

HELICOPTER RISK: High-profile crashes put focus on market pressures - PAGE 8

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APRIL 2020

SPECIAL  
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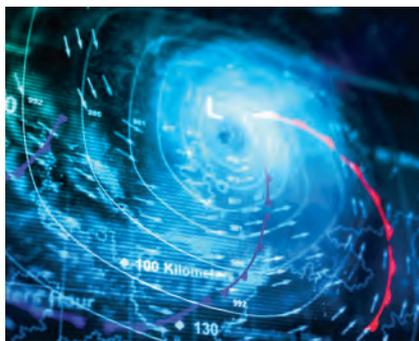
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## COVER STORY

The coronavirus pandemic has caused upheavals across the globe and is putting severe financial pressure on numerous organizations. Infectious disease exclusions are common in insurance policies but that doesn't mean all claims will be denied. Commercial policyholders will likely be able to recover some virus-related losses from their portfolio of coverages. **PAGE 4**

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When nearly everyone has a camera at hand, businesses are at heightened risk from frontline employees behaving badly. Insurers now offer coverage against the risk of public shaming in the cyberworld. **PAGE 26**

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FOR BREAKING NEWS  
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### NEWS ANALYSIS

Several recent high-profile helicopter crashes have prompted increased scrutiny by insurers. **PAGE 8**

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Substantial coverage limits for phishing risk are available to companies with good internal controls. **PAGE 12**



### INTERNATIONAL

The Portuguese insurance market is characterized by high concentration at the top end, significant foreign ownership and the lack of a domestic reinsurance market. **PAGE 14**

### VIEW FROM THE TOP

### STEVE MCGILL

Steve McGill, former group president of Aon PLC, launched a new specialty risk broker named McGill and Partners in May 2019 backed by \$250 million in private equity funding. Mr. McGill discusses the impact of industry consolidation and competition, as well as his "contract of trust" approach to recruiting staff for the London-based insurance and reinsurance brokerage. **PAGE 21**



### OFF BEAT

Aon PLC's blockbuster \$30 billion deal to buy rival Willis Towers Watson PLC raises towering question for Chicagoans. **PAGE 34**



## CORONAVIRUS COVERAGE ISSUES LOOM

Policy details crucial  
to determine success  
of commercial claims

### BUSINESS INTERRUPTION

**U**.S. businesses began feeling the effects of the coronavirus outbreak before any cases were reported in North America.

With numerous manufacturers and others relying on producers in China for parts and products, supply chains started straining early in the year as Chinese authorities responded to the crisis with quarantine measures and factory shutdowns.

For many firms, the question arose as to whether revenue lost due to supply chain problems would be covered under the business interruption or contingent business sections of their property insurance policies.

The early consensus was that because there was no physical damage to property to trigger the business interruption coverage, claims would not be successful.

Unless policies contained specific coverage for losses caused by viral outbreaks, losses would be uninsured.

When the virus hit U.S. businesses directly, with authorities across the country ordering bars, restaurants and other businesses to close or cut hours, at least some legal experts suggested that business interruption losses might be covered.

"We start with the threshold issue of 'Is coronavirus or the presence of coronavirus property damage?'" said Finley T. Harckham, a senior litigation shareholder in the New York office of Anderson Kill P.C. who

represents and advises corporate policyholders and other entities in insurance coverage matters.

Mr. Harckham said cases that have dealt with similar situations lead him "to believe there's a good chance that the presence of coronavirus is property damage." He added that the issue of the coronavirus as physical damage has yet to be "directly addressed by the courts."

And in mid-March, a policyholder sought to test its property coverage in court. On March 16, Ocean Grill, a New Orleans restaurant, filed suit in a Louisiana state court seeking a declaratory judgment that its property policy should pay business interruption expenses.

The policy issued by syndicates at Lloyd's of London covers civil authority-ordered shutdowns, and does not have an exclusion for viruses or pandemics, the lawsuit said.

In addition, "It is clear that contamination of the insured premises by the coronavirus would be a direct physical loss needing remediation to clean the surfaces of the establishment," the suit said.

Despite the Louisiana action, however, several insurer attorneys and others say that business interruption losses are not covered under standard policy wordings.

Viruses, pandemics and contagious/infectious diseases such as COVID-19 are generally not designated perils in a standard form commercial property policy, said Paul S. White, a partner in Los Angeles with Wilson Elser Moskowitz Edelman & Dicker

LLP. He said such policies typically contain at least two conditions precedent to coverage, that the loss arises from a designated peril, such as a fire or earthquake, and it results in a direct physical loss to property.

While standard policy language may limit coverage for disease and pandemic, "there are also specialized commercial property policies that may include 'communicable and infectious diseases'" as a designated peril, Mr. White said.

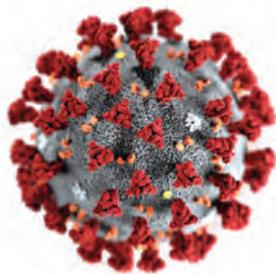
The American Association of Insurance Services Inc.'s commercial lines, inland marine, business owners and commercial property programs "all contain virus or bacteria exclusions either within endorsements or within the coverage forms themselves," said Nicole D. Milos, assistant counsel at the AAIS based in Lisle, Illinois.

This exclusionary language has been in existence for 15 years, so "it's not a new phrase, or new terminology," Ms. Milos said.

Going forward, the coronavirus may lead to changes in policy wordings.

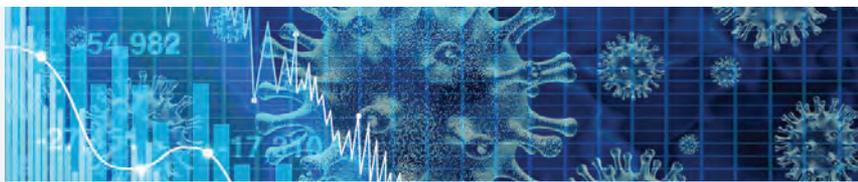
The Insurance Services Office Inc., part of Verisk Analytics Inc., based in Jersey City, New Jersey, recently said it had developed, but not yet filed with regulators, drafts of two advisory endorsements that can provide limited coverage for business interruption caused by certain actions of civil authorities taken to avoid infection by coronavirus, or to limit its spread.

Matthew Lerner, Claire Wilkinson  
and Gavin Souter



**T**HE CORONAVIRUS PANDEMIC began causing major disruption worldwide last month as many governments imposed severe restrictions and businesses overhauled their operations in reaction to the crisis. As organizations respond to the challenges arising from COVID-19 and efforts to stem the spread of the disease, numerous risk management issues arise ranging from coverage for lost revenue to liability exposures and worker safety.

In the following special section, *Business Insurance* reports on some of the major risk management concerns emerging in late March. To stay up-to-date on all insurance and risk management issues related to the coronavirus, visit our special Coronavirus section at [www.businessinsurance.com](http://www.businessinsurance.com) and sign up for coronavirus-related email news alerts.



## DIRECTORS AND OFFICERS LIABILITY

**B**usinesses should brace themselves for a likely flood of shareholder suits related to the coronavirus outbreak, but the success of any litigation may depend on companies' willingness to fully disclose directors and officers liability-related risks now, say many experts.

Last month, the U.S. Securities and Exchange Commission directed companies to disclose information related to the coronavirus, which could have implications for D&O claims.

SEC Chairman Jay Clayton issued a statement saying companies must provide investors with assessments and plans for addressing material risks to their businesses and operations resulting from the coronavirus "to the fullest extent possible."

"We all expect that we will see claims arising out of the virus in the D&O world," said Sarah Downey, New York-based FINPRO and D&O product leader for Marsh USA Inc.

In the past, widespread illnesses have not led to D&O litigation, said Kevin LaCroix, executive vice president of RT ProExec, a division of R-T Specialty LLC, in Beachwood, Ohio.

But over the past few years, D&O liti-

gation in general has become "event driven," focusing "on adverse events affecting company operations" rather than financial statements or false information, he said. "The unique thing about this particular health outbreak is the extent to which it is affecting the business operations of many companies," he said.

If investors feel they were not fully informed about supply chain vulnerabilities or distribution problems, they may file lawsuits, Mr. LaCroix said.

Laura Foggan, a partner with Crowell & Moring LLP in Washington and chair of the firm's insurance/reinsurance group, said, "This is such an evolving situation, with so many unknowns, it creates a recipe for plaintiffs to think about future shareholder action." If the situation does not develop as predicted in firms' SEC filings, it could result in D&O litigation, she said.

The success of litigation will depend on whether a company makes accurate disclosures, follows government recommendations, has emergency plans in place and has developed supply chain alternatives, said Susan Friedman, Plainview, New York-based vice president and claims counsel for NFP Corp.

Publicly held companies are "caught between a rock and a hard place" with the SEC requirement that they disclose an assessment of their plans for addressing the coronavirus and the material risks to their business, said Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC's FINEX North America practice. They do not have the benefit of safe harbors from liability with respect to what is happening today, he said.

"It's really important not to say something that hasn't been vetted" by legal counsel or auditors, Mr. Yellen said.

If shareholder suits are filed, D&O insurance should pay claims, Peter M. Gillon, a partner with Pillsbury Winthrop Shaw Pittman LLP in Washington, D.C., said in an email.

"Fortunately, such securities litigation falls well within the scope of typical D&O coverage, so most companies should be insured against the potential securities litigation risks," he said.

"We are advising our clients to make sure they're buying Side A limits," said Christine Williams, New York-based CEO, financial services group at Aon PLC. The Side A portion of a D&O policy offers coverage for individual directors and officers in shareholder actions.

In addition, companies should look at bodily injury exclusions, which are standard in D&O policies, and "make sure they narrow the exclusion as best they can," Ms. Williams said.

*Judy Greenwald*



## MEDICAL MALPRACTICE

**T**he coronavirus pandemic could lead to increased medical malpractice claims, but much remains uncertain, say observers.

Experts say increased claims could stem from hospital systems' lack of preparedness for a pandemic, their failure to diagnose the disease, coronavirus patients' treatment, patients who are inadvertently exposed to the disease and situations where unrelated procedures are delayed because of the virus.

With the situation so much in flux, the outlook is uncertain, say experts. "Quite frankly, it's a struggle because we're not certain where this is going to go," said Martha Jacobs, Pittsburgh-based managing director and national health care practice leader for Aon PLC.

Michael Maglaras, Ashford, Connecticut-based principal with insurance and risk management consultancy Michael Maglaras & Co., said if the situation follows what has happened in the past, "we can see claims arising from a failure first to diagnose patients," then a failure to adequately treat them.

Dr. John C. Evanko, chief medical officer for Burlington, Vermont-based med mal insurer MCIC Vermont, a reciprocal risk retention group, said if many health care systems cancel or delay elective surgery, it may reduce medical malpractice claims, although an economic downturn may increase them.

Health care systems "have to be very judicious and weigh the pros and cons of delay. If it's truly elective surgery, it should be fine," he said.

Mike Stinson, vice president, government relations and public policy, for Rockville, Maryland-based Medical Professional Liability Association, a trade association, said the normal time frame between an alleged negligence and a claim is about two years, "so I don't think we're going to see a real impact to this for some time yet."

*Judy Greenwald*



## CYBER RISK

**C**ompanies that directed large numbers of employees to work from home for the first time because of the coronavirus pandemic face a host of cybersecurity issues, including concerns over the security of workers' personal computers and vulnerability to phishing attacks.

While it's likely that many problems would be covered by cyber insurance or other policies, now is a good time for firms to review their policies, experts say.

"The problem is, we're suddenly pushing out a very large contingent of the folks who work for you, and not all of them may be sophisticated telecommuters," said Robert Parisi, New York-based managing director and cyber product leader for Marsh LLC.

"If you have a lot of people working off of their own computer devices, you're of course counting on the fact that they

have practiced good cyber hygiene at home, meaning do they patch and update their systems regularly and do they have high-quality protection on their computers," said policyholder attorney Joshua Gold, a shareholder with Anderson Kill P.C. in New York.

Employees should be trained that any sensitive data that is on a network is behind a virtual private network, or VPN, that is using multifactor authentication, said Stephanie Snyder, Chicago-based senior vice president and commercial strategy leader for cyber solutions with Aon PLC.

Another concern is many people have Internet of Things devices in their homes, from nanny cams to appliance-based software or hardware, that "can provide an opportunity for someone to overhear, or see, things that the person's doing at work," said Tedrick A. Housh III, a partner with Lathrop GPM LLP in Kansas City, Missouri.

Lindsey Nelson, London-based cyber development leader for CFC Underwriting Ltd., said 80% of cyber incidents, including ransomware, last year were initiated through remote desk protocols and logins.

"Many cyber criminals are now capitalizing on the opportunity" presented by the coronavirus outbreak with phishing campaigns, sending out emails inviting employees to click on links to malicious software that purportedly presents health safety measures, Ms. Nelson said.

Employees may also be misled by emails appearing to be from their own information technology departments requesting credentials, Ms. Snyder said.

Experts say cyber-related events are likely to be covered by corporate cyber policies, even if they stem from an employee working at home. "If it's going to be a pure cyber incident, such as a breach, or something driven by cyber, working from home wouldn't change that. That's typically not excluded," said Anthony Dagostino, New York-based global cyber and technology practice leader for Lockton Cos. LLC, although firms should check their policies to confirm the definition of computer system is broad enough to include employees working from home.

*Judy Greenwald*

## OTHER LIABILITY

Coverages such as general liability, employment practices liability and pollution liability policies might respond to infectious diseases in specific circumstances, said experts from Marsh LLC in a presentation last month.

“Employers’ enforcement of specific corporate and human resources policies during an outbreak could give rise to claims of discrimination against protected classes,” said Christopher Lang, global placement leader for U.S. and Canada, for Marsh LLC, based in New York.

Employment practices liability policies could respond in those cases, he said.

Depending on the severity of the disease, organizations might also incur cleanup or waste removal costs and might be forced by government authorities to temporarily close.

“Pollution legal liability policies can respond depending on policy wording and the facts of a claim,” Mr. Lang said.

General liability policies could also cover illness involving customers and other third parties but are “unlikely to cover claims based on fear of exposure without actual symptoms,” Mr. Lang said.

*Claire Wilkinson*

## WORKERS COMPENSATION

Will there be a workers compensation claim if a worker contracts COVID-19? Generally, no, experts say, adding that workers compensation claims stemming from infectious diseases are typically considered occupational hazards for health care workers only.

But that could change as the country grapples with an issue many legal experts say is unprecedented and put employers in a gray area.

“We don’t have precedent on this issue,” said Aaron D. Goldstein, a Seattle-based partner at Dorsey & Whitney LLP, adding that COVID-19 “may not follow the same rules” as other illnesses that made headlines, such as swine flu.

Generally, “if you come down with the flu, it is not a workers comp issue maybe with the exception of health care workers.”

But those with “medium” risk exposure, such as workers whose jobs require them to work with the public, could see rules shift in their favor, said Mr. Goldstein.

Workers traveling on business to infected areas or those stationed permanently or semi-permanently in high-risk areas would be the most likely to make convincing cases for workers comp claims, according to a post on Willis Towers Watson PLC’s website last month.

“A person who works with the general public” might have a claim if they can prove they were exposed at work, Mr. Goldstein said.

Overall, employers should have a plan to protect workers, according to other legal teams tackling the issue in statements and blog posts over the past month, stating they have been bombarded with questions from employers confused over the issue.

Citing federal labor law, the law firm Fisher Phillips LLP in March posted an online alert stating that an employee could refuse to go to work if they feel they are in “imminent danger,” but that “the threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time.”

Yet “most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work,” according to Fisher Phillips.

*Louise Esola*

## WORKPLACE SAFETY

The Occupational Safety and Health Administration released guidance on March 9 to help employers prepare their workplaces for an outbreak of COVID-19, along with a reminder that incidents of employees contracting the coronavirus at work are recordable illnesses. The agency issued revised guidance March 13 to clarify the parameters for reporting workplace COVID-19 exposure.

Despite protests by trade associations and employers that have argued other viral illnesses such as the common cold and flu are exempt from being recordable illnesses, OSHA has “doubled-down and said this is not exempt,” said Eric Conn, founding partner in the Washington, office of Conn Maciel Carey LLP.

