changes are of "great interest to me," Mr. Eveleigh said. "The PFIC reserving requirement that 25% of the assets need to be in reserves — and those reserves are only loss reserves, not unearned premium reserves — that has certainly had an impact on some captives. Captives that either always knew they were going to have really great underwriting results and low loss ratios or captives that hadn't thought too much about that and then looked at results and said 'our results are so good we don't have the reserves, now we're going to have to do something about it' and now ... suddenly people are paying a lot out in dividends. That is real. That has happened."

The U.S. tax overhaul also included the BEAT provision, which imposes a mini-

mum tax on certain deductible payments made to a foreign affiliate.

"Congress tends, when they do large legislation, to try to fix a specific issue but unintentionally impacts a much larger base than they originally thought," Mr. Work said. "That comes to mind for me with PFIC and BEAT. For PFIC, my take on it from talking to folks on the (Capitol) Hill, was that Congress was looking at PFIC to deal with offshore private equity and its flow back and forth internationally and domestically. Unintentionally, some captives, particularly on the CFC side, have been roped into that. I don't think that was necessarily Congress' intent."

Congress will have to pass legislation clarifying some of the tax bill provisions, he said. "It's going to have to be tackled," Mr. Work said. "I just don't think it's going to be anytime soon."

## Onshore v. offshore

As Mr. Eveleigh currently works on forming new group captives, "the question now is onshore or offshore," he said. "Before tax reform, the answer was very likely offshore. Post-tax reform, I am canvassing opinion. I'm not suggesting that we're going to see group captives redomesticating, but I think it could mean that more group captives in the future will

actually choose an onshore jurisdiction."

Mr. Jones said he has not seen redemestications related to the tax overhaul, as most of the provisions were not aimed at captives and they were "just along for the ride." But redemestications could happen in a few years once the full impact of these provisions is digested and if there is an adverse impact on the regulatory flexibility that has been a traditional advantage of offshore domiciles, he said.

"I don't think we've seen a direct impact, but there's been a lot of discussion within industry about what some of these provisions mean for onshore and offshore entities," particularly with regard to CFCs, Mr. Work said. "It goes back to uncertainty. If you're an owner of a CFC, is this really what I want to be doing or is this getting too complicated for what I want to accomplish? I think the best thing for right now is making sure you're doing due diligence and riding out the uncertainty until you can have all these fact patterns in place to make sure you're managing your risk where and when you need to."

"There's obviously a lot more complexity now with offshore entities in general. But at the same time, I think some of the new tax reform issues are also having domestic folks look at what their other options are," he added. "It's a dichotomy in both directions."

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# RANKINGS OF CAPTIVE DOMICILES & CAPTIVE MANAGERS

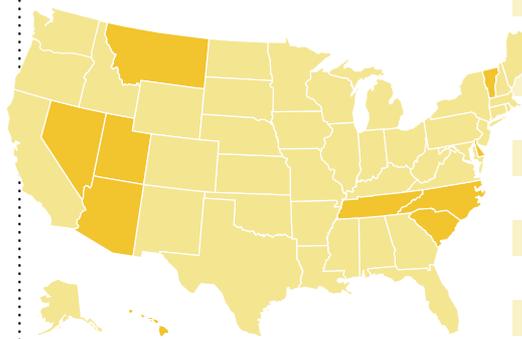
## TOTAL CAPTIVES WORLDWIDE



<sup>1</sup> Restated  
Source: BI survey

## TOP U.S. CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2018



Rank	Domicile	2018	2017
1	Vermont	580	578 <sup>1</sup>
2	Utah	443	481 <sup>1</sup>
3	Delaware	421	391
4	North Carolina	240 <sup>2</sup>	220
5	Hawaii	231	230
6	South Carolina	171	172
7	Tennessee	169	155
8	Nevada	156	172 <sup>1</sup>
9	Montana	129	141 <sup>1</sup>
10	Arizona	124	121

<sup>1</sup> Restated. <sup>2</sup> BI estimate.  
Source: BI survey



## TOP 5 EUROPEAN CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2018

Rank	Domicile	2018	2017
1	Guernsey	206	217 <sup>1</sup>
2	Luxembourg	198	204 <sup>1</sup>
3	Isle of Man	103	109
4	Dublin	78	83
5	Sweden	42 <sup>1</sup>	44 <sup>1</sup>

