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MAY 2020

**SPECIAL
REPORT**

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MANAGEMENT**

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YOUR MONEY OR YOUR DATA

Organizations struggle to combat
rise in sophisticated hacker attacks

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COVER STORY

The incidence of ransomware has become much more prevalent in recent months as hackers grow increasingly sophisticated in taking advantage of pandemic-caused vulnerabilities and escalate their monetary demands. Still, businesses can take steps to minimize if not eliminate their risk, including tapping ransomware coverage in cyber liability policies. **PAGE 18**

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SPECIAL FEATURE: COVID-19 AND HEALTH BENEFITS

The precipitous fall in economic activity during the coronavirus lockdown is putting huge financial pressures on employers, which will almost certainly hit their benefits budgets, particularly for health care. **PAGE 21**

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NEWS ANALYSIS

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DANIELLE LISENBey

Danielle Lisenbey is the global president of Broadspire Services Inc., a third-party administrator for Crawford & Co. The first female member of Crawford & Co.'s global executive team, Ms. Lisenbey discusses workers compensation industry challenges amid the coronavirus outbreak. **PAGE 16**



OFF BEAT

Virtual happy hours are all the rage as telecommuting workers stay socially connected with colleagues. **PAGE 35**



Pressure builds for pandemic backstop

BY CLAIRE WILKINSON

cwilkinson@businessinsurance.com



A broad swath of U.S. businesses, including risk managers and their organizations, have called for Congress to create a pandemic risk insurance program.

The growing momentum among insurance buyers and others for a government backstop to cover pandemic risks comes as insurers continue to maintain that most commercial property policies do not provide coverage for business interruption losses arising from the COVID-19 pandemic.

A public-private partnership that addresses pandemic risk is “critical” to providing greater access to capital from lenders and to establish a viable insurance market with “sufficient, affordable capacity,” the Risk & Insurance Management Society Inc. said in an April 20 letter to the U.S. Department of the Treasury, Congress and President Donald Trump.

A coalition of 17 business organizations, including the National Retail Federation, National Restaurant Association and American Hotel & Lodging Association, also sent a letter to Congress April 20 adding their support for a government-backed pandemic risk program.

A draft bill outlining the proposed Pandemic Risk Insurance Act of 2020 has been circulated on Capitol Hill, modeled on the Terrorism Risk Insurance Act that was enacted after the 9/11 terrorist attacks.

The proposed legislation would establish a federal backstop for business interruption losses resulting from a future pandemic and would be triggered when insurance industry losses exceed a \$250 million threshold and capped at \$500 billion, according to an April 3 draft.

That same day John Doyle, president and CEO of Marsh LLC, said in a letter to clients that a public-private pandemic risk insurance program is “essential” to accelerate economic recovery and provide much-needed protection against future pandemic risks.

The New York-based Insurance Information Institute has also said that only the federal government has the financial resources to cover global pandemic risks.

However, reaching consensus on the details of a federal backstop may prove challenging, sources say.

Rep. Carolyn Maloney, D-N.Y., a senior mem-

ber of the House Financial Services Committee, plans to introduce the bill “soon,” the National Retail Federation said in its statement April 21. The proposal is backed by House Financial Services Committee Chairwoman Maxine Waters, D-Calif.

A similar bill is planned by Housing, Community Development and Insurance Subcommittee Chairman William Lacy Clay, D-Mo., the National Retail Federation said.

Meanwhile, another draft bill — the Business Interruption Insurance Coverage Act of 2020 — is also circulating, led by California Democratic Rep. Mike Thompson.

This proposal, which is broader and retroactive, would make available insurance coverage for business interruption losses “due to viral pandemics, forced closures of businesses, mandatory evacuations, and public safety power shut-offs,” according to the draft.

It would also nullify any exclusion in place in a contract for business interruption insurance as of the date of its enactment.

The proposed bill has received broad pushback from insurer groups.

Many RIMS members have filed business interruption claims with their insurers but believe there won’t be coverage because there were exclusions in their policies, Mary Roth, CEO of the New York-based organization, said in an interview.

The question of whether a potential Pandemic Risk Insurance Act should be retroactive to the COVID-19 pandemic is an issue RIMS is still exploring, she said.