OSHA made a few concessions, however, determining that employers are required only to record cases of medically confirmed cases of COVID-19 that were acquired as a result of performing work duties, but companies with recordable cases must list those on their OSHA 300



logs or face the failure-to-record fines as other workplace injuries and illnesses.

OSHA also relaxed its fit-test standards for protective masks so that employers, such as those in health care who make good-faith efforts to comply with the guidance, will not be in violation of standards due to shortages in masks and other personal protective equipment, said Kristin White, a partner in the Denver office of Fisher & Phillips LLP.

Employers may not be required to call OSHA to report hospital admissions due to COVID-19, either, said Mr. Conn. OSHA requires employers to report when a worker has been admitted to a hospital for a workplace injury or illness within 24 hours of the underlying incident or exposure. With the reported incubation period of a week or two before show-

ing symptoms and even longer lead times before a hospital admission would be needed, “it strikes me as very unlikely that a COVID-19 case is likely to be reportable to OSHA as a hospitalization,” he said. With fatalities, the reportability window is 30 days, so if the exposure were determined to have occurred in the workplace, those deaths may be reportable, he said.

While recordkeeping and workers compensation claims will likely be mostly confined to the health care industry and nursing care sector, said Mr. Conn, it’s also possible that businesses that have a clustered outbreak of COVID-19 could be affected. For example, if a hotel’s housekeeping department all contract the virus around the same time, those illnesses could be recordable and end in comp claims.

*Angela Childers*



## TELECOMMUTING RISKS

With more employees working from home during the coronavirus pandemic, workers compensation experts say an uptick in workers compensation claims will likely follow.

Trips and falls and soft-tissue injuries stemming from poor ergonomics are among those often seen in companies with telecommuting staff.

“We’re probably going to see more claims,” said Jeffrey Smagacz, Nashville-based ergonomics practice leader for Marsh LLC. Office workers

may now work at a kitchen table that’s too high and sitting on a hard chair, or sitting on a soft couch working in an awkward posture, he said.

“(Workers) are going to go from a totally ergonomically sound workstation to a totally unsafe workstation. ... It’s going to be hard to defend,” said Les Johnson, partner in the Chicago office of SmithA-mundsen LLC.

“People need to be focused on proper positioning, whether they’re working from home or in an office,” said Deborah

Roy, Falmouth, Maine-based president of SafeTech Consultants Inc. and president-elect of the American Society of Safety Professionals.

Another focus will be claims that arise when a telecommuter trips on a cord or other object in their home office, among other accidents that create comp claims, said Dennis Tierney, Marsh’s Norwalk, Connecticut-based national director of workers compensation claims.

In addition, employees will submit claims for accidents where there were no witnesses, Mr. Johnson said. “That’s a big defense issue in comp in general,” he said.

Employers may also see delays in reporting, which can increase defense litigation costs and negatively affect an employer’s exposure because “it’s really hard to defend” a late-reported accident or an unwitnessed accident, Mr. Johnson said.

*Louise Esola and Angela Childers*



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# Chopper crashes make insurers wary

BY CLAIRE WILKINSON

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Helicopters fulfill a key role in the economy and in local communities, often used to monitor traffic and for medical transportation, but recent high-profile accidents such as the California crash that killed former NBA star Kobe Bryant have led to increased scrutiny by insurers.

The heightened attention on private helicopter risks comes as the aviation insurance market in general has been contracting, with capacity reduced either because insurers are withdrawing from the market or because they are no longer putting up the limits that once were available, industry experts say.

Insurance rates are rising for all sectors of aviation, not just VIP helicopters or helicopters in general, said Jeff Bruno, Parsippany, New Jersey-based president and chief underwriting officer at Global Aerospace Inc.

“Several factors prevail, including higher liability awards, repair costs inflation, high-profile large industry losses, combined with rates coming off of historic lows,” Mr. Bruno said.

Liability payouts seem to be on the rise, according to Joel Heining, Columbia, South Carolina-based vice president-sales at AssuredPartners Inc. “The insurance industry can’t put a finger on what the next outcome is going to be on a tragic loss,” he said.

Until recently, severe aviation liability claims were understood to run as high as \$7.5 million per person on average. “We have now seen a few claims that are significantly higher than that,” Mr. Heining said.

“It’s somewhat irrelevant who’s on board the aircraft, whether it’s an executive or a private owner. A life is a life,” he said.

What type of claim settlement is ultimately reached depends on who is on the litigation side, Mr. Heining said.

Despite the improving safety and accident record of the aviation sector in general, including helicopters, in the past 20 years, recent high-profile losses are garnering considerable attention in the industry and publicly, experts say.

The Jan. 26 incident in which Mr. Bryant,



his daughter Gianna, six other passengers and the pilot were killed when the Sikorsky S-76B helicopter they were traveling in crashed in hilly terrain near Calabasas, California, is one of the most prominent losses to hit the market.

In the wake of the crash, Vanessa Bryant, wife of the former NBA star and mother of Gianna, filed a wrongful death lawsuit against the helicopter operator Island Express Holding Corp. and Island Express Helicopters, and the pilot’s family, according to reports.

Several notable tour operator losses, including one in Hawaii in December 2019 and two others in 2018 in the Grand Canyon and in New York, have contributed to the shift in the insurance market for private helicopter operators, industry experts say.

In the broader aviation market, the crashes of two Boeing 737 MAX planes and subsequent grounding of the global fleet was a major event for insurers and reinsurers, they say.

Liability limits, especially for VIP-type risks, are being “scrutinized much more closely now, and insurers are looking to reduce their exposure to some of those high-profile type helicopter operations,” said Jason Saunders, Atlanta-based

president of Willis Towers Watson Aerospace, a unit of Willis Towers Watson PLC.

“For example, if you’ve got a VIP worth \$100 million and he has his family members or friends on board who also might be worth significant sums of money, some of the limits being offered out there now are a mere fraction of what the actual exposure is,” Mr. Saunders said.

Operators of professionally managed aircraft that are part of much larger fleets will have “a better opportunity to sustain their current liability limits, whereas a single helicopter operator or operator of maybe two or three helicopters is going to have a much more difficult time to sustain their liability limits,” Mr. Saunders said.

While each risk is treated on a case-by-case basis, it would not be surprising to see insurers “looking at reductions of 50% in liability limits offered for those risks exposed to higher limits of liability,” he said.

Higher liability limits aren’t available anymore due to the hardening market and multi-billion-dollar liability claims, said Matt Drummelsmith, president, Aviation Specialty Insurance, in Columbus, Ohio.

For a single-pilot helicopter charter, the maximum liability limit available would be “maybe \$10 million without breaking the bank,” Mr. Drummelsmith said. If an operator adds a second pilot, they “may be able to push the limit to \$25 million,” but insurers are no longer taking an all-line share of that \$25 million, he said.

“Charter use helicopters, anything held out to the public, tends to open up the policy to large liability awards because people on board are paying customers or guests,” Mr. Bruno said. “Large limits of liability are difficult to obtain and the prices for those liability limits are increasing rapidly,” he said.

The apparent rise in liability awards and high-profile losses, combined with the higher costs to repair and the historic decline in insurance premiums, have “drastically changed” what’s happening in the insurance market, Mr. Heining said.

“We expect to continue to see insurance rates increase by 25% to 60% in the helicopter market over the next two years, as the market recovers,” he said.

## HELICOPTERS: HIGH-PROFILE LOSSES

**JAN. 26, 2020** —

A Sikorsky S-76B helicopter, operated by Island Express Helicopters Inc., en route from Santa Ana to Camarillo, crashed in hilly terrain near Calabasas, California. The flight was carrying former NBA star Kobe Bryant; one of his daughters, Gianna; six other passengers; and the helicopter’s pilot. Nine fatalities.

**DEC. 26, 2019** —

An Airbus AS350 B2 helicopter crashed into terrain 24 miles northwest of Lihue, Hawaii. The sightseeing flight operated by Safari Aviation Inc. was carrying six passengers and one pilot. Seven fatalities.

**JULY 14, 2019** —

An AgustaWestland AW139 helicopter, owned and operated by Challenger Management LLC, en route from the Bahamas to Fort Lauderdale, Florida, crashed into water shortly after takeoff. The flight was carrying West Virginia coal magnate Chris Cline; one of his daughters, Cameron; three other passengers; and two pilots. Seven fatalities.

**OCT. 27, 2018** —

An AgustaWestland AW169 helicopter crashed shortly after takeoff from the King Power Stadium, the home ground of Leicester City Football Club in Leicester, United Kingdom. The flight, operated by Amadeus Aviation, was carrying club owner and Thai billionaire Vichai Srivaddhanaprabha, two staff members and two pilots. Five fatalities.

**MARCH 11, 2018** —

An Airbus Helicopters AS350 B2 helicopter lost engine power during a sightseeing flight and ditched in the East River, New York. The FlyNYON-branded flight, which had departed from Kearny, New Jersey, was operated by Liberty Helicopters Inc. as a nonstop commercial air tour. Four passenger fatalities; pilot injured.

**FEB. 10, 2018** —

An Airbus Helicopters EC130 B4 helicopter crashed during a sightseeing flight over the Grand Canyon in Arizona. The airtour flight, operated by Paillon Airways Inc., had departed Boulder City, Nevada, and intended to land at the Quartermaster landing zone in the Grand Canyon. Three passenger fatalities; pilot and three other passengers injured.

## PILOT TRAINING, SAFETY PROGRAMS KEY IN HARDENING MARKET

Private helicopter operators can differentiate themselves by ramping up their safety programs and pilot training amid the ongoing hardening market, industry experts say.

“In order for us to present the best risk to market, insurers are generally going to look at pilot qualifications, safety programs, training and loss history,” said Jason Saunders, Atlanta-based president of Willis Towers Watson Aerospace.

Insurers want to see that pilots have completed “not just the initial training” but are going through recurrent training on a regular basis, he said.

“They want to see there’s a safety management program in place with the organization,” Mr. Saunders said.

Pilot training and whether the risk is a single or dual pilot operation are key factors, said Matt Drummelsmith, president, Aviation Specialty Insurance, in Columbus, Ohio.

“If any pilot comes to us with lax training requirements, it’s an automatic red flag,” Mr. Drummelsmith said.

While having two pilots may not be required by the manufacturer or by the Federal Aviation Administration in certain cases, “in the wake

of recent events, insurers are pushing for dual pilot. ...There is more of a movement to dual pilot operations,” he said.

Pilot training on an annual and semi-annual basis and a two-person crew are important, but the insurance marketplace remains competitive, said Joel Heining, Columbia, South Carolina-based vice president-sales at AssuredPartners Inc.

“If one insurer dictates two crew, and three of four others don’t, they get more of the business,” he said.

Claire Wilkinson

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# Focus sharpens on employment practices

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

The awareness and momentum created by the #MeToo movement, which helped lead to former movie mogul Harvey Weinstein's 23-year prison sentence, will continue to affect employers, say many experts.

They say businesses have made significant progress in addressing the issues raised by the #MeToo movement, although they may nevertheless face higher employment practices liability insurance rates.

A jury found the former movie producer guilty of rape and sexual assault last month.

Meanwhile, although sexual harassment cases continue, observers say the next big focus will be pay equity (see sidebar).

The U.S. Equal Employment Opportunity Commission reported receipt of 7,514 charges alleging sexual harassment in fiscal year 2019, a slight decrease from fiscal year 2018's 7,609.

Fueling the issue is state legislation. In 2018, 32 states introduced more than 125 pieces of legislation related to sexual harassment, with 29 states introducing more than 100 pieces in 2019, according to the Denver-based National Council of State Legislatures.

Alexandra Harwin, New York-based partner at plaintiff law firm Sanford, Heisler Sharp LLP, and co-chair of its national Title VII practice group, said, "The verdict against Weinstein is a watershed moment. Many people who have experienced sexual harassment in the workplace now see that they can come forward and report what they've experienced and be believed."



Certainly, the Weinstein sentencing has caused a renewed focus on the #MeToo movement, but "it had never really subsided since the movement began in 2017," said Kelly Thoerig, Richmond, Virginia-based U.S. employment practices liability product leader for Marsh LLC.

However, the Weinstein verdict may make it less likely plaintiff attorneys will be willing to settle in civil cases because of the potential for high jury verdicts, said Tom Hams, Chicago-based managing director and national employment practices liability insurance practice leader at Aon PLC.

Carrie Kurzon, New York-based national EPL practice leader for the Hartford Financial Group, said the Weinstein verdict means settlements may take longer, and therefore lead to higher defense costs.

Settlements in these cases are very expensive to defend, because they are so fact driven and hard to dispose of, said David Rocklin, Calabasas, California-based senior claims consultant, management lia-

bility for Woodruff Sawyer & Co.

Meanwhile, employers take sexual harassment more seriously, say observers. "Companies are paying closer attention to the issue," said Gerald T. Hathaway, a partner with Faegre Drinker Biddle & Reath LLP in New York, who represents companies and has been asked to conduct training with high-level executives and major business generators.

"Employers have gotten the message that these types of claims are problematic and should not be tolerated in organizations and have done a lot to enhance their reporting mechanism and educate their employees" on the issue, said Ms. Thoerig.

Jeffrey D. Polsky, San Francisco-based co-chairman of Fox Rothschild LLP's labor and employment department, said, "There's been a renewed effort on making sure that people understand the policies, and their right to complain without retaliation, but the policies have been in effect for years and years, so I don't know if it's the policies that have changed so much as employers taking the issue more seriously, and being sure to respond appropriately when issues arise."

"Most large companies have worked hard to have good policies and procedures in place," including training and reporting mechanisms, for years, said Mr. Hams.

But #MeToo "helped to revitalize all of that," making sure that senior management, even up to the board level, had an important role to play in enforcement from

a top-down perspective, he said.

But there is still a way to go, say observers. "There's absolutely still progress to be made," said Mr. Polsky.

Meanwhile, claims have led to an upward movement in EPLI rates, said Ms. Thoerig. "For at least the last three or four quarters, we've seen single digit rate increases for U.S. clients, and settlement demands have increased," she said.

"The EPL carriers that we work with, for the most part, recognize that this is the new normal, and it's likely these leveraged settlements and claim values are going to continue for the foreseeable future," she said.

Some observers believe the #MeToo movement's full impact has already been felt. "I don't know how long it'll continue to get the amount of attention it's gotten," said Mr. Polsky.

But Mr. Hams said, "I would view it as stable. I don't think it's going away. I think it's an important social movement, if you will, to keep everyone honest and to keep them on edge to be better."

Ms. Harwin said, "The #MeToo movement has been a system shock that has permanently impacted the consciousness not only of women who may have experienced sexual harassment," but also their colleagues and the management that is responsible for keeping workplaces free of discrimination and harassment.

Training workers is critical in avoiding #MeToo claims, but company culture, which includes top officials setting an example, may be even more important, say experts.

Mr. Polsky said employers "need to make sure that every employee knows that if they believe they've been subjected to harassment in the workplace they have multiple avenues to raise the issue, that they should raise the issue immediately and can do so without fear of retaliation."

When an employee makes a complaint, "do not go into defense mode" but rather "do what you need to do to get to the truth and take appropriate action," said Ivy Kagan Bierman, Los Angeles-based partner with Loeb & Loeb LLP, who represents entertainment and related firms.

## SEXUAL HARASSMENT CHARGES — BY FISCAL YEAR

Charges alleging sexual harassment filed with the U.S. Equal Employment Opportunity Commission declined for several years before the #MeToo movement, which began in October 2017, led to a boost:



## #METOO LIKELY TO SHIFT ATTENTION TO NEXT GENDER CHALLENGE: PAY EQUITY

Pay parity is not a new issue, but it is going to become a major focus in the wake of the #MeToo movement, many observers predict.

"I do think that this is where the movement goes to next," said Kelly Thoerig, Richmond, Virginia-based U.S. employment practices liability product leader for Marsh LLC.

It is a natural outgrowth of gender issues in the workplace, she said, adding she is "surprised we haven't seen more activity around that yet, but that is the other shoe that we're all waiting to drop in the EPL space."

