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PAGE 24

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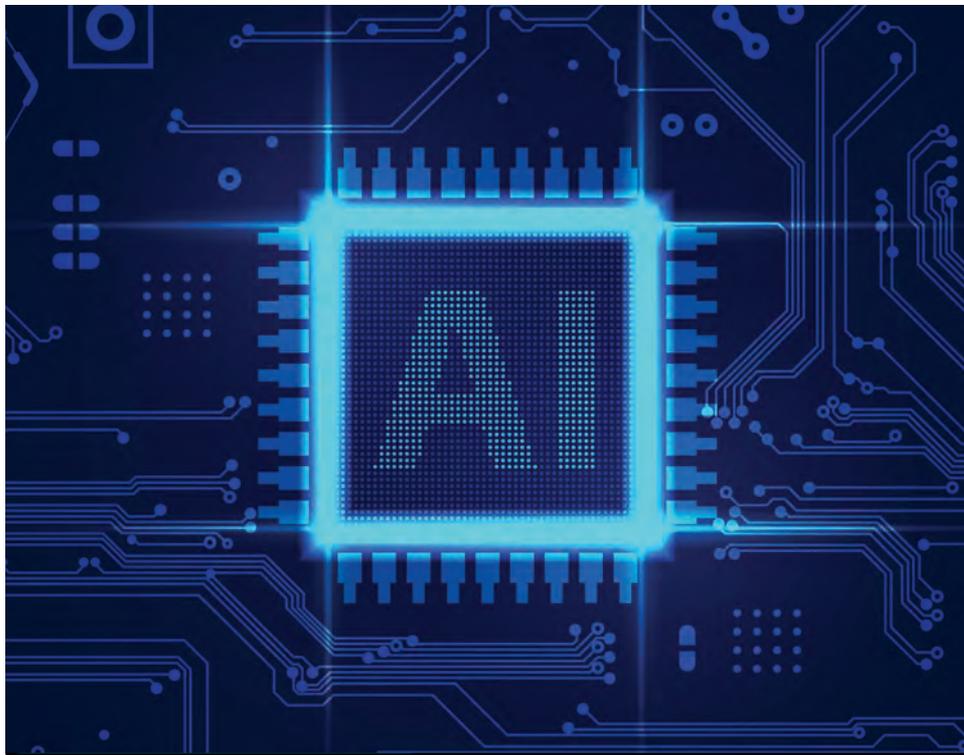
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INSIDE



PERSPECTIVES

The legal landscape in Illinois is more of a minefield after a biometrics privacy ruling, says Franklin Z. Wolf of Fisher & Phillips. **PAGE 33**

- ▶ **LEGAL BRIEFS**
Recent court opinions **PAGE 17**
- ▶ **OPINIONS**
Time for Congress to take a stand on LGBT protections **PAGE 32**
- ▶ **MARKET PULSE**
Products, deals and more **PAGE 34**
- ▶ **PEOPLE**
Insurance industry moves **PAGE 35**

SPECIAL REPORT: RISK MANAGEMENT TECHNOLOGY

Drones take off as insurers' eyes in the sky; risk managers uniquely positioned to address cyber threats; telematics use on the rise in commercial auto sector; builders use technology to improve safety and efficiency; RMIS survey data. **PAGE 24**

NEWS ANALYSIS

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RISK MANAGEMENT

NFIP adopting new approach to rating flood risk as lawmakers debate reauthorization. **PAGE 4**

WORKERS COMP

The safety review commission has put OSHA on notice that it may be overusing its general duty clause. **PAGE 10**

INTERNATIONAL

The Norwegian property/casualty market is sophisticated and well-developed. **PAGE 16**

VIEW FROM THE TOP

JOHN HALEY

John Haley became chief executive officer of Willis Towers Watson PLC in January 2016 on the completion of the \$18 billion merger of Willis Group Holdings PLC and Towers Watson & Co. In 1977, he joined what was then The Wyatt Co., and was named CEO of Watson Wyatt Worldwide in 1998. In this issue, he discusses lessons learned from the integration and the company's appetite for mergers and acquisitions. **PAGE 18**



OFF BEAT

Domestic doyenne Martha Stewart moves on from crafts and recipes to medical cannabis. **PAGE 36**



National flood program revisits risk ratings

BY GLORIA GONZALEZ

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The National Flood Insurance Program is adopting an approach to rating flood risk that has been employed by the private market for years and that can more accurately capture an individual property's true risk of flood and price that risk more appropriately, experts say.

There are lingering concerns, however, about a lack of transparency over the new risk rating system. Meanwhile, legislative proposals to reauthorize the program ahead of another expiration are being debated, but unresolved questions such as how to handle the program's current debt could prevent an overhaul package from moving forward.

"We're going to change an insurance rating structure that hasn't fundamentally been changed since the 1970s," said David Maurstad, deputy associate administrator of the Federal Insurance and Mitigation Administration of the Federal Emergency Management Agency and chief executive of the NFIP. "We're going to consider more flood risks than we currently do now. It is going to be based on replacement costs of the properties."

More information about effects on policyholder will be released in the coming weeks, but the new rating system will be "data-driven" and factor in different variables rather than basing flood insurance premiums simply on whether or not a property is in a flood zone, Mr. Maurstad said. For example, the new system will determine a policyholder's flood risk by incorporating elements such as different types of flooding — heavy rainfall from a hurricane, river overflow or coastal surge — and a building's distance to a coast or river.

"I think the concept is phenomenal," said John Dickson, president of Aon Edge in Kalispell, Montana, which sells flood insurance policies. "What they're trying to do is what the private industry has been working on for years, which is defining rates that are more tailored to the risk associated with an individual location. The situation you have today where an A zone in Florida is



REUTERS

A flooded Interstate 95 after Hurricane Florence went through North Carolina in September 2018 highlighted the need to revamp the NFIP's flood risk mapping process.

FIXING NFIP

The House Financial Services Committee is considering a comprehensive overhaul of the National Flood Insurance Program, which has suffered costly losses in recent years.

- The number of NFIP policies in force has declined from the high point of 5.7 million in 2009 to 5.1 million in 2017.
- NFIP earned premiums totaled \$3.3 billion in 2017.
- Flood loss payments totaled \$8.7 billion in 2017, higher than the 2016 losses of \$3.7 billion, but less than the \$9.5 billion in 2012, the year of Superstorm Sandy.
- In 2005, loss payments totaled \$17.8 billion, the highest amount on record, including losses from hurricanes Katrina, Rita and Wilma.

"These figures do not take into account the 2018 hurricane season"

Source: Federal Emergency Management Agency and the Congressional Research Service

the same as an A zone in Iowa, that gets addressed substantially with Risk Rating 2.0, at least as far as the concepts go."

The movement away from mandating flood coverage based on predefined zones toward a more individualistic approach to rating properties was widely praised, because property owners have often mis-

takenly believed they did not need flood insurance if they were outside of the zone and not required to purchase coverage to comply with requirements of their federally backed mortgages — a misperception that proved costly in places like Houston after Hurricane Harvey.

"It's a timely upgrade of the NFIP program, including tying the premium to the actual flood risk of the property rather than the artificial 100-year flood zone boundaries that they do their rating off of right now," said Jim Albert, CEO of private flood insurer Neptune Flood Insurance. "It changes the game in the required and not required definitions ... and the confusion that generates in the market of people confusing 'not required' with 'not needed.'"

But there is uncertainty over how Risk Rating 2.0 will work, stakeholders say.

"In my experience, FEMA likes to play things very close to the vest," Mr. Dickson said. "What tends to happen is they have really great ideas, but they do limit the input and they do limit the number of constituents and stakeholders who get to see the entire concept. When that happens, you're not getting a full view, and unexpected, unintended pricing issues happen." But stakeholders express cautious opti-

mism about the few details that have been released, such as the fact that FEMA will add a rainfall metric to the mix, particularly in light of hurricanes Harvey and Florence, which dropped significant rain in a short period of time, leading to major flooding.

"There's a changing nature of storms," Mr. Albert said. "Hurricanes don't just sweep in and out of the area in a few hours. Both of those storms came and sat for days."

The House Financial Services Committee is debating drafts that would extend the NFIP to Sept. 30, 2024, and raise the limits of coverage from \$250,000 to \$500,000 for residential properties and from \$500,000 to \$1.5 million for commercial properties.

"If they raise the available limit, it would really help the NFIP because they could then charge against a higher limit and collect a more accurate premium," said Craig Poulton, CEO of Salt Lake City-based Poulton Associates Inc., the underwriting manager and administrator of the Natural Catastrophe Insurance Program, a private flood insurer. "But even if that doesn't happen, if the NFIP implements Risk Rating 2.0 and ... they implement the rates logically, in the way the private market would implement them, then (the replacement costs) issue should be a thing of the past."

The draft legislation would cancel the NFIP's existing debt, which House Financial Services Chair Maxine Waters, D-Calif., supports but continues to be a significant point of contention.

A "glaring omission" is "a mandate that Risk Rating 2.0 and anything that comes after it ... has to be actuarially defensible," Mr. Poulton said. "Congress has to tell the NFIP in no uncertain terms that they need to design their rates so they will not go to the Treasury for money anymore."

The committee held a hearing on the bills in March. Tom Santos, vice president of public policy advocacy for the American Property Casualty Insurance Association in Washington, called it "a good first step."

"It will be May 31st before we know it, though," he said, referring to the NFIP's scheduled expiration. "The clock is ticking."

CONGRESS AIMS TO ADDRESS NFIP FLOOD RISK MAPPING, MITIGATION

Draft legislation for a comprehensive overhaul of the National Flood Insurance Program would strengthen the program's flood risk mapping and mitigation initiatives, experts say.

The legislation would reauthorize the flood-mapping program and provide \$400 million per fiscal year through 2023 to fund improvements to mapping technology, including the use of property-

level Light Detection and Ranging surveys.

The Congressional Budget Office found that of the 166 U.S. counties with expected annual flood claims of more than \$2 million, together representing 89% of the NFIP's \$3.7 billion in total expected annual claims, 83 counties had maps that were more than 5 years old and 17 had maps that were more than 16 years old, according to a November 2017 report.

"I don't think there's any real disagreement on the need to engage in those type of activities," said Tom Santos, vice president of public policy advocacy for the American Property Casualty Insurance Association in Washington. "I think the hurdle that needs to be overcome is that they are expensive."

On the mitigation side, the legislation would double the Increased Cost of

Compliance coverage, which currently provides up to \$30,000 to help cover the cost of mitigation measures to reduce flood risk and enable policyholders to use ICC coverage — part of most NFIP policies — to reduce their risk before the property floods. An ICC increase is "very, very helpful," said Alan Rubin, a New York-based principal with Blank Rome LLP.

Gloria Gonzalez

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High court silent on LGBT bias cases

BY JUDY GREENWALD

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The U.S. Supreme Court's refusal so far to accept certiorari on cases concerning sexual and gender identity leaves employers facing an uncertain legal landscape and a litigious U.S. Equal Employment Opportunity Commission.

The Supreme Court has turned away cases by two U.S. appeals courts that said such issues are covered under Title VII of the Civil Rights Act of 1964, and one by a third that held it does not.

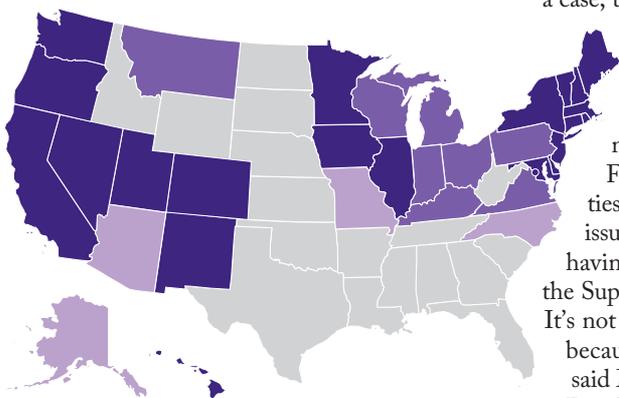
At the same time, states are issuing their own laws and policies. According to the Washington-based Human Rights Campaign, 21 states and the District of Columbia prohibit discrimination based on sexual orientation and gender identity as of Jan. 28.

"Employers were looking for the Supreme Court to provide some clear guidance," said Mark T. Phillis, a shareholder with Littler Mendelson P.C. in Pittsburgh.

But while the federal law on the issue remains uncertain, employers who do not have policies prohibiting discrimination because of sexual orientation or gender identity policies still face possible litigation from the EEOC, which has disagreed with the administration's Justice Department on the issue.

SEXUAL ORIENTATION DISCRIMINATION LAWS

The federal Equal Employment Opportunity Commission is currently accepting complaints of sexual orientation and gender identity discrimination in employment based on Title VII's prohibition against sex discrimination.



- Prohibit discrimination based on sexual orientation and gender identity (21 states & D.C.): California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Washington
- Prohibit discrimination against public employees based on sexual orientation and gender identity (8 states): Indiana, Kentucky, Michigan, Montana, Ohio, Pennsylvania, Virginia, Wisconsin
- Prohibit discrimination against public employees based on sexual orientation only (4 states): Alaska, Arizona, Missouri, North Carolina

Source: Human Rights Campaign



The Supreme Court's apparent reluctance to accept the cases has generated speculation the court is wary of dealing with such a contentious issue.

The court "is leaving the split between the EEOC and the Justice Department because they don't want to deal with it, because politically it's a hot potato. That's my guess," said Richard B. Cohen, a partner with Fisher-Broyles LLP in New York.

"It is somewhat of a calculated move by the Supreme Court to not take these cases which are highly volatile and that are subject to being resolved through legislation and by public opinion," said Paul E. Starkman, a member of law firm Clark Hill PLC in Chicago.

If and when the Supreme Court takes such a case, they will seek to rule on "the most narrow ground on which they can get a consensus or majority," Mr. Starkman said. "I don't know that they're looking to make any broad pronouncements of the law if they can avoid it."

Furthermore, with state and local entities issuing regulations on their own, "this issue is going to be largely resolved without having to have a broad pronouncement by the Supreme Court on an issue of federal law. It's not going to have a huge practical impact because of all these other local activities," said Mr. Starkman.

But there would be advantages for employers and their insurers to having the Supreme Court interpret federal law on the issue, experts say.

"There's no consistency, there's no clarity on where the law is, and that just proves difficult from an underwriting perspective," said Talene Carter, New York-based national employment practices liability leader in Willis Towers Watson PLC's FINEX North America practice.

"Until there's some consistency and certainty, the state laws are really going to be the drivers" on the issue, she said.

"It would be really helpful to insurers" to have a Supreme Court ruling on the issue because they would like certainty rather than the cur-

rent patchwork of laws, said Tom Hams, Chicago-based managing director and national employment practices liability insurance practice leader at Aon PLC.

Meanwhile, the EEOC "is going to continue to take the position that Title VII should be read expansively," and even if the agency does not file suit itself, "there are also plenty of plaintiff lawyers who would relish the opportunity to become one of the seminal cases" that expand its interpretation, said Tim K. Garrett, of Bass, Berry & Sims PLC in Nashville, Tennessee.

A congressional solution is also possible, said Kelly Thoerig, Richmond, Virginia-based U.S. employment practices liability product leader for Marsh LLC, who pointed to the proposed Equality Act recently introduced in Congress that would expand Title VII to include gender identity and sexual orientation. Past congressional legislative efforts have been unsuccessful.

Experts advise employers to act in effect as though their circuit court has ruled Title VII covers sexual orientation and gender identity, even if they have not done so.

In its February 2018 ruling in *Melissa Zarda et al. v. Altitude Express*, the 2nd Circuit in New York decided in favor of Donald Zarda, a gay skydiver, who sued his former employer, Calverton, New York-based Altitude Express, alleging he was fired from his job as a skydiving instructor because of his sexual orientation.

In March 2018, the 6th Circuit in Cincinnati, in *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, ruled in favor of a transgender worker who was fired when she told her funeral home employer she was undergoing a gender transition to male from female.

In contrast, in a May 2018 ruling, the 11th Circuit in Atlanta in *Gerald Lynn Bostock v. Clayton County* upheld a lower court decision and ruled against Mr. Bostock, a gay man who contended he was fired as a child welfare services coordinator for the Clayton County Juvenile Court system because of his sexual orientation.

#METOO PROPELS INCREASE IN CLAIMS

The employment practices liability market is beginning to show some signs of hardening, but experts do not attribute it to the uncertain legal landscape surrounding gender identity and sexual orientation issues.

They point instead to increased claims stemming from the #MeToo movement.

Rates are firming, said Tom Hams, Chicago-based managing director and national employment practices liability insurance practice leader at Aon PLC.

The majority of accounts that do not have recent claims payments or a significant increase in headcounts are finding rates that are flat to up a few percentage points, but those experiencing claims are seeing more substantial increases, he said.

Rates are increasing about 5%, except in California, where they are increasing 5% to 10%, said Talene Carter, New York-based national employment practices liability leader in Willis Towers Watson PLC's FINEX North America practice.

There has also been an increase in retentions, "especially in the middle market," she said.

There was a "slight uptick in rates" among Marsh LLC clients in the 2018 fourth quarter, but "not shockingly so," and claims volume is up significantly, said Kelly Thoerig, Richmond, Virginia-based U.S. employment practices liability product leader for the brokerage.

Much of that is driven by the increased exposure created by the #MeToo movement and sexual harassment claims, said Mr. Hams, adding there has not been any retrenchment of coverage.

Judy Greenwald

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London, Singapore deals signal ILS strength

BY MATTHEW LERNER

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Recent catastrophe bonds issued out of London and Singapore demonstrate the two domiciles' potential for growth even as the insurance-linked securities sector takes stock after the heavy catastrophe losses of 2017 and 2018, industry experts say.

Insurance Australia Group Ltd. secured AU\$75 million (\$53.5 million) of annual aggregate catastrophe protection for three years with its Orchard ILS Pte. Ltd.

And Pool Reinsurance Co. Ltd., Britain's terrorism risk reinsurer, secured £75 million (\$99.1 million) in coverage with a three-year catastrophe bond through special-purpose vehicle Baltic PCC Ltd.

There are more potential bond transactions for both London and Singapore, said Cory Anger, New York-based global head of ILS origination and structuring at GC Securities, a division of MMC Securities LLC.

"Over time, we will see more transactions come out of both domiciles, and we're certainly aware of clients that are



A flooded street after Hurricane Irma hit Fort Lauderdale, Florida, in September 2017

contemplating issuing out of both," said Paul Schultz, Chicago-based CEO of Aon Securities.

"Aon Securities is very supportive of new domiciles to the extent that clients that operate in those domiciles or even time

zones to some degree," find additional comfort in trading locally, Mr. Schultz said, adding the company is supportive of even more domiciles "if that makes sense for the market."