<sup>1</sup> Restated.  
Source: BI survey

## TOP 10 CAPTIVE MANAGERS

Ranked by the number of captives managed worldwide in 2018<sup>1</sup>

Rank	Company	2018 total captives	2018 captive premium volume <sup>2</sup>	Domiciles	Total staff	Officers
1	Marsh Captive Solutions	1,270	\$58,750,414,404	47	400	Ellen Charnley, president; Julie Boucher, islands practice leader; Chris Varin, U.S. practice leader; Will Thomas-Ferrand, international practice leader
2	Aon Captive & Insurance Management	919	\$32,000,000,000	43	550	John English, CEO
3	Artex Risk Solutions Inc.	739	\$6,760,000,000	32	406	David McManus, president/CEO; Jennifer Gallagher, president-Artex North America; Nick Heys, CEO-Artex International
4	Willis Towers Watson PLC., Global Captive Practice	420	\$6,850,000,000	36	210	Paul Owens, CEO; Sumit Mehra, chief operating officer; Sean Rider, director-business development
5	Strategic Risk Solutions Inc.	331	\$7,825,000,000 <sup>3</sup>	26	116	Brady Young, president/CEO; Michael O'Malley, senior vice president/managing director; Andrew Berry, chief operating officer
6	JLT Insurance Management	169	\$1,917,218,857	20	64	Melissa O'Sullivan, chief financial officer; Richard Daley, president
7	Quest Management Services Ltd. <sup>4</sup>	140	N/A	17	27	Nicholas Dove, chairman; Nicholas Frost, president; Jeff Kenneson, president-Quest USA
8	Risk Services LLC	110	\$261,000,000	10	45	Michael Rogers, chairman/CEO; B. Troy Winch, vice president-director of captive insurance; Jon Harkavy, executive vice president
9	USA Risk Group <sup>5</sup>	107	\$750,000,000	10	22	Paul Macey, president; Rob Leadbetter, vice president; Charmain Aggarwal, vice president
10	Atlas Insurance Management	83	\$324,000,000	14	28	Martin Eveleigh, chairman; Elaine Tapp, executive vice president; Mark Kay, senior vice president

<sup>1</sup> Captives electing to operate under Section 831(b) of the U.S. Tax Code are not included.  
<sup>2</sup> Premium volume includes total gross premium volume of captives managed by the company or on its behalf.  
<sup>3</sup> Company's estimates, as final numbers not available at time of print.  
<sup>4</sup> Bought the onshore assets of USA Risk Group in November 2018.  
<sup>5</sup> Sold its onshore assets to Quest Management Services Ltd. in November 2018.  
 N/A = Not available  
 Source: BI survey



## TOP 5 NORTH AMERICAN OFFSHORE CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2018

Rank	Domicile	2018	2017
1	Bermuda	711	739
2	Cayman Islands	674	669
3	Barbados	276	266
4	Anguilla	165	188 <sup>1</sup>
5	Nevis	155	151

<sup>1</sup> Restated.  
Source: BI survey



## TOP 5 ASIA-PACIFIC CAPTIVE DOMICILES

Ranked by number of captive licenses at year-end 2018

Rank	Domicile	2018	2017
1	Singapore	72	69 <sup>1</sup>
2	Labuan	48	43 <sup>1</sup>
3	Micronesia	25	22 <sup>1</sup>
4	New Zealand	9 <sup>2</sup>	6 <sup>2</sup>
5	Australia	7 <sup>2</sup>	5 <sup>2</sup>

<sup>1</sup> Restated. <sup>2</sup> BI estimate.  
Source: BI survey

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## Captive defenders dig in for fight

In the tug of war between tax authorities and captive owners that has played out in court over the past 40 years, the IRS has lately pulled backed some lost ground.

After some big wins for captive owners in the *Rent-A-Center* and *Securitas* U.S. Tax Court cases in 2014 — which widened the definition of what constituted risk distribution for the purpose of determining tax deductibility of premiums — the IRS was the victor in cases decided in 2017 and 2018.

The *Avrahami* and *Reserve Mechanical* decisions — the latter of which is being appealed — concerned so-called 831(b) captives, which are usually owned by small businesses that elect to be taxed under a provision of the tax code that allows them to pay tax only on the captives' investment income.



**Gavin Souter**  
EDITOR

With five closely watched cases being heard, the IRS won the first two decisions and continues its increased scrutiny of microcaptives. The lengthy decisions reveal a good amount of skepticism by the court over issues such as high premium payments, lack of claims, distributions of excess funds to family-controlled entities and circular flows of funds between captives and reinsurance pools.

While the IRS clearly targeted 831(b) captives they believed to be vulnerable to charges of tax avoid-

ance and many other microcaptives are structured differently, the effect of the IRS victories and the increased audits of the captives has been to dampen the growth of 831(b)s.