It is the "natural next step," said Talene Carter, New York-based national employment practices liability product

leader for FINEX North America at Willis Towers Watson PLC.

Alexandra Harwin, New York-based partner at plaintiff law firm Sanford, Heisler Sharp LLP, and co-chair of its national Title VII practice group, said the #MeToo movement "has raised consciousness about gender inequalities in our workplace, primarily concerning

sexual harassment, but also pay equity issues have garnered more attention as well.

"Many states have enacted new laws that broaden protections against pay discrimination, and we can expect many more women who have been underpaid to come forward and seek redress," Ms. Harwin said.

Judy Greenwald

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# Crime cover tackles phishing risk

BY MATTHEW LERNER

mlerner@businessinsurance.com

**S**ocial engineering fraud, including email phishing scams, is a growing exposure faced by numerous organizations that use electronic funds transfers to conduct business.

While many of the attempts to lure employees to make incorrect payments take place online, coverage for financial losses can be found more extensively under crime policies rather than cyber liability policies, experts say.

A recent battle over coverage for an alleged phishing scam reveals some of the insurance concerns for policyholders (see related story).

Companies should use a combination of tight internal controls and insurance coverage to protect themselves from the evolving crime trend, experts say.

"I think there's a great deal of confusion when we talk about social engineering," said Stephanie Snyder, senior vice president, commercial strategy leader-cyber solutions, in Chicago for Aon PLC.

Losses from social engineering and phishing that results in business email compromises, where employees are duped by email into transferring funds to a bad actor, are "not contemplated typically in cyber insurance policies," but fall under crime policies, she said.

Generally, there are higher limits available for social engineering business email compromise losses in the crime coverage market than under cyber policies, said Kevin Guillet, U.S. crime product leader for Marsh LLC in New York.

Some cyber liability policies, Mr. Guillet said, include a small sublimit for social engineering-related fraud, generally on the order of \$250,000 to \$500,000. "If you are really concerned about the exposure, the best place to find more substantial limit is in the crime insurance space," he said.

*"In terms of being able to purchase additional, higher limits, you really need to be able to demonstrate that you have the right controls in place."*

Kevin Guillet,  
Marsh LLC

Substantial phishing and social engineering coverage limits are available for organizations "with good controls or those willing to improve their controls," said Cara LaTorre, vice president and special risk practice leader in New York with Aon. "An underwriter is not going to give decent limits unless the



client has decent controls."

Limits in place can range from \$500,000 to \$100 million, built with more than one insurer, she said.

For policyholders with good controls, underwriters typically are willing to provide for social engineering/phishing coverage up to 50% of the overall crime limit under the policy, Ms. LaTorre said.

"It is very important to insurance companies for insureds to demonstrate they do have controls in place," Mr. Guillet said. "In terms of being able to purchase additional, higher limits, you really need to be able to demonstrate that you have the right controls in place."

Policyholders can put in various controls to defend against different types of attacks, said Edward Chang, second vice president, cyber risk management, bond and specialty insurance at Travelers Cos. Inc. in New York, including "out-of-band" verification, when a phone call is placed to double-check any email instructions.

One of the controls underwriters look for before providing more substantial limits is a call-back policy in which a policyholder checks a vendor's phone number on file and calls to verify any requested changes to banking practices, Ms. LaTorre said.

Stephen Boyer, co-founder and chief technology officer of Boston-based cyber security

firm BitSight Technologies Inc., also sees the need for coverage. "That risk transfer piece is huge," he said. Even with strong controls, "there will always be some gap, and that's why we have insurance."

"You should think about a blend of technical controls of mitigation as well as risk transfer as part of your risk management program," Mr. Boyer said.

Losses from social engineering largely fall in the single-digit millions range, Ms. LaTorre said, while the largest losses under crime policies are tied to employee dishonesty, she said.

In the crime insurance sector, employee dishonesty is still probably the number one cause of loss, although "these types of social engineering fraud tactics are gaining prominence fairly rapidly," Mr. Guillet said.

Industries hit by social engineering crimes include retail and other commercial enterprises, but losses are less frequent in the financial services sector "because they have call-back procedures and other historical controls in place," Ms. LaTorre said.

The chaos being caused by the coronavirus outbreak and resulting effects on employment could facilitate attacks.

"The biggest challenge right now is that we have a lot of disruption in the workforce and a lot of distractions," from family, news, markets and elsewhere, said Ms. Snyder of Aon.

## RULING HIGHLIGHTS COVERAGE LIMITATION

**A** February court decision shows how coverage can be limited for social engineering fraud without separate policy limits for such exposures.

In *Mississippi Silicon Holdings LLC v. Axis Insurance Co.*, the policyholder's recovery was limited to \$100,000 under the sublimit included in the social engineering section of its management liability policy with the unit of Bermuda-based Axis Capital Holdings Ltd.

The chief financial officer at a silicon metal manufacturer was tricked into transferring more than \$1 million to incorrect accounts after the company received an email with the name of a known employee of a Russian supplier in the "from" line that changed banking and payment instructions.

Two payments were made, electronic transfers of \$250,030 and \$775,851, using the new instructions, and the deception was only realized after a call from the supplier saying it had not received its payments.

Mississippi Silicon sought coverage under the \$1 million policy limit, but a U.S. district court judge ruled the lower sublimit should apply.

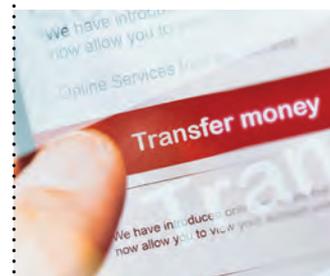
In general, "the common loss we've been seeing is an email pretending to be a vendor saying that banking instructions have been changed," said Cara LaTorre, vice president and special risk practice leader in New York with Aon PLC.

Such attacks are "constantly evolving as scammers become more sophisticated," the FBI said in its 2019 Internet Crime Report from The Internet Crime Complaint Center.

Matthew Lerner

**\$3.5 B**  
**467,361 CASES**  
According to the 2019 Internet Crime Report from the FBI's Internet Crime Complaint Center, there were 467,361 complaints of suspected internet crime last year, with reported losses in excess of \$3.5 billion.

Source: FBI



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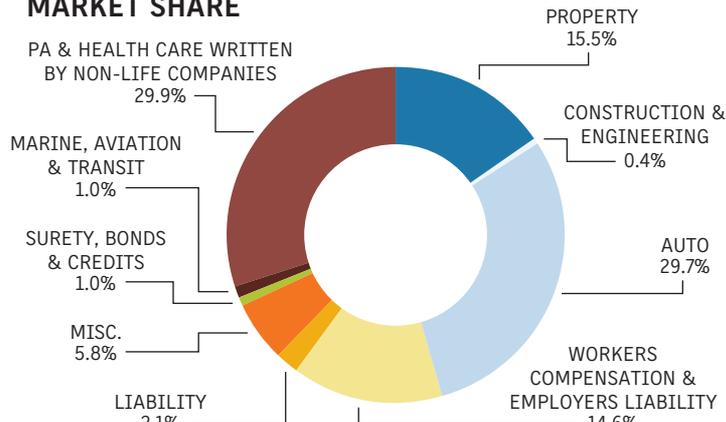
## PROFILE: PORTUGAL

# 37

GLOBAL  
P/C MARKET  
RANKING

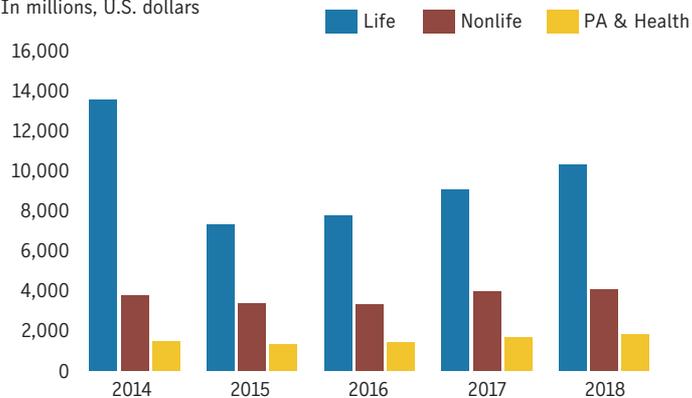
The insurance market in Portugal is characterized by relatively stable insurance penetration, a high degree of concentration at the top end of the market, significant foreign ownership, the lack of a domestic reinsurance market and some exposure to earthquake. At year-end 2019, there were 53 companies licensed to operate in the Portuguese nonlife insurance market, 25 of which are branches of foreign insurers. Many other companies operate under European Union freedom of services legislation. Nonlife growth has been marginal and occasionally negative in the years since the 2008 financial crisis, with the only significant exception being 2017, when years of persistent underwriting losses led to marked rate increases for workers compensation and, to a lesser extent, auto insurance. These measures were reflected in a much improved underwriting result in 2018.

### MARKET SHARE



### MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

### COMPULSORY INSURANCE

Several lines of coverage are compulsory, including:

- Auto third-party liability
- Hunters' third-party liability
- Workers compensation
- Third party liability for installers of gas pipelines
- Professional liability for architects, auditors, notaries public, insurance brokers and several other professions

### NONADMITTED

Nonadmitted insurance is not permitted in Portugal because the law provides that insurance must be purchased from locally authorized insurers with no exceptions. Insurers from European Economic Area, which includes all EU member states, Iceland, Liechtenstein and Norway, may provide insurance under the EU's freedom of services provisions.

### INTERMEDIARIES

Brokers and agents must be authorized to conduct insurance business. Intermediaries are not permitted to place business with nonadmitted insurers. Intermediaries operating in any EEA state are required to be registered with their home authority and may conduct business in other EEA states provided they have made the necessary application by informing the supervisory authority in their home country.

### MARKET PRACTICE

The diversity of companies operating in the market and the access to the freedom of services regime allow most risks to be covered without problem. There is not thought to be willful circumvention of the legislation. Considerable use is made of fronting.



### AREA

# 35,603

square miles

### POPULATION

# 10.3

million

### MARKET CONCENTRATION

# 63.7%

market share of top five insurers

### 2019 GDP CHANGE (PROJECTED)

# 2%

### MARKET DEVELOPMENTS

Updated February 2020

- The only significant natural catastrophe affecting the Portuguese market in 2018 was Tropical Storm Leslie, which hit the Atlantic coast in October, resulting in 38,000 claims and an estimated €100 million (\$111 million) in losses.
- In October 2018, the Associacao Portuguesa de Seguradores, the country's insurance company association, proposed a catastrophe risk protection program. Initially aimed at providing cover against earthquakes and tsunamis, under the model put forward by the APS to the government the insurance and reinsurance sector would assume liabilities of up to €8 billion.
- In June 2019, the Portuguese risk managers association — Associacao Portuguesa de Gestao de Riscos e Seguros — reported that the large-scale liabilities and long maturities of the country's workers compensation system were making insurers reluctant to bid for public sector contracts for this compulsory class of business. According to APOGERIS, the situation is exacerbated by the increased level of merger and acquisition activity in recent years, which has reduced available capacity.
- In June 2019, Italian insurer Generali Group announced the acquisition of Seguradoras Unidas SA from U.S.-based Apollo Global Management Inc. The merged group will have a 20% market share but remain behind Fidelidade SA, which is the clear market leader.

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## Firm that promised virus vaccine sued

■ A putative securities class action lawsuit has been filed against a pharmaceutical company that allegedly falsely promised a quick coronavirus vaccine, and whose stock plunged once it failed to deliver.

On Feb. 14, J. Joseph Kim, CEO of Plymouth Meeting, Pennsylvania-based Inovio Pharmaceuticals Inc. appeared on Fox Business News and said the company had developed a COVID-19 vaccine “in a matter of three hours once we had the DNA sequence from the virus” and that its goal was to start human testing in the U.S. early this summer, according to the lawsuit filed in U.S. District Court in Philadelphia in *Patrick McDermid v. Inovio Pharmaceuticals Inc. and J. Joseph Kim*.

In response to the news, the company’s stock price increased more than 10% over the next few trading days on “enormous trading volume,” according to the litigation.

On March 2, following a meeting with President Trump, Mr. Kim again claimed the company had developed a vaccine, and said further it planned to begin trials in April, and the firm’s stock price more than quadrupled, according to the lawsuit.

However, on March 9, in response to a research report that charged the defendants with misstatements, the stock plummeted, leading to a \$643 million drop in capitalization.

The company then admitted it had not developed a vaccine, but merely designed a precursor for one, although it believed it had a “viable approach” to addressing the outbreak, according to the lawsuit.

The lawsuit charges the company with making false and misleading statements in violation of the Securities and Exchange Act of 1934.

## Court validates ‘federal forum’

■ In an eagerly awaited decision, Delaware’s Supreme Court unanimously overturned a lower court ruling and held that companies’ charters can require actions

filed under federal securities law to be filed only in federal court.

The “federal forum” provisions in several Delaware corporations’ charters, which address actions arising under the federal Securities Act of 1933, are valid under Delaware law, said the court, in its ruling in *Matthew B. Salzberg, et al. and Blue Apron Holdings Inc. Stitch Fix Inc., and Roku Inc. v. Matthew Sciabacucchi*.

The ruling says permitting shareholders to file this litigation in state court has led to increased litigation, causing higher costs and inefficiencies.

Matthew Sciabacucchi, who had bought shares of these companies in their initial public offering, sought a declaratory judgment in Delaware’s Court of Chancery that the federal forum provisions were invalid.

The Court of Chancery held in its 2018 ruling the provisions were invalid because the “constitutive documents of a Delaware corporation cannot bind a plaintiff to a particular forum when the claim does not involve rights or relationships that were established by or under Delaware’s corporate law.”

In overturning that ruling, the Supreme Court said the Private Securities Litigation Reform Act of 1995, which limited recoverable damages and attorneys fees, had the unintended consequence of prompting some members of the plaintiffs bar to avoid federal courts and file in state courts instead. That led some companies to adopt the forum-selection provisions.



## Officer awarded comp for heart disease

■ A city must pay benefits for a police officer’s heart disease despite his long history of heart problems.

In *City of Newport News v. Kahikina*, the Virginia Court of Appeals unanimously affirmed a Virginia Workers Compensation Commission’s decision to award benefits to the officer under the state’s occupational disease presumption.

Joey Kahikina worked as a police officer for the city of Newport News, Virginia, and began having heart problems in 2004. In 2011, a cardiologist diag-

nosed him with cardiomyopathy and attributed his irregular heartbeats to his consumption of Red Bull. In 2015, Mr. Kahikina was hospitalized for chest pain and diagnosed with “unstable angina” as well as hypertension, diabetes and high cholesterol.

In 2017, he was hospitalized again for chest pain and was advised to transition to a less stressful position. In August 2017, he filed a claim for workers compensation benefits, stating that he had acquired the occupational disease of cardiomyopathy due to the stress related with his job.

The commission granted Mr. Kahikina temporary wage benefits and lifetime medical benefits, determining that his 2015 diagnosis was the trigger for the two-year statute of limitations and that his claim was timely filed.

## Amputee denied enhanced benefits

■ A young man whose arm was ripped from his body in a workplace accident is not entitled to additional benefits, despite being exposed to hazards, because he was employed by a temporary employment agency.

In *Maysey v. Express Services Inc.*, a three-judge panel of the Kentucky Court of Appeals “reluctantly” affirmed a Kentucky Workers Compensation Board decision denying additional benefits to the worker, noting that state law governing temporary workers allows safety violations to “go unpunished.”

Shortly after graduating from high school, Nathaniel Maysey began working for temporary help service Express Services Inc., which placed him at Magna-Tech Manufacturing LLC in Glasgow, Kentucky. On his sixth day of work, his left arm was amputated above the elbow by a centrifuge machine.

The day of the accident was Mr. Maysey’s first day working on a particular line after receiving minimal training, according to the complaint. His job required him to place a bucket of parts into a centrifuge, and after a rotation, attach a hoist hook to the basket and lift it out of the machine. He was attaching a hook when the machine started again; the hook wrapped around his arm and twisted until it tore it from his body. He underwent nine surgeries to reattach his arm but continues to undergo therapy, has limited use of his arm and is unable to grip or pick up objects with his left hand.