The nascent market will likely take some time to develop, according to Ian Stewart, Clyde & Co LLP partner in Singapore.

"Despite developments in London and Singapore, it is still very much early days for both of these ILS markets," he said in an email answer to questions.

"At this point, the new rules offered by London and Singapore are not pushing new issuance, but the framework of both regulations are adding folks looking to utilize ILS," Ms. Anger said. "Singapore's grant reimbursement scheme for upfront expenses is a key draw of the jurisdiction and expect that to help new sponsors consider utilizing ILS."

London's new insurance-linked securities regulations and Singapore's 2018 grant program to support upfront issuance costs are both recent additions to the market, Mr. Stewart said.

"In the U.K., there were just a handful of ILS issued in the first year since the new rules came into force," he said. "We expect the pace to accelerate."

"Meanwhile, we have just seen the first cat bond issued from Singapore," he continued, adding, "It is generally accepted the development of an ILS platform and the establishment of a functioning ILS market will not occur overnight — it takes time as the necessary regulatory framework is established and refined and gradually the expertise necessary to provide services to potential sponsors is put in place."

"However, the appetite for ILS is undeniable, and both these markets are moving

in the right direction. Both are positioning themselves as genuine contenders to compete with those jurisdictions that lead the way in ILS offerings at present," Mr. Stewart said.

At the same time, sources were generally bullish on the market's future, even as some momentum may have come off as players take stock after substantial catastrophe losses in 2017 and 2018.

"Following 2017 events, we saw on a net basis positive cash coming into the marketplace," Mr. Schultz said. "Following 2018, it feels a bit more neutral. Net, net, it feels a bit more flat to us."

"Sentiment on the overall market is bullish despite losses," said Bill Dubinsky, New York-based head of ILS at Willis Towers Watson Securities. "End investors are still producing net inflows to ILS for both life and nonlife," but with "relatively more churn," he added.

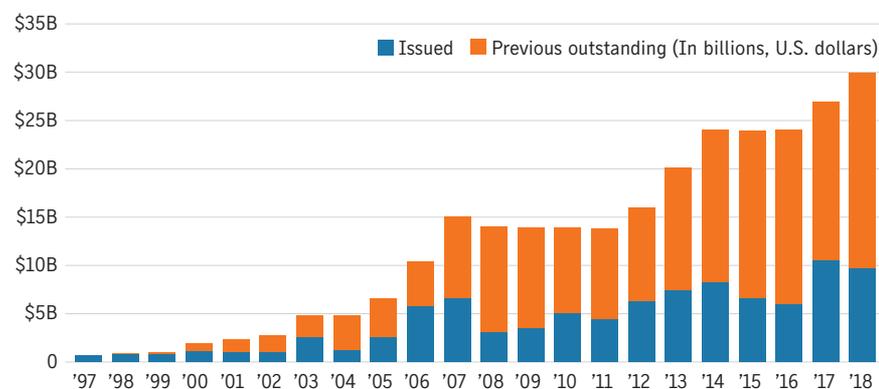
"The majority of other end investors are still keen to grow but perhaps a little more skeptical of promises of rate increases in 2019 when they didn't materialize to the same extent as they were led to believe in 2018," he said.

"ILS capital is here to stay. The bump caused by hurricanes Harvey, Irma and Maria was not, as predicted by many, the end of the road for ILS."

Ian Stewart,
Clyde & Co LLP

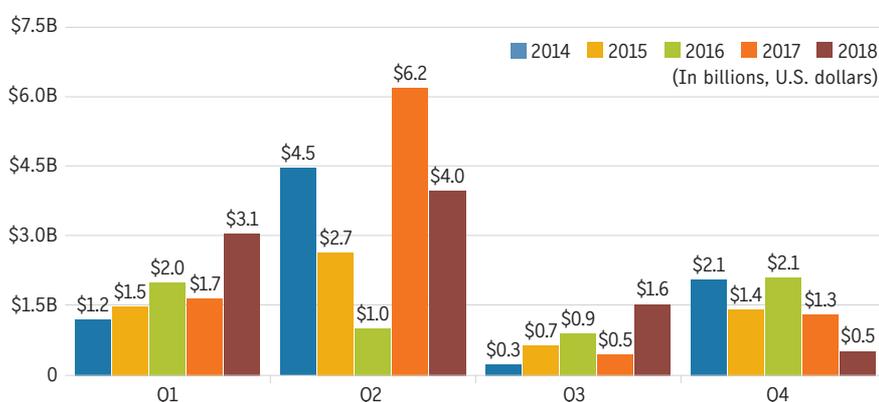
YEARLY ISSUANCE AND OUTSTANDING ILS BONDS

The primary market saw another active year in 2018, as total issuance reached \$9.7 billion across 29 transactions and 49 tranches, placing it overall as the second-highest year of issuance volume since the market's inception, and only 8% down from 2017's \$10.5 billion.



Source: Swiss Re Capital Markets, as of Dec. 31, 2018

PROPERTY/CASUALTY ILS ISSUANCE BY QUARTER (2014-2018)



Source: Willis Towers Watson PLC



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OSHA's general duty clause flagged

BY GLORIA GONZALEZ

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The Occupational Safety and Health Review Commission has sent clear signals that federal workplace safety regulators should adopt standards to address heat stress risks and workplace violence in the health care and social services sector rather than relying on the general duty clause to cite employers, but it did not broadly strike down the agency's ability to use the clause in two recent decisions, experts say.

Experts warned the rulings may not be the last word, as both cases could be ripe for appeal and the makeup of the review commission is in limbo with one commissioner announcing her resignation and another commissioner's term set to expire in April.

In *Secretary of Labor v. A.H. Sturgill Roofing Inc.*, the U.S. Occupational Safety and Health Administration issued a general duty clause citation following the death of a 61-year-old temporary employee with various pre-existing medical conditions on his first day of work, according to commission documents. Sturgill contended that the Secretary of Labor failed to prove any of the required elements of an Occupational Safety and Health Act general duty clause violation. Commissioners Heather MacDougall and James Sullivan agreed that the secretary failed to prove both the existence of a hazard and a feasible means of abatement and vacated the citation. Commissioner Cynthia Attwood dissented, finding that the secretary established all the required elements of the clause, according to the decision.

"I really looked at it as the commission, in its present makeup, saying to the agency, 'You'd better be sure that this is a situation where a reasonable employer is clearly on notice that there is a serious risk of physical harm or death based on a hazard,' because the OSH Act is not a strict liability statute," said Stephen Phillips, Atlanta-based senior partner with Hendrick Phillips Salzman & Siegel P.C., who filed an amicus brief on behalf of the National Roofing Contractors Association.

Meanwhile, the commission affirmed a citation against a social services employer whose employee was fatally assaulted in a test of OSHA's use of the clause to cite employers in the health care and social services industry for failing to protect employees from workplace violence, according to the decision in *Secretary of Labor v. Integra Health Management Inc.*

A consistent theme in both the *Sturgill* and *Integra* cases was the discussion among the commissioners about OSHA's use of the clause to cite employers when there is no specific standard. Despite acknowledging that workplace violence in health care



A GENERAL DUTY

The Occupational Safety and Health Review Commission in March issued two long-awaited decisions in cases challenging the U.S. Occupational Safety and Health Administration's use of the Occupational Safety and Health Act's general duty clause.

➤ In *Secretary of Labor v. A.H. Sturgill Roofing Inc.*, the review commission vacated citations issued to a roofing contractor following the August 2012 death of a 61-year-old temporary employee with various pre-existing medical conditions on his first day of work after he suffered heat stroke.

➤ In *Secretary of Labor v. Integra Health Management Inc.*, the review commission affirmed a citation against a social services employer whose 25-year-old employee was fatally stabbed nine times in December 2012 by a client with schizophrenia who had a prior criminal record.

and social services is a serious employee safety concern, Ms. MacDougall expressed concern in the *Integra* decision about the commission establishing a precedent that the alleged hazard is covered by the clause, invoking the adage that "bad facts make bad law." She also cited "troubling issues" in the way the commission was asked to construe the use of the clause in the *Sturgill* case.

"I think she's tipping people off on her view that the general duty clause should be used sparingly," said Robert Dunlevey, Dayton, Ohio-based senior counsel at Taft Stettinius & Hollister LLP and the attorney for Sturgill.

But Gabrielle Sigel, Chicago-based co-chair of Jenner & Block LLP's environmental and workplace health and safety law practice, said the review commission did not rule in either case that there can be no general duty clause citations. "I would suggest that it doesn't even stand for the proposition that heat illness cannot be a basis for a general duty clause" citation, she said. "However, the majority in the *Sturgill* case ... are clearly concerned about OSHA's use of the general

duty clause as an enforcement mechanism."

A footnote in the *Sturgill* decision noted that while practical considerations may have led OSHA to rely on the clause in lieu of setting standards, the provision seems to have increasingly become more of a "gotcha" and "catch all," which often leaves employers confused as to what is required of them.

In the *Integra* case, Mr. Sullivan stated, "I believe that Congress did not contemplate that the Secretary would apply the general duty clause to workplace violence hazards."

"These two decisions have heavily indicated, at least for the current makeup of the review commission, where they would like to see the Secretary of Labor and OSHA move the ball on these issues, because the commissioners certainly have a lot of problems with" OSHA's use of the clause, said Raymond Perez, of counsel and a labor and employment attorney in the Atlanta office of Jackson Lewis P.C.

The workplace safety industry may not have seen the last of either the *Sturgill* or the *Integra* litigation, experts say. OSHA declined to comment on both decisions, and *Integra* and its attorney did not return requests for comment.

"I think that's a very realistic prediction," said John Ho, New York-based chair of Cozen O'Connor's OSHA practice. "I think that these issues are ripe for a circuit court."

Meanwhile, the makeup of the review commission could look very different, as Ms. MacDougall announced she would be stepping down by the end of March, and Ms. Attwood's term expires on April 27, creating concerns that another potential staffing shortage at the review commission could complicate or stall decisions in difficult cases such as *Sturgill* or *Integra* — both of which trace back to 2012 fatalities.

"If it's going to be down to one member or even just two, they are not going to be able to hear cases or make decisions that are going to be binding," Mr. Perez said.

CALIFORNIA TAKES THE LEAD

If the U.S. Occupational Safety and Health Administration wants to promulgate specific standards to cover heat-stress hazards or mitigate the risk of workplace violence in health care and social services, it need look no further than the state of California.

The Occupational Safety and Health Review Commission recently noted the most populous state's leadership in adopting regulations covering both exposures and that such rule-making processes allow all interested parties to comment while enabling regulators to give clear notice about what is required of employers.

A footnote in *Secretary of Labor v. A.H. Sturgill Roofing Inc.* references the fact that California's Division of Occupational Safety and Health has had a heat illness prevention regulation in existence since 2006. Similarly, in *Secretary of Labor v. Integra Health Management Inc.*, the commissioners note the California Division of Occupational Safety and Health promulgated a workplace violence prevention in health care standard that went into effect in April 2017.

"I don't think the commissioners are passing any judgment on whether such standards are good or bad — it's just legally that's the best way to give everybody an opportunity to comment on it," said John Ho, New York-based chair of Cozen O'Connor's OSHA practice. "(T)heir point is 'Look, if you want to do it, you can do it this way, and California in fact has done it that way.'"

In the *Integra* opinion, Commissioner Cynthia Attwood noted that Commissioner Heather MacDougall's concurrence asserted that the Occupational Safety and Health Act's general duty clause should be viewed as a placeholder until rule-making can be initiated to address hazards, but the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, has previously indicated it would be "unreasonable" to expect promulgation of specific safety standards for every hazard and that Ms. MacDougall dismissed the difficulties in modern rule-making.

The *Integra* decision highlighted why addressing such hazards via rule-making "may not be practical," Mr. Ho said. "I don't think that necessarily means (rule-making) is not the best approach, even though it may take longer than some people would like."

Gloria Gonzalez

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Employers urged to follow safety records rule

BY GLORIA GONZALEZ

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Employers should comply with the U.S. Occupational Safety and Health Administration's narrowed electronic record-keeping rule even though confusion and uncertainty reign over its applicability and longevity, experts say.

Complicating matters, the application of the rule may not be consistent across the United States because some states still have not adopted it, while others may be tempted to stick with the original rule, experts say.

Meanwhile, public interest groups and six U.S. states have filed lawsuits to preserve the original rule.

The electronic record-keeping regulation, formally known as the Improve Tracking of Workplace Injuries and Illnesses rule, was adopted under the Obama administration. But in July 2018, OSHA released a proposal to amend the 2017 record-keeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA forms 300 and 301. They are still required to submit information from their Form 300A summaries of work-related injuries and illnesses, per the rule, finalized in January, with the forms due March 2.

"Federally, I think the right move is just to start getting those 300As in and just accept that's the way it's going to be," said Jason Mills, a Los Angeles-based partner at Morgan, Lewis & Bockius LLP who represents employers in OSHA citation challenges. "It just seems like a burdensome and unnecessary requirement."

However, some employer representatives are warning against providing OSHA with more injury and illness information than it is entitled to, because such information can be used in citations. In 2017, 60,956 out-of-scope submissions, meaning they were not required under the rule, of Form 300A data were made, up from 52,171 in 2016.

"I'm of the approach if it's not actually



LIMITED ACTION

The anti-retaliation provisions of the U.S. Occupational Safety and Health Administration's electronic record-keeping rule have drawn widespread criticism — and triggered litigation against the rule — in the employer community, but the agency has issued only a few citations to employers for allegedly violating these provisions since Dec. 1, 2016.

- OSHA has issued seven other-than-serious citations for alleged adverse employment actions against employees who reported work-related injuries or illnesses.
- The agency has issued four other-than-serious citations for allegedly maintaining unreasonable procedures for reporting work-related injuries and failing to inform employees about reporting rights.

Source: Conn Maciel LLP analysis of OSHA citations

required, don't volunteer it because you don't have control over how that information is used," said Fiona Ong, a partner in the employment practices division of Shawe Rosenthal LLP in Baltimore.

Contributing to employer confusion over compliance, some OSHA state plans have not adopted the rule, experts say. A state plan is an OSHA-approved safety and health program that enforces its own standards, which must be at least as effective as federal OSHA, but may have different or additional requirements. Twenty-six states and two U.S. territories have state plans.

The Occupational Safety and Health Act does not allow the agency to compel employers in state-plan states to comply with a regulation that has not been adopted in their states or issue citations against such employers, so the remedy would be for the agency to revoke the state-plan status, said Daniel Deacon, a Washington-based associate in Conn Maciel Carey LLP's OSHA and labor and employment practice groups. The agency has occasionally threatened to, but has rarely invoked that authority, although it did in North Carolina after a September 1991 fire at a chicken processing plant resulted in the deaths of 25 workers.

Eight state plans had not adopted the rule by the time OSHA issued a press release in April 2018 informing employers in those states that they were expected to comply with the rule. In response, Maryland informed its employers that they did not have to comply with the regulation until it was adopted by the state.

Other state plans such as California were slow to adopt the regulation, but the California Division of Occupational Safety and Health will conduct an advisory committee meeting in May to "evaluate how to implement the changes necessary to protect the goals" of the original rule, according to a notice on the agency's website.

"It will not surprise me if California comes up with its own system where it says you have to submit everything that the original federal rule was going to require," Mr. Mills said.

Some state plans that have adopted the original rule might not be inclined to adopt the revised rule because they are allowed to have regulations more stringent than OSHA, he said. "The state plans are probably going to see this as an opportunity to be a little more aggressive."

But Larry Stine, Atlanta-based senior principal at Wimberly, Lawson, Steckel, Schneider & Stine P.C., expects states that had adopted the original rule to adopt the revised rule, meaning employers in those state plans would only have to file the 300A forms, because "most state plans tend to follow the federal rules pretty closely."

Maryland now plans to adopt the revised rule, according to a spokeswoman for the Maryland Department of Labor, Licensing and Regulation.

After OSHA issued its final revised rule in January, Public Citizen Health Research Group, the American Public Health Association and the Council of State and Territorial Epidemiologists filed a lawsuit in the U.S. District Court for the District of Columbia accusing the agency of violating the Administrative Procedure Act and asking the court to vacate the regulation.

"If the plaintiffs in the lawsuit are successful in stating that this new final rule should be overturned because it's arbitrary and capricious ... the electronic recording requirement for 300 and 301 would go into effect," and employers would have to start complying with that rule, Ms. Ong said.

Separately, Illinois, Maryland, Massachusetts, Minnesota, New Jersey and New York challenged the "illegal and unjustified attempt to roll back (the regulation's) requirements for the public reporting of workplace injuries and illnesses" in a lawsuit filed in March in the same court.

Meanwhile, a stay issued in a lawsuit filed in Oklahoma by employer groups challenging the original rule has been lifted.

OSHA'S ELECTRONIC RECORD-KEEPING RULE SURVIVES EMPLOYER CHALLENGE

The decision of an administrative law judge of the Occupational Safety and Health Review Commission to strike down two defenses offered by the U.S. Postal Service to a citation issued by the U.S. Occupational Safety and Health Administration preserves the agency's authority under its electronic record-keeping rule.

The anti-retaliation provisions of OSHA's rule were controversial because employees already had the ability to file

retaliation complaints under Section 11(c) of the Occupational Safety and Health Act, which prohibits employers from retaliating against employees for exercising OSH Act rights such as filing a safety or health complaint with OSHA.

Employer representatives were troubled by its establishment of a new, citation-based pathway for employee complaints.

"This was a run around the 11(c) provisions," said Larry Stine, Atlanta-based senior principal

at Wimberly, Lawson, Steckel, Schneider & Stine P.C. "I know if I get a citation, I'm going to certainly raise those challenges."

On Feb. 26, 2018, OSHA cited USPS for allegedly issuing a seven-day working suspension to a carrier because he reported a work-related injury, according to the February ruling in *Secretary of Labor vs. U.S. Postal Service*. The USPS argued that the alleged standard and/or penalties were invalid because they were beyond

the legal power or authority of OSHA and/or were arbitrary and capricious. But the judge rejected arguments that Congress intended for Section 11(c) to be the exclusive means to redress retaliatory acts that both violate an employee's OSH Act rights and undermine OSHA's duty to collect accurate injury and illness data. "The text of Section 11(c) contains no limiting language of any kind," the judge said.

Gloria Gonzalez

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Epilepsy drugs enter the painkiller arena

BY LOUISE ESOLA

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Anticonvulsants, a class of drugs originally intended and only federally approved to treat epilepsy, are increasingly commonplace in treating injured workers for pain, producing mixed reactions from workers compensation experts.