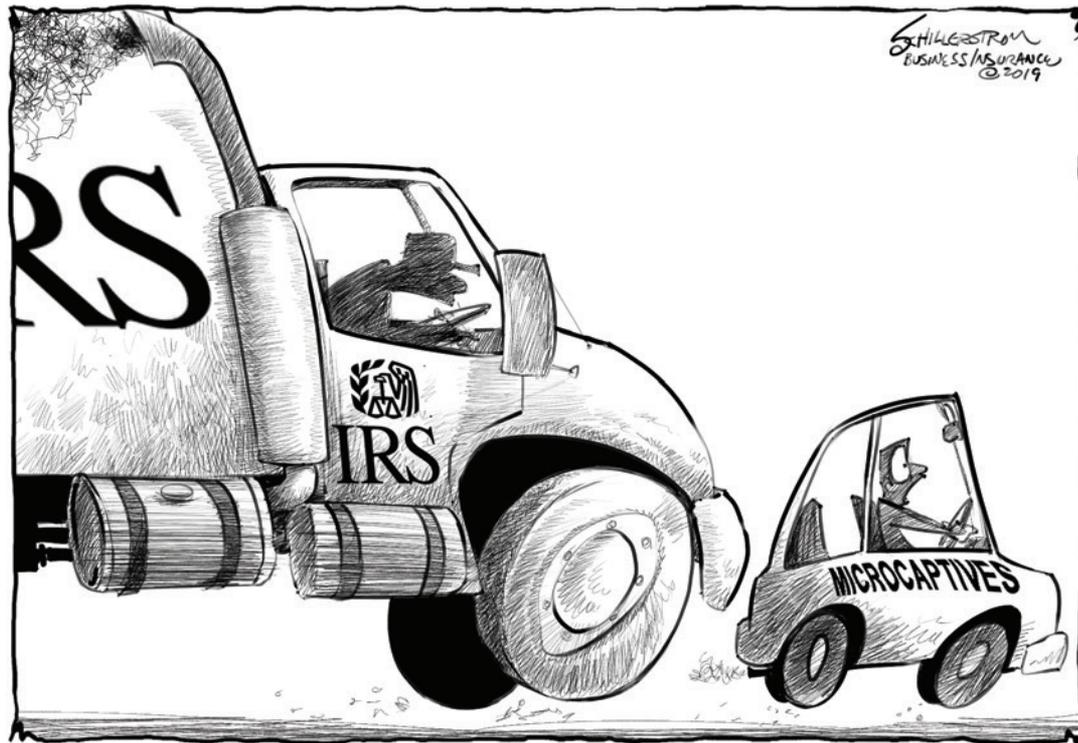
At the same time, and likely unrelated to the 831(b) saga, the number of total captives formed worldwide dipped again last year (see chart, page 28).

With the tax disputes playing out, it is encouraging to see industry organizations step up efforts to defend the use of all captives.

As we report on page 8, the Self-Insurance Institute of America recently published the Captive Manager Code of Conduct, which puts in writing what one would hope would be best practices already in place at most mainstream captive management firms. Meanwhile, the Captive Insurance Companies Association issued a document detailing commonly accepted practices involved in captive structures, particularly related to risk pools.

While it would be disingenuous to argue that tax plays no role in many companies' decisions on whether to set up captives, the structures provide numerous other benefits, including allowing tailored insurance coverage for tough risks, stable pricing, direct access to reinsurance and the ability to instill a culture of risk management throughout an organization. All those benefits are worth defending vigorously.

Meanwhile, *Business Insurance* recently redesigned its website to make it easier for readers to access news and information on all topics of interest to commercial insurance buyers. With an enhanced search function, users can quickly access items of interest, including stories from the *Business Insurance* archives going back to the launch issue in 1967. Check out the new look of the site at [www.businessinsurance.com](http://www.businessinsurance.com).



VIEW FROM WASHINGTON

## Protecting the caregivers

All across the United States, health care providers are being viciously attacked by patients and their family members, fellow employees and others. In Washington, D.C., something might actually be done about the violence.

The Workplace Violence Prevention for Health Care and Social Service Workers Act was introduced in the U.S. House of Representatives in February. The bill would direct the U.S. Occupational Safety and Health Administration to issue a standard that requires employers within these industries to develop and implement a comprehensive workplace violence prevention plan.

This isn't the bill's first rodeo. It's been introduced in previous legislative sessions, but its re-introduction and scheduled hearing are signs the new Democratic majority in the U.S. House of Representatives is paying serious attention to what is often a fatal workplace hazard. With the exception of law enforcement officers, health care and social services professionals are more prone to violence than in other industries. In 2016, 42 employees in the sector were fatally injured by violence and other injuries by people or animals — an increase from the 27 who died in 2015, according to the Bureau of Labor Statistics.

OSHA does not currently have a standard for workplace violence prevention. The agency has utilized the Occupational Safety and Health Act's general duty clause to cite health care employers for not protecting employees from workplace violence. But as seen in a recently affirmed citation against a psychiatric hospital where employees experienced at least 51 violent incidents in one year, such citations often originate from an employee complaint about unsafe working conditions, and some employees just do not report violent incidents, taking it as "part of the job" or because they don't want to stigmatize their patients. Sometimes citations emanate from a fatal incident.