An administrative law judge held that Express Services did not intentionally violate the general duty statute and that as a result, Mr. Maysey was not entitled to a 30% enhancement benefit for a safety violation because the temporary agency was his sole employer at the time of the accident. The Kentucky Workers Compensation Board affirmed the decision.

## DOCKET



### JUDGE AUTHORIZES WORKER’S LAWSUIT

A worker whose left arm was amputated after an accident may proceed with his lawsuit for “intentional wrong” against his employer. In *Sims v. VC999 Packaging Systems*, the U.S. District Court for the District of New Jersey in Camden denied employer Express Scripts Inc.’s motion for summary judgment after holding that a jury could reasonably find that the company intentionally allowed the bypass of security features on a machine. Brian Sims was working for St. Louis-based Express Scripts as an electromechanical technician in a mail-order pharmacy facility in Florence, New Jersey, when his left arm was crushed and burned when a coworker activated the machine he was working on.

### LAWSUIT FILED OVER POULTRY LINE SPEEDS

Several animal welfare groups and the Government Accountability Project have filed a lawsuit over the U.S. Department of Agriculture’s 2018 increase of poultry slaughter line speed limits. In September 2018, the department announced that it would consider waivers filed by the poultry industry seeking to increase poultry slaughter line speeds to a maximum of 175 birds per minute. The law previously set the maximum poultry slaughter line speed at 140 birds per minute.

### AIG UNIT LOSES APPEAL IN OIL DERRICK CASE

A federal appeals court ruled for the second time against an American International Group Inc. unit over the issue of whether it is obligated to reimburse a drilling company for an accident settlement. The case stemmed from a December 2008 accident in which Darrell Jent, an independent contractor of Sugar Land, Texas-based Upstream International LLC, was injured while working in Sublette County, Wyoming. The accident occurred when a derrick unexpectedly crashed to the ground while being broken down in preparation for moving.



# ORIGAMI RISK

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# RISK MANAGEMENT TECHNOLOGY SURVEY

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# RISK MANAGEMENT TECHNOLOGY SURVEY

Organizations' average investment in technology/software for risk management, excluding human resources, saw an average increase in the past year of 8.24%, or \$234,589, according to a *Business Insurance* online survey on technology used in risk management. Only 4.7% of respondents said their companies had cut technology spending.

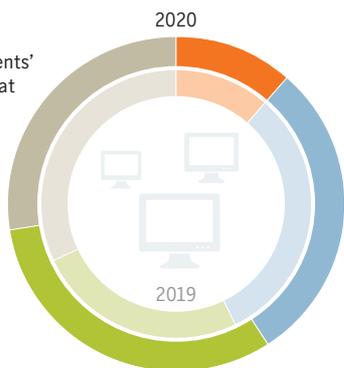
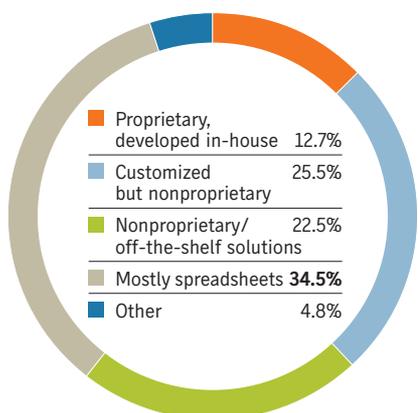
The survey was conducted between Jan. 30 and Feb. 27. The results are based on 275 respondents who indicated they are corporate insurance buyers/users and are involved in their company's risk management technology purchase decisions. The base used is the total answering each question.

Source: BI Survey

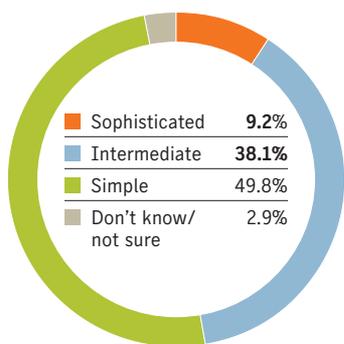
## RMIS USAGE

This year's survey found that **27.3%** of respondents' organizations are not RMIS technology users. That compares with 31.7% of respondents in 2019.

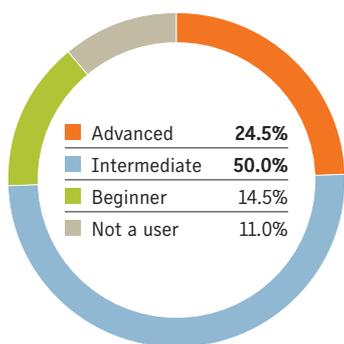
	2020	2019
Heavy user	11.6%	11.4%
Moderate	29.5%	31.6%
Light	31.6%	25.3%
Not a user	<b>27.3%</b>	31.7%



**34.5%** of respondents still rely on spreadsheets.



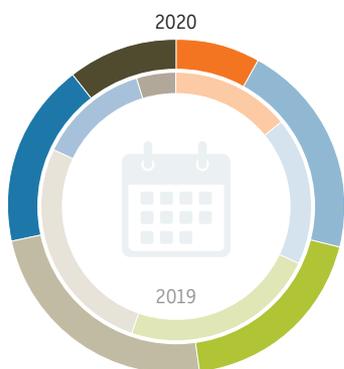
**Slightly fewer than half** of the respondents described their organization's RMIS system as intermediate or sophisticated.



Of those whose companies use RMIS technology, **74.5%** described themselves as intermediate or advanced users.

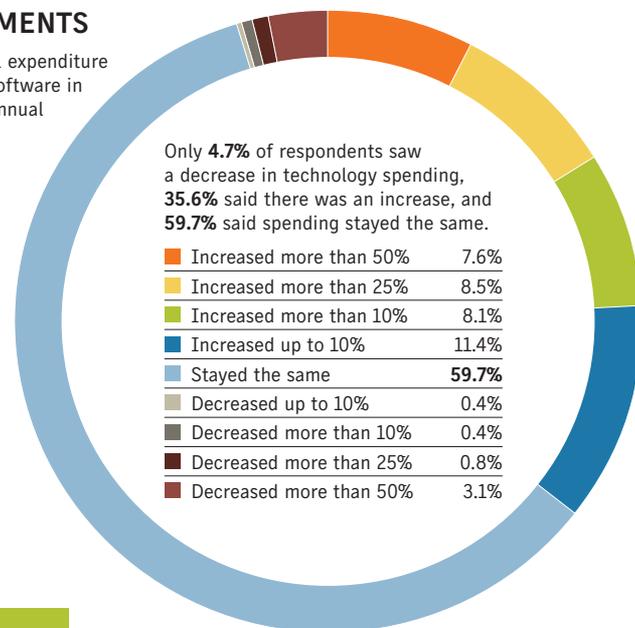
**10.5%**, compared with **4.5%** last year, said their companies have been using RMIS technology for less than a year. The average time companies have been using RMIS technology is **7.2 years**.

	2020	2019
More than 15 years	8.3%	14.4%
10-15 years	20.6%	17.8%
6-9 years	18.9%	23.3%
3-5 years	23.9%	26.7%
1-2 years	17.8%	13.3%
Less than a year	<b>10.5%</b>	4.5%



## TECHNOLOGY INVESTMENTS

Overall, companies' average annual expenditure for risk management technology/software in 2019 was **\$234,589**. The average annual technology expenditure varied by company size.



Only **4.7%** of respondents saw a decrease in technology spending, **35.6%** said there was an increase, and **59.7%** said spending stayed the same.

## AVERAGE SPENT ANNUALLY BY COMPANY SIZE (BY ANNUAL REVENUE)



## TOP RMIS FUNCTIONALITIES

Incident reporting and claims management	79.3%
Renewals/data collection	39.1%
Policy management	22.3%
Enterprise risk management	21.2%
Premium allocation and calculation	19.6%
Asset management	13.0%
Risk financing	9.8%
Insurer ratings	2.7%
Other	9.2%
Don't know/not sure	2.7%

Of respondents not using RMIS, the reasons are:

Don't know enough about it to adopt/invest in it	47.9%
Don't know what capabilities it can offer to justify it	46.6%
Current needs do not justify expense	45.2%
There is no budget for it	43.8%
Don't know what they are missing	41.1%
Don't have the resources to implement	19.2%
Nothing visible/cost-effective in the market to support needs	17.8%
Don't have time to implement	17.8%
No training/expertise to use the technology	16.4%
Don't have the IT infrastructure/personnel to support it	12.3%
There are no users in the organization to use it	5.5%
Other	5.5%

No RMIS provider dominates the market, but 19.6% of the net users of RMIS in this year's survey are using systems by Origami Risk LLC, with 12.3% developing their own in-house systems.

Provider	Percent using
Origami Risk LLC	19.6%
Riskconnect Inc.	16.1%
Proprietary system developed in-house	12.6%
Crawford Risk Sciences Group Inc.'s Dmitri	4.5%
Liberty Mutual Insurance Co.'s RiskTrac	4.5%
Computer Sciences Corp.'s Riskmaster	3.5%
Ventiv Technology Inc.'s RiskConsole	2.0%
Other	28.1%
None of the above	26.1%

## TOP 5 THINGS MOST LIKED ABOUT RMIS TECHNOLOGY

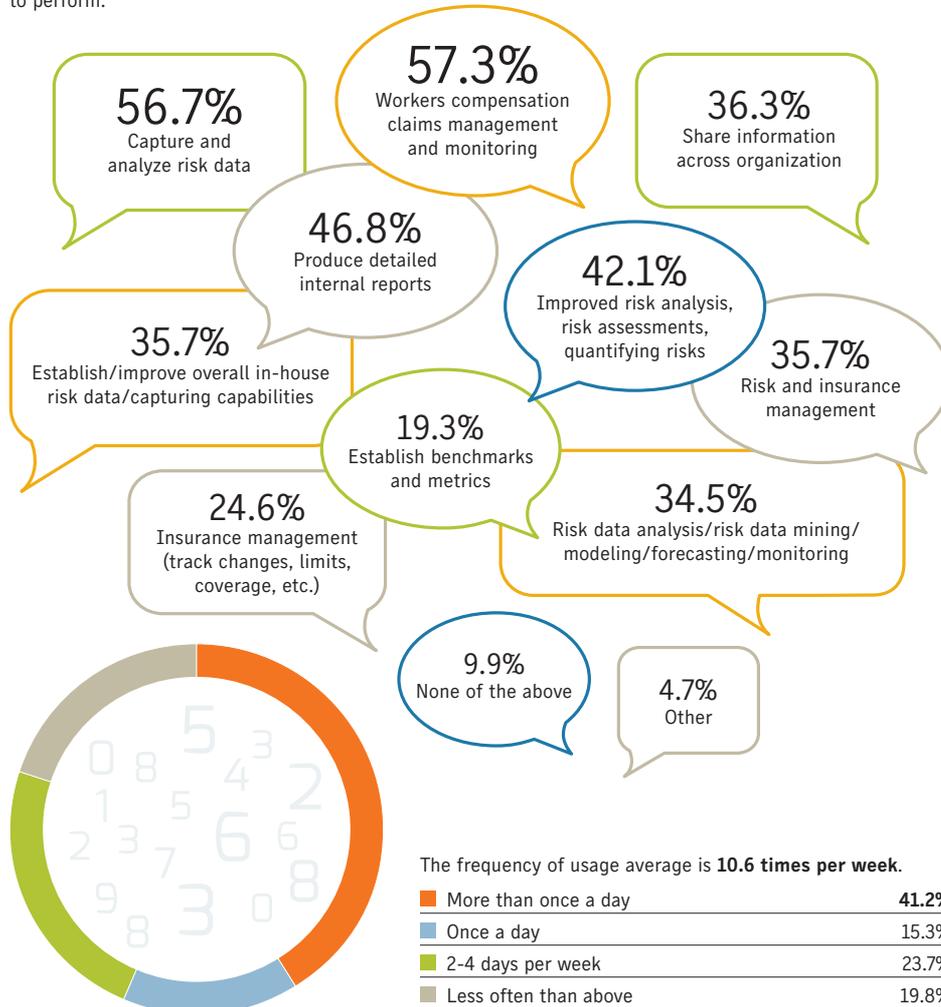
Simple to use/user-friendly	56.3%
Accessible online/web-based	52.7%
Customizable for special/specific needs	43.1%
Single point of reference for tracking, repository and data extraction	39.5%
Low cost/cost-effective	37.1%
Adaptable/flexible for growing/future needs	35.9%
Reliable/timely	28.7%
Report writing	20.4%
Widely used/recognized in the market	19.2%
Customer support	18.6%
Training programs	9.6%
Other	2.4%
Don't know	7.8%

## TOP 5 THINGS MOST DISLIKED ABOUT RMIS TECHNOLOGY

Analytics or forecasting capabilities	38.0%
Lack of easy reporting functions and features	29.4%
Lack of sophistication	27.0%
Not customizable/flexible	25.2%
Outdated	24.5%
Cost	24.5%
Customer support	16.6%
Lack of training	16.0%
Complex/difficult to use	14.1%
Lack of easy access	11.0%
Processing speed	7.4%
Other	6.1%
Don't know	23.9%

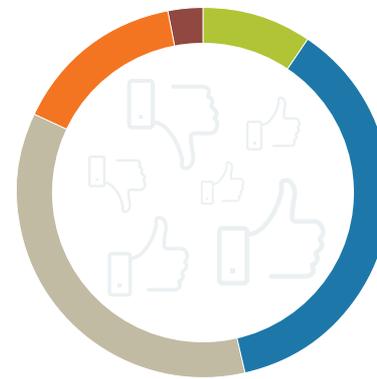
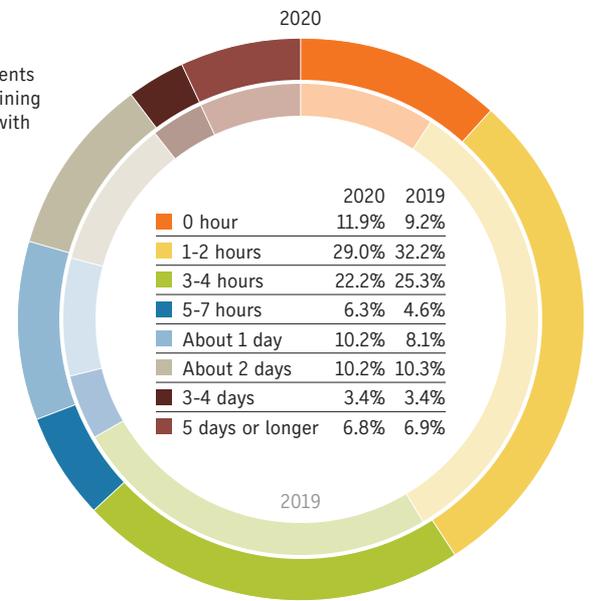
## ACTIVITIES AND TASKS

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



## TRAINING

On average, respondents spent **8.47 hours** training in RMIS, compared with 8.22 hours last year.