Despite their positioning as an alternative to opioids, stakeholders say anticonvulsant drugs are not without their own risks of abuse.

“There’s an awful lot of prescribing of Lyrica,” said Craig Prince, a West Chester, Pennsylvania-based clinical pharmacist for Coventry Workers’ Comp Services, whose pharmacy benefits management program now lists euphoria-producing anticonvulsants — Lyrica being one of them — as the number one drug spend in workers comp. “(Anticonvulsants) have tripled in use since about 2010.”

In California, anticonvulsants accounted for 9.7% of the workers compensation prescriptions in 2018 and an overall 136.6% rise in use since 2009 that researchers with the California Workers’ Compensation Institute, which culled the data, deemed was “likely associated with the continued decline in opioids,” according to a report released in February.

Such drugs are now number three in California for treating pain, after opioids and anti-inflammatory drugs, according to the Oakland-based institute.

The Ohio Bureau of Workers’ Compensation, which provides comp insurance for all state employers, reported data to *Business Insurance* showing that anticonvulsants are now second to opioids when treating pain, ahead of the third most-prevalent remedies in the system, which are anti-inflammatory drugs.

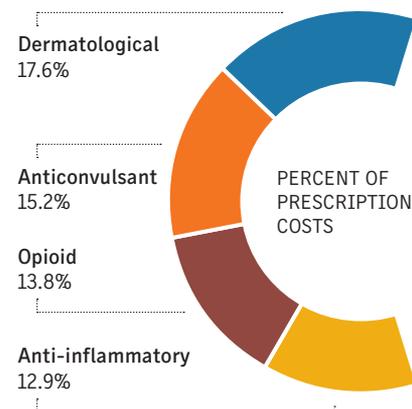
The emergence has much to do with the health industry’s overall step away from opioid prescribing, experts say.

“I do think that doctors are trying to do the right thing,” said Phil Walls, Tampa, Florida-based chief clinical officer for myMatrixx, an Express Scripts company.



TOP COMP SPEND

Spending on opioid prescriptions lagged behind the costs of dermatological and anticonvulsant prescriptions in California’s workers compensation program in 2018.



Source: California Workers’ Compensation Institute, 2019

“It’s good to see the opioids go down, but it’s like a balloon — as one area gets smaller, another area will get larger. The concern is (anticonvulsants) can be misused ... I would categorize that as a rising concern.”

“Doctors are prescribing fewer opioids because they are afraid to do so,” said Dr. Steven Feinberg, a pain expert and founder of the Palo Alto, California-based Feinberg Medical Group who also sits on the California Division of Workers’ Compensation Pharmacy and Therapeutics

Committee. “But (anticonvulsants) are not benign drugs, and they can cause side effects. The pendulum is always swinging one way or another.”

Dr. Feinberg, the senior author of the American Chronic Pain Association Resource Guide to Chronic Pain, noted in a section covering anticonvulsants that “there have been scattered reports of misuse ... for their intoxicating effects.”

Most anticonvulsant drugs found in the comp system include the generic gabapentin and the more expensive brand name Lyrica, according to several experts. Gabapentin — the most commonly prescribed — was approved by the U.S. Food and Drug Administration in 1993 to treat epilepsy and other nerve conditions.

“They found out (the anticonvulsant) did not work as well as other drugs (for epilepsy), but a side effect was that it worked for nerve pain,” said Dr. Terrence Welsh, Columbus, Ohio-based chief medical officer for the Ohio Bureau of Workers’ Compensation.

The drug then went “off label” for treating pain, meaning it did not have FDA approval for pain management, and health care providers increasingly began prescribing the drug for pain, he said. “Off label doesn’t have a negative connotation in this context,” Dr. Welsh said.

Anticonvulsants such as gabapentin and

Lyrica help stabilize interactions between nerves and the brain, he said. “When someone has a damaged nerve, they also have unstable properties,” meaning pain from nerve damage stemming from an injury such as a pinched nerve in the neck or spine can be alleviated by calming the “electricity” between nerves and the brain, he said.

But a side effect to such drugs could be “relaxation, a euphoric effect ... an altered sensation,” not unlike drugs that are often abused, said Mr. Walls.

Sounding the alarm in February was Cordant Health Solutions, a Denver-based company that provides drug monitoring for chronic pain patients, when it revealed data that showed how increasingly drug tests for gabapentin use are finding both the drug and unprescribed opioids in the urine of injured workers.

The company’s concerns are centered on the “polydrug pattern” found in gabapentin use: the drugs, which work to relax nerves, can produce a high alone and even more so with opioid use, leading researchers to see gabapentin as the next drug of abuse, according to Cordant. The company provided data to *Business Insurance* that found that of 430 workers comp patients prescribed gabapentin, 14.4% also had opioids in their system.

“We are seeing this increase in the prescribing of gabapentin, (and) when we talk to providers, they think we are nuts — what’s the big deal?” said Michele Settel, Tampa-based senior vice president and general manager for workers compensation at Cordant. “There are dangerous side effects at higher dosages.”

“As far as being the drug that would cause physical dependency, there is no question that would be the case, as with any drug like that,” said Richard Stripp, New York-based chief scientific and technical officer at Cordant. “Anything that affects dopamine can be addictive.”

Anticonvulsants are not considered as dangerous as opioids, but “the tide is turning, and people don’t think it’s as safe and benign as they were once considered,” Mr. Prince said.

ANTI-INFLAMMATORIES NUDGE OPIOIDS TO THE SIDE IN CALIFORNIA

The prescribing of medications deemed to be pain treatment alternatives to opioids has significantly risen in California.

Anti-inflammatory drugs often prescribed for pain and inflammation now represent the largest percentage of drugs prescribed to injured workers in California, and the drug spend on pain-relieving topical creams grew 74.3%

between 2009 and 2018, according to a study released by the California Workers’ Compensation Institute in February.

Such drugs have replaced opioids as the top drug in comp one year after the state enacted a drug formulary that limited opioid prescribing to injured workers, according to the study by the Oakland, California-based institute.

Anti-inflammatories represented 31.7%

of drugs prescribed to injured workers in California in 2018, according to the data. In each of the six years prior to that, opioids were the top therapeutic drug category dispensed, with anti-inflammatories ranking second.

Although dermatological prescriptions only increased from 5% of all prescriptions in 2009 to 5.6% in 2018, the study found that over that same

period their share of the total drug spend climbed from 10.1% to 17.6%, “indicating an increase in the average amount paid for dermatological prescriptions,” the study stated.

In 2018, opioids accounted for 18% of prescriptions, down from a high of 30.5% in 2009 — representing a 41% decrease over nine years, according to the study.

Louise Esola

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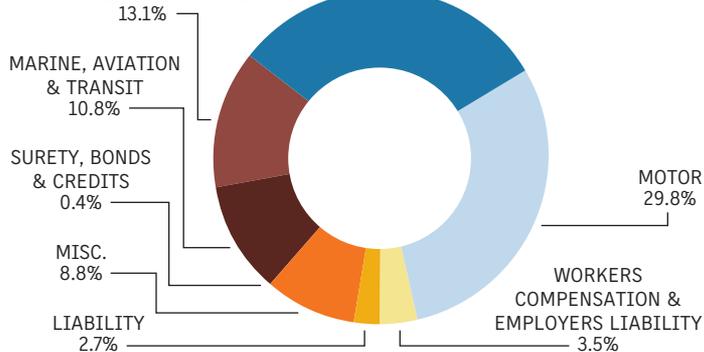
26

GLOBAL
P/C MARKET
RANKING

Norway's economy, though small by global and European standards, has one of the highest per-capita gross domestic product rates in the world due to its energy reserves; the country is Europe's largest exporter of oil and the world's third-largest exporter of gas. The Norwegian property/casualty market is sophisticated and well-developed, and insurers offer a broad range of products. Four large insurers dominate the market, which can be divided into domestic, nonmarine lines and international business, including marine hull, energy and P&I. Both sectors are extremely competitive and because of this, while premiums have gone up, they have not always kept up with inflation. Auto is the most important class of business, and its profitability generally drives the overall results of the market.

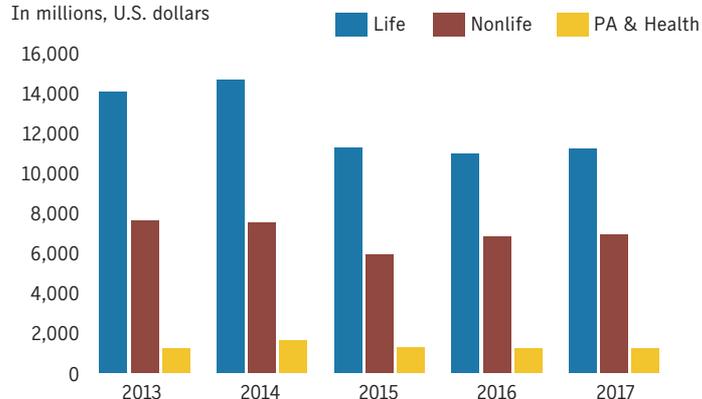
MARKET SHARE

PA & HEALTH CARE WRITTEN BY NON-LIFE COMPANIES



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Third-party liability for cable car operators and ski lifts
- Professional indemnity for insurance brokers
- Shipowners liability against marine oil pollution
- Workers compensation (part private market, part state cover)

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Norway. At the same time, with some exceptions, there is nothing in the law indicating that insurance must be purchased from authorized insurers. This is generally interpreted to mean that insurers can issue policies from abroad with exceptions if approached by a buyer and/or an intermediary.

INTERMEDIARIES

Intermediaries must be authorized to do insurance business and are allowed to place business with nonadmitted insurers. Property/casualty insurance business including commercial, marine, aviation and transport can be placed by brokers with insurers outside the EEA, but brokers cannot place workers compensation, compulsory auto third-party liability, nuclear and pharma liability outside of it. Brokers involved in nonadmitted placements are not required to warn buyers that their insurer is not subject to local supervision.

MARKET DEVELOPMENTS

Updated January 2019

- Increased claims costs after a difficult winter and lower investment income contributed to weaker results for property/casualty insurers in the first half of 2018. As a result, insurers decided remedial pricing action is required and are pushing through rate increases across all market segments in 2018 and into 2019.
- Auto insurance results generally drive the overall profitability of the market. In 2018, insurers were struck by worsening claims experience particularly for Teslas and other eco-vehicles, and are doubling the rates for them.
- An invasion of long-tailed silverfish is causing consternation among insurers of "change of owner" insurance, which protects property buyers against loss due to defects existing at the time of purchase but discovered subsequently.
- In 2018, Tryg A/S acquired online specialist Troll Forsikring and OBOS Forsikring. SpareBank 1 Forsikring's merger with DNB Forsikring was also announced in 2018.
- The European Economic Area has adopted the EU's Insurance Distribution Directive regarding insurance mediation, though by October 2018 there was still no published time frame for its implementation in Norway.



AREA

141,031

square miles

POPULATION

5.4

million

MARKET CONCENTRATION

74.5%

market share of top five insurers

2019 GDP CHANGE (PROJECTED)

2.1%

MARKET PRACTICE

Nothing prevents an insurance buyer from obtaining cover outside Norway on a nonadmitted basis. But in practice, most industrial/commercial risks are placed with local insurers. Some business is placed on a freedom-of-services basis, and some is placed outside the EU/EEA with multinational insurers.

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



Gallagher seeks to toss captive suit

■ Arthur J. Gallagher & Co. asked a federal court to dismiss a class action lawsuit alleging its captive management unit promoted the use of 831(b) captives that resulted in captive owners illegally reducing their taxes.

The lawsuit against Gallagher and its Artex Risk Solutions Inc. unit was filed in December in U.S. District Court in Phoenix on behalf of a group of Arizona-based businesses that allege they had to pay back taxes, penalties and interest to settle IRS probes over their use of 831(b) captives, also known as microcaptives. The plaintiffs in *Dimitri Shivokov v. Artex Risk Solutions Inc.* allege violation of the Racketeer Influenced and Corrupt Organizations Act, breach of fiduciary duty, professional malpractice, and negligent misrepresentation or fraud, among other charges.

In its motion to dismiss, Gallagher argues, among other things, that the contracts that governed each captive's formation and operation specifically state that the defendants are not the plaintiffs' advisers, and the plaintiffs alone are responsible for tax and legal matters, according to the motion.

The tort claims also violate the economic loss rule, which requires contracting parties to seek recovery pursuant to the terms of the contract itself for any economic injuries, according to the motion.

Conductor fired for repeat violations

■ The 7th U.S. Circuit Court of Appeals in Chicago, in *Holloway v. Soo Line Railroad Co., d/b/a Canadian Pacific*, unanimously affirmed a decision by U.S. District Court in Chicago that a railroad provided sufficient evidence it terminated a worker for repeated safety violations.

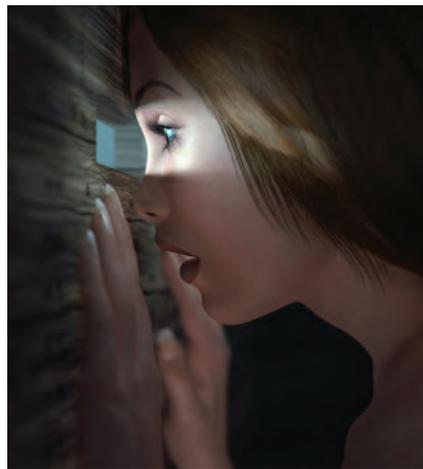
Douglas Holloway began working for Canadian Pacific Railroad of Franklin Park, Illinois, in July 2014. During his tenure, he was suspended three times for infractions ranging from failing to provide

his engineer with important safety information to violating safety and work rules.

In October 2015, while he and another employee were moving railcars using an all-purpose vehicle, the other worker crashed the vehicle in to a pole, injuring them both. Neither was wearing a seatbelt. Canadian Pacific determined Mr. Holloway had violated its seatbelt requirements and a rule requiring him to inspect for and report safety defects. Based on his history of safety violations, he was terminated.

Mr. Holloway sued Canadian Pacific, but the District Court dismissed the case. He appealed, arguing only that the court erred in dismissing his claim for unlawful retaliation in violation of the Federal Railway Safety Act.

The appeals court affirmed the earlier decision, finding he presented no evidence that he was fired in retaliation for reporting the injury. Rather, the court noted, Mr. Holloway repeatedly violated the company's work and safety rules and was eventually fired for "accumulating so many violations."



Stalking victim may sue employer

■ A Washington appeals court ruled a female public defender stalked by a client and subsequently diagnosed with post-traumatic stress disorder is not barred by the state's workers compensation code and can sue her employer under hostile work environment laws.

In a partial reversal of a trial court's dismissal of a hostile work environment, negligence and disability discrimination case filed by the public defender against King County, Washington, and the Public Defender Association, the Washington Court of Appeals in Tacoma ruled that repeated stalking by a criminal client is not a mental injury that falls within the state's comp law definition, according to documents in Case No. 50858-3-II.

In 2012, the public defender was assigned to represent a "Mr. Smith" on felony stalking charges. "In late March 2013 ... Smith began to make repeated

sexually motivated, harassing phone calls to (the lawyer) at work." She repeatedly informed her supervisor of the harassment and stalking: "(she) stated that she thought she needed to get off the case. (Her supervisor) said 'Okay,' in an irritated, dismissive, angry, impatient tone," documents state. She said "she would try to finish the case because she was almost done with the representation." But eventually she sought permission from the court to be removed, and the request was granted in July 2013.

The stalking escalated, however, and she "sent emails to her County supervisors detailing these contacts." In 2015, she was diagnosed with PTSD stemming from the repeated harassment and granted a medical leave. In 2017, the county, which had granted her leave, fired her because she was unable to work as a public defender.

She sued the Public Defender Association and the county, claiming they violated state antidiscrimination laws by failing to provide a nonhostile work environment and engaging in other discriminatory conduct. The defendants filed motions to dismiss, "arguing that they could not be liable as a matter of law for Smith's harassing conduct" and that the state's Industrial Insurance Act could bar the suit from proceeding. The trial court granted their motions.

The three-judge appellate panel remanded the case, however, "because under certain circumstances, an employer may be subject to liability for a hostile work environment claim based on a non-employee's harassment of an employee in the workplace," and workers comp law does not classify repeated incidents of stress as an occupational injury.

The appeals court affirmed dismissal of the bias charges.

NRA can question former N.Y. official

■ U.S. Magistrate Judge Christian F. Hummel in U.S. District Court in Albany, New York, has allowed the National Rifle Association to question former New York Department of Financial Services Superintendent Maria T. Vullo in its First Amendment litigation against New York state.

Over the New York attorney general's office's objections, the judge agreed with the NRA, saying, "The court finds that plaintiff has demonstrated that Ms. Vullo's specific rationale for her alleged actions is at issue in this case such that her deposition testimony may be the only way" to address "critical blanks" in the record.

In *National Rifle Association v. Andrew Cuomo, et al.*, the NRA charged New York with violating its First Amendment rights and threatening its existence by putting pressure on insurers and banks doing business with it.

DOCKET



OHIO AG SUES PHARMACY FIRM

Ohio Attorney General Dave Yost sued OptumRx Inc., claiming the Irvine, California-based pharmacy benefits manager overcharged the Ohio Bureau of Workers' Compensation millions of dollars in prescriptions for injured workers and asking for \$30 million to cover overcharges and punitive damages. The suit, filed in Franklin County Common Pleas Court, alleges breach of contract, fraudulent inducement and promissory fraud. Ohio terminated its contract with OptumRx in October, according to the attorney general's office.

TTD CAN'T BE OFFSET BY OTHER BENEFITS

The Minnesota Supreme Court held an employee's claim for temporary total disability benefits cannot be offset by benefits paid to the employee for the same period of disability under the employer's short-term disability plan, affirming a lower court ruling. In its opinion in *Claude Bruton v. Smithfield Foods Inc. and ESIS Inc.*, the high court in St. Paul stated: "We recognize Smithfield's concern that the employer is effectively penalized for maintaining an additional wage-loss benefit for its employees suffering a covered workers' compensation injury ... If a different result is necessary or intended, the legislature — not the judiciary — must act."