However, such a piecemeal regulatory response does not address the scope of the problem nor does it force employers to take action on a broader scale.

A proposed standard for workplace violence prevention in the health care and social services industry is on OSHA's regulatory agenda. Proposals for new regulations generally don't stand much of a chance in the wake of the Trump administration's deregulatory efforts. But some workplace safety experts see the potential for this proposal to become an enforceable regulation.



**Gloria Gonzalez**  
DEPUTY EDITOR

I reported on the extreme violence in the sector for a cover story for the Winter 2018 edition of *Business Insurance's* Workers Compensation magazine. I heard horrific stories about gang members threatening emergency rooms, nurses being raped by patients, and medical professionals being both physically and verbally assaulted by patients and

their family members, including spitting, kicking and throwing cellphones and other items at them.

There may be a limit in addressing violent incidents involving patients suffering from conditions such as Alzheimer's or dementia who have limited control over their own actions and behaviors, but many other incidents are potentially preventable, and health care employers can and should be doing more to mitigate the risks.

There has to be a way to stop or reduce the bloodshed in the industry before more physicians, nurses, social workers and other health care providers decide the risk is not worth it and pursue other, less threatening professions.

# Cyber risks present challenges, opportunities for businesses owning captive insurers



Todd Cunningham is head of strategic risk solutions and captives for Zurich North America. He can be reached at 212-4553-3336 or [todd.cunningham@zurichna.com](mailto:todd.cunningham@zurichna.com).

**W**ith cyberattacks hitting the headlines regularly, and becoming more frequent and more financially damaging, businesses are waking up to the fact that solidifying their insurance strategy is one vital aspect to a holistic cybersecurity plan. For any company, guarding against cyber risks is all part of running a successful business; and with the risks related to cyberattacks growing exponentially each year, this is no less true for companies with captive insurance.

While businesses with captive insurers differ from those that take out policies with traditional insurers in numerous ways, largely speaking they, too, are struggling to understand the risks, let alone the exposures, stemming from cyber-related issues. But because of their structure, businesses with captive insurance face unique challenges — and also opportunities — when it comes to cyber insurance.

## Underwriting policies with limited information

By definition, a captive is an insurance company that is wholly owned and controlled by its parent company. Its purpose is to analyze and prioritize the risks of the parent company and to underwrite insurance policies that are precisely tailored to those risks. Among other benefits, owning the risks in this way allows for the parent companies to better control the costs associated with insuring against these risks.

Because captives are focused solely on the parent company and its risks, one of the biggest challenges when it comes to cyber risks is understanding and planning for the increasingly wide range of cyber event outcomes. This can mean loss of data and systems, unwanted disclosure of data and disruption to supply chains.

Captives only underwrite policies based on information from the parent company, unlike traditional insurers that have a wider range of actuarial information to guide pricing structures. With cyber threats and defenses constantly evolving, and with less data to rely on in a captive insurance structure, predicting when a security breach is going to happen and accurately calculating expected losses relating to cyber incidents is challenging.

The solution here is to use the wider insurance market if it is unclear that a pricing structure is adequate for the risks at hand. For example, captives can look to partnerships with fronting insurers that can provide a fuller view of the risks. When engaging an insurer to front the risk, that insurer will use its pricing models to calculate a fair price. While a captive will not gain full access to the information



held by the insurer, the captive insurer can better understand and accurately underwrite for cyber risks.

## Covering unpredictable but often large losses

We are moving into a period where businesses no longer ask themselves “if” they will be impacted by a cyber security breach, but “when” and “how much.” A global study by the Ponemon Institute LLC and IBM Security found that the average total cost of a cyber incident was up 6.4% in 2018 compared with the year before, continuing the trend of record-breaking breaches and hacks that cost extraordinary amounts. But unlike traditional insurance providers, captive insurers don’t generally diversify their risk portfolio across unrelated organizations; they are designed largely to manage their own parent company’s risks and are capitalized by the parent for this purpose.

*To address the risk diversity issue, captives can look to the wider industry if worried about cyber introducing increased volatility to the captive portfolio.*

Similar to the problem of limited actuarial information, to address the risk diversity issue, captives can look to the wider industry if worried about cyber introducing increased volatility to the captive portfolio. Retrocessional reinsurance can be purchased to protect against unexpected, frequent, large and unpredictable losses related to cyber breaches or hacks. Adding this layer of access to the global reinsurance market provides the protection to protect the capital and surplus of the captive.