“I don’t think we have a tight grasp on the support of making it retroactive back to this pandemic. It’s important we have a viable insurance community and market out there. We are looking towards the future,” Ms. Roth said.

RIMS doesn’t want to “get into the business of” altering contractual agreements that were “legally and freely entered into,” said Whitney Craig, RIMS government relations director.

“We would be very wary of supporting legislation that has that. We don’t want to bankrupt an industry that we as risk managers rely on,” Ms. Craig said.

Some 91% of U.S. risk managers polled by RIMS support a TRIA-type federal loss-sharing program for insurance claims relating to pandemic losses, RIMS said in an April 21 statement.

The vast majority of survey respondents (90%) also said that their organization was not planning to take legal action against any insurers to recover business interruption losses, RIMS said.

Most of the dozens of COVID-19 business interruption suits filed across the country involve small businesses.

Meanwhile, 65% of risk managers said they would be prepared to pay 5% more for pandemic risk insurance coverage, the survey found.

Some risk managers were willing to pay more, Ms. Roth said, adding: “The majority would pay some increase in their premium for insurance for pandemic risk.”

However, while it’s not unreasonable to expect policyholders to pay more, coverage also has to be affordable, she said.

“RIMS not only represents large entities but smaller businesses and nonprofits. It has to be something that we would need the federal backstop for because we would need the coverage to be affordable,” Ms. Roth said.

“There has to be a go-forward TRIA-like federal backstop for pandemics,” said Zachary Finn, clinical professor and director of the Davey Risk Management & Insurance Program, Lacy School of Business, at Butler University.

If COVID-19 turns into a “one-two punch” like the 1918 Spanish flu pandemic, this will leave businesses bankrupt, Mr. Finn said. “This country cannot take another one of these,” he said.

PANDEMIC RISK SURVEY

Key findings from a late April RIMS survey on a proposed Pandemic Risk Insurance Act include:

67%

of risk professionals expect direct business interruption losses due to COVID-19.

77%

expect the losses to be over \$1 million, of which 36% estimate losses to be more than \$25 million.

91%

support a federal backstop for pandemic risk insurance similar to the Terrorism Risk Insurance Act.

65%

of risk professionals would be willing to pay up to 5% more in premium for pandemic risk insurance coverage.

90%

of risk professionals are not planning to take legal action against insurers to recover business interruption losses.

Source: Risk & Insurance Management Society Inc.

EUROPEANS EXAMINE STRUCTURES TO COVER DISEASE EXPOSURES

Disaster risk financing mechanisms such as the United Kingdom’s Pool Reinsurance Co. Ltd. and France’s Caisse Centrale de Réassurance could be models for backstops for pandemic risk in Europe and the U.K., experts say.

Pool Re was created to manage terrorism risk and Caisse Centrale to handle natural catastrophe and other risks.

A steering group formed by the U.K. insurance industry will work with Pool Re to develop a response to future pandemics, the group said in a statement April 21.

Stephen Catlin, chair of the group and chairman and CEO of the Convex Group, said: “The insurance industry needs to be on the front foot in the current situation, paying claims quickly and continuing to

provide people and businesses with the protection they require.”

Risk managers in Europe have urged the European Commission to back the development of public-private partnerships to cover future pandemic risks.

Pandemic risk, like climate change and cyber risk, is “systemic” and “beyond the capital of the private insurance market

to provide material capacity” to transfer the risk, the Federation of European Risk Management Associations said in an April 16 letter to the European Commission.

It urged the EU to help member states by providing modeling, rate setting and start-up costs for the creation of national pandemic public-private partnerships.

Claire Wilkinson

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Presumption measures worry payers

BY ANGELA CHILDERS

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Workers compensation for viral infections has typically been a benefit reserved for those on the front lines of battling disease, and experts are concerned that state measures that would expand the eligibility could cripple comp systems.

As of April, several states had expanded or were considering widening access to workers compensation coverage for COVID-19 beyond first responders and health care workers to include other workers labeled essential.

Kentucky and Illinois became the first states to implement emergency orders to provide workers comp access to public-facing essential workers, such as grocery, pharmacy, Postal Service and day care workers. Lawmakers in Louisiana and New Jersey also recently proposed legislation to expand COVID-19 coverage beyond first responders and health care workers, who traditionally are covered by comp in the event of contracting a communicable disease.