INSURER'S PLAY FOR RULING PREMATURE

A Great American Insurance Group unit must wait until underlying litigation is resolved before it can be determined whether it must indemnify its policyholder, said the 11th U.S. Circuit Court of Appeals in Atlanta in upholding a lower court ruling. The U.S. District Court in Fort Meyers, Florida, ruled Tulsa, Oklahoma-based Mid-Continent's duty to indemnify was not "ripe," which was affirmed by a unanimous three-judge panel of the 11th Circuit in *Mid-Continent Casualty Co. v. Delacruz Drywall Plastering & Stucco Inc.*



John Haley became chief executive officer of Willis Towers Watson PLC in January 2016, on the completion of the \$18 billion merger of Willis Group Holdings PLC and Towers Watson & Co. Mr. Haley began his career working as a life and health insurance actuary. In 1977, he joined what was then The Wyatt Co., where he served as consulting actuary to several of the company's largest clients. He was named CEO of Watson Wyatt Worldwide in 1998. Mr. Haley recently spoke with *Business Insurance* Reporter Claire Wilkinson about what lessons have been learned from the integration and the company's appetite for mergers and acquisitions. Edited excerpts follow.

John Haley WILLIS TOWERS WATSON

Q Aon recently considered a bid for Willis Towers Watson. What is the current status of a possible deal with Aon?

A It was a relatively unusual sequence of events from our standpoint. First, a story broke that Aon was looking to make a bid for Willis Towers Watson. That caused some movement in the share prices of both companies. Then Aon said it was in the preliminary stages of thinking about a bid, and then the next day said it had decided not to go ahead. My understanding is it was driven by some requirements from Irish regulators. Willis Towers Watson is an Irish-domiciled company. Aon felt the need to respond to say it was thinking about something, then decided better of it the next morning. As I understand Irish takeover law, that means Aon cannot come back within the next year and try to make an offer. We are not in discussions with Aon. We look at this as something that is nothing to worry about at the moment.

Q Willis Towers Watson retains the right to pursue a deal with Aon in 2019. What's the likelihood of the deal going ahead?

A I guess we could if we wanted to. We have the option. I do not expect that is something we would do at all.

Q So what areas are you looking at in terms of prospective M&As?

A We're looking at probably between six to eight acquisitions right now. They are all over the lot in terms of size. Most of our acquisitions will be adjacencies as opposed to businesses we are already in. When we look out across the spectrum, we do not see any big holes in our operations in terms of the suite of services or in geographies. We tend to be relatively careful acquirers, which means that we look at eight to 10 acquisitions for every one we might pursue. There are three things we look at when we're doing an acquisition. The first is culture, making sure it's a good fit with who we are and what we do, and that we share values. The second thing is strategy: Is it a good strategic fit, and are its services complementary to ours? Finally, price is important, and I am as cheap as can be. Even so, I recognize that if I'm off by 5% in price, it's probably not the biggest deal in the world. But if I'm off by 5% on culture, it could be a disaster.

Q What lessons have been learned from the integration of the businesses since the January 2016 completion of the merger?

A The integration has gone as well as we could have expected. We are a long way to creating a Willis Towers Watson culture. Both Willis and Towers Watson had attractive cultures that we wanted to build on, without being a replication of either one. One of the things we did well was we made choices about what we wanted to do early on. But sometimes you think you are communicating one thing and you're actually communicating something else. We talked about getting synergies out of different parts of the business, so a lot of people felt they should be working on the intersection between the businesses. But we realized we had too many people focused on that, so near the end of 2016 we did a course correction with the message "back to basics." One of the reasons our financial performance was not what we wanted it to be the first year of the merger was because of that loss of focus. We quickly righted that, and that's why 2017 and 2018 were better.



Q Other companies have sought to cross-sell consulting and broking services with varying degrees of success. What will Willis Towers Watson do differently?

A I've never been fond of the term cross-selling. It's very difficult to do, and it's no surprise that most organizations haven't been very good at it. What we're focused on is seeing convergence between different areas, and maybe we shouldn't even call that cross-selling. It's a different view of what the value proposition can be. An example is the work we do around

cyber. We know that 65% of hacks or other intrusions are not fundamentally technological issues, they are people issues. Are there insights from our human capital consulting group that can say what kind of environment makes an intrusion more likely? Those are the kinds of synergies we see coming together, and it's not as much a cross-sell as an expanded view of how you can tackle cyber risk in this case.

Q What services from the consulting business will the brokerage be able to utilize?

A The biggest cross-selling or revenue synergies we get are from our insurance consulting and technology operation. It's the largest actuarial consulting operation to insurers in the world. It's mainly a software business today. The software that ICT provides to its insurance company clients can be redesigned for our reinsurance and general corporate risk and broking clients. That's one of the biggest sources of revenue synergy that we've had. We also have synergies that come about just from understanding clients. In the United States, Towers Watson had a much bigger base of large clients. We served them through account directors, making sure we understood their needs and matching up the appropriate services. Now we can use that same approach for our broking and other services. That's not two services coming together, it's a client understanding that's now available to some of the Willis services that did not exist before. Near the end of 2018, we saw new brokerage clients in the large company space as a result of those learnings and cross-selling.

Q How will insurtech affect your business?

A The likely effect of insurtech is not that it fundamentally changes the business model of insurance, but that it helps to make all participants more efficient. An example is fintech 10 to 12 years ago. People would say fintech is going to change the banking model. In fact, fintech made banking more efficient, but it didn't fundamentally disrupt or change the model. That's the most likely outcome for insurtech. However, what I have to worry about as a CEO and what we have to worry about as a business is making sure if there is disruption we are the ones who invented it and we are the ones capitalizing on it.

We are not in discussions with Aon. We look at this as something that is nothing to worry about at the moment.



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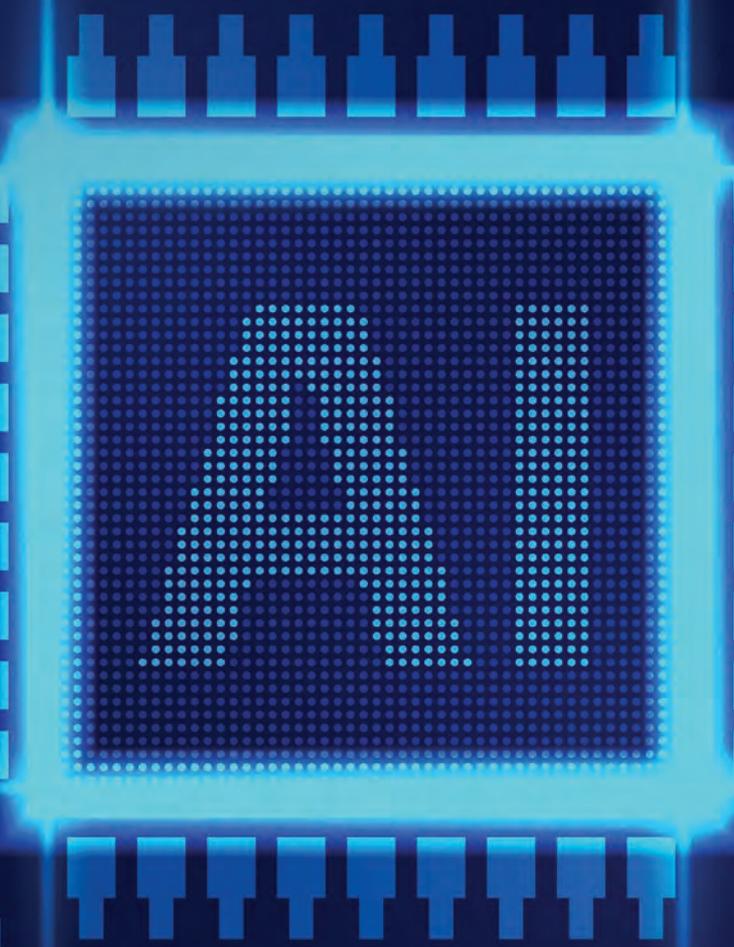
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RISK EXPERTS DEPLOY ARTIFICIAL INTELLIGENCE

Early efforts apply machine learning to cybersecurity, fraud detection, managing operational efficiencies



BY CLAIRE WILKINSON

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Artificial intelligence and machine learning technologies are increasingly being deployed by companies to reduce risk, with a broad swath of industries from financial services and transportation to energy and technology applying the tools to detect fraud, manage cyber threats and predict disruptions.

While risk professionals are embracing and implementing technological advances at an accelerating pace amid the explosion in the “internet of things,” it will take time for artificial intelligence to become embedded in the risk management process, experts say.

Artificial intelligence and machine learning applications are moving at such a rapid pace that they are transforming every industry segment, said David Derigiotis, Detroit-based professional liability and cyber risk practice leader with Burns & Wilcox Ltd.

“Everybody is rushing to implement some form of AI and machine learning because it adds efficiency, it allows companies to capture and analyze a lot of data, to be able to forecast trends and to reduce risks. I see it across the board,” Mr. Derigiotis said.

Cybersecurity is one area where there’s an “absolute requirement” and need for artificial intelligence to be deployed, according to Eric Boyum, Denver-based national practice leader, technology for Aon PLC.

“Cybersecurity is probably the biggest area in risk management where it’s being employed right now,” said Mr. Boyum. In an environment where “pursuers of information and data are trying to penetrate, impose, and compromise networks constantly,” AI is being used by private companies, governments and other groups to mitigate the threat, he said.

For example, Seattle-based Microsoft Corp.’s Windows Defender advanced threat protection service uses machine learning and AI to determine whether a cyber threat is active and what action to take to protect an organization’s network.

“We build tools that people can use or adapt that have a machine learning function to them. We are selling them as tools, not as artificial intelligence agents, so to speak,” said Tom Easthope, a member of the Risk & Insurance Management Society Inc.’s Strategic and Enterprise Council and director of enterprise risk management at Microsoft.

AI-based technologies are also being used to manage brand and reputation “to monitor and alert companies when there’s negative sentiment being developed, whether in social or traditional forms of media,” Mr. Boyum said.

In an environment where one negative comment can go viral, real-time social media listening or monitoring tools use AI technology to help companies track and monitor sudden changes on social media around their brand and online reputations, experts say.

AI used in regulatory compliance

Regulatory compliance is another area where AI-based technologies are being deployed.

“Banks use it to manage and monitor their traders, sometimes they use it for compliance around the Foreign Corrupt Practices Act, or they utilize it around money laundering or credit card fraud,” Mr. Boyum said.

Banks use the technologies to mitigate corruption by analyzing data from different sources, identifying patterns in transactions and detecting any unusual transactional activity related to employees,

customers and third parties, experts say.

New York-based credit card giant Mastercard Inc. uses artificial intelligence and machine learning in three key areas: to manage operational risk, to detect and prevent fraud and to mitigate insider threats, according to Ed McLaughlin, St. Louis-based Mastercard’s president of operations and technology.

“The primary set of fraud patterns we look for is transactional fraud, credit card fraud (and) retail spending fraud with consumers,” said Mr. McLaughlin. “It’s not only about being able to identify the fraud, but about taking action to prevent the fraud from happening.”

Using machine learning, Mastercard analyzes data in real time across every transaction that’s flowing through its system, Mr. McLaughlin said. The move to real-time analysis has led to a 40% reduction in fraud and a 50% reduction in so-called false positives, where transactions are incorrectly flagged as fraudulent, unintentionally preventing business from occurring, he said.

“In the financial services and transaction processing industry — a lot like the insurance industry — there’s a huge focus on loss reduction, but you also need to focus on the business prevention and on the customer experience,” Mr. McLaughlin said.

Recognizing, evaluating images

The combination of artificial intelligence and image recognition can make detection more precise and increase a company’s ability to detect manufacturing faults, according to Manan Sagar, chief

THE POTENTIAL VALUE OF AI BY SECTOR

	AGGREGATE DOLLAR IMPACT (\$ TRILLION)	IMPACT AS % OF INDUSTRY REVENUES
Retail	0.4-0.8	3.2-5.7
Transport & Logistics	0.4-0.5	4.9-6.4
Travel	0.3-0.5	7.2-11.6
Consumer Packaged Goods	0.2-0.5	2.5-4.9
Public & Social Sector	0.3-0.4	1.1-1.4
Automotive & Assembly	0.3-0.4	2.6-4.0
Health Care Systems & Services	0.2-0.3	2.9-3.7
Banking	0.2-0.3	2.5-5.2
Advanced Electronics/Semiconductors	0.2-0.3	3.3-5.3
Basic Materials	0.2-0.3	1.6-3.1
High Tech	0.2-0.3	5.7-10.2
Oil & Gas	0.2-0.2	1.8-1.9
Insurance	0.1-0.3	3.2-7.1
Agriculture	0.1-0.2	2.4-3.7
Chemicals	0.1-0.2	1.0-2.3
Media & Entertainment	0.1-0.2	2.9-6.9
Telecommunications	0.1-0.2	2.9-6.3
Pharmaceuticals & Medical Products	0.1-0.1	4.2-6.1
Aerospace & Defense	<0.1T	1.8-3.2

NOTE: Artificial Intelligence here includes neural networks only. Numbers may not sum due to rounding.

Source: Exhibit from “Notes from the AI frontier: Applications and value of deep learning”, April 2018, McKinsey Global Institute, www.mckinsey.com. Copyright (c) 2019 McKinsey & Company. All rights reserved. Reprinted by permission.

technology officer for insurance at Fujitsu UK in London.

Fujitsu, for example, has applied image recognition and AI in wind turbine manufacture, he said.

“In the past, every time a blade needed to be inspected, an engineer had to do it. With technology, what we’ve been able to do is have photographs taken of the blades and then train a bot and artificial intelligence to read and evaluate those images to see if there are any faults in the

plates,” Mr. Sagar said.

As well as being more accurate and much quicker than human intervention, this application could also reduce business and liability costs for insurers, he said.

“It will have an impact on insurance costs because we know the quality of the blade is improved, so you should have less business interruption costs and less possibility of a business interruption claim — and for that matter, liability should be lower, which would have a knock-on effect on premiums,” Mr. Sagar added.

Industrial facilities are using smart sensors, said Jaap de Vries, Providence, Rhode Island-based vice president for innovation, science and technology at mutual insurer FM Global. “Now you have full emerging operational technology and information technology that makes a plant or an industrial facility a cognitive organization,” he said.

“What we are interested to see is — if that network of sensors is in place and is connected — how we can use that to make predictions about the health of machinery or if there’s a piece of equipment about to break down?” Mr. de Vries said.

Sensors also can be added to buildings to prevent losses, such as from a leak. “We can make the building smart. There are a lot of opportunities there,” he said.

AI is also being deployed in the shipping sector to analyze the real-time behavioral data of vessels to better quantify and manage risk.

“In that scenario, it’s about how we can use artificial intelligence to track their behavior and monitor whether there are exposure clusters around the globe,” said Asha Vellaikal, San Francisco-based head of Marsh Digital Labs, an incubator launched by Marsh LLC in 2018 that experiments with emerging technologies and insurtech.

AI concepts risk managers should understand, support

Making sense of the many and varied perspectives around artificial intelligence can be difficult for risk professionals, the Risk & Insurance Management Society Inc. said in a recent report.

To take advantage of AI opportunities, risk managers need to understand their company strategies for the use of AI systems, said Tom Easthope, a member of the RIMS Strategic and Enterprise Council, director of enterprise risk management at Microsoft Corp. and author of the report.

“Risk professionals are not the gurus or sages,” he said. “What risk management does is provide a common way to talk about these conduits across an organization. Facilitating that high-level management discussion is the primary role of risk management.”

RIMS identified several key concepts around artificial intelligence in the report, including:

- **Artificial General Intelligence:** A form of artificial intelligence that refers to “thinking machines” that apply intelligence to a wide range of cognitive functions and continue to improve their reasoning abilities automatically.
- **Artificial Narrow Intelligence:** A game-changer for businesses. This application of artificial intelligence is focused on narrower tasks, such as image recognition, credit card fraud detection and speech recognition.
- **Algorithms:** The mechanisms (supervised, unsupervised and reinforcement learning) that machines use to learn. Algorithms represent a control mechanism to guard against introduction of various forms of bias in the implementation of AI.
- **Data:** Any implementation of artificial intelligence is dependent on data. Both volume and the variety of data points are highly correlated with successful artificial intelligence innovation.

Claire Wilkinson

Tech E&O, cyber coverage most likely to pay AI-related claims

Organizations developing or using artificial intelligence should examine their insurance coverages to see which policies could come into play in the event of a claim, experts say.

When artificial intelligence fails to perform as expected, several different insurance coverages may respond, including technology errors and omissions and cyber policies, they say.

“A lot of the risk sits on the technology errors and omissions side for the organizations or companies that are providing this technology,” said David Derigiotis, Detroit-based professional liability and cyber risk practice leader with Burns & Wilcox Ltd.

When evaluating AI risks, insurers are closely scrutinizing the companies

providing the technology, how the technology was created, how it is being deployed and the revenues generated by the service or the product, Mr. Derigiotis said.

Interest in coverage for AI risks has been increasing, especially among companies creating AI technology applications.

“Whether it’s a company that’s evaluating lab results or a company developing surveillance technology or facial recognition, or an organization that is collecting data, those are the companies we are seeing that are concerned about their exposure and what their liability could be,” he said.

For health care organizations that provide a variety of medical services, for example, it’s important to have the

right regulatory coverage built into cyber privacy policies, he said. From a professional liability standpoint, “you also want to make sure the coverage extends to any of the services the company is promoting or providing, such as lab result evaluation.”

In the case of autonomous vehicles, if a crash happens because of the failure or malfunction of a car’s AI system, it may be difficult to establish fault so the liability risk for auto manufacturers is changing, experts say.

“If an autonomous vehicle causes an accident, is it the fault of the manufacturer or the vendor who gave them the software or the chip manufacturer? It’s a very complex subject to determine who exactly is

at fault,” said Asha Vellaikal, head of Marsh Digital Labs, a technology-focused division of Marsh LLC in San Francisco.

Ultimately, the insurance industry may become more driven by AI and risk mitigation than it is by the sale of insurance, said Eric Boyum, national practice leader, technology for Aon PLC.

“Now that technology is driving new ways in which risk is being realized, we may be on the cusp of a sea change in what our industry does,” Mr. Boyum said.

“So far, our industry has sold insurance because people don’t want to realize the financial consequences of the risk. There are more ways to reduce their total costs of risk than just doing it with insurance,” he said.

Claire Wilkinson

“Are they going into geographical areas where we are detecting a higher level of risk and can we proactively inform the vessel owner, or change their behavior in exchange for lesser premiums?” she said.

Adoption of AI in its infancy

While there is general awareness that the use of AI can help make sense of the big data generated by the internet of things —

the virtual network that connects billions of web-based devices such as self-driving cars and thermostats — the adoption of AI in risk management is still at a relatively early stage, experts say.

“It’s early days. Risk managers have to see concrete examples of how risk was mitigated in a certain industry, using certain information,” said Ms. Vellaikal.

There are several reasons why AI adoption has been slower among risk professionals than in other areas, including the regulatory environment, according to Derek Waldron, partner in the New York office of consultancy firm McKinsey & Co. Inc. One example is the share lending regulation in the United States, which applies to how banks make credit decisions on who to lend to or not.