This approach is critical in the strategic thinking of the captive owner and is being increasingly used to manage cyber risk. For example, we recently saw a large company incorporate a large limit

of insurance coverage for cyber risk into its captive. This allowed the parent company to manage its own risk, to develop appropriate coverage and to accrue capital for future expected losses. The captive then reinsured a significant amount of the risk on an excess-of-loss basis, protecting against the volatility associated with the cyber peril. This layered approach allowed the parent company to still benefit from the captive structure while protecting itself against large losses.

The typical sweet spots for captive insurers are fairly predictable and reasonable risks such as workers compensation — and cyber threats are anything but predictable. That’s not to say that captive insurers can’t successfully underwrite data breach coverages or business interruption coverages; they just need to recognize how the dynamic risks around cyber bring new challenges and need to be managed in a different way. Engaging experienced partners to support the captive owner on their journey is a prudent way to go.

## The future of cyber insurance for captives

The market for cyber insurance in the captive sector is young and evolving, but using captives to cover cyber risks is certainly increasing. Currently, the wider cyber insurance market is efficient and fairly priced given the volatile nature of risks in the space and associated costs. However, the threat of cyber risks is on the rise, and the capacity of the traditional market may come under pressure as losses materialize. To guard against surprises and tough conversations, captives need to begin to think more proactively about this peril and develop a strategy if the efficiency of traditional markets is compromised. Expect to see captives making advancements and solving for inefficiencies in ways that benefit the parent companies. As cyber risks remain top of mind for the C-suite and the board of directors, business owners need to explore new avenues to address cyber risk. Placing the risk in the captive with adequate reinsurance may offer an optimal solution in the face of an uncertain future.

## Cybersecurity firm launches insurer platform

■ Arceo.ai introduced a platform that enables insurers to automate and enhance their cyber insurance products while increasing policyholders' security.

The San Francisco-based company said in its statement the platform enables insurers to serve small and medium-size enterprises, which disproportionately suffer financial losses from cyber incidents.

It said its platform offers a transparent modeling process that enhances underwriting, accelerates providing quotes and provides insurers with "actionable technical cyber resilience guidance."

Company officials include sales head Ben Beeson, who formerly led Lockton Cos. LLC's cyber risk practice.

## Aon, insurtech firm partner on claims

■ Aon PLC and Australian insurtech firm Claim Central Consolidated Pty. Ltd. established a partnership to automate insurance and reinsurance claims handling.

Technology used includes live video streaming, aerial imagery, real-time chat and digital payments, Aon said in a statement.

Claim Central will establish a support center for the alliance with Aon in Jacksonville, Florida, with desk examiners, field adjusters and a connection to a credentialed contractor repair network, the statement said.

## Wearables firm teams up with IBM

■ Guardhat Inc., a Detroit-based industrial safety technology company specialized in developing wearables, infrastructure and software platforms, plans to work with the IBM Watson "internet of things" platform to integrate solutions for smart personal protection equipment and respond to potential risks in near-real time.

Guardhat's proprietary software actively monitors a user's location, pulse, body temperature and work environment. This provides a holistic view of every user's work environment and instant alerts in the event of a fall, exposure to toxic gases, lockout zones and proximity to moving equipment, the company said in a statement.

International Business Machines Corp.'s Watson platform is designed to help clients improve the operational efficiency and address potential risks with artificial intelligence. Its factory and construction industries service, Maximo Worker Insights, monitors biometric and environmental data in near real-time



## Cyber firm broadens GDPR cover for SMEs

■ Cybersecurity company Coalition Inc. said it is broadening its coverage for small and midsize businesses for General Data Protection Regulation violations.

San Francisco-based Coalition said in a statement that it will offer "full-spectrum" coverage to help businesses comply with GDPR regulations, protect against alleged violations, and pay resulting expenses and penalties.

The company can provide up to \$10 million in defense costs as well as fines and penalties for a covered GDPR violation, with limits as low as \$25,000. Premiums range from \$50 per year to more than \$100,000 per year for larger corporations that request a full \$10 million of coverage, according to the statement, adding the average cost of a policy is about \$4,000 for a \$1 million to \$2 million coverage limit.

A spokeswoman said in an email that Coalition has a syndicated placement with Swiss Re Ltd. and Argo Group International Holdings Ltd., where Swiss Re leads.

from wearables and other connected devices to help employers identify potential hazards in the workplace, according to the statement.

## Hanover partners with RSA on overseas risks

■ The Hanover Insurance Group Inc. has partnered with London-based RSA Insurance Group PLC in an agreement that

allows it to offer a wider range of insurance to U.S. businesses with overseas risks.

For policies beginning March 1, Hanover's agents will be able to offer admitted insurance that complies with local laws and legislation for foreign operations in countries where coverage must be written by local, licensed insurers, the Worcester, Massachusetts-based insurer said in a statement.