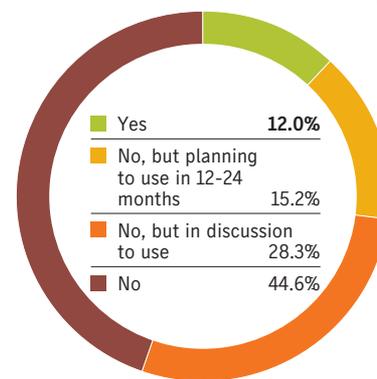
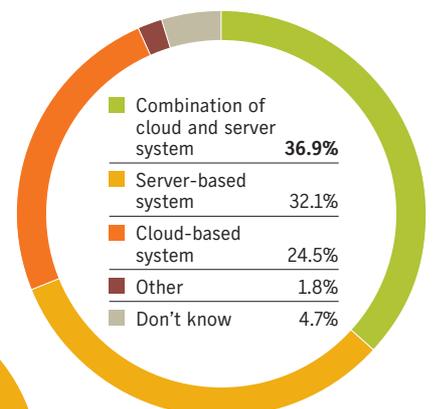


## LEVEL OF SATISFACTION

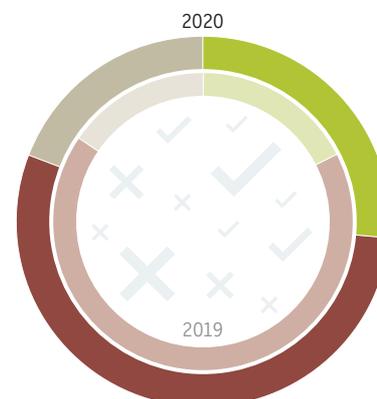
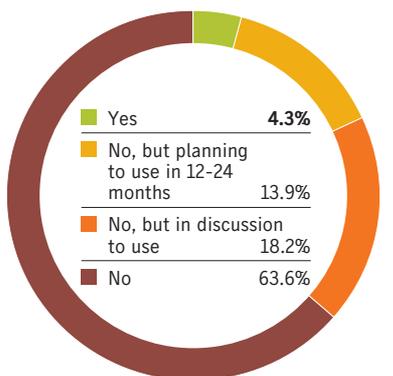
Extremely satisfied	9.5%
Satisfied	36.9%
Neither satisfied nor dissatisfied	35.7%
Dissatisfied	14.9%
Extremely dissatisfied	3.0%

## RMIS TECHNOLOGY

**36.9%** of respondents said that their companies are using a combination of cloud-based and server-based systems.



**4.3%** are using artificial intelligence.



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

	2020	2019
Yes	26.6%	17.6%
No	54.4%	67.0%
Don't know	19.0%	15.4%



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Steve McGill, longtime insurance executive and former group president of Aon PLC, launched a new specialty risk broker named McGill and Partners in May 2019 backed by \$250 million in funding from global private equity firm Warburg Pincus LLC. Headquartered in the Lloyd's of London building, McGill and Partners has since recruited talent from across the industry and expanded internationally. Mr. McGill discussed the impact of industry consolidation, competition and talent acquisition with *Business Insurance* Deputy Editor Claire Wilkinson. Edited excerpts follow.

## Steve McGill

McGILL AND PARTNERS

### Q What does the Aon/Willis merger mean?

**A** When the deal is done, you will have a duopoly of Aon and Marsh & McLennan. These are two very impressive global firms with an incredible breadth of service and capability across a whole spectrum of risk, retirement and health. When you think about that from our standpoint, it is a reaffirmation of the strategy we've been pursuing where we're going narrow and deep in terms of capability and expertise. It's unfortunate that client choice has now dramatically narrowed. It's a challenge for insurers because they look at distribution, and they look at the concentration of risk among a very small group of firms now. One of the fundamental drivers of setting up McGill and Partners was to provide a viable alternative to major corporate clients to the large global broking firms. Our belief was that to provide that viable alternative, you don't build a value proposition around being a smaller version of an Aon, Marsh or Willis. We believe we are perfectly positioned for the future.

### Q How do you compete with brokers with bigger resources?

**A** Many of these firms have got big resources and are hugely successful, and we admire the way they have evolved. If you look at the evolution of the insurance broking industry over time and you go back 30 or 40 years, you had high-quality insurance and reinsurance brokerages looking after large corporate clients. These were firms like Johnson & Higgins, Sedgwick's, Frank B. Hall, Alexander & Alexander. They've all been acquired over time, and that's why you have quite a degree of concentration, particularly among the largest firms. Not only have they been acquired, but the capability and services they provide have expanded from pure broking to risk engineering, consulting, and pensions and retirement. There's nothing wrong with that strategy, but we felt that there are clients who are interested in a firm that can go narrow and deep around a business proposition.

That's a firm that is practitioner-led that focuses on making and creating markets and focuses on core specialties with a combination of veteran dealmakers and the next generation of talent. Our thesis is that you can coexist very effectively and successfully in this environment, and you can serve clients either directly or in partnership with other big broking firms.

### Q How do you bring in the necessary expertise to compete?

**A** Our talent acquisition strategy is vital to our success. In building the firm, we looked at an adjacency in financial services that was investment banking. We looked at how that had evolved over decades where you had the emergence of boutique specialty firms like Evercore and Moelis. Evercore, for example, is the fourth largest investment bank in the world and largely grew by acquisition of talent as opposed to acquiring companies. We've designed a value proposition around

about 160 are on board and the balance are serving notice. In this business, the assets of the firm are the people in it. If you have high-quality talent, you will attract clients because they will go to where the expertise is. Expertise doesn't just mean having lots of resources and being big. It means having world-class talent and being highly specialized in the areas in which you want to serve.

### Q What niche areas of business are you looking to grow?

**A** We're looking at leadership in complex property and casualty business, including construction. We're looking at marine and cargo, energy and power, aviation, what we call financial lines and special risk, which includes directors and officers liability, errors and omissions, cyber. There's a division that we operate called structured solutions, which looks at highly innovative, multiyear, multiline transactions, loss portfolio transfers and creating capacity for MGAs, which is keeping us active now. And then there is a reinsurance business that we're building, both facultative and treaty.

### Q How is the hardening market affecting business?

**A** Well, it's unearthing opportunities where clients are not getting the results they want from their existing brokers. We've had several examples where, unfortunately, clients have not been well communicated to and the expectations of what happens with their program versus what they thought was going to happen are quite wide of the mark. Also, generally when you have market conditions like this, there is a flight to quality, and clients have to go to where they can get deals placed. We have several very interesting inbound inquiries from clients right now. For example, a major U.S. multinational has agreed to transfer responsibility for placing the business to us midterm because of the concerns they have. They want to make sure they're in the best possible place to get the best possible results for their program renewal.



our colleagues, just like we've designed a value proposition around our clients. It's really resonating with talent in London where we've developed what we call a contract of trust. We have no set working hours, no defined holiday entitlements, maternity and paternity leave fully paid at 12 months, and carer's leave. We will modify this as we go around the world. We've recruited from over 26 different companies and have 204 professionals in London, of which

In this business, the assets of the firm are the people in it. If you have high-quality talent, you will attract clients because they will go to where the expertise is. Expertise doesn't just mean having lots of resources and being big. It means having world-class talent and being highly specialized in the areas in which you want to serve.



## RISK MANAGEMENT INNOVATION

# Parametric triggers offer buyers options

BY MATTHEW LERNER

[mlerner@businessinsurance.com](mailto:mlerner@businessinsurance.com)

### INSIDE

#### ▶ ART MARKET OPTIONS

Alternative risk transfer market provides growing range of custom coverages. **PAGE 23**

#### ▶ WEARABLE DEVICES

Tech-enabled wristbands and clothing can help monitor and protect workers in dangerous jobs. **PAGE 24**

#### ▶ DISRUPTIVE TECHNOLOGIES

Risk managers should be involved early on in talks about adopting new technologies. **PAGE 25**

**P**arametric insurance coverage is attracting more interest from commercial insurance buyers as traditional insurance prices increase, retentions rise and catastrophic losses raise concerns, brokers say.

While the parametric coverage often is relatively expensive, it can be customized to address emerging risks, the index-linked triggers used in the policies can quickly be verified and claims are paid quickly, they say.

“Because of the way they’re structured, the payout is based on an index or if the event occurred, then the client gets paid and they get paid pretty quickly,” said Douglas O’Brien, national division manager for USI Insurance Services LLC’s casualty and alternative risk practice.

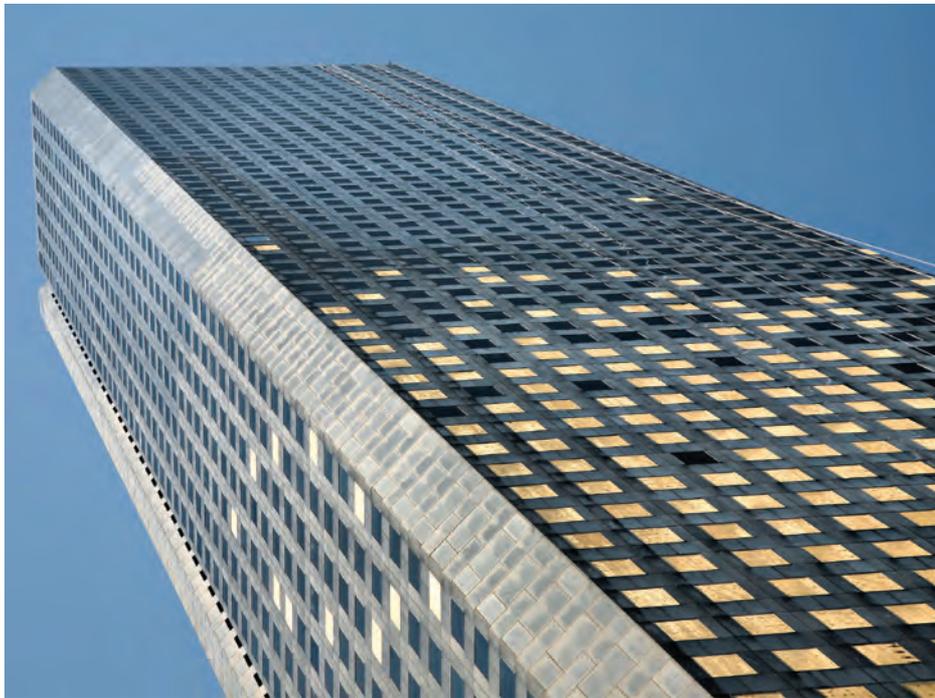
Triggers vary depending on coverage, but an example might be an agreement by an insurer to pay a given dollar

amount to a policyholder if sustained wind speeds exceed 75 mph in an agreed geographic area.

By contrast, traditional coverage requires damage estimates and can result in disputes over policy exclusions.

Launched several years ago, parametric insurance drew limited interest in the soft market, but that is changing, experts say.

Policyholders with traditional cover-



age are “seeing renewals which are quite expensive, and they are asking, ‘Is there a better way to purchase risk transfer?’” Mr. O’Brien said.

“Interest in parametrics has been increasing significantly since the markets hardened last spring,” said Chad Wright, head of risk analytics and alternative risk, U.S. and Canada, for Marsh LLC in Atlanta.

The hardening market surprised many policyholders, said Derrick Easton, Americas lead, alternative risk transfer solutions, Willis Towers Watson PLC, in an email.

The price hikes led to a demand for more choice “leading to an avalanche of alternative risk solution discussions,” he said.

Parametric insurance, however, can be expensive, said Renee Dube, vice president of USI’s national P&C practice, with rates on line ranging between 5% and 8%, meaning \$1 million of coverage will cost between \$50,000 and \$80,000.

“Usually when you think about parametric, you are thinking about property events and business interruption, but there are other things which can be defined as events, such as pandemic.”

Chad Wright,  
Marsh LLC

The structures offer policyholders a different perspective on insurance, said Michael Gruetzmacher, Chicago-based managing director for Aon PLC’s alternative risk solutions team.

“The traditional way of thinking about insurance is driven by losses,” he said. “Can we instead think about the events that cause those losses and use those events to trigger

the coverage,” and potentially cover a broader range of losses.

“If there is an event a client is concerned about and we have some data to describe that event, regardless of physical damage, we can put together a parametric insurance solution,” he said.

Parametric coverage could have been structured for the coronavirus outbreak, he said. “Traditional insurance, in many cases, is driven by physical damage. Theoretically, you could create a trigger based on the number of reported cases in a given geography.”

Pandemics could be covered via parametric structures, Mr. Wright of Marsh said.

“Usually when you think about parametric, you are thinking about property events and business interruption, but there are other things which can be defined as events, such as pandemic,” Mr. Wright said.

“If you look at hard-to-place or hard-to-define risks such as pandemic, most general forms are not written specifically enough to cover pandemic and you really have to spend a fair amount of time defining what you want the triggers to be.”

PathogenRX, for which Marsh partnered with San Francisco-based epidemic risk modeling company Metabiota Inc. and Munich Reinsurance Co., offers a remedy to pandemic-related revenue loss. It has a mortality trigger and other customizable triggers, according to an email from a spokeswoman, who added that, “Marsh is actively seeking additional capacity to keep up with demand ... given the number of inquiries.”

Insurance is available for almost any event, if buyers and sellers can agree on a price and what constitutes a loss, said John J. Head, president of Risk Placement Services Inc.’s national brokerage division.

In response to the coronavirus, RPS, which is the underwriting management and wholesale unit of Arthur J. Gallagher & Co., is receiving inquiries mainly about workers compensation and business interruption coverages. “There are a lot of ‘what if’ questions,” he said.

The current pandemic, however, would

likely not be covered in policies going forward this year.

“For those enquiring now, however, we have to accept that COVID-19 is excluded. It will be 2021 at the earliest before that is reinstated, but that is not to say that a different pandemic could impact your business,” Mr. Easton of Willis Towers Watson said. In prior years, hurricane losses also stimulated interest in parametric policies, he said.

“The traditional way of thinking about insurance is driven by losses. Can we instead think about the events that cause those losses and use those events to trigger the coverage?”

Michael Gruetzmacher,  
Aon PLC

Parametric coverage can also be structured to cover business disruptions following a natural catastrophe or extreme weather conditions, Mr. Easton said. “A parametric approach may effectively complement limited coverage available in the traditional market.”

Policyholders are also looking to parametric coverages to address rising deductibles and attachment points in the hardening market, said Parag Bavishi, managing director of Allianz Risk Transfer, a division of Allianz Global Corporate & Specialty.

“As rates are going higher, underwriters are looking for higher attachment points,” he said. “Parametric fills in.”

In addition to providing coverage for hard-to-place risks, claims payments under parametric insurance policies are usually quick because triggers have been agreed, sources said.

“This process happens very quickly and clients can get paid within 30 days after an event, which can help generate liquidity,” said Mr. Gruetzmacher of Aon.

“The claims process is simpler and more transparent,” said Mr. Wright of Marsh. “It can really assist with post-event costs and business continuity,” and improve liquidity.

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## ALTERNATIVE RISK MARKET GAINS MORE TRACTION

Parametric insurance policies are handled in the alternative risk transfer market, a term long used to describe a part of the insurance sector specializing in nontraditional coverage.

In addition to parametric coverage, other developing risk transfer mechanisms in the ART market include structured solutions and integrated solutions, which are also gaining more traction with policyholders, experts say.

Loss-sensitive deals, usually structured on a multi-year basis, offer policyholders a return on underwriting profits, if losses fall under an agreed threshold, or may require additional premium, if losses exceed expectations, sources said.

“One of the areas which seems to be getting a lot of inquiry is doing a multiyear, loss-sensitive deal,” said Parag Bavishi, managing director of Allianz Risk Transfer, a division of Allianz Global Corporate & Specialty SE.

“If they perform well, they get a return premium, like a low-claims bonus,” he said. “But if the loss activity is long, there may be ‘additional loss premium features’ in the contract.”

Douglas O’Brien, national division manager for USI Insurance Services LLC’s casualty and alternative risk practice, said the broker sees two or three clients a month interested in structured solutions, including loss sensitive programs.

Sources stressed that policyholders considering such deals should do so well in advance of needs as the deals usually are individually structured.

“These deals take time,” said Amauri Taveras, managing director of Allianz Risk Transfer, a division of Allianz Global Corporate & Specialty SE.

Matthew Lerner



# Wearable safety devices catching on

BY CAROLINE McDONALD

**W**earable devices, such as wristbands and clothing that incorporate electronic technologies with connectivity, are increasingly being used to monitor workers and their environments for ergonomics, heat stress, lone-worker safety and fatigue.

These devices can especially play a key role in high-risk industries such as construction and transportation.

Although construction accounts for only about 6% percent of the U.S. workforce, nearly 20% of all work-related fatalities in a given year occur at building sites, according to the National Institute for Occupational Safety and Health. Construction workers are frequently exposed to extreme temperatures, poor air quality and loud noise, and tasks are regularly performed in close quarters and near dangerous equipment.

NIOSH also estimates that about 40% of highway crashes can be attributed to a fatigued driver or worker.

## Technology advances

One change in devices making a difference in worker safety is the “internet of things.” “We want to be able to do cloud computing so that we have real-time information,” said Ibukun Gabriel Awolusi, assistant professor in the Department of Construction Science at the University of Texas at San Antonio, and co-author of an upcoming wearables article for the American Society of Safety Professional’s Professional Safety Journal.