Legacy systems also challenge the use of AI in risk management activities, he said. “In many cases, risk functions have been using analytics as part of their toolkits for decades, far longer than many other areas,” said Mr. Waldron.

“In those cases, because risk functions already have well-functioning tools, analytics and processes — even though AI can drive better results — there can be an obvious challenge in driving change in companies’ legacy processes and systems,” he said.

A McKinsey Global Institute report estimates that AI has the potential to generate \$3.5 trillion to \$5.8 trillion in value across all industries. Of this, risk is one of the sizable contributors, Mr. Waldron said.

“The value of risk analytics including AI is a total of about \$500 billion to \$900 billion across all industries. We are seeing the adoption of AI in risk management across just about every industry at varying levels of pace,” he said.

Despite the tangible value that AI can bring to risk reduction and prevention, it also raises ethical and regulatory concerns, experts say. Companies capturing and analyzing data with AI for surveillance or

monitoring purposes need to be cognizant of privacy laws, for example.

“Number one, are you disclosing it to your clients? Are you letting them know what your data collection methods are and who you are sharing the data with?” said Mr. Derigiotis. “If you are using it in the workplace, are you disclosing ahead of time to let employees know what you’re monitoring and where you are monitoring them?”

Insurers, too, are using AI to better assess risks and to price more accurately, and while this can benefit policyholders, it can also spark concerns around bias, experts say.

There are several elements inherent in AI that could produce bad outcomes, according to Mr. Boyum. “There’s always a possibility based on the way you wrote the algorithm, or recipe for how you’re dealing with data. If that recipe has bad assumptions or unintended biases built into it, then it’s going to produce the possibility of biased recommendations or outcomes,” he said.

Properly used, AI is a great tool, said Peter Miller, CEO of The Institutes, the Malvern, Pennsylvania-based provider of education and research in risk management and property/casualty insurance. “In most applications, you need a human to look at it or look at some significant sample of its output. Then I think it has value.”

But AI is also difficult to understand, experts say.

“When you get into the mechanics of how these AI systems work, it’s very difficult even for developers of systems to tell you how an AI system arrived at a result,” said Mr. Miller.

“In real-time, AI systems will make decisions and if an insurer needs to go in front of a regulator and justify that decision, it’s not a simple thing to do. So, I think regulators are going to be very cautious about that,” he said.

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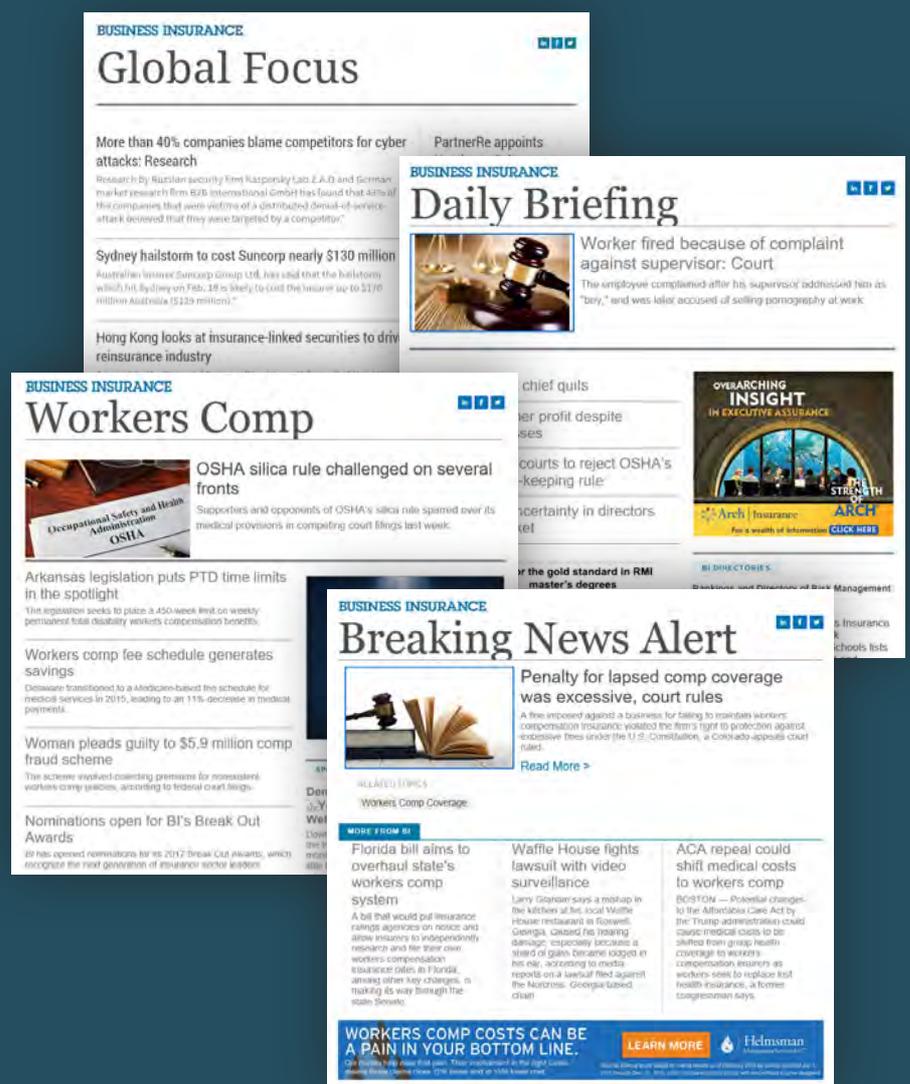
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RISK MANAGEMENT INNOVATION

Drones take off as insurers' eyes in the sky

INSIDE

- ▶ **RISK MANAGERS AND CYBER**
Risk managers are uniquely positioned when it comes to addressing cyber threats. **PAGE 26**
- ▶ **SAFETY TECH HITCHES A RIDE**
The use of telematics systems is on the upswing in the commercial auto insurance market. **PAGE 27**
- ▶ **BUILDERS RELY ON TECH**
Construction firms deploy technology to improve safety and efficiency at job sites. **PAGE 28**
- ▶ **RMIS SURVEY DATA**
BI's risk management information systems survey reveals trends in usage, functions and more. **PAGE 30**

BY GLORIA GONZALEZ

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A recent outbreak of devastating tornadoes in Alabama highlights a trend of insurers expanding their use of drones to assess damages caused by intensifying and more frequent natural catastrophes.

Previously, drone programs developed by insurers primarily focused on claims, but recent efforts have evolved to include underwriting and risk mitigation, including using drone imagery to identify problems prior to catastrophes and to take steps to fortify the resilience of properties to weather events.

The major inflection point for insurer usage of drones was 2017 due to the cost of hurricanes such as Harvey and Irma, said Edin Imsirovic, senior financial analyst with A.M. Best Co. Inc. in Oldwick, New Jersey.

"These catastrophe events proved the value of drones for the industry, as it would

have been impossible to immediately access some of these areas in great detail using anything else but drones," he said.

"It was really due to these catastrophe events that the insurance industry moved away from the concept of whether the drones are useful to 'How do we scale our drone operations?' given the tremendous



benefits of drones: efficiency, safety and customer satisfaction,” Mr. Imsirovic said.

Drone utilization in the insurance industry is being driven by technological advances in artificial intelligence and image recognition — “the ability to automate all of these processes and sort through all of these images without the human intervention,” he said. AI can now “categorize objects and images more accurately than humans.”

Prior to the 2018 natural catastrophe season, drones were not often used in the surplus lines markets, but hurricanes Florence and Michael and the Camp and Woolsey wildfires created a scarcity of field adjusters, contractors and ladder companies, said Emily Daugherty, claims supervisor at third-party administrator Minuteman Adjusters Inc., a unit of H.W. Kaufman Financial Group Inc. based in Farmington Hills, Michigan.

During the wildfires, “we were able to use drone images of properties to determine exactly which properties were total losses before we would have been able to if we had to use field adjusters, and that allowed us to go to our carriers at Lloyd’s (of London) and get emergency funds to insureds,” Ms. Daugherty said.

Policyholders have benefited from the use of drones to validate claims, she said, citing a \$700,000 hurricane-related loss in North Carolina in which the TPA used a drone to examine the exterior of a building and the roof to look for holes and determine the policyholder was entitled to coverage because the interior water damage was caused by an exterior opening.

The TPA also used a drone to assess damages on a claim from the tornado outbreak in Alabama in early March, Ms. Daugherty said. “Anything that’s a widespread disaster whether it be a hurricane, a wildfire, a tornado, flooding — really anything that goes across multiple properties and makes it difficult to access the area, or resources are limited in the area — drones are great for,” she said.

Travelers Cos. Inc., whose drone program has about 600 Federal Aviation

SLICE OF THE DRONE PIE

The commercial potential for drone usage in insurance operations is significant, although the industry still represents a relatively small share of a \$100 billion market opportunity through 2020. The top three categories are:



Source: Goldman Sachs Research

Administration-certified pilots and has operated about 31,000 drone flights, has mostly used drones from a claims perspective, said Jim Wucherpennig, Travelers’ vice president of property in Hartford, Connecticut.

“We look at a drone as just another piece of equipment that’s necessary for our claims professionals to do their job,” he said. “It’s no different from an iPhone, no different from a laptop or a laser measurer, etc.”

But drones can also be used for tasks such as fraud management, including investigating contractors’ repair work, he said. Drones also improve workplace

safety because insurers can send drones to inspect properties rather than having adjusters or other staff climb ladders to inspect damaged roofs, he said.

Insurers are also beginning to use drones for risk mitigation. FM Global used drones to record and assess Hurricane Florence-related damage in South Carolina, but then used drone pictures to help create 3D images and analyze the potential for future floods and communicate the best protection methods to its policyholders, said Jaap de Vries, vice president of innovation, science and technology for FM Global in Johnston, Rhode Island.

Advances in GPS technology and sensors, cameras and battery technology have contributed to improve drone imagery, but progress in the utilization of artificial intelligence has improved the efficiency of drone imagery analysis, experts say.

“Just having a folder with thousands of images is not necessarily going to be very helpful for our engineering staff or our clients, for that matter,” Mr. de Vries said. “What we’re really focusing on is what you can do with those images.”

Drone usage has its limitations because of regulatory restrictions, experts say. Entire areas are often closed off during catastrophes such as the California wildfires while the FAA prohibits drones from entering restricted airspace to avoid potential collisions with commercial aircraft, experts say.

But insurers should continue to expand their use of drones, including deploying drones prior to a catastrophe to record the exact status of exposures and any prior property damage, as well as using drones immediately after a catastrophe to survey damage and inform policyholders that they have a loss rather than waiting for a claim so that damage can be addressed sooner and does not create more difficult, expensive losses later, Ms. Daugherty said.

“I would like to see them used more proactively rather than reactively, and I think it’s something that’s going to start happening more and more, unfortunately, as these cat events keep hitting,” she said.

FAA DRONE RULES ON LINE OF SIGHT RESTRICT USE AFTER DISASTERS

Federal Aviation Administration regulations requiring drone operators to maintain a visual line of sight remain a significant barrier to the use of drones in disaster prevention and recovery efforts.

“If you have to maintain visual line of sight, using drones has much more limited value and is much more difficult,” said Mark Dombroff, Alexandria, Virginia-based attorney with LeClairRyan PLLC focusing on the aviation and transportation industries.

“The technology is there to get the drone outside of the line of sight of the pilot and to do so safely and confidently,” said Jay Martin, chief operating officer of Bellevue, Washington-based aerial imagery and data analytics provider EagleView Technologies Inc. “The regulations are still evolving, and I completely understand why they evolve at the pace that they do versus the pace of technology.”

In November, State Farm received a national waiver from the FAA to utilize drones in natural catastrophe response after demonstrating the safe use of drones following hurricanes Florence and Michael. The waiver allows the insurer to fly drones beyond visual line of sight and over people — another FAA restriction — although it does not allow drones to be used from a premitigation perspective for natural catastrophes, according to a spokeswoman for the Bloomington, Illinois-based insurer.

The FAA prohibits drones from entering restricted airspace to avoid potential collisions with commercial aircraft, but its Low Altitude Authorization and Notification Capability program provides access to controlled airspace near airports through near real-time processing of airspace authorizations below approved altitudes for approved industry partners.

“We may think of them as drones, but in the view of the FAA these are all aircraft, and they need to follow the same safety rules as they enter the national airspace,” said Jon Hegranes, CEO of San Francisco-based drone software technology firm Kittyhawk.io Inc., an approved participant in the FAA program that received a \$3 million investment from Travelers Cos. Inc. last year. “As you give employees access to drones, you want to make sure they are using them properly.”

The agency must be satisfied that operators have “sufficient proficiency” in drone piloting and that the drones themselves have sense-and-avoid capabilities to prevent collisions with other aircraft before broadly lifting such restrictions, Mr. Dombroff said.

Gloria Gonzalez



Risk managers suited to lead cyber defense

BY JUDY GREENWALD

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Risk managers are playing a crucial role in marshaling their firms' personnel and resources to address cyber threats.

Experts say risk managers are in the unique position within their organizations of being able to gather resources throughout the company without being "siloe" into an individual function.

Since the 2014 cyberattack on Sony Pictures Entertainment Inc., "the risk is ramping up and the response has really not kept pace," said Paul King, Dallas-based senior vice president and national technical director of executive and professional solutions for USI Insurance Services LLC.

Kevin Richards, Chicago-based global head of cyber risk consulting for Marsh Risk Consulting, said the leading risk managers with whom he works are "pushing the business a little bit harder to, first, better understand where those risks actually are," and "trying to quantify those cyber exposures in terms of local currency ... so they can start to put cyber on the same table" with their other coverages and "advise the business in true risk management fashion."

"The risk manager is focusing on all the different types of risk that are affecting the company, and to that degree, that's how they can be a quarterback, in a sense, in terms of pulling together all the constituencies to help address cyber risks across the firm," said Stephanie Snyder, Chicago-based senior vice president and national sales leader for cyber insurance with Aon PLC.

"You pull in the risk manager because they already have a lot of tentacles into the various silos within an organization," said Ms. Snyder. The risk manager "can help coordinate and have a larger voice in terms of how the organization's protecting itself" and the balance sheet against cyber risk.

Nahua Maunakea, Denver-based executive director of global risk management for IHS Markit Ltd., an information technology firm, said, "I like the idea of being a facilitator" and "of engaging the various



CRITICAL COORDINATION

Risk managers should take several key steps to coordinate their firms' responses to cyberattacks.

- Assess and quantify the organization's exposure, including what assets in particular must be protected.
- Decide how those assets should be categorized in terms of their critical importance.
- Evaluate what is needed to protect the assets.
- Take advantage of the risk modeling help offered by insurers and brokers.
- Help decide how to allocate the firm's resources.
- Determine how much residual risk the company is willing to retain and how much should be insured.
- Coordinate with the various departments within the organization, including meetings with insurers.
- Develop and coordinate pre- and post-incident response plans.

Source: Cyber insurance and risk management experts

stakeholders, both internal and external, together, getting them around the table and making sure they check their egos at the door," asking them, "What do we do to address the opportunity that's being presented to us?"

Jeffrey Schermerhorn, regional leader of FINEX cyber and E&O for Willis Towers Watson PLC in Los Angeles, who works with Mr. Maunakea, said Mr. Maunakea approaches the issue by building a consensus among stakeholders. Risk managers are building alliances, bringing the various sec-

tors of the company "together at one table and assisting in developing a plan to be prepared to respond to a breach," he said.

Risk managers are "actually acting as a unifying force for the organization," said Kelly Geary, New York-based managing principal and U.S. cyber practice leader and coverage and claims leader for Integro Insurance Brokers. "An interdisciplinary approach to cyber security is the one that's most effective" because organizations are traditionally set up in silos, she said.

Shiraz Saeed, Starr Cos.' New York-based cyber risk national practice leader, said, "Risk managers are in a unique position within the organization to understand cyber risk. The risk manager needs to be the focal point. They're the ones leading the team in understanding the risk."

The risk manager understands "the sophistication level of their organization," said Josh Ladeau, Rocky Hill, Connecticut-based global head of tech E&O and cyber for Aspen Specialty Insurance Co.

A less sophisticated organization, for instance, may want to focus on partnering with insurers that have more of a turnkey incident response operation, he said.

But risk managers "must get upper management involved," said Thomas Douglass, St. Louis-based executive vice president with Arthur J. Gallagher & Co. They "need their stamp of approval, and it has to come down to this is an organiza-

tional need," not just one for an individual department, he said. The risk will never be totally managed, "but we can put the organization in the best position possible to defend ourselves," he said.

Emy Donovan, head of cyber and technology professional indemnity for Allianz Global Corporate & Specialty SE in San Francisco, said risk managers advocate for an understanding of cyber risk at the board level. "We're almost at the point where the majority of companies understand this is something they need to worry about, but there's still, I think, a lot of pushback," where the attitude is, "Who would target us?"

They can get help in this process, said Tracie Grella, head of cyber risk insurance at American International Group Inc. in New York. "Many insurance companies and insurance brokers are providing modeling information" that "provides some guidance on the quantification of cyber's risks and mapping out companies' exposures in a way that can be shared with the business' leaders," she said.

Risk managers' success in coordinating their firms' cyberattack defense can vary. Gerry Kane, Schaumburg, Illinois-based head of cyber risk engineering for Zurich North America, said, "I can see from the outside, some are very well respected and they have a terrific relationship with the (chief information officer), who owns technology, and the (chief information security officer), who owns security. And there are other places where you can see that the relationship is not that good."

Steve Anderson, Dallas-based vice president and product executive with QBE North America, said one organizational change helping risk managers is that the role of chief information security officer is becoming intertwined with the chief technology role.

That change, "from a risk management perspective, is very important" because in the past "they were kind of counterproductive to each other," Mr. Anderson said. Putting these roles together makes the position "an enabler rather than a blocker of information," he said.

GETTING FAMILIAR WITH INFORMATION TECHNOLOGY STRENGTHENS ADVISORY ROLE

No one expects risk managers to become technology experts, but they should try to learn as much about it as they can, observers say.

"A good risk manager doesn't necessarily have to know all the technology behind security," said Gerry Kane, Schaumburg, Illinois-based head of cyber risk engineering for Zurich North America. But if they understand

the five cybersecurity framework functions identified by the National Institute of Standards and Technology — identify, protect, detect, respond and recover — "they can bring the right resources to be there to provide risk management for their company."

Leslie Lamb, director of global risk management for San Jose, California-based Cisco Systems Inc., said in a

statement that the risk manager's role is "to understand the risks, not necessarily to become an expert in IT and/or HR or other areas, of the business, but to become a business partner and adviser."