The partnership includes access to local claims experts overseas who can provide professional claims management and services for businesses, Hanover said in the statement.

## MGA, Aspen link up on P&I insurance

■ Managing general agent Lodestar Marine Ltd., part of Chicago-based Ryan Specialty Group LLC, entered into an agreement with the insurance division of Bermuda-based Aspen Insurance Holdings Ltd. to provide protection and indemnity insurance to the owners of small and specialized ships.

Under the contract, London-based Lodestar provides cover up to \$50 million backed by Aspen, with an additional \$450 million excess of loss capacity placed with about a dozen Lloyd's of London syndicates with a minimum A rating, said John Hearn, managing director and co-founder of Lodestar Marine.

Lodestar also provides claims handling services, the company said in a statement.

## Parametric policy focused on German crop loss

■ Pembroke, Bermuda-based specialty insurer and reinsurer Sompo International Holdings Ltd. and Stuttgart, Germany-based insurer SV Sparkassenversicherung launched a parametric insurance product to protect German farmers exposed to crop losses due to extreme weather.

An index-based product, SV ErnteIndex pays out based on a 10-year average crop yield index for the district where the farm is located, as well as yield and market price projections the farmer chooses at the time the cover is purchased, the companies said in a joint statement.

The parametric cover is designed to complement traditional loss-based crop insurance and protects German farmers against crop losses arising from drought, heavy frost or prolonged wet weather, the statement said. Typically, the coverage lasts for one year and can be used for a wide range of conventional and organic crops.

The parametric cover provides significant, unlimited capacity, a Sompo spokeswoman said.

## DEALS & MOVES

### AssuredPartners sold back to original owner

AssuredPartners Inc., based in Lake Mary, Florida, is being sold to its original private equity backer, Chicago-based GTCR LLC, by current owner Apax Partners LLP.

Terms of the deal, expected to close in the 2019 second quarter, were not disclosed, but sources said the purchase price was around \$5.1 billion. Apax will retain a minority investment in AssuredPartners and its management team, the firms said in a joint statement.

### Ryan Specialty expands in Texas

Ryan Specialty Group LLC agreed to acquire the assets and operations of Houston-based wholesale brokerage Myron F. Steves & Co. Terms of the deal were not disclosed.

Steves offers commercial property/casualty, professional liability, health care, transportation and personal lines, Chicago-based Ryan Specialty said in a statement. The Steves team of over 125 staffers will become part of wholesale brokerage unit R-T Specialty LLC.

### USI to buy wholesaler US Risk Insurance

USI Insurance Services LLC, based in Briarcliff Manor, New York, will acquire wholesale brokerage U.S. Risk Insurance Group Inc.

Terms of the deal, expected to close in the 2019 second quarter, were not disclosed.

U.S. Risk will maintain its Dallas headquarters and continue to operate independently under CEO Randall G. Goss and his leadership team, the companies said in a joint statement.

### PE-owned brokerage makes construction buy

Patriot Growth Insurance Services LLC, a recently launched private equity-backed brokerage, announced its first significant property/casualty brokerage acquisition.

Fort Washington, Pennsylvania-based Patriot has bought Montgomery, Alabama-based construction insurance broker Turner Insurance & Bonding Co. Terms of the deal were undisclosed.

Turner's 16 staff, which include CEO David Durden, have come on board to Patriot.

Turner handles property/casualty and employee benefits business.



“Fundamental change is coming to broking. Digitalization will bring services that are more innovative and more centered around clients, and at a lower cost.”

## UP CLOSE

### Jo Kendall

**NEW JOB TITLE:** London-based head of catastrophe and exposure management, Ed Broking Group Ltd.

**PREVIOUS POSITION:** London-based divisional director, catastrophe modeler, Willis Re

**OUTLOOK FOR THE INDUSTRY:** Fundamental change is coming to broking. Digitalization will bring services that are more innovative and more centered around clients, and at a lower cost. By embracing new technology, brokers will be able to improve efficiency through fast-flowing data, with decision-making becoming closer to “real-time.” Our role will become more advisory, as brokers evolve to become more like tech companies, providing electronic trading platforms. In the short term, the wider industry will face further change with a second year of cat losses impacting insurance-linked securities capital and Lloyd’s. And, of course, Brexit brings a level of uncertainty. But London continues to be a resilient market because it combines financial expertise, technology and talent.

**GOALS FOR YOUR NEW POSITION:** Firstly, to broadcast Ed’s growing analytical capabilities, further differentiating us from our competitors. And, secondly, to change the way cat modeling is used within the market so that our focus is more on the client’s specific issues.

**CHALLENGES FACING THE INDUSTRY:** One challenge is the current perception of cat models. Within the market, there is a growing overreliance on these models, which are deemed by some people to be providing precise figures on future loss, rather than simply a view. This results in nonmodeled perils being deemed less important in portfolios. The market standard needs to be changed.