Mr. Awolusi said that with cloud technology, workers’ locations can be tracked accurately and in real time, helping to consistently monitor potentially dangerous situations and equipment. He added that not only is this data important for a safe work environment, it can also be used to make ongoing improvements from lessons learned.

Although getting workers home safely is the ultimate goal for organizations, there are many additional benefits from wearables, said Gary Kaplan, president, North America construction with Axa XL, a division of Axa SA, in Chicago.

“When you start to look at the possible benefits of wearables, it cuts across all nine lines of business that we underwrite,” he said. “Say you’re monitoring the atmosphere, you begin to pick up things like excessive noise levels and ambient light. You could pick up dust particulate matter, humidity, and identify the presence of water where it is not supposed to be.”

## Employee buy-in

With all the advantages of wearables, there are still some obstacles that keep their implementation from being more widespread. One is employee buy-in, as many workers don’t want to be tracked by management.



Chuma Nnaji, assistant professor in civil, construction and environmental engineering at the University of Alabama, said research shows that attitudes may be shifting as workers use the devices more.

In a recent study *Wearable Devices for Construction Safety and Health Management*, sponsored by the University of Alabama, about 200 field workers at larger companies using wearables with functions including fatigue and ergonomics, revealed the shifting attitudes.

“Something we hear a lot about in the industry is the resistance from concerns about privacy and security, but surprisingly we found that two-thirds of the wearers were OK with the reporting of conditions as well as information about the workers themselves,” said Mr. Nnaji, who is also a co-author of the upcoming ASSP safety article.

Key to the devices’ acceptance is transparency between management and workers about the data collected and how it will be used. This includes letting workers know the information gathered will not be used against them, Mr. Nnaji said. “If they realize that it is only about sharing the data that keeps them safe and healthy, that can be a strong message,” he said.

## Monitoring fatigue

Real-time information is also useful for monitoring fatigue, as heart rate, body temperature and even eye movements can be tracked. “Companies can monitor the safety of the worker’s environment as well as their fatigue,” Nnaji said.

Emily Whitcomb, director of the Work to Zero initiative at the National Safety Council in Itasca, Illinois, said the issue of fatigue has been on employers’ radar for some time and that their interest is increasing. “Most organi-

zations are adopting these (devices) for workers that are most at risk,” she said. Declining costs are making the devices more appealing, Ms. Whitcomb added.

While it is widely believed that older workers are at higher risk of injury, those concerns shouldn’t be limited to aging employees, she said.

“Risk in older workers often is the result of risk normalization, where they don’t feel that they are at risk,” she said. Younger workers are at risk as well, she said, “because they are not as seasoned on the job and may not be as aware of the risks or know about them. They can be overconfident. They don’t know what they don’t know, or when to use mitigation strategies.”

## Future of wearables

Currently, there are many types of wearables, including a watch focused on identifying electric current and one that connects to GPS and identifies the location of employees. Another capability in development measures hydration and fatigue.

Mr. Kaplan sees a future where fewer devices will be needed. “It seems that at some point, the number and variety of wearables will consolidate, similar to the iPhone,” he said. “Think of how many devices we had before the iPhone, which eliminated the need for all those devices, and now the watch is even eliminating the need for the phone.”

“I think this will happen with wearables, where devices will be consolidated into one solution that could probably do everything, whether it’s monitoring movements or monitoring vitals,” he said. Consolidating capabilities should have a positive impact on worker safety and ultimately improve pricing, Mr. Kaplan added.

## WORKER DEATHS, INJURIES STEADILY DECLINE

**S**afety in the workplace has come a long way since the early 1900s.

In 1928, 19,000 people died from work-related injuries, compared with 5,147 deaths in 2017 — nearly a 73% drop in workplace deaths over a nearly 90-year period, according to the National Safety Council report *Safety Technology 2020: Mapping Technology Solutions for Reducing Serious Injuries and Fatalities in the Workplace*.

This sharp decline is attributed to worker protection laws, government oversight and safety training for workers.

The NSC says there is more to this picture. The Occupational Safety and Health Administration reported a 67% drop in injuries — from about nine to three injuries per 100 workers over the past 25 years. The rate of preventable fatalities, however, dropped only 26% during that same period. The conclusion was that if organizations could reduce the overall number of non-injury incidents, serious injuries and fatalities would be reduced as well.

An increasing number of organizations are employing technology, including wearables, drones and robotics, to prevent injuries and save lives. What’s more, advances in technology, such as the “internet of things”, have made it possible to monitor and analyze worker behavior in real time, helping to provide a safe work environment.

Caroline McDonald

# Disruptive technologies hold promise, risk

BY MARK A. HOFMANN

Whether it's the "internet of things" or a new use for a drone, it's critical for risk managers to be involved as early as possible in consideration of deploying a new technology, experts say.

They shouldn't allow themselves to be viewed as obstacles but rather as facilitators. They have to understand the technology, and then seek ways to minimize or transfer the new risks, according to observers.

"Disruptive technology is our No. 1 risk among the top enterprise risks," said Soubhagya Parija, chief risk officer for the New York Power Authority in White Plains, New York. "We want to make sure that we take some risks even when these technologies are in a very nascent state and even though we do not have a clear understanding today whether these technologies are going to be successful or not."

It's important that risk managers explore the potential benefits of new technology while also assessing potential threats. "We constantly advocate that clients think through the dark side of the moon," said Allison Pan, senior vice president, emerging risks practice for Marsh LLC in Chicago. "At the end of the day, technology is our friend. There's no going back to analog. You can't unwind the clock, nor should you."

Risk managers need to get in on the ground floor as enterprises adopt new technologies, observers say.

"Risk management professionals should be part of innovation or new initiative teams as new technology is being developed and deployed within organizations," said Carol Fox, vice president of strategic initiatives at the Risk & Insurance Management Society Inc. in New York. "In these cases, risk assessment and testing assumptions are part of each phase of the innovation or deployment initiative, with the goal of achieving the desired outcomes."

The goal for the risk manager is to have influence but not be a restraint to business, said Jeff Tilley, vice president and manager of cyber hazards at FM Global in Johnston, Rhode Island. "If you haven't checked your invite list in a while, you're



probably missing some key players, particularly in respect to technology risk."

"We advise anybody in the risk field to engage deeply with risk owners across the enterprise," Ms. Pan said. "Learn about the goals and objectives of all of those. How do I help you get there? How do I protect your strategy? How do I help you be what you want to be. How do I help bring this organization forward?"

Recognizing the interconnected nature of technology is key to successfully managing the risks, experts say.

"As opposed to looking only at a specific, single technology like artificial intelligence, drones or blockchain, and asking how this will affect my company's risk, it is more productive to look at those technologies that are clustered together and used to change the business model of the company," said Eric Boyum, national practice leader for Aon PLC's technology and communications industry practice in Denver. He cited ride-sharing services as an example.

"As opposed to waving at a yellow car to get a ride someplace, you now can wave digitally at any car or digitally hitchhike using a variety of technologies," Mr. Boyum said. "One is mobility in the phone, another is connectivity that comes through the cellular network. The third is applications that are readily available

through an app story. The fourth is GPS. You look at the cluster of technologies, that enabled the new business model.

Many companies are starting to use drones, noted Nick Graf, CNA's assistant vice president of information security, specialty risk control in Las Vegas. "There are very positive aspects of this. They can use the drone to survey a roof and increase employee safety because you do not have to send a worker up there. But if you're not piloting those drones safely, there can be an accident, crash or run in with a powerline."

One of the greatest challenges for risk managers is the expansion of the internet of things.

"It's a whole new world when it comes to IoT," said Steve Robinson, Cambridge, Maryland-based national cyber practice leader for Risk Placement Services Inc.

"You have these smaller mobile devices that allow workers to be a lot more nimble in the field," he said. But risk managers "may not know how many are in the ecosystem. 'How many do we have and where are they deployed, and what measures have been taken to make sure they're secure?'" he said, adding that risk managers should implement a security assessment for the devices.

Specific industries face specific digital exposures, said John Farley, managing director of the cyber liability practice for

Arthur J. Gallagher & Co. in New York.

For example, in health care, "5G networks will allow doctors to perform robotic surgery," Mr. Farley said. "Doctors are clicking a mouse rather than using a scalpel, allowing doctors to operate remotely. But the other side of it is, when you're the patient, you're hoping the network is secure and operating."

Mr. Farley noted that such a failure of the network during an operation had not yet happened.

Agriculture provides another example.

"Precision agriculture relies on an IoT network system made up of GPS, remote sensors and IoT-controlled machinery to provide irrigation and to help with harvesting. If that goes down, the whole farm-to-table concept goes out the window," Mr. Farley said.

Insurance hasn't always evolved to keep up with evolving technologies.

"There are areas where insurance is inadequate and unavailable," Mr. Boyum said. "As an industry, we have historically been good at insuring tangible assets, but the current economic environment is driven largely by intangible assets, and has been for some time now."

"I'm not sure if there's any insurance product that's available today that will enable us to transfer some of these risks," Mr. Parija said. "Companies that have a captive insurance entity are going to be better able to transfer some of these risks."

Coverage questions begin with something as basic as what is considered a "computer" or a "system?" Mr. Robinson said.

"How about a system that just stops working?" Mr. Robinson said. "Many insurers have broadened coverage to consider 'unplanned outage' as covered."

If a policyholder brought the system down on purpose in order to prevent the damage from getting worse, "that's something that should be covered."

Mr. Robinson added that new policies are being developed to deal with large property losses associated with supervisory control and data acquisition systems, such as those that operate dams.

"Very specific niche policies are being written to deal with these things," he said, "but I feel we still have a long way to go."

## MODERN DISTRIBUTION CENTERS PRESENT NEW CHALLENGES TO INSURERS

Digital advances that propelled the rise of e-commerce disrupted the retail sales industry, but the digital economy also disrupted the very material world of property loss control, notably fire protection, according to James Breikreitz, vice president, property services, risk engineering for Zurich U.S. in Schaumburg, Illinois.

"The traditional schemes of providing fire protection for warehouses are based

on a very traditional warehouse layout and operation," he said. Warehouses provided bulk storage with boxes on pallets, pallets on racks, all neatly arranged.

"You're forced to have aisle space that allows for the movement of forklifts," he said.

The traditional layout also allows access for fire departments, but new warehouses are not typically traditional warehouses, Mr. Breikreitz said. "They are now

customer fulfillment distribution centers."

These centers feature "storage arrangements with multiple operating levels and multiple tiers and completely different challenges to fixed protection systems as well as greater challenges to the fire department."

Goods can be tightly packed, resulting in obstructions to the path of the water coming from the sprinkler system.

"The tighter you pack things, and

the taller the structure, the tougher it is for the firefighters to do the things they do," Mr. Breikreitz said.

Robotic storage and retrieval systems also present new challenges, he said. "You can store more goods in a smaller area," but that means firefighters face greater challenges, Mr. Breikreitz said. "It's trading an unknown risk for the efficiency of operations."

Mark A. Hofmann

# REPUTATIONS AT RISK IN THE AGE OF SOCIAL MEDIA

Insurers develop coverage  
against risk of public shaming  
when bad employee  
behavior is exposed  
to the cyber world

BY LOUISE ESOLA

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**I**n an Evansville, Indiana, Olive Garden restaurant in early March a patron loudly demanded a nonblack server and the manager complied. Similarly, in October 2019, a staff member at a Buffalo Wild Wings restaurant in Naperville, Illinois, asked a large table of black customers celebrating a child's birthday to move because a regular customer didn't want to sit by them.

In November 2019 a Starbucks employee in Glenpool, Oklahoma, wrote “pig” on coffee cups in a drinks order placed by a police officer. This followed a 2018 incident in which two black men were forcibly removed from a Starbucks in Philadelphia. In 2017, United Airlines dragged a man off an overbooked commuter flight. And perhaps aiming for laughs in February this year, a Wendy’s restaurant employee took a bath in a restaurant sink.

There is no shortage of examples.

While the incidents vary, the end of the story has become a signature for modern reputational risk: someone — victim or bystander — video records the scene, snaps a photo or documents the event, posts it on social media, and the ordeal goes viral, causing outrage and stinging a brand.

The result is a gaping exposure that no business is immune to and one the insurance industry is increasingly working to mitigate with new products aimed at helping companies respond.

“We all have video cameras in our hands, and we are not afraid to use them,” said Deborah Hileman, South Bend, Indiana-based president and CEO of the Institute for Crisis Management, highlighting what she calls one of the biggest threats to businesses: a damaged public image.

“It’s a huge risk for companies that deal

with the public a lot, such as retail and restaurants. ... We are living in an age of accountability,” said Kelly Castriotta, Chicago-based head of product development and North American cyber underwriting lead for Allianz Global Corporate & Specialty. The Allianz SE unit is launching a product in North America to help policyholders grapple with reputational risk exposures stemming from social media. European companies already have access to the product, she said.

*“It’s a huge risk for companies that deal with the public a lot, such as retail and restaurants. ... We are living in an age of accountability.”*

Kelly Castriotta,  
Allianz Global Corporate & Specialty

Many other global insurers, including Munich Reinsurance Co. and London-based Beazley PLC, are promoting similar products. Most of the policies are standalone, but some can be part of broader business coverage.

Reputational risk insurance typically provides services that include crisis management in the event of an incident that spurs reputational harm. The products also offer services to track the brand in social media following an incident.

Several offerings include business interruption benefits in the event there are proven financial losses attached to an event. Coverage and services usually begin at the onset of the loss — meaning, once the first negative post hits and goes viral, according to experts.

“The reputation capital value is a huge exposure for companies who do not have their reputation risk house in order,” said Lance Ewing, Houston-based executive vice president of global risk management and client services at Cotton Holdings Inc., a property restoration and infrastructure support company.

Companies that seek protection can often weather a loss, said Mr. Ewing, a longtime risk manager with experience in handling issues in the hospitality industry, who advises businesses to check their policies.

Targeting companies via social media “is a way to hold companies accountable without going an expensive route, such as litigation,” which is how injured or

See **REPUTATION** next page

## CRISIS MANAGEMENT IN THE DIGITAL AGE

# 28%

28% of corporate reputational crises spread internationally within one hour, with social media playing a “significant” role in spreading the story.

# 21 HOURS

On average it takes companies 21 hours to issue “meaningful external communications” in their defense.

# 50%

50% of communications advisors believe organizations are “not adequately prepared” to manage social media crises.

Source: Freshfields  
Bruckhaus Deringer LLP

# We Are Going to Exceed Your Expectations



Mark Wilhelm with members of Account Services

“Customer service is not an approach. It is really who we are as a company. When given the opportunity, we are going to exceed our customers’ needs. We will deliver unparalleled professionalism, product and service – most specifically when customers need us to respond to a catastrophic loss of some kind.”

– Mark Wilhelm, CEO



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## REPUTATION

Continued from previous page

offended parties sought to hurt a company financially in the past, Ms. Cas-triotta said.

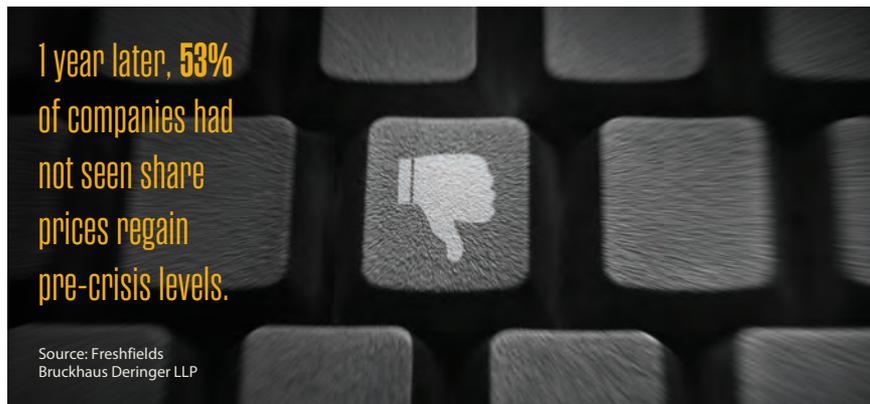
Now it's a few posts, likes, and clicks, she said, adding, "You have a lot of companies that are vulnerable."