Brett Anderson, Los Angeles-based breach response services manager with Beazley PLC's Breach Response Services unit, said, "Risk managers sometimes don't know enough

about" information technology.

"They need to understand it, because they are essentially transferring part of this risk to a third party that is hopefully going to help them manage that risk better," Mr. Anderson said. "They need to constantly train themselves on how to understand the cyber risk better."

Judy Greenwald

Technological advances drive improved automotive safety

BY ANGELA CHILDERS

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The increasing use and availability of automotive technology has helped reduce accidents and their associated injuries for fleet operators.

Companies are using technologies like telematics, such as GPS navigation, dash cameras and in-vehicle communications devices or advanced driver assistance systems, which can include lane movement detection, automatic brake assistance and blind spot monitoring to better monitor driver behavior and reduce external road risks.

The use of telematics systems has been on the upswing in the commercial auto insurance market because telematics programs with driving data are a highly predictive measure of risk, experts say.

“Auto and vehicle-related incidents are one of the big loss drivers for most organizations I work with,” said Paul O’Connor, a risk control consultant for Baltimore-based brokerage RCM&D Inc., who works with construction clients on managing their fleet programs. “We do look to technology as a way to help combat these situations.”

The insurance industry has relied on programs like predictive analytics and actuarial models for years. However, with the introduction of artificial intelligence and combining it with telematics and other technologies, companies are able to use predictive modeling to reduce exposure in their fleets by identifying the potential risk for large losses, said Leah Cooper, managing director of global consumer technology at Memphis, Tennessee-based Sedgwick Claims Management Services Inc.

“I feel like this new technology lets us expand into accident prevention, not just anticipation,” said Ms. Cooper. “If we can start impacting the behavior that causes accidents, that’s where we can really make a dent.”

Telematics that measure biofeedback and report it in real time can significantly improve driver safety, said Steve Rodriguez, senior vice president of property/casualty claims for York Risk Services Group Inc. in Jersey City, New Jersey. For instance, if a driver is showing signs of fatigue, a supervisor could tell him to take a break.

One of Mr. O’Connor’s clients, which has a fleet of about 300 trucks, began using a dash camera system that allows the company to monitor drivers and coach driver deficiencies. He said the system essentially takes a short video of an event such as a hard brake and sends it electronically to a review team that can sit down with the driver. He said he believes this type of camera technology — when combined with effective coaching of drivers — can reduce the total cost of incidents by 20% to 30%, and reduce wear and



FATAL CRASHES

Technology such as telematics is being increasingly deployed to address a stubborn and costly workplace safety risk: vehicle-involved fatalities and injuries.



Motor vehicle accidents are the leading cause of work-related fatalities.



The driver is a contributing factor to vehicle accidents 90% of the time.



The average on-the-job motor vehicle accident costs employers more than \$70,000.

Source: Travelers Cos. Inc.

tear on a fleet by about 10%.

Construction engineering firm Fidelity Engineering LLC in Sparks, Maryland, uses a GPS system that tracks its 350-vehicle fleet and scores driver behaviors, sending “flags” to the company for behaviors considered unacceptable, like speeding or hard braking. The company rewards drivers who have great scores, while those who don’t have to attend remedial drivers training.

Spero Skarlatos, Fidelity’s fleet manager, said in less than a year, the technology combined with coaching has led to a more than 95% reduction in the number of “flags” it receives on a daily basis as well as a reduction in accidents.

Darren Beard, vice president and senior loss control consultant at Kansas City, Missouri-based Lockton Cos. LLC, said one of his clients, a service delivery company with a 140-vehicle fleet, implemented technology restricting the use of mobile phones while a vehicle was in motion through an app. He said the company took the hard-line stance of requiring employees to download the app on their company phones or face termination. In a single year, the company reduced preventable collisions by 70% through the use of the app and working with employees to change driving behaviors.

The American Society of Safety Professionals plans to release a report later this spring on best practices for the safe operation of partially and fully automated vehicles. Advanced-driver assistance systems, such as frontal crash systems that slow down vehicles automatically to prevent rear-ending, are also having a big affect on accident reduction and injury severity, said Brian Hammer, vice chair of ASSP’s standards development committee and an insurance risk manager with Nationwide Mutual Insurance Co.

The initial expense is one obstacle to the adoption of technology, Mr. O’Connor said. However, he expects more fleets to adopt technological advances “once they understand the return on investment, and the fact that they’re making their drivers better.”

The fact that recordings of accidents are discoverable in court — and that employees may be resistant to the idea of having “big brother” watching them in the cab — can also deter employers from adopting these types of technologies, said Mr. Beard.

“Just having an event recorder or telematics means nothing — what changes behaviors is the interaction,” he said. “If the information isn’t acted upon ... having the tech becomes a liability.”

TELEMATICS CAN ACT AS WITNESS

Telematics can be used to root out fraud in automobile-related workers compensation and other types of claims, experts say.

Some of the newer software allows companies to visualize crash data, determine fault or fraud, expedite claims, forecast bodily injury and even measure how driving may be affected by external conditions such as icy weather or damaged roads, said Leah Cooper, managing director of global consumer technology at Memphis, Tennessee-based Sedgwick Claims Management Services Inc.

“The use of telematics, especially if you’re talking about crash visualization and the ability to make predictions based on point of impact, speed and whether or not bodily injury might have occurred, has also been a big factor in workers compensation,” Ms. Cooper said.

For instance, a company can receive data immediately after an accident occurs that can tell them the likely severity of an injury, allowing them to intervene and encourage drivers who say they didn’t feel they were badly injured to get checked out by medical professionals, or root out fraudulent instances where an employee is claiming a major injury for an accident that occurred at 5 miles per hour.

Telematics devices can also assist in an investigation of a loss by showing who was at fault for the accident and the force of the impact, which can help if there is a significant exaggeration of injuries and provide defense material for fraudulent workers compensation and third-party claims, said Steve Rodriguez of York Risk Services Group Inc. in Jersey City, New Jersey.

Although the thought of cameras in a truck cab may give some employees pause, the cameras can be witnesses to accidents, noted Paul O’Connor of RCM&D Inc.

“Commercial fleets have been targeted in some cases with fraudulent activity, and regulatory groups point a finger at them quickly,” Mr. O’Connor said. “These cameras can help exonerate the drivers.”

Angela Childers

Builders rely on technology to improve safety

BY MATTHEW LERNER

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Construction firms, aided by their insurers, are deploying a wide range of technologies at different stages of adoption to help improve workplace safety and efficiency on their worksites.

Insurers are helping to vet the technologies, partnering with policyholders and technology providers in proofs and beta tests, experts say. But most technology deployment involves some upfront cost that must be considered in evaluating the tech's worth, they say.

Over the past five to seven years, technology has "definitely" become more prevalent in the construction sector, running the gamut from environmental and wearable sensors to robotics and artificial intelligence, said Eric Zimmerman, Americas head of construction property, builders risk, for American International Group Inc. in Minneapolis.

Technology is moving very quickly and there is more use of technology in the construction sector than three years ago, according to Rose Hoyle, head of strategic operation for construction risk engineering for Axa XL, a unit of Axa SA, in New York.

At any of the major construction conferences, "the number of tech companies in the exhibit hall has increased" substantially, with about 30% to 50% of exhibitors now featuring "some kind of tech," said James Boileau, risk engineering director of construction with Zurich North America in Lakeville, Minnesota.

"Without a doubt in the last five to 10 years, the amount of technologies that have come to the marketplace is over-



whelming," said David Bowcott, global director of growth, innovation and insight in the global construction and infrastructure group for Aon PLC in Toronto.

Aon set up a technology assessment panel in early 2018 to assist clients in vetting new technologies — looking at about one technology per week and have evaluated more than 50 technologies so far, including 3D printables and robotics, Mr. Bowcott said.

"We're literally dealing with a wave of technology," Mr. Bowcott said. "We set up this technology panel to keep up with it."

Axa XL is partnering with OnSiteIQ Inc., a New York-based construction technology firm that collects 360-degree imagery and transforms it into interactive walk-throughs, in a test to evaluate the technology as it helps document the job site and identify risks, Ms. Hoyle said. The insurer is also in an environmental sensor proof of concept with construction site risk management company Pillar Technologies Inc. in New York and is "looking to partner with more technology companies like that," she said.

CNA Financial Corp. is involved in a

beta test using an exoskeleton prototype built by a vendor to assist workers with lifting and reduce fatigue which could lead to injury, said Gary Clevenger, vice president of risk control in Kansas City, Missouri, for CNA. "Does it really provide a benefit? Assist workers and increase job production? That's what we're trying to see," he said.

"Sensors, telematics, drones — we are using all of these on our job sites to help us manage risk," said Doug Ware, vice president of risk management in Boston for Suffolk Construction Co. Inc., a national contractor.

Suffolk has teamed with photo and video management firm SmartVid.io to help with pretask analyses from a loss control standpoint and to use artificial intelligence to analyze photos from safety and operational observations performed by staff, Mr. Ware said.

Wearables, sensors and drones were some of the more ubiquitously mentioned technologies.

"Without a doubt in the last five to 10 years, the amount of technologies that have come to the marketplace is overwhelming ... We're literally dealing with a wave of technology."

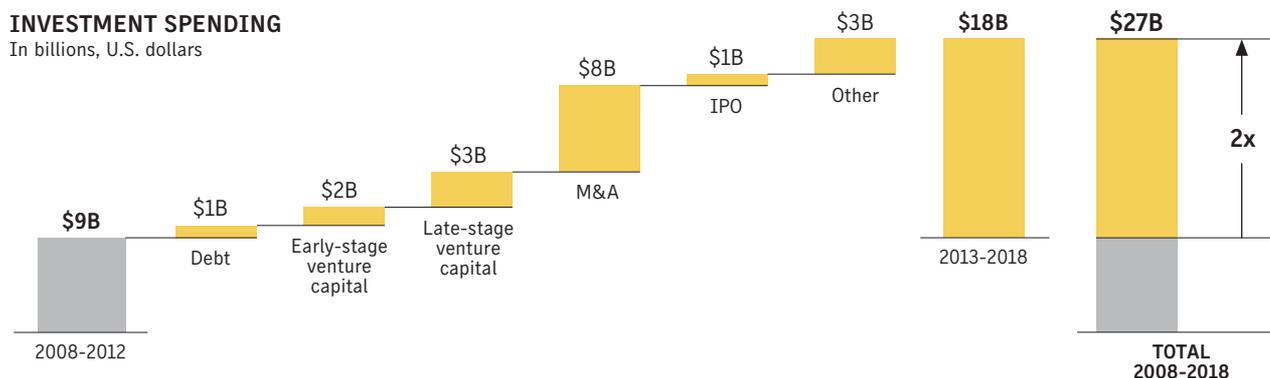
David Bowcott,
Aon PLC

INCREASING AND EVOLVING TECHNOLOGY INVESTMENT

Between 2008 and 2012, construction technology received \$9 billion in cumulative investment. Between 2013 and February 2018, that number doubled to \$18 billion, largely driven by mergers and acquisitions.

INVESTMENT SPENDING

In billions, U.S. dollars



NUMBER OF TRANSACTIONS

2008-2012	246	2013-2018	908	1,154
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Source: McKinsey & Co.

Drone utilization is "almost becoming common" in the construction industry and is used for tasks such as infrared scans that can help detect leaks and other structural building issues, Mr. Boileau said.

Wearables can help promote proper movement and have other safety applications, Ms. Hoyle said.

Sensors on water pipes could help identify potential water damage in advance, Mr. Bowcott said. "The technology is moving from telling you there is a problem to predicting there could be a problem, which becomes very powerful," he said, adding a lot of claims come from such water damage.

Technology is "enhancing our ability to see things that one risk engineer visiting a site even repeatedly can't possibly grasp on their own," Ms. Hoyle said. "It provides better visibility and allows us to get to know our customers better" by providing more information and feedback in a

timely manner.

But a major consideration when considering technology in the construction sector is cost, experts say.

“One of the things that definitely came up was cost” in a recent discussion among peers about which application to use for a specific task, Mr. Boileau said. “Free is always better, but you get what you pay for.”

The key is looking at technology as an investment, he said.

“We’re always looking for some sort of (return on investment) on the investment we make or the time we put into developing a technology,” Mr. Ware said.

Scalability is also a “huge concern” in considering a technology, Mr. Ware said. To deploy a tool on job sites across the country, the contractor must have a “repeatable process,” he said.

Modular construction, in which a part or portion of a job is built off-site and then transported to the site to be installed, is being used to manage and mitigate risk alongside technology, but it presents its own challenges, including design limitations, experts say.

However, it may also be used to fill a labor gap by allowing work to be shifted away from the available labor pool, Mr. Zimmerman said.

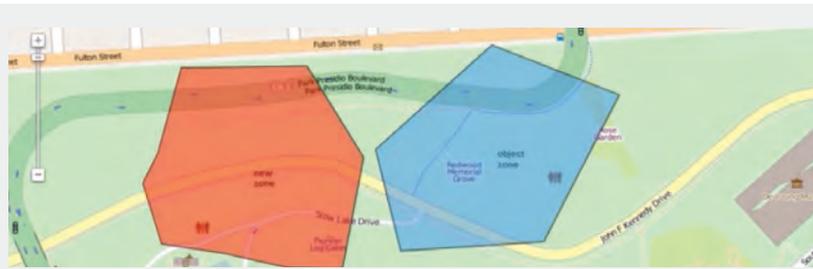
Technology is “enhancing our ability to see things that one risk engineer visiting a site even repeatedly can’t possibly grasp on their own. It provides better visibility and allows us to get to know our customers better.”

Rose Hoyle,
Axa XL

The continuing labor shortage in the construction sector means there is a “big need for skilled labor not being filled, so there has to be another way of getting the job done,” Mr. Clevenger said. “Companies are turning to technology and automation to get the job done.”

Inexperienced workers such as those hired in the building trades might need training, instruction and monitoring, all of which is further enabled with mobile applications, Mr. Clevenger said.

“Using technology to monitor the job site, conduct training and assist with quality control is all part of that equation,” he said.



GEOFENCING KEEPS WORKERS SAFE

Geofencing technology is being used by the construction industry to improve workplace safety, among other uses, experts say.

Using the global positioning system or radio frequency identification coupled with mobile or handheld applications, workers can receive a notification when they venture into the wrong area or breach a defined perimeter.

Geofencing can be used for a variety of situations including tracking employees’ locations for safety as well as helping to prevent theft and inventory control, said Gary Clevenger, vice president of risk control for CNA Financial Corp. in Kansas City, Missouri.

The technology can also be used to keep workers out of “dangerous” zones

or to segregate renovation projects from active building operations at a hospital or school for instance, said James Boileau, risk engineering director of construction with Zurich North America in Lakeville, Minnesota.

The technology could also be used to create lower-speed zones in specific areas of a construction site, according to Marco Encinas, marketing and product manager of global platforms at Teletrac Navman US Ltd., a maker of fleet management and other software in Garden Grove, California.

But most of the sources mentioned cost as the main challenge or consideration, as deploying the technology requires some outlay.

Matthew Lerner

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Risk management technology survey

BY ANDY TOH

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Average investment in technology/software for risk management, excluding human resources, increased by 9% from last year to \$154,333.

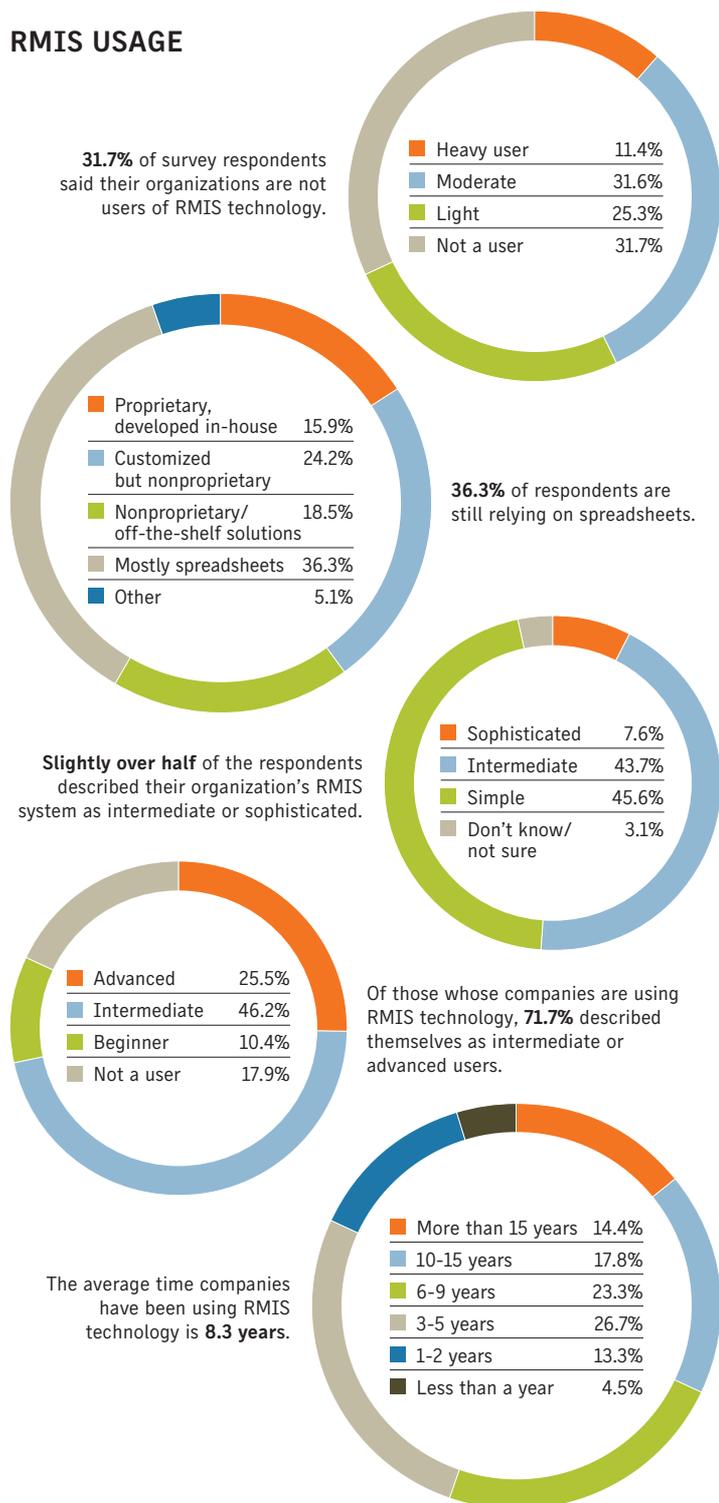
More than half of this year's respondents to *Business Insurance's* survey of risk managers and commercial insurance buyers said they are either satisfied or extremely satisfied with their RMIS technology; and 67.0%, up from 58.6%, said they are not considering a change in the next 12-24 months.