**FIRST EXPERIENCE:** I started out doing cat modeling for an underwriter. To begin with, the focus was on data cleansing tasks, but I soon began to run the cat models, although at this stage I didn’t fully understand the science behind them.

**ADVICE FOR A NEWCOMER:** The learning curve can be slow, and at the beginning, certain jobs such as data auditing can appear mundane. But getting past those jobs can be hugely rewarding. They lay the groundwork at the beginning to learn how the data is derived from the models and gain a strong understanding of these processes.

**DREAM JOB:** I would have loved to incorporate my hobbies into a career, so a dream role outside of the industry would be either a personal trainer or something within the fashion industry.

**COLLEGE MAJOR:** IT, computer programming

**LOOKING FORWARD TO IN YOUR NEW JOB:** This role is a change for me. Previously, I was involved in the running of models and manipulating data. At Ed Broking, I’m looking forward to client interaction and working closely on bespoke projects, making the models meet the clients’ needs.

**FAVORITE MEAL:** My diet is focused around “clean eating,” so I really look forward to the days when I let myself have a roast chicken dinner, complete with all the trimmings.

**FAVORITE BOOK:** I enjoy reading crime thrillers, especially by my favorite author, Jo Nesbo.

**HOBBIES:** Fitness, fashion and reading

**TV SHOW:** “Game of Thrones”

**ON A SATURDAY AFTERNOON:** My Saturday afternoons are spent taking the dog for long walks in the country and finding time to relax, refresh and prepare myself for the week to follow.

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## ON THE MOVE



Lloyd’s of London named **Burkhard Keese** as its finance chief, effective April 1. Previously, he was chief financial officer of Allianz Deutschland AG, a unit of Allianz SE.



Swiss Re Ltd. hired **Anette Bronder** as its group chief operating officer and member of the group executive committee, effective July 1. She joins Swiss Re from

T-Systems International GmbH, the IT arm of Germany’s Deutsche Telekom AG, and replaces Thomas Wellauer, who is retiring.



Health insurance startup Oscar Insurance Corp. hired former American International Group Inc. executive **Sid Sankaran** to be chief financial officer, effective March 1. He

had been executive vice president and CFO at AIG and is based in New York.



Scor SE named **Jean-Paul Conoscente** as CEO of its global property/casualty division, effective April 1. Currently CEO of reinsurance, he will also join the group’s executive

committee. He is based in New York and succeeds Victor Peignet, who retired.



Aon PLC named brokerage executive **Lambros Lambrou** as CEO of its commercial risk solutions division. Based in New York, he has worked at Aon for 30 years, most recently

as CEO of global specialties. He replaces Tom Fitzgerald, who left Aon in January.



Ironshore Specialty Casualty named Boston-based **Tracey Sharis**, former senior vice president of operations, distribution and retail distribution, to be director of



programs. Ironshore also named former Liberty International Underwriters executive **Casey Hartley** to be senior vice president, head of programs business in the U.S. Ms. Hartley is based in Atlanta.



## Risk manager job gets no love

At least risk manager made the list — even if the bottom third — unlike claims manager and insurance broker. Glassdoor Inc., a website that allows employees to anonymously post information about their employers, this winter released its “50 Best Jobs in America” report, identifying specific jobs with the highest overall “Glassdoor Job Score.” It weighs three factors equally: earning potential, or median annual base salary; overall job satisfaction rated 1 to 5; and job openings.

Risk manager came in at No. 35, with an average salary of \$100,500, a score of 3.7 out of 5 in job satisfaction; and boasting 3,924 openings as of early January.

The top three jobs listed were data scientist, nursing manager and marketing manager. At the bottom were systems administrator, software development manager and brand manager.