Over the past several years, Swiss Re Corporate Solutions, the commercial insurance unit of Swiss Re Ltd., has held discussions with many clients about reputational risk, Livia Phillips, a Zurich-based underwriter for Swiss Re Corporate Solutions said in an e-mail.

**"Social media audiences are very impatient. They will not wait hours or days for a company to respond. A quick response can diffuse a potential volatile situation."**

Deborah Hileman,  
Institute for Crisis Management

"In our experience, companies are acutely aware of the risk of economic damage stemming from adverse media. More importantly, the topic has the attention of senior management and the board of directors and not only that of



corporate risk managers or marketing departments," she said.

"A lot of it is post-incident," said Lewis Edwards, London-based head of underwriting, specialty binders with Liberty Mutual Specialty Markets, a unit of Liberty Mutual Insurance Co. "The challenge is a lot of (companies) lack the current processes to understand that they may face these challenges" in responding to incidents that provoke social media outrage and the losses that can follow.

Ms. Hileman of the Institute of Crisis Management said most companies respond to social media shaming, for example by firing an employee involved, but announcements about the response can take days.

In the Olive Garden incident, in which a manager complied with a customer's request for a different server based on the server's race, a bystander documented the incident on Facebook on March 1. The restaurant chain issued a statement

on March 4 that the manager had been fired. It did not respond via social media to the incident.

The Oct. 26 Buffalo Wild Wings incident was posted on Facebook the next day by one of the black customers involved. The post included a photo of an employee speaking with a white customer who allegedly asked for the black customers to be seated at another table. The company posted its response on Twitter eight days later, stating it had terminated the employees involved in approaching the family and had banned the regular customer who asked that the black family be seated elsewhere.

Starbucks issued an apology on Twitter two days after two black men were arrested on suspicion of trespassing at the Philadelphia store — a response met with more outrage. The incident, which was first posted on Twitter with photographs of police arresting the two men, was shared widely. Following Starbucks's

apology, a black politician in London, Ontario, Mohamed Salih, remarked to his 120,000 Twitter followers, who went on to share the post more than 2,000 times, that "It took Starbucks two days to issue a paragraph." After "#boycottstarbucks" continued to spread, three days later the coffee shop chain issued a statement saying it would close all its locations for an afternoon in May 2018 to provide racial-bias education.

None of the companies involved in the incidents responded to a *Business Insurance* request for comment.

"Social media audiences are very impatient," Ms. Hileman said. "They will not wait hours or days for a company to respond. A quick response can diffuse a potential volatile situation."

"You can't ignore social media," said Bill Rand, associate professor of marketing, department of business management at the Poole College of Management at North Carolina State University in Raleigh. "The message to companies is you can't put your head in the sand and ignore these channels. Negative messages feed on themselves."

"You used to have 24 hours" to respond, said Mr. Ewing. "That has minimized quickly. Everybody is waiting to see how you are going to react."

"Corporations with a solid reputation and that continue to do well can be brought to their knees with social media," he added. "I always go back to the Warren Buffet quote: 'it takes 20 years to build a reputation and five minutes to ruin it.' That's the current world we live in."

## Advice to frontline workers: Leave politics at home

Sensitivity training and political neutrality training may become more commonplace as companies seek to proactively manage reputational risks by better communicating their expectations to frontline employees, experts say.

"There is often a disconnect between internal risk management and the people on the front lines with customers, and employees are not prepared properly," said Andrea Bonime-Blanc, New York-based founder & CEO of GEC Risk Advisory, which provides strategic risk consulting to company boards and executives.

Employee training is one strategy for helping companies manage the risk of an adverse event going viral, according to Deborah Hileman, South Bend, Indiana-based president and CEO of the Institute for Crisis Management, which helps companies address brand risk management strategies.

"People fire off before thinking about what they are saying or doing," she said. Ms. Hileman cites the recent incident



at an Olive Garden restaurant in which a woman requested a server who was not black — a racial incident that could have been managed better with strict protocols. She said that often retailers haven't adequately trained their employees to address such incidents.

These situations typically only get corporate attention if someone is there to witness them, Ms. Hileman said. "That's how we found out about it. Somebody saw it and posted it," she said.

While some incidents that are widely disseminated on social media often involve a rogue employee, or one who makes a poor choice and who is often later fired, "the other side of it is if the client is being rude or provocative," Ms. Bonime-Blanc said. "These employees should leave the situation quietly and get their management involved ... but not everybody does."

Personal politics can be another risk factor, experts say.

"I think it's extraordinarily important for a direct customer service representative to maintain political neutrality," Ms. Bonime-Blanc said. "If you are a waitress and people have MAGA hats on, then just do your work and serve the people.... Keep your political feelings for when you are not working."

"The volatility that we are seeing in politics has bled into our interactions," said Ms. Hileman, who said political neutrality is a good place to focus.

"There is opportunity in training, especially in customer service," said Lance Ewing, Houston-based executive vice president of global risk management and client services at Cotton Holdings Inc., who previously worked in risk management for the hospitality industry. "Whatever your viewpoint is, your salary, your job comes from serving those customers no matter what race, religion, profession. ... Serve them with a smile and say, 'Thank you very much,' and move on."

Louise Esola



## Lloyd's adds crypto liability coverage

■ Lloyd's of London Ltd. has launched a liability insurance policy to protect cryptocurrency held in online wallets against theft or other malicious hacks, Lloyd's said in a statement.

The policy, with limits beginning at £1,000, was created by Lloyd's syndicate Atrium in conjunction with cryptocurrency exchange Digital Asset Services Ltd. (trading as Coincover), the statement said.

The upper limit for each policy is £100,000, a spokesman said in an email.

The policy limit increases or decreases in line with price changes of crypto assets, allowing the policyholder to be indemnified for the underlying value of the asset even if it fluctuates over the policy period, the statement said.

The policy is backed by a panel of other Lloyd's insurers, including Tokio Marine Kiln Group Ltd. and Markel Corp., all of whom are members of Lloyd's Product Innovation Facility, the statement said.

"There is a growing demand for insurance that can protect cryptocurrency as it becomes increasingly popular," Matthew Greaves, underwriter at Atrium, said in the statement.

## Sompo unveils property cover

■ Sompo International Holdings Ltd. launched a replacement value coverage policy for U.S. commercial real estate firms and financial institutions.

The coverage, which is offered through the Bermuda-based insurer's global risk solutions division, covers lenders or owners against losses from property damage that's more than the replacement cost value of a property, a Sompo statement said.

Offered in conjunction with New York-based risk management and consulting firm Fisher Harris Shapiro Inc., the policy covers the difference between outstanding loan balances and the combined value of underlying property proceeds and

land used to collateralize loans in the event of losses.

The coverage is designed to help policyholders complete financing and reduce borrowing costs, the statement said.

The coverage is offered through retail brokers and agents that use Fisher Harris Shapiro as a consultant, a Sompo spokeswoman said. The policy provides limits up to \$100 million.

## Zurich, Israeli cyber firm partner

■ Zurich Insurance Group has partnered with cybersecurity company CYE of Tel Aviv, Israel, to launch Zurich cyber security services, Zurich said in a statement.

Zurich cyber security services combines Zurich's cyber coverage and risk engineering with CYE's artificial intelligence-based technology, services and cyber expertise, the statement said.

The product includes a risk assessment report to help evaluate an organization's posture regarding cyber threats, according to information on the Zurich website.

The policy provides coverage to \$25 million and includes cover for exposures such as breach costs, business income loss, reputational damage coverage, for reputational damage associated with an adverse media event resulting from a cyber breach, and social engineering fraud transfer coverage, for funds lost from a social engineering fraud event, according to an email from a Zurich spokeswoman.

## Tokio Marine revamps cyber policy

■ Tokio Marine Kiln Group Ltd. has launched Cyber Ctrl PD+, a cyber insurance policy designed to help protect clients against physical damage stemming from cyberattacks, the insurer said in a statement.

The policy provides affirmative cover for property damage and ensuing business interruption arising from a cyberattack, the statement said.

Cyber Ctrl PD+ includes standard cyber insurance coverages such as privacy liability and non-damage business interruption and has limits available up to \$25 million, the statement said.

Cyber Ctrl PD+ is an evolution of Kiln's existing Cyber Ctrl policy, Paul Gooch, cyber underwriter at Tokio Marine Kiln, said in the statement.

## DEALS & MOVES

### Aon purchase of Willis Towers Watson to create world's biggest broker

■ Aon PLC's proposed acquisition of Willis Towers Watson PLC will create the world's largest insurance brokerage, outstripping rival Marsh & McLennan Cos. Inc.

The deal announced March 9 came a couple of days after the end of a standstill agreement between No. 2-ranked Aon and No. 3-ranked Willis Towers Watson that regulators required after the two firms ended possible merger discussions in March of last year.

The current proposal, expected to be completed in the first half of 2021, will still need to meet numerous regulatory requirements.

Under terms of the deal, Willis Towers Watson shareholders will receive 1.08 Aon ordinary shares for each Willis Towers Watson share, according to an Aon statement. Based on the March 6 market close, that would value the deal at about \$29.86 billion, but share prices of both firms have since fallen sharply amid a market sell-off linked to coronavirus concerns.



On closing, existing Aon shareholders will own about 63% of the combined firm, which will trade under the Aon name, and Willis Towers Watson shareholders will own about 37%.

The merged entity's operating headquarters will be London. The firm "will be led" by Greg Case, CEO of Aon, and Christa Davies, chief financial officer of Aon, according to the statement.

John Haley, CEO of Willis Towers Watson, who was due to retire at year end, will be executive chairman.

Aon expects the deal will result in annual cost savings of \$800 million by the third full year after the combination, the statement said.

The two firms currently compete in numerous areas, including retail broking, reinsurance broking and employee benefits consulting.

If the deal is called off due to antitrust concerns, Aon would pay Willis Towers Watson \$1 billion, according to terms of the offer.

### Mitchell/Genex to buy workers comp provider

■ Mitchell International Inc. will acquire Coventry Workers Comp Services from CVS Health.

Financial terms of the deal were not disclosed.

Mitchell/Genex, which includes San Diego-based Mitchell and Wayne, Pennsylvania-based Genex Services LLC, a division of Mitchell, will add Coventry's preferred provider organization to its cost containment and clinical services and gain 2,000 employees.

Coventry is a provider of care and cost management programs for workers compensation, auto insurance, third-party administrators and self-insured employers.

### Brown & Brown unit buys Boston-based broker

■ Brown & Brown Inc. said a subsidiary has acquired wholesale insurance broker RLA Insurance Intermediaries LLC.

Terms of the deal were not disclosed.

RLA, which was acquired by Peachtree Special Risks Brokers LLC, a subsidiary of Daytona Beach, Florida-based Brown & Brown, will continue to do business from its Boston headquarters and other locations in West Palm Beach, Florida; Brentwood, Tennessee; Potomac Falls, Virginia; and Manassas, Virginia, according to the statement.

The offices will continue under the leadership of Jeff Hays, who co-founded the

firm in 2010 with Chris Skaletsky, and form a stand-alone operation with Brown & Brown's wholesale brokerage segment.

### Gallagher buys New York wholesaler

■ Arthur J. Gallagher & Co. has acquired Melville, New York-based wholesaler CMS LLC, the brokerage announced.

CMS specializes in placing insurance for businesses operating in various sectors, including construction, importing, wholesaling and distribution, manufacturing and real estate, according to a Gallagher statement.

Terms of the deal were not disclosed. CMS has about 25 employees, a Gallagher spokeswoman said.

### AssuredPartners buys Calif. agency

■ AssuredPartners Inc. bought San Diego-based agency Wateridge Insurance Services Inc.

Wateridge reports \$12 million in annual revenue, Lake Mary, Florida-based AssuredPartners said in a statement. Its 67 staff "will remain under the operational leadership of Jeff Byroads, John Clanton and John Dorris," the statement said.

Wateridge, which has an additional office in Sacramento, California, places commercial insurance, personal lines coverage and employee benefits business.

COMMENTARY

## Policy fine print magnified in crisis

**A**dapting to the strange new world of COVID-19 is testing so many dimensions of our daily existence — work habits, social activities, economic resources — that it's tough to find frameworks to guide us through the process.

Businesses, governments and individuals are coming up with different approaches to stem the spread of the disease, but it will likely be months before we know what the best strategies really were.

The final analysis will no doubt point to various weaknesses in crisis preparedness, development of response plans and the execution of those plans. And changes will be recommended and implemented to ensure that everyone is far better prepared in the event of another global health crisis.

One of the issues that has already come into focus is how to support businesses crippled by the consequences of the coronavirus. With sources of revenue sharply curtailed or eliminated, business owners are forced to make harsh decisions.



**Gavin Souter**  
EDITOR

If the crisis were caused by a more conventional type of catastrophe, they would be turning to their business interruption insurers to soften the blow. Insurance experts and advocates, however, quickly asserted after the virus hit that physical damage is a necessary trigger for most business interruption policies to kick in and, they argue, contamination by a virus does not constitute physical damage.

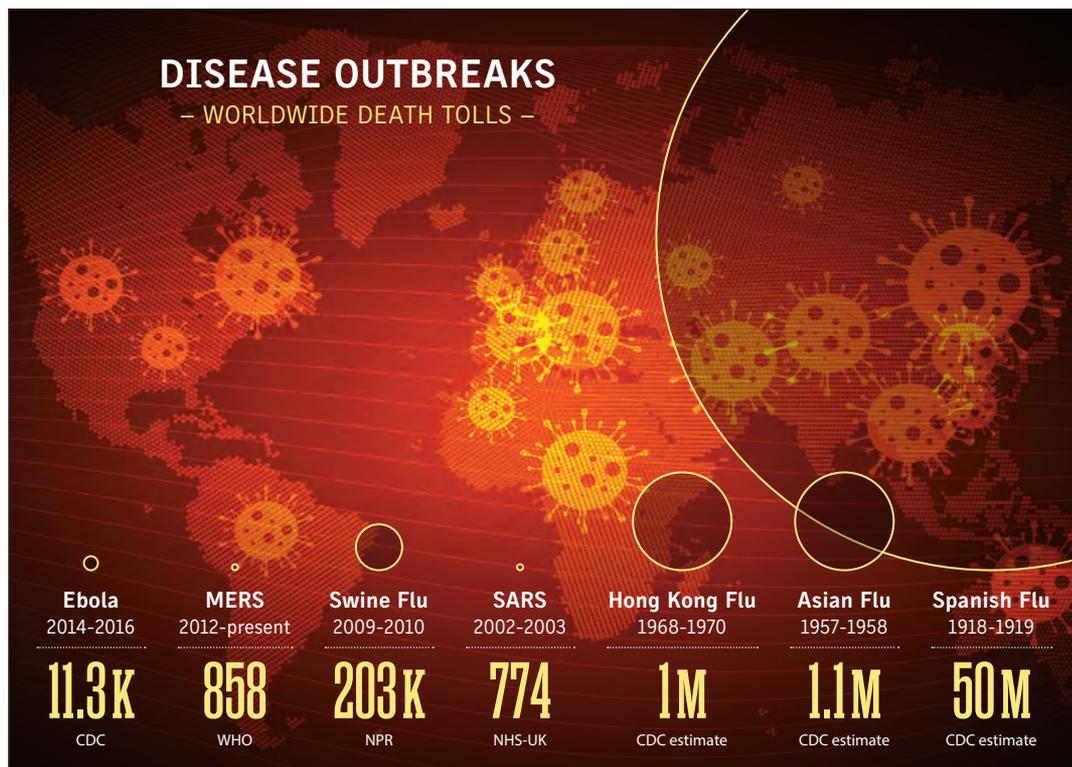
Given that they could be facing the mother of all business interruption claims if the policies did respond to the coronavirus, it's hardly surprising that insurers are looking to lay down rules of play early.

But that won't be the end of the discussion. Already in mid-March, a New Orleans restaurant owner went to court seeking a ruling that among other things coronavirus contamination in a building should be defined as a "physical loss."