While the changes have been lauded by employee groups and unions, they could have a significant negative financial impact on the workers comp industry, experts say.

The American Property Casualty Insurance Association said it “strongly opposes these retroactive executive branch edicts that violate long-established, bedrock principles of workers compensation law.”

“This approach is extremely dangerous to the long-term stability of the state workers compensation system,” said David Sampson, Washington-based APCAIA president and CEO.

In Kentucky, an executive order signed by Gov. Andy Beshear entitles frontline workers removed from work because of workplace COVID-19 exposure or suspected exposure to temporary total disability payments during the quarantine period, even if the employer ultimately denies liability for the claim.

In Illinois, the state’s workers compensation commission issued an emergency amendment in April creating a rebuttable presumption for COVID-19 acquisition that extends to nearly all workers.

Rich Lenkov, capital member and head of the workers compensation practice at Bryce Downey & Lenkov LLC in Chicago, foresees more states adopting similar COVID-19 workers compensation approaches, and possibility even coverage at the federal level similar to that implemented after 9/11.

Mr. Lenkov said he also expects to see challenges to the orders and emergency amendments in court. Two Illinois business associations filed the first of such challenges. A judge issued a temporary restraining order April 24 halting the workers comp expansion, stating that the emergency order amounted to “invalid lawmaking.”

The sweeping changes present “a potentially enormous and unfair burden on workers com-



REUTERS

POTENTIAL SURGE IN COMP COSTS

- Presumptive COVID-19 coverage could cost the New York workers comp system in excess of \$31 billion, more than triple the state comp system’s pre-pandemic annual losses in both the insured and self-insured markets, according to legislative analysis by the New York Compensation Insurance Rating Board legislative analysis in March 2020.
- California’s Workers Compensation Insurance Rating Bureau predicts that making COVID-19 coverage presumptive for the state’s essential workers could cost as much as \$33.6 billion — 61% of the estimated total cost of the state’s workers comp system prior to the pandemic, according to the board’s mid-April analysis.

pensation insurers that’s completely unprecedented in history,” said Robert Hartwig, clinical associate professor and director of the Risk and Uncertainty Management Center at the University of South Carolina in Columbia.

“It has never been the case that employers have been held responsible for such things as an employee catching a cold or catching the flu from a co-worker or client or customer because it’s virtually impossible to prove that such things were contracted in such a manner,” Mr. Hartwig said. “This is potentially extraordinarily costly to workers comp insurers, but also to many large employers who have either very high-deductible programs or are largely self-insured.”

The change could also be “potentially catastrophic to workers comp state funds,” he said.

Traditionally, employees must meet their burden of proof by showing their accidents arose out of and in the course of their employment and that the condition was caused by work, Mr. Lenkov said.

“This rule change makes it much easier to prove that,” he said. “But it’s important to remember that this is still a presumption and a rebuttable one, so employers should still do their due diligence and investigate every workers comp claim because you can overcome the burden,” Mr. Lenkov said.

The real financial impact will come on the higher end of the severity spectrum, such as

individuals needing intensive care or dying from the virus, said Mike Hessling, CEO North America of Rolling Meadows, Illinois-based Gallagher Bassett Services Inc. “That’s where the real cost is going to be material for employers. ... But no one really knows how many claims we’ll see as a result of this or what the financial impact will be.”

Employers in Illinois could potentially be on the hook for medical treatment, total temporary disability during quarantine and/or recovery, and possibly a settlement if the worker suffers permanent damage to the lungs or other organs from COVID-19, said Lisa Azoory-Keller, partner at Chicago law firm Nyhan, Bambrick, Kinzie & Lowry P.C.

“It’s going to be really hard to rebut that presumption,” she said. “I don’t expect employers to even invest the money to fight it because rebutting the presumption is going to be such a huge standard. I think employers are just going to be inclined to roll over and pay given the new emergency action.”

But certain classes of employees covered by the rule in Illinois may face an uphill battle trying to prove that they contracted COVID-19 from work, Mr. Lenkov said. For example, covered hotel employees who have not been exposed to guests would have that presumption fairly easily refuted, he said.