## Burger King settles Whopper of a deal

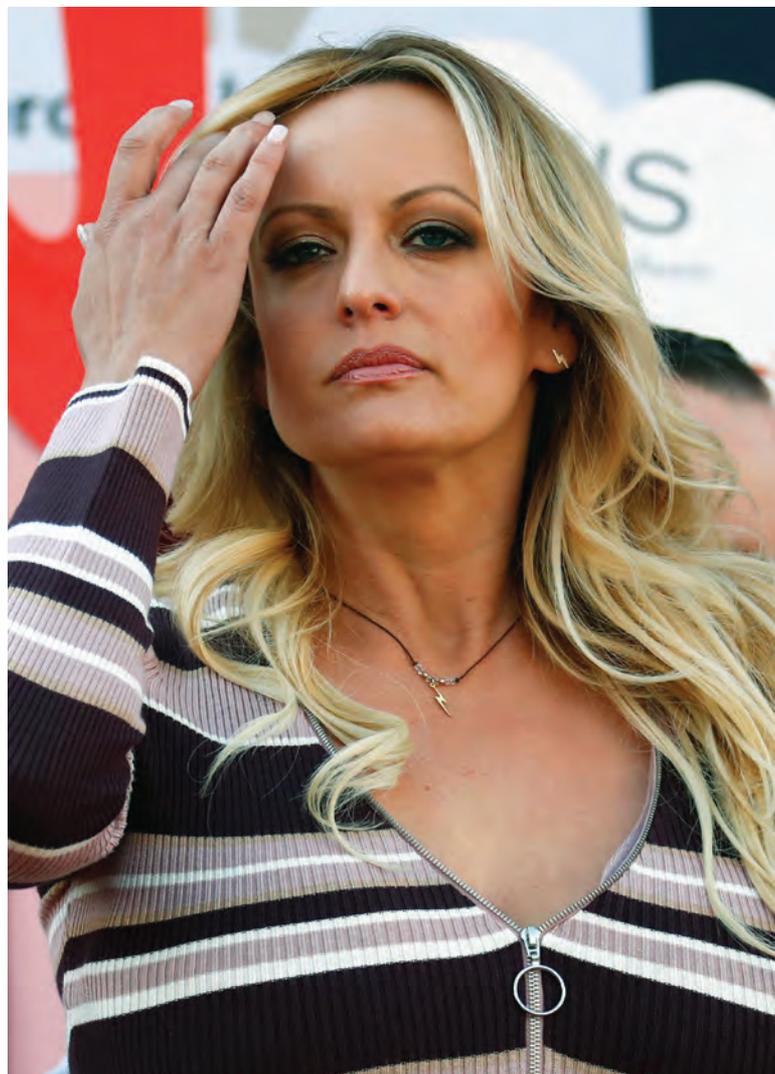
That settles it: If you get locked in a Burger King bathroom, you earn free Whoppers for life. Or rather the cost of them, as a Portland, Oregon, man learned when the chain settled his lawsuit stemming from a December incident where he was locked in a bathroom for over an hour.

In response to his January lawsuit, Burger King gave Curtis Brooner, 50, \$9,026 — the cost of one Whopper value meal a week for his life expectancy of the next 22 years, his lawyer told the Willamette Week newspaper.

Mr. Brooner alleged in his suit that he also cut his hand using a fly swatter to help pry open the lock and that he could hear employees laughing at the situation, according to news reports.



# STORMY OUTLOOK FOR EXOTIC DANCERS



“Who doesn’t want health insurance and workers comp coverage?” a guest columnist asked in a Los Angeles Times last month.

Well not all exotic dancers do, famed porn actress Stormy Daniels claimed in a column she penned for the paper, arguing a recent ruling will threaten this line of work.

California Supreme Court decision in *Dynamex Operations West Inc. v. Superior Court of Los Angeles* found that for a worker to be an “independent contractor,” he or she must perform “work that is outside the usual course of the hiring entity’s business.”

“At most strip clubs, including the ones I’ve worked at throughout my career as a stripper, dancers work as independent contractors who set their own hours,” she wrote. “The work strippers do is clearly not outside the usual course of a strip club’s business.”

She also argued that forcing exotic dancers into employment contracts limits their money-making ability: “The successful strippers I know are industrious entrepreneurs. We move from club to club, going where the money is best.”



## ‘Lord Voldemort’ requests his due

A disgruntled insurance agent in Singapore sent anonymous threatening messages to some clients after they canceled the policies they had bought from him, asiaone.com reported.

He called himself “Lord Voldemort,” among other scary-sounding fictional characters, according to the article chronicling Ye Lin Myint’s eventual arrest and sentencing to two years and five months.

Mr. Myint was also unhappy with appointment no-shows and they, along with neighbors and canceled policyholders, were among the 33 people he targeted with threatening letters and emails in 2017.

All from Lord Voldemort, among other pseudonyms.



## Helicopter scams in Nepal taking off

Travel insurance claims stemming from travelers trekking near Mount Everest are reportedly spiraling out of control.

Several international insurers are now threatening to end travel coverage to Nepal if the government does not stop fraudulent “trek operators, guides, helicopter companies and even doctors and hospitals” from conspiring “to bilk millions of dollars from insurance companies by pushing for emergency mountainside evacuations for minor illnesses, or when simpler treatment options were available,” The New York Times reported.

Investigations in 2018 by the Nepali government and Traveller Assist Ltd., a medical assistance company based in Ireland, found that conspirators “preyed on trekkers when they were most vulnerable,” according to the newspaper. “The Nepali government found evidence that some guides went as far as intentionally making hikers ill by spiking their food with large amounts of baking soda, which can cause vomiting, diarrhea and other ailments, and then calling for an emergency helicopter evacuation.”

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