At first blush, insurers may look at policy wordings and exclusions and think they're secure in their position. But so did general liability insurers in the 1980s when they argued that the word "sudden" in the sudden and accidental pollution exclusion clearly meant "quick." Courts disagreed and after some tortious litigation insurers were left paying substantial clean-up bills.

And the New Orleans suit will be followed by other attempts to secure coverage. Policyholder lawyers are scouring numerous policy wordings looking for openings. Similar actions took place when companies were facing huge costs to pay for so-called Y2K patches to keep their computer systems running after the last millennium ended. In those cases, insurers won the argument over whether the "sue and labor" clause, which originated in the marine market but was included in other policies, would pay the expenses, but not until after protracted court battles.

As we plan for the future, lawmakers and other policymakers will need to assess what financial safety nets need to be on hand to deal with the financial havoc of a pandemic and who is expected to support them.



VIEWPOINT

## Social Distancing 2.0

BY CLAIRE WILKINSON

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**M**y late mother was a young child when she was evacuated from London during World War II to live in Bedfordshire for a period of time with a family she didn't know. Her brothers were sent elsewhere. There was no Internet, no FaceTime, no Skype — just social distancing in its truest form.

Looking back on the stories she told of that disruptive part of her childhood, it's clear that risk management was at the heart of the evacuation of mostly children and mothers away from British cities to rural areas that were safer and more protected from the risks associated with the German bombing.

There are many other examples over the course of history when individuals and businesses have had to move either temporarily or permanently in order to save lives, or to reduce risk. If you think about it, all of them have involved some element of social distancing.

Does it feel strange to put physical distance between ourselves and others while a global pandemic is raging? Sure. It's hard not to have the usual in-person interactions with business associates, friends and family, especially if they're sick, and certainly there are numerous reports out there noting that the economic impact of lost business from the pandemic will be significant.

But whether you're located in a community that has a shelter-in-place order, a curfew, a quarantine, travel restrictions and/or lockdowns, probably the biggest risk management step you can practice is to stay home.

Since the COVID-19 outbreak began late last year, the World Health Organization and others have stressed the importance of "flattening the curve"

to slow the spread of the virus and save lives by not overwhelming our health care systems.

"WHO continues to call on all countries to implement a comprehensive approach, with the aim of slowing down transmission and flattening the curve," said WHO Director-General Tedros Adhanom Ghebreyesus at a media briefing in mid-March.

In a now viral post that first appeared on Medium.com on March 10, Tomas Pueyo, vice president of growth at Course Hero Inc., a California-based educational technology company, laid out a series of charts and graphs that provided a powerful collective visual of the exponential growth of coronavirus and the importance of acting early to flatten the curve.

The only way to truly reduce the spread of the virus, Mr. Pueyo wrote, is to practice social distancing.

As we grapple with the new normal of closed businesses, schools, and stringent travel restrictions, the importance of having a computer and access to the Internet has never been so essential.

Technology becomes a human connector in the social distancing world. Yes, there are risk management issues that arise. Just read some of the stories in our special section on COVID-19 to learn about some of the cyber and workers comp-related risks that telecommuting will bring.

But ultimately this pandemic will cause technology to be used in new and innovative ways by risk managers and others to learn, adapt, interact and move forward to better plan for and mitigate the next iteration of risks, whatever they may be.

As this edition of the magazine goes to press, it's not lost on us that some of what we publish about the COVID-19 pandemic may have shifted by the time you read this, such is the rapidly changing landscape. Visit [businessinsurance.com](http://businessinsurance.com) for up-to-the-minute coverage of the risk management and insurance implications of this unprecedented event.

# 'Bottom up' biomechanics takes active role in evaluation of workplace injury claims



*Ian M. Zeller, a Jacksonville, Florida-based consultant with Rimkus Consulting Group Inc., earned his doctorate degree in biomechanics from the University of Tennessee. He currently performs biomechanical analyses on cases involving vehicle accidents, falling objects, falls due to slips and trips, and evaluations of other causes of injury. He can be reached at [izeller@rimkus.com](mailto:izeller@rimkus.com).*

**D**oes biomedical engineering have a potential role in the insurance industry when it comes to gauging the cause of injuries?

Current trends point to yes.

This application of engineering principles to problems in medicine and biology has a long-evolving history that has come into the spotlight in the past 15 years with its progress in bio-fabrication of artificial organs and surgical robotics and can be particularly valuable for use in the evaluation of bodily injury claims in such industry segments as workers compensation, where injury causation can come into question.

There are several facets to what is collectively referred to as biomedical engineering, including that which explores the understanding and applications of electrical signals in the body, that which seeks to understand and apply the healing and growth properties of human tissue, and that which explores the actions and reactions of the human body, especially as pertains to forces and movements that can lead to injuries.

Despite this inherent value in such industries as workers compensation, involving the concepts of math and physics coupled with the novelty of the field of injury biomechanics for the analysis of personal injuries makes such analysis an often-overlooked part of the claims process. Encompassing a broad field that includes sports science, human performance engineering and medical device design, the most relevant aspect of this discipline to claims evaluation is injury biomechanics.

This is a sub-discipline centered on understanding the relationship between the forces and movements acting upon the body as a result of an incident and the consistency of injuries that would be expected to result from such an event. It is important to distinguish that this is different from the role of a physician whose purpose is to diagnose and treat reported injuries. As such, the physician would treat the injuries regardless of their origin. To highlight this difference, it can be said that a physician uses a "top down" approach where an injury diagnosis is determined on the basis of observations from an examination as well as the history as reported by the patient. This is contrasted by a biomechanics approach that can be described as "bottom up," basing injury potential on the event itself.

Biomechanics is based on the evaluation of the dynamics from an incident, identification of associated injury mechanisms, and a determination whether the forces and motions from the incident would facilitate the mechanical failure of tissue



diagnosed by a physician as an injury. Between these two processes, the biomechanics technique is uniquely qualified as a means of evaluating the link between an incident and a claimed injury as it quantifies the mechanics of the incident.

The scope of a biomechanical analysis is not to dispute a diagnosis, as that is within the purview of a physician, but rather to identify which rendered diagnoses are related to an incident and which are not consistent with the forces and motions associated with an incident. In other words, the analysis attached to biomechanics serves as an evaluation as to whether a particular diagnosed injury is consistent with the mechanics that would have been in effect given the physics of the accident.

*Biomechanics is particularly suitable for identifying injuries that resulted from a particular set of traumatic circumstances in addition to identifying which are more likely the result of degenerative processes or predated an incident.*

The scientific methodology of a biomechanical injury consistency analysis revolves around several basic steps, which include quantifying the forces and movements associated with a particular incident and establishing the known injury mechanisms associated with a claimed injury.

This analysis can include a calculation of the speed change and associated forces involved in a vehicle accident, the motions resulting from a trip and fall, and the forces resulting from contact with a falling object.

The methodology of examining biome-

chanics is particularly suitable for identifying injuries that resulted from a particular set of traumatic circumstances in addition to identifying which are more likely the result of degenerative processes or predated an incident.

In many cases, injury mechanisms have been extensively published in the peer-reviewed scientific literature and made available in textbooks for teaching purposes. It is understood that some injuries have significantly more complex mechanisms requiring an analysis of multiple forces, moments and possibly abnormal body positioning.

One of the final steps in biomechanical analysis is determining whether each known injury mechanism of the reported injury was consistent with the dynamics of an incident.

While biomechanics generally focuses on the consistency of injuries, it is also possible to use a well-documented injury as evidence to validate the claimed incident as reported. For injury reconstruction, this strategy can sometimes be used to determine the order of events and determine body positioning and orientation prior to an incident.

The role of biomechanics in claims evaluations is sometimes not well understood, and for that reason this type of analysis is often underutilized in claims evaluations. The overall goal of a biomechanical analysis is to evaluate the evidence from an incident, determine the associated forces and movements from that particular event, evaluate the motions, orientations and mechanisms associated with the claimed injuries, and finally compare those claimed injuries with the mechanisms that dictate how they occur. The end result is an evaluation as to whether an injury is consistent with a particular event based on the evidence available.

Specifically, biomechanics is not about making diagnoses; rather it is about determining the root cause that led to the diagnoses given by physicians in the context of a mechanical event.

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### UP CLOSE

## Manuel Andrés Giner

**NEW JOB TITLE:** New York-based managing director, Euclid Transactional LLC

**PREVIOUS POSITION:** New York-based senior vice president, Euclid Transactional LLC

**OUTLOOK FOR THE INDUSTRY:** I think representation and warranty insurance still has some room to grow as strategic buyers continue to develop comfort with the product and insurers look to underwrite bigger and smaller enterprise value transactions as a way of maintaining growth and diversifying their risk portfolio. That said, the industry is at an inflection point. Over the preceding growth period, markets have generally competed on price, coverage and execution. These factors remain important, but as policies mature, the industry has seen material claims filed and paid, which has given insurers and MGAs the opportunity to separate themselves and demonstrate value to their clients.

**GOALS FOR YOUR NEW POSITION:** My goal is to use our wealth of information and data points to continue to inform our underwriting strategy and to develop market insights that benefit our clients and insurer partners.

**CHALLENGES FACING THE INDUSTRY:** The M&A market has not asked the R&W industry to react to and perform during an economic downturn or a period of economic uncertainty. Ensuring that the markets continue to provide excellent coverage and client service when it is most important, while maintaining sound underwriting standards, will be the challenge over this year.

**FIRST EXPERIENCE:** For as long as I've been a professional, I've been involved in M&A in some capacity. I started my career as an attorney at Debevoise & Plimpton where I advised clients on a wide range of corporate matters, including corporate finance and mergers and acquisitions. I moved from the law firm to start underwriting R&W at a leading international insurance company and came to Euclid in 2017.

**ADVICE FOR A NEWCOMER:** My advice would be to treat your colleagues in the industry as partners and not as adversaries. Demonstrating your technical abilities and familiarity with the deal process is important, but your ability to maintain, develop and deliver on your relationships in this space will separate you from what is a continuously growing crowd.

**DREAM JOB:** Give me the reins to any Major League Baseball team. I would certainly prove inadequate to the task, but I would have a good time failing.

**LOOKING FORWARD TO:** We have a talented and experienced underwriting team, and I am excited to take an active role in building on our reputation for excellence as the industry continues to develop, while maintaining and contributing to our culture of inclusivity.

**COLLEGE MAJOR:** I majored in history with concentrations in Latin America and the United States.

**FAVORITE MEAL:** The food is less important to me than the company. My evenings with takeout and my family have always been the most memorable to me.

**FAVORITE BOOK:** My favorite book is usually the one I just finished, but there is a story in "Islands in the Stream" that describes a father's grief over the passing of his children. It is both haunting and devastating and has stuck with me, while everything else I've read slowly fades from memory.

**HOBBIES:** I've set some lofty fitness goals for myself that I spend a lot of time trying to achieve. It's been going more poorly than well, but I've managed to turn it into an enjoyable use of my free time.

"Representation and warranty insurance still has some room to grow as strategic buyers continue to develop comfort with the product and insurers look to underwrite bigger and smaller enterprise value transactions."

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QBE North America appointed **Dan Moore** chief operating officer. His appointment follows the recent departure of former COO Daniel Franzetti to CNA. Mr. Moore,

who has served as the insurer's interim COO since January, previously served as head of operations.



CAC Specialty named Denver-based **Carrie O'Neil** to the newly created position of senior vice president of financial lines, legal and claims practice. Previously,

Ms. O'Neil was a first vice president for Alliant Insurance Services Inc.



Specialty brokerage EC3 Brokers Ltd. named London-based **David Purdy** to lead the firm's new international financial and professional lines division. Previously,

Mr. Purdy was executive director of the financial and executive risks practice for Willis Towers Watson PLC.



Marsh LLC named **Brian Hanuschak** CEO of managing general underwriter Victor Insurance Holdings. He will be based in Chevy Chase, Maryland. Mr. Hanuschak

most recently served as president of Victor North America and prior to that was president of Victor O. Schinnerer & Co., now Victor U.S.



Markel Corp. merged its surplus lines and complex account division Markel Assurance with its specialty risk division and named Richmond, Virginia-based **Bryan Sanders** to head the combined unit as

president of Markel Specialty. Previously, Mr. Sanders was president, U.S. insurance.



Aon PLC named **Eric Andersen** single president of the firm, following the departure of Michael O'Connor, who was co-president. Mr. Andersen is based in

New York and joined Aon in 1998. Previously, he was co-president.



## Algorithm gets set to name that tune

With hopes to bring an end to music copyright lawsuits forever, a pair of lawyers say they have created an algorithm to write every single music melody that could possibly exist and are releasing their entire catalog of tunes into the public domain, as reported on the science news website [www.iflscience.com](http://www.iflscience.com).

Lawyer, musician and programmer Damien Riehl told a reporter that the idea grew out of the discovery that all singer-songwriters are essentially walking on a “melodic minefield” due to the fact that there is a finite number of melodies that can exist, according to the article.

That means with each new song the chances of creating a tune that is unique decreases, and the potential for writing a melody that has already been recorded by someone else increases, according to the article.

## Judge rips insurer’s slogan

When Nationwide told customers it would be on their side, it’s doubtful the insurer thought such marketing would help a federal judge make a point and rule against the company.

Doing just that is the recent ruling in *Frank Slupski v. Nationwide Mutual Insurance Co.*, in which a judge with the 3rd U.S. Circuit Court of Appeals in Philadelphia ruled that the insurer violated the Pennsylvania Motor Vehicle Financial Responsibility Law when it denied an underinsured motorist claim filed by a man who was rear-ended.

“Plaintiff-Appellant Frank Slupski (‘Slupski’) sought underinsured motorist ... coverage for an accident because he believed Defendant-Appellee Nationwide Mutual Insurance Company (‘Nationwide’) was on his side. Apparently not,” Judge Joseph Greenway wrote in the introduction of the ruling.



# AON MUM ON MONUMENTAL QUESTION



The Chicago Sun-Times posed the question just as the big news of Aon PLC’s planned acquisition of rival Willis Towers Watson PLC was circulating: Will it still be the Willis Tower?

The press release on the planned \$30 billion deal doesn’t cover it. And an Aon spokeswoman did not wish to comment on the future of the 110-story tower, which opened as the Sears Tower in 1973 and is Chicago’s tallest building.

According to the hometown paper, the deal “raises one question in the mind of most Chicagoans: What will happen to the Willis Tower name now that we’ve gotten used to calling it that?”

Executives said the combined operation will use the Aon name, not Willis. Can Chicagoans stand another name change? The 2009 move to rename the building — which some still refer to as Sears Tower — outraged some. And Chicago, as the newspaper points out, already has the 83-story Aon Center, the city’s fourth-tallest building.

## Man trolls agent over wrong name

Ring? Rong? Ring? Wrong!  
A man named Teo Jian Rong had fun with it, anyway, trolling an insurance agent who could not get his name right in a request to work for the unnamed firm as a financial services consultant.



In a text message exchange published on [timesnownews.com](http://timesnownews.com), Mr. Rong was first addressed as Sian Ring. Then Sian Rong. He corrected: “Jian Rong.” And then the agent proceeded with a message for “Jian Ring.”

Mr. Rong put the exchange on Facebook, sharing screenshots, which included: “Sian Ring, Sian Rong, and Jian Ring are ready to start immediately, but I have decided to decline this offer.”



## Vanity plate fuels offensive discussion

C HUBBY but not FATTY; DRUNK but not TIPSY ...,” reads a complaint filed by the American Civil Liberties Union against the Rhode Island Department of Motor Vehicles over its assessment of which vanity plates are considered offensive.

As the Providence station WPRI reported, the case stems from the license plate Sean Carroll put on his electric Tesla that reads “FKGAS,” which the DMV allegedly decided to pull for being four-letter-word offensive.

“The DMV twice issued the license plate ‘FKGAS’ to Mr. Carroll and he drove his Tesla for over five months with that plate on it making his political statement,” an ACLU attorney said. “No one complained. Now, after one unknown person complained ... the defendant has decided the plate is ‘inappropriate and/or offensive.’ This looks like political censorship.”

According to the complaint, Mr. Carroll had installed solar panels at his home and after explaining to his daughter that they could charge the car with energy from the solar panels, she said it was like “fake gas.”

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