While the various emergency orders and amendments demonstrate “a strong desire to impact positively a very difficult situation,” they have the potential to upend the “delicate balance” of the workers compensation system, said John Hanson, an Atlanta-based senior consultant with Willis Towers Watson PLC.

“Everyone agrees that the right thing is to find a solution for folks with occupational COVID,” he said. “That is the right thing, but the answer is that it may not be in the comp system.”

In Europe, several insurers have begun offering supplemental health coverage to employers that essentially provides the equivalent of medical and indemnity for COVID-19 claims. Mr. Hanson said this could be a viable alternative in the U.S. to covering COVID-19 in the comp system.

UNCLEAR HOW VIRUS WILL AFFECT RATES

It remains to be seen whether new COVID-19 claims from industries not accustomed to accepting virus-related workers compensation claims will immediately affect rates.

Jeff Eddinger, a senior division executive for the Boca Raton, Florida-based National Council on Compensation Insurance, said the ratings agency will soon decide whether to include COVID-19 claims in experience ratings. NCCI provides guidance to 37 states.

“Is it something that’s out of the control of an employer, or is it something that is indicative of their future experience?” he asked. “Obviously, this is a very unique situation that no one saw coming.”

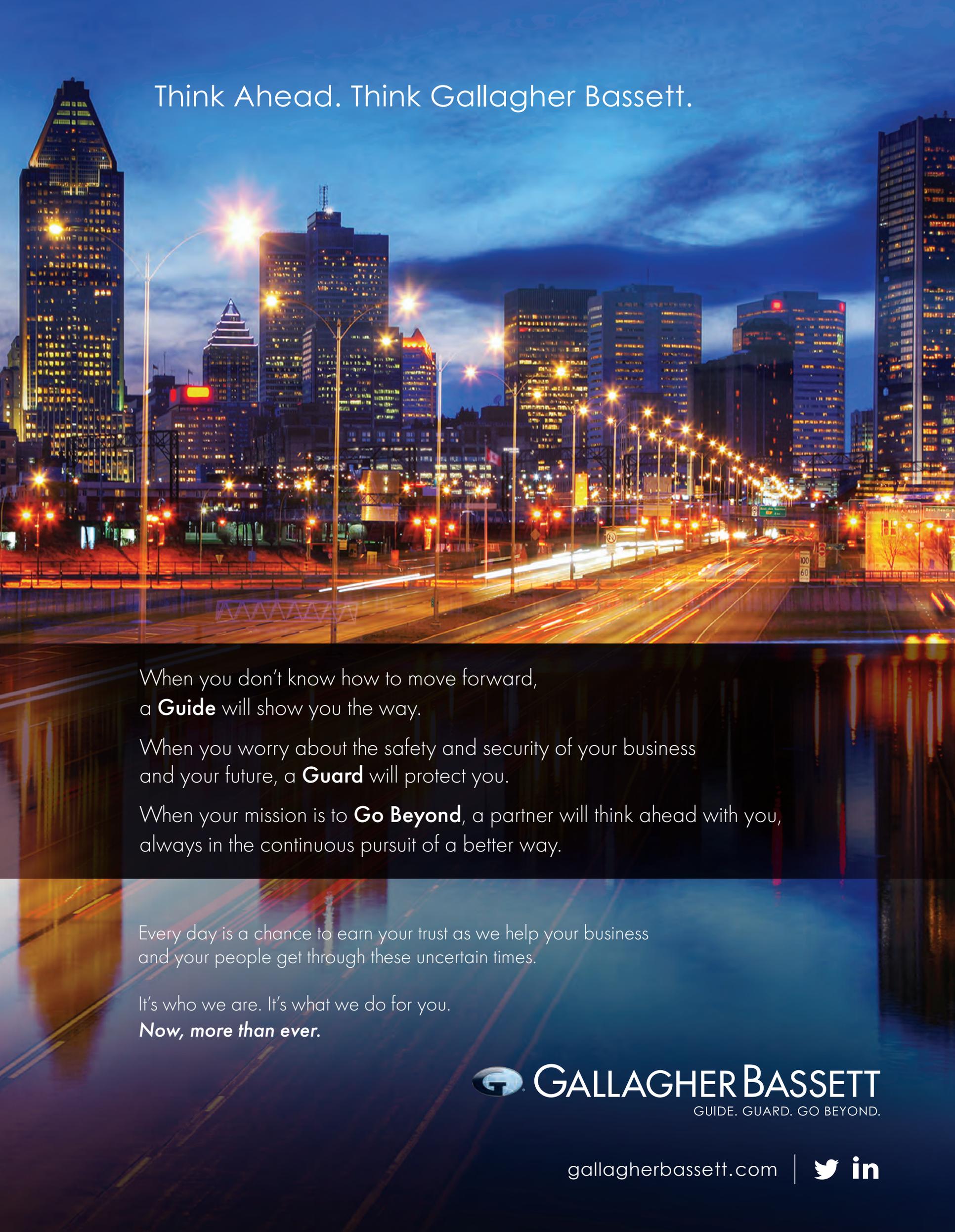
The California Workers Compensation Insurance Rating Bureau announced April 7 that it would not include COVID-19 claims in its experience modification calculations.