This year's online survey was conducted from Feb. 5 to Mar. 12, with 158 risk managers responding. The base used is the total answering each question.

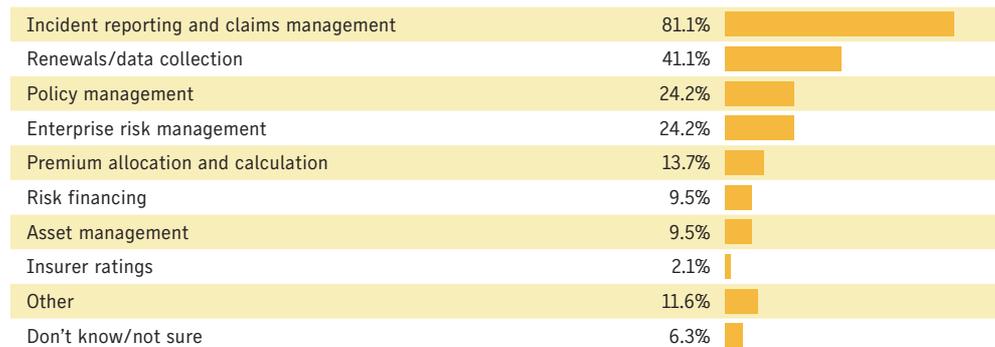
Source: BI Survey



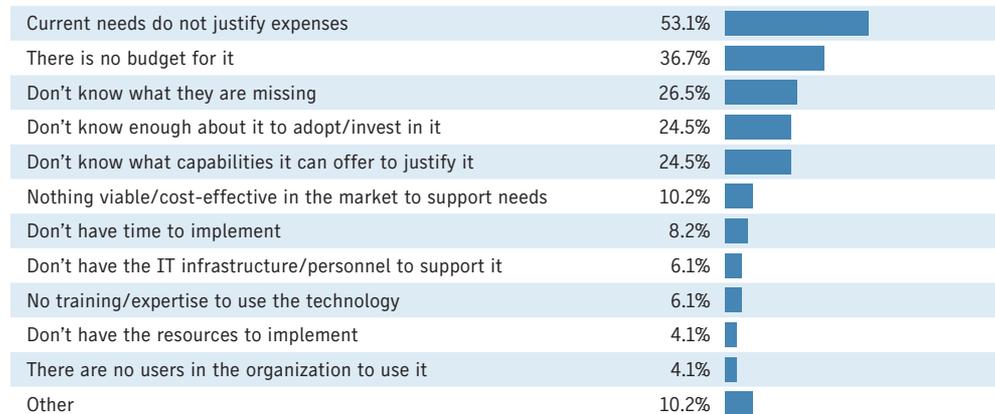
RMIS USAGE



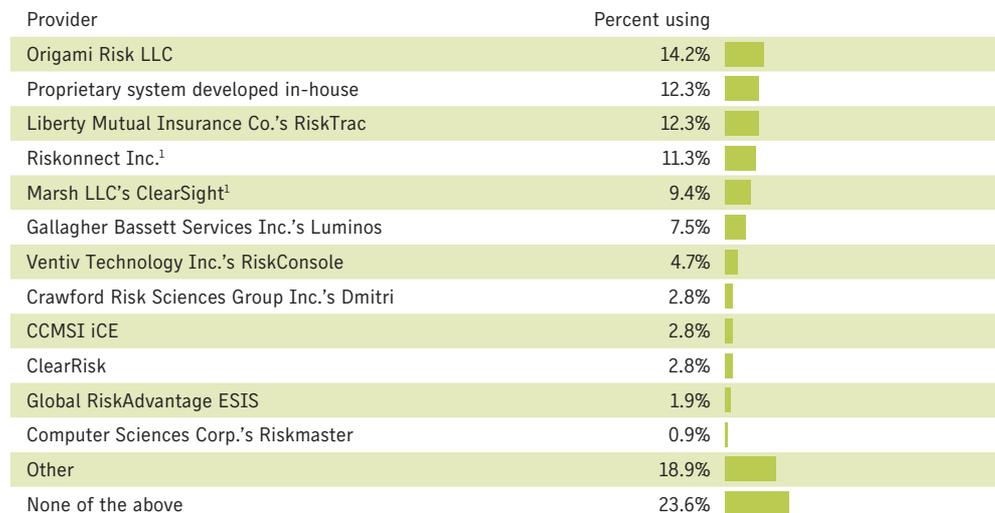
TOP RMIS FUNCTIONALITIES



Of respondents not using RMIS, reasons for not using are:



No RMIS provider dominates the market, based on the 76.4% of net users of RMIS who responded to this year's survey.



¹Riskconnect Inc. announced the completion of its acquisition of Marsh ClearSight LLC on October 1, 2018.

TOP 5 THINGS MOST LIKED ABOUT RMIS TECHNOLOGY

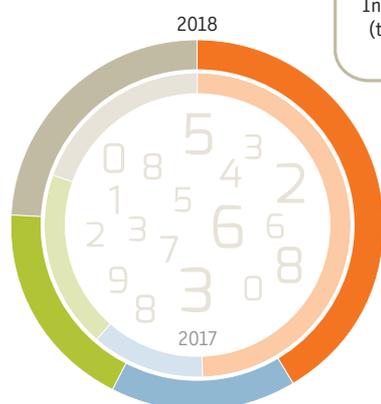
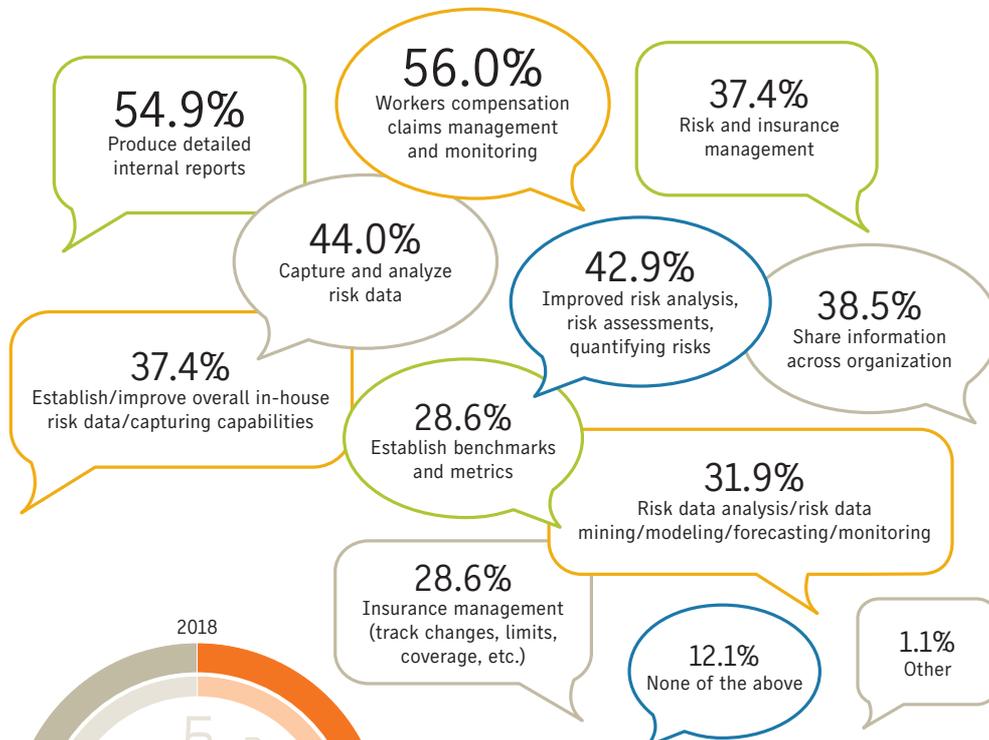
Simple to use/user-friendly	57.1%
Accessible online/web-based	52.7%
Low cost/cost-effective	47.3%
Customizable for special/specific needs	41.8%
Single point of reference for tracking, repository and data extraction	29.7%
Adaptable/flexible for growing/future needs	28.6%
Reliable/timely	23.1%
Report writing	20.9%
Customer support	15.4%
Widely used/recognized in the market	12.1%
Training programs	6.6%
Other	3.3%
Don't know	13.2%

TOP 5 THINGS MOST DISLIKED ABOUT RMIS TECHNOLOGY

Analytics or forecasting abilities	30.3%
Lack of easy reporting functions and features	30.3%
Lack of sophistication	25.8%
Outdated	24.7%
Lack of training	21.3%
Not customizable/flexible	19.1%
Complex/difficult to use	15.7%
Customer support	15.7%
Cost	14.6%
Lack of easy access	5.6%
Processing speed	5.6%
Other	6.7%
Don't know	23.6%

ACTIVITIES AND TASKS

Activities or tasks able to do today using RMIS technology software/platform that previously were unable to perform:

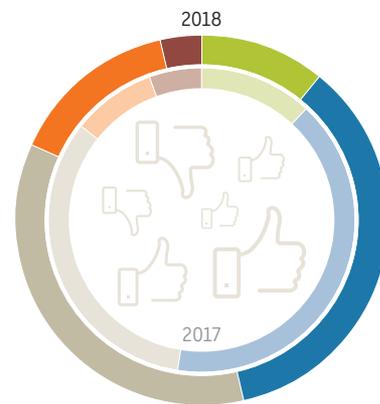
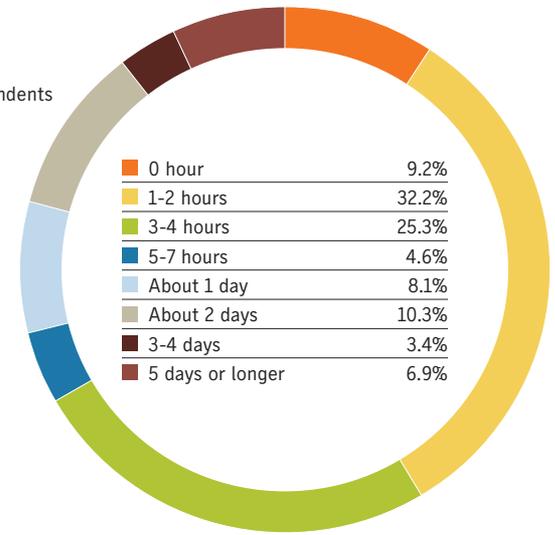


The frequency of usage has decreased from last year, with an average of **11 times per week**.

	2017	2018
More than once a day	49.6%	41.4%
Once a day	12.0%	16.1%
2-4 days per week	18.8%	18.4%
Less often than above	19.6%	24.1%

TRAINING

On average, respondents spent **8.22 hours** training on RMIS.



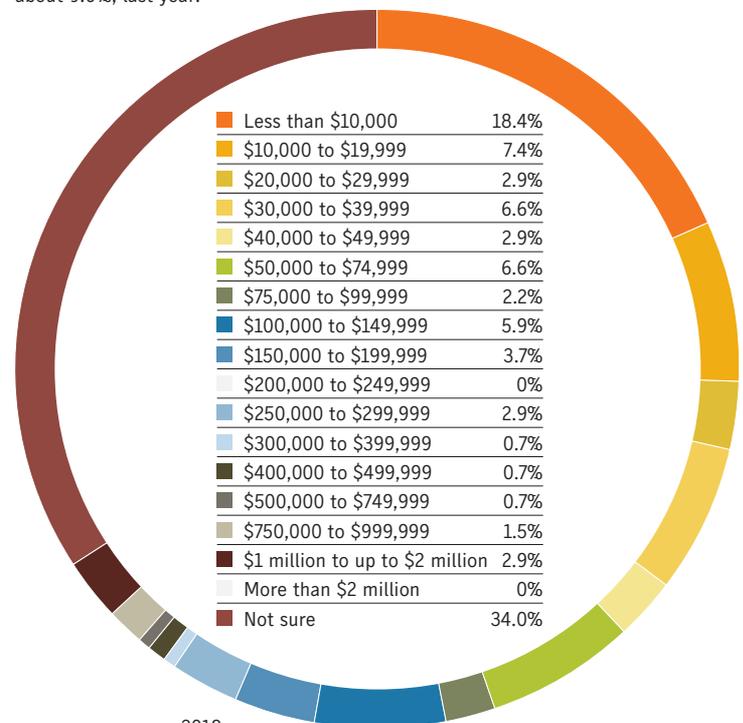
LEVEL OF SATISFACTION

Satisfaction with current RMIS technology at organization.

	2017	2018
Extremely satisfied	10.9%	12.1%
Satisfied	35.5%	40.6%
Neither satisfied nor dissatisfied	35.5%	33.0%
Dissatisfied	14.5%	8.8%
Extremely dissatisfied	3.6%	5.5%

TECHNOLOGY INVESTMENTS

Organizations' average investment in technology/software for risk management, excluding human resources, increased to **\$154,333** from \$141,561, about 9.0%, last year.



Is organization considering a change in RMIS technology in the next 12-24 months?

	2017	2018
Yes	24.3%	17.6%
No	58.6%	67.0%
Don't know	17.1%	15.4%

COMMENTARY

Tech redefines insurance sector

As technological developments create increased threats for organizations to deal with, the insurance and risk management sector is enjoying a productive period in terms of innovative use of technology to address numerous challenges.

In the past, the sector has justifiably been called out for its tardiness in implementing technology-based solutions to pervasive problems — whether it be risk analysis and mitigation, insurance placements or claims processing — but significant progress is being made, and significant changes are being implemented.

While few would claim that the insurance industry is on the cutting edge of change, it seems clear from the rapid progress that we've seen over the past several years that it is shedding its status as a technological laggard.



Gavin Souter
EDITOR

As we note in our special report on risk management innovation on page 24, risk managers and insurers are not only deploying new technology to address some age-old issues, they are doing so at a rate that was unimaginable in the past.

Take drones as an example. Only a few years ago, unmanned aerial vehicles were seen as having interesting potential to make claims assessments more efficient, but regulatory roadblocks were standing in the way of widespread use. While those roadblocks remain, several insurers have unlocked the potential of drones, and during recent catastrophes tens of thousands of drone flights have helped make claims adjusting more efficient and safer.

Technologies such as telematics and GPS tracking are also being widely implemented to address commercial auto risks and construction risks, which are areas that have been plagued by accidents for years.

And the future looks even brighter from an innovation point of view. As we report in our cover story on page 20, insurers and risk managers are uncovering the potential for artificial intelligence applications to manage a broad spectrum of property and liability exposures and threats. Already, machine learning is being utilized to clamp down on fraud, fight cyber security threats, detect manufacturing faults and tackle other risk management challenges.

While all these developments should enhance risk management protocols and heighten the value of risk professionals within their organizations, they should also help address another significant problem for the insurance sector: attracting talent.

While anyone familiar with the insurance industry knows there are many opportunities for people from a wide variety of backgrounds to succeed and find a rewarding career in the sector, that's not the perception that most outsiders have. Too often, insurance is seen as a sector that lacks vitality and opportunities for creativity.

With the emergence of new risk management technologies, the insurance sector has the opportunity to change its image as well as its practices and be seen as a home for exciting and challenging careers.

SCHILLERSTROM



VIEW FROM WASHINGTON

Clarity needed on equality

The U.S. Supreme Court has refused to weigh in on the state of current protections for lesbian, gay, bisexual, transgender and queer individuals under federal law. It's time for Congress to settle the issue once and for all.

The Supreme Court has turned away three major sexual and gender identity cases, leaving an ongoing federal appeals court split over the issue to linger. The issue has also divided agencies of the federal government, with the U.S. Equal Employment Opportunity Commission in public conflict with the U.S. Department of Justice, which has argued such protections do not exist under federal law, as we report on page 6.

Congress could resolve these conflicts by passing H.R. 5, the Equality Act, which would explicitly prohibit discrimination on the basis of sex, gender identity and sexual orientation — a bill introduced with 287 original co-sponsors on both sides of the aisle. By passing this legislation, Congress could also address the current patchwork of laws governing sexual and gender identity, with the Washington-based Human Rights Campaign identifying 21 states and the District of Columbia as prohibiting discrimination based on sexual orientation and gender identity, which complicates matters for employers in multiple states and leaves individuals in states without such protections vulnerable to discrimination.

Employers are lobbying for Congress to step up on this issue. The Business Coalition for the Equality Act comprising 176 companies, including recognizable names such as Airbnb Inc., Amazon.com Inc., Facebook Inc., Microsoft Corp., Lyft Inc. and Uber Technologies Inc., has come out strongly in favor of the bill's "clear, consistent protections to prohibit discrimination on the basis of sexual orientation and gender identity in employment ensuring that LGBTQ employees are hired, fired and promoted based on their performance."

Federal legislators have recently proved they can put bipartisan differences aside when they believe the cause is right, as they did when the U.S. House of Representatives and the U.S. Senate adopted a resolution to try to terminate the national emergency on immigration declared by President Donald Trump on Feb. 15. The Equality Act is equally worthy of such bipartisan treatment, even if it may ultimately face the same result: a presidential veto.



Gloria Gonzalez
DEPUTY EDITOR

The Equality Act notes the important contributions that employers have made to ensuring equality in their workforces, stating "many employers already and continue to take proactive steps, beyond those required by some States and localities, to ensure they are fostering positive and respectful cultures for all employees."

But the bill goes on to state that "the absence of explicit prohibitions of discrimination on the basis of sexual orientation and gender identity under Federal statutory law, as well as the existence of legislative proposals that would have provided such explicit prohibitions, has led some courts to conclude incorrectly that current Federal laws prohibiting sex discrimination do not prohibit discrimination on the basis of sexual orientation and gender identity. It has also created uncertainty for employers and other entities covered by Federal nondiscrimination laws and caused unnecessary hardships for LGBT individuals."

It's time for Congress to resolve this uncertainty and give employers clear direction and guidance on sexual and gender identity protections.

State supreme court sets high bar on handling of biometric information



Franklin Z. Wolf is an attorney with the Chicago office of Fisher & Phillips LLP, a national labor and employment law firm that represents employers. He can be reached at fwolf@fisherphillips.com.

The Illinois legal landscape recently became more of a minefield for employers due to the decision by the state's Supreme Court in *Rosenbach v. Six Flags Entertainment Corp.* that gives the Illinois Biometric Information Privacy Act new teeth and requires all private entities — subject only to limited exceptions — to be even more cautious in how they collect, store and use biometric information.

Enacted in 2008, the law requires private entities, including employers, that collect or maintain employees' fingerprints, retinal or iris scans, voiceprints, hand scans or face geometry to first receive written consent from the employee, and also develop a publicly available policy that establishes the retention schedule for the applicable biometric information. The law further mandates that the employer destroy biometric information upon the earlier of either of the following circumstances: the initial purpose for collecting the relevant biometric information has expired, or within three years of the individual's last interaction with the employer. Further, the law implements a reasonable standard of care upon employers that applies to collection, maintenance and transmission of biometric data, and prohibits the sale, leasing or trading of any such information.

The implications are apparent from the plain language of the law. If an individual prevails in a lawsuit, he or she is entitled to \$1,000 per negligent violation and \$5,000 per willful violation, or actual damages, whichever is greater. Perhaps most importantly, it also provides for attorneys' fees, costs and any other relief that a court may deem appropriate. If a private entity collected, maintained or used biometric data on a mass or even moderate scale, violating the statute's provisions could result in costly penalties that escalate quickly. The magnitude of these risks is evidenced by yet another Illinois class action case, *Sekura v. L.A. Tan Enterprises Inc.*, wherein the parties reached a settlement of approximately \$1.5 million in connection with various violations of the law.

So, the question remains: Why is the statute more dangerous in a post-*Rosenbach* world? In *Rosenbach*, the mother of a 14-year-old amusement park patron filed a lawsuit against Six Flags alleging a violation of the law. Six Flags asked the patron to scan his thumbprint into their biometric data capture system, and his fingerprint was then coupled with his season pass card. This process allowed the park to efficiently facilitate the entry process, as season-pass holders simply need to scan their fingerprints to enter. The mother eventually sued the park, but she was not



able to claim that her child was injured or victimized in any sort of tangible way as a result of the violation. The state appellate court dismissed the lawsuit on that basis, and the mother appealed the case to the Illinois Supreme Court.

Prior to *Rosenbach*, there was a split among Illinois courts about who could file a lawsuit under the statute. On the one hand, some courts held that a person needed to claim that they had suffered an actual injury because of an unlawful collection, maintenance or use of his or her biometric information. Different Illinois courts held, on the other hand, that an individual only needed to allege some technical violation of the statute. In other words, courts in the latter group determined that the individual did not need to allege — or even prove — that they had been actually harmed by an employer's potential violation.

Rosenbach is dangerous for employers because it provides for substantial penalties even if an employer did not cause any actual harm to anyone. After *Rosenbach*, Illinois employers need to be particularly careful if they collect, maintain or use any kind of biometric information.

In *Rosenbach*, the Illinois Supreme Court decided that the second set of court decisions — i.e., those in which it was decided that no actual harm is necessary — was the correct interpretation. Accordingly, the court said, whenever an entity fails to comply with any of the statute's requirements, regardless of whether that person has claimed or proven any actual harm, that action constitutes a violation of that person's rights under the statute, and the penalty provisions could apply even if an individual had not suffered

any actual injury.

Plainly, *Rosenbach* is dangerous for employers because it provides for substantial penalties even if an employer did not cause any actual harm to anyone.

After *Rosenbach*, Illinois employers need to be particularly careful if they collect, maintain or use any kind of biometric information. Oftentimes it has been easier for employers to use, for example, timeclocks activated by their employees' fingerprints. Indeed, these devices can be effective tools for calculating payroll correctly and preventing potential fraud. The *Rosenbach* decision suggests that those practices may need to be reworked. Because class actions and other litigation under the law have been more prevalent in recent years, the potential penalties — and plaintiff-side attorneys fees — are just too staggering to ignore. The results from *Rosenbach* and *Sekura* essentially require that any private entity in Illinois, employers included, should craft the necessary policies and obtain the required written releases before taking any steps with respect to an individual's biometric information.

The *Rosenbach* decision has demonstrated that employees, including a class of employees, need only meet a minimal threshold in pleading and proving claims under the statute. Implementing the necessary policies and authorizations can allow employers to be well-positioned to defend against any potential litigation and better equipped to handle biometric data.

If employers collect any kind of biometric information from their Illinois workforce, then they should take this opportunity to consider whether their biometrics collection and retention practices meet the law's requirements. Employers should identify existing relevant policies and, if appropriate, develop and distribute new policies and authorizations that are strictly compliant with the statute.

Barring any additional action by the Illinois legislature, *Rosenbach* is the law of the land in Illinois. Employers across the state, and any employers who maintain a workforce in Illinois, should conduct themselves accordingly.

Aon, AI firm partner on wildfire model

■ Aon PLC has teamed with insurtech firm Zesty.ai to apply artificial intelligence to wildfire modeling and underwriting.

Oakland, California-based Zesty uses more than 130 billion data points on buildings and their surroundings to “enable granular risk analysis and informed pricing,” Aon said in a statement. The data points are obtained from regularly updated satellite and aerial imagery and other sources.

The wildfire model uses machine learning to combine the property details such as vegetation, building materials, topography and weather patterns, with actual loss data, the statement said.

China Re launches offshore wind farm cover

■ China Re Corp. has launched a renewable energy consortium at Lloyd’s of London that focuses on reinsurance for the construction and operation of offshore wind farms in mainland China.

China Re’s syndicate 2088 will manage and co-lead the consortium with Canopus syndicate 4444 and Travelers syndicate 5000, China Re said in a statement. The consortium is also supported by Chaucer syndicate 1084, Axis syndicate 1686 and GCube Underwriting Ltd.

The consortium covers construction all risks, erection all risks and third-party liability, and can provide capacity of up to \$225 million per risk, the statement said.

Brown & Brown unit launches quake policy

■ Arrowhead General Insurance Agency Inc., a subsidiary of Daytona Beach, Florida-based Brown & Brown Inc., has launched California commercial earthquake coverage for business interruption that triggers when a business closes due to an earthquake, even if no property damage occurs.

Underwritten by specialty insurer Falls Lake National Insurance Co., a subsidiary of James River Group Holdings Ltd., the Quake Assist coverage triggers upon “business closure” after an earthquake, even if no damage occurs to the insured’s building and/or business property, Arrowhead said in a statement.

Policyholders can purchase a daily limit of coverage up to 90 days, subject to an annual aggregate limit of \$1 million, a spokesman said. Coverage applies in the event of an earthquake of magnitude 4.0 or greater occurring within 100 miles of the property location, he said.



FM Global teams with aerial mapping startup

■ FM Global is partnering with AirWorks Solutions LLC, a startup developing software for aerial mapping and surveying, to aid in property risk identification and loss prevention.

AirWorks uses data from drones, aircrafts and satellite imagery, along with artificial intelligence, to create layered sketches of location topography and conditions in near real-time, FM Global said in a statement. It identifies “property hazards from the air that couldn’t otherwise be easily or safely identified,” Michael Lebovitz, senior vice president for innovation at FM Global in Johnston, Rhode Island, said in the statement.

The data can be used to help inform critical decisions and improve the timeliness and costs on construction projects, FM Global said, adding it is also investing \$250,000 in the Boston-based startup.

Sompo adds crime, cyber liability covers

■ Sompo International Holdings Ltd. introduced a management assurance policy in the U.S. that expands its primary

professional lines insurance coverage for private companies to include commercial crime and cyber liability risks.

Up to \$25 million in capacity is offered for each line of business, according to a spokeswoman for the Pembroke, Bermuda-based insurer.

Sompo said in its statement that the new coverages are in addition to the company’s private company directors and officers liability, employment practices liability, fiduciary liability and professional liability coverages.

Sompo said MAP’s modular format gives private companies the ability to customize their coverage selections in a single policy tailored to their risk profile. It said the product, which is admitted in most U.S. states, targets private companies in all industries, not-for-profit entities, health care organizations and professional service firms.

Marsh USA offers IP insurance cover

■ Marsh USA Inc. launched IP Protect, a coverage for intellectual property backed by managing general underwriter Ambridge Partners LLC.

More than \$60 million in primary coverage is available from New York-based Ambridge, Marsh USA said in a statement, and up to \$100 million in coverage is available, according to Jack Flug, managing director in Marsh USA’s FINPRO practice in New York.

IP Protect provides broad defense coverage for losses relating to patents, copyrights, trademarks and, by endorsement, trade secrets, the statement said.

Jason Sandler, vice president in Marsh USA’s FINPRO practice in New York, said policyholders list assets to be insured on individual schedules. Organizations of up to \$2 billion can cover their entire business, while larger entities can insure a portion of their intellectual property.

Munich Re offers cover for battery-makers

■ Munich Reinsurance Co. is offering warranty coverage for battery manufacturers.

“The insurance cover is primarily aimed at major projects, such as those to ensure grid stability or to cover peak demand periods,” Munich Re said in a statement, giving solar parks as an example.

The 10-year warranty coverage will pay for repair or replacement costs of a defective or weak battery above a predetermined amount, Munich Re said in a statement.

Annual limits of \$50 million are available but can be tailored to meet the needs of individual customers, a spokeswoman said.

DEALS & MOVES

JLT selling aerospace unit to Gallagher

Jardine Lloyd Thompson Group PLC will sell its aerospace practice to Arthur J. Gallagher & Co. to address potential overlap with JLT’s acquisition by Marsh & McLennan Cos. Inc.

All assets within JLT’s global aerospace retail and wholesale broking division will be sold to Gallagher, the brokerages said in respective statements. JLT valued the sale at about £190 million (\$250.9 million).

About 250 employees from JLT’s global aerospace division will join Gallagher, according to Gallagher’s statement.

Alliant unit acquires Canadian brokerage

Tribal First, a unit of Newport Beach, California-based Alliant Specialty Insurance Services Inc., acquired AFN Insurance Brokerage, which specializes in risk management and insurance for Canada’s First Nation governments.

Terms of the deal were not disclosed. AFN will continue to operate from its Ottawa location, Alliant said in a statement.

Alera Group buys California agency

Alera Group acquired Stockton, California-based Dohrmann Insurance Agency Inc. Terms of the deal were not disclosed.

Dohrmann specializes in agriculture and construction, Deerfield, Illinois-based Alera said in a statement. Its staff of 20, led by President Greg Dohrmann, remain in its existing location under the name Dohrmann Insurance Agency, an Alera Group Co. LLC.

Hub purchases Wisconsin brokerage

Hub International Ltd. acquired Waukesha, Wisconsin-based Integrated Risk Solutions Inc. Terms of the deal were not disclosed.

Integrated Risk specializes in commercial insurance, loss control engineering, employee benefits and claims management, Chicago-based Hub said in a statement. It has more than 20 employees, according to its website.

Tom Precia, co-founder, president and CEO of Integrated Risk, and Pete Aisbet, co-founder and executive vice president, will join Hub Midwest, and Mr. Precia will become Wisconsin CEO, Hub said in the statement.



“As the physical world becomes more digital, the way we live, move and work changes. Assets are more easily shared, and ‘access’ is valued by some over ‘ownership.’”

UP CLOSE

Rob Bauer

NEW JOB TITLE: San Francisco-based managing director and head of sharing economy and mobility group for Marsh USA Inc.

PREVIOUS POSITION: San Francisco-based general insurance head of innovation and sharing economy group for American International Group Inc.

OUTLOOK FOR THE INDUSTRY: Vibrant — for the sharing economy, mobility and insurance sectors. They are closely related and rely on each other. Technology is changing our expectations of all three. If an independent contractor can deliver eggs to your front door in less than two hours — summoned by an app, following a digital map — then our tolerance for how insurance responds must keep up. Just recently, insurance products have been created that are priced by mile, by hour or even by completed task. We do not leave our “prime-now, on-demand” expectations at home when we go to work. Even in insurance.

GOALS FOR YOUR NEW POSITION: It’s three-fold: To serve clients using technology to change the world for good; to make insurance “just work” for the gig economy; and to create new products, partnerships and capacity. In addition to protecting corporate balance sheets and individuals’ income, sharing-economy firms are using insurance to help gain access to new markets, compete for funding, grow users and aspire to make our lives better.

CHALLENGES FACING THE INDUSTRY: Keeping pace with how we use technology and quantifying the risk. As the physical world becomes more digital, the way we live, move and work changes. Assets are more easily shared, and “access” is valued by some over “ownership.” When was the last time you bought a DVD versus subscribing to Netflix? What does insurance look like when we’re able to subscribe to mobility across scooters, bikes, cars, city buses, subways and more instead of owning? Risks shift as new realities are introduced. Was it the human, machine or software that caused the accident?

FIRST EXPERIENCE: Downloading Uber and Lyft both on the same day.

ADVICE FOR A NEWCOMER: Don’t ask “why,” ask “why not?” Listen, learn and be polite, but bring yourself to work every day, and don’t be afraid to challenge things that don’t make sense.

DREAM JOB: The person who cuts limes for the bartender on a fancy catamaran cruise in the Caribbean or U.S. ambassador to Aruba.

LOOKING FORWARD TO IN YOUR NEW JOB: Seeing the future through clients’ eyes and helping them go and get it.

COLLEGE MAJOR: Political science in undergrad. In law school, I specialized in copyright. First, I was going to be a senator, then a talent agent, now in insurance. My grandfather sold New York Life insurance as one of his careers, so perhaps this is fate?

FAVORITE MEAL: Acai bowl after a long run or bike ride.

FAVORITE BOOK: Fiction: “The Alchemist,” by Paulo Coelho. An allegory for life. Nonfiction: “Franklin and Winston,” by Jon Meacham, the greatest American writer living today.

HOBBIES: Running, biking, cooking, Sunday New York Times, Bloomberg, helping friends with their startups.

TV SHOW: I’m on the move often, so I don’t watch a lot of TV. I much prefer podcasts — Guy Raz’s “How I Built This,” Andreessen Horowitz’s “a16z,” “Pod Save America.”

ON A SATURDAY AFTERNOON: The kale breakfast burrito at the Fort Mason Farmers’ Market in San Francisco is amazing!

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

ON THE MOVE



Lloyd’s of London promoted **Hayley Spink** to be head of global operations. Ms. Spink succeeds Joe Dainty, who left Lloyd’s in March to join IT services

provider DXC Technology Co. She joined Lloyd’s in 2007 and has served in several operational leadership roles.



Tokio Marine HCC named **Michael Schell** to be president of the Houston-based specialty insurer effective April 1, succeeding the

retiring William Burke. Mr. Schell joined the insurer in 2002 and most recently was an executive vice president at Tokio Marine HCC.



Scor SE elevated **Michel Blanc** to CEO of reinsurance for its global property/casualty division, succeeding Jean-Paul Conoscente. Mr. Blanc, who was CEO

of the Asia-Pacific region for global property/casualty, took up his new role on April 1 and is based in Singapore.



Hiscox USA named New York-based **Jennifer Nierenberg Metzger** to be head of product innovation and development in the U.S. Previously, Ms. Metzger was

director, professional liability and specialty programs underwriting group for Nationwide Mutual Insurance Co.



Aon PLC appointed Chicago-based **Brian Cochrane** to be chief commercial officer of the broker’s new ventures group. Mr. Cochrane

previously served as Aon’s executive vice president and global leader of mergers and acquisitions and transaction solutions.



Jane Tutoki stepped down as vice chair of Sedgwick Claims Management Services Inc. but will remain on the board as its first female director. She joined Memphis,

Tennessee-based Sedgwick last year.

SEE MORE ONLINE



JASONPARIS/FICKR

Beer battle brewing in New Orleans

The marketers of New Orleans's largest beers are taking their barroom brawl to court.

The pourers of "Huge Ass Beers," a trademarked name for a plus-sized pour of draft beer sold at a trio of Bourbon Street businesses, are suing the makers of "Giant Ass Beer," a pour served at other New Orleans bars, according to an article in *The Advocate*.

"Huge Ass Beers" creators alleged trademark infringement in a federal lawsuit filed in February and are seeking a restraining order barring the sale of "Giant Ass Beer" and damages.

By Mardi Gras season, a reporter on the story wrote that he couldn't find a "Giant Ass Beer" on Bourbon Street and that a bartender "had only conventional 16-ounce plastic cups available."

Social media quizzes dig deep

Those just-for-fun quizzes on Facebook have been trying to learn more about you than just what your eye color or people skills indicate.

A lawsuit filed last month by Facebook against two Ukrainian men alleges such quizzes have been stealing the personal data of some 63,000 users, causing \$75,000 worth of damage to the social media company, according to *Fortune* magazine.

The quizzes, allegedly created by defendants Andrey Gorbachov and Gleb Sluchevsky, tricked users into installing malicious browser extensions that mined a person's profile data and friends list, according to a federal lawsuit accessed by the magazine.

After users agreed to a quiz, the defendants allegedly installed malicious browser extensions, which were able to collect profile data and allow the quiz-makers to "inject unauthorized advertisements when the app users visited Facebook or other social networking sites."



MARTHA STEWART TOSSES PILLOW, GETS INTO POT



Top American home and garden expert — and convicted felon — Martha Stewart will get her latest kicks in the medical cannabis industry, *Business Insider* reported.

Specifically, Ms. Stewart is set to partner with Ontario-based Canopy Growth Corp., which produces and markets both medical and recreational marijuana, to develop a line of CBD — medical marijuana — animal health products and food, the news outlet reported, adding that she is planning to help market such products for humans.

The announcement produced 3% stock jumps for Canopy Growth. "Martha is one of a kind, and I am so excited to be able to work alongside this icon to sharpen our CBD product offerings across categories from human to animal," Canopy CEO Bruce Linton said in a statement.

Checking out on return to work

Authorities in Connecticut are considering it a check in the box for workers compensation fraud.

A school board employee in Windsor, Connecticut, has been charged after an investigation found she altered a doctor's return-to-work note to her employer after a slip and fall on ice in 2018, NBCconnecticut.com reported in March.



Inspectors from the Connecticut Workers' Compensation Fraud Control Unit of the Office of the Chief State's Attorney arrested Patricia Stackpole and charged her with one count of fraudulent claim or receipt of benefits.

Ms. Stackhouse began collecting benefits after reporting the work-related injury but was observed "moving in a manner inconsistent with her claimed injuries," the state Division of Criminal Justice told reporters.



SQUAREMOUTH

Teacher hits insurance jackpot

Apparently no risk manager had the chance to buy and read Squaremouth Inc.'s travel policy before a high school teacher did.

In January, the St. Petersburg, Florida-based insurer hid its instructions for claiming \$10,000 in its Tin Leg travel insurance policy, figuring no one would be quick to read the section entitled "it pays to read," which was placed on page 7 of the nearly 4,000-word document, according to the *Tampa Bay Times*.

First to meet the challenge and earn the prize was Donelan Andrews, a self-described "nerd" who said she always reads the terms of such documents.

"Teaching students to read their contracts has always been close to my heart because of my consumer economics background," Ms. Andrews, a consumer economics teacher from Georgia, said in a Squaremouth statement. "I always read every contract I sign. It really paid off for me this time!"

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