“The insurance industry is being asked to cover claims that they didn’t contemplate covering but not collect additional premium for doing it,” said Mark Walls, Chicago-based vice president of communications and strategic analysis for Safety National Casualty Corp. “It’s too early to say what this will do to rates going forward.”

Regardless of what happens down the road, Mr. Walls said he’s confident that the workers compensation system has sufficient reserves to cover COVID-19 losses.

“But make no mistake, this is going to be a significant adverse event for the workers comp industry,” he said.

Angela Childers

A nighttime cityscape with illuminated skyscrapers and light trails from traffic on a multi-lane road. The sky is a deep blue with some clouds. The lights from the buildings and streetlights create a vibrant, urban atmosphere.

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Telemedicine boom set to outlive coronavirus

BY LOUISE ESOLA

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States are updating rules on telemedicine as demand for virtual medical care soars amid the COVID-19 pandemic, setting a trend that many experts think will continue after the global health crisis subsides.

With more telemedicine providers and programs coming to the market in recent years, the industry has been using the technology in workers compensation cases to tackle injury triage, follow-up appointments and rehabilitation services, but prior to the pandemic uptake had been moderate.

The spread of coronavirus, which has led to government-ordered shutdowns to stem its spread, is making telemedicine less of an option and more of a required offering, experts say.

"We've just seen a massive uptake to the tele-rehab process," said Michelle Despres, vice president and national product leader at Jacksonville, Florida-based One Call Care Management Inc., a managed care organization that has included physical therapy sessions over the internet for injured workers in its offerings since 2017. "It's been low adoption until this crisis. ... Now it has gone through the roof."

One Call CEO Thomas Warsop spoke during a recent webinar sponsored by Sedgwick Claims Management Inc. and Safety National Casualty Corp. of a "2,500% increase in supply and utilization" of services that link remote physical therapy providers to patients. "There was a clear reluctance ... that I think is dead," he said. "This experience (with COVID-19) means telemedicine will just keep growing."

And with the dangers of close human contact posed by the virus, injured workers are more willing to use telemedicine, he said.



In addition, regulators are changing rules to help widen the availability of telemedicine services for injured workers. In late April, California gave doctors a new fee schedule for telehealth. Texas also upped its fee schedule. Arizona in March amended its regulations, requiring all insurance plans to cover telemedicine. More states are following with similar measures. With the changes, fees for the remote services are comparable to that of in-office visits, which is why physicians are catching on, according to experts.

"We have been so excited to see some of the states that had such restrictions lift them," said Ann Schnure, Cincinnati-based vice president of telemedicine operations for Concentra Inc., a provider of occupational health to injured workers.

Until the coronavirus, Washington had

DOCTORS ON TELEMEDICINE

36%

of physicians said potential medical errors was a top concern in adopting virtual care technologies

33%

were concerned with privacy and cybersecurity

18%

were concerned about increases to practice costs, such as software

Source: Deloitte Insights, 624 doctors surveyed in 2018

regulations that didn't allow for telehealth unless both the patient and the provider were in a medical facility at the time of care. The state lifted those requirements in March, enabling home appointments.

Many states have also loosened the requirement, temporarily in most cases, that a doctor be licensed in the state where the patient is located, according to Dr. Teresa Bartlett, Troy, Michigan-based senior vice president of medical quality for third-party administrator Sedgwick.

Some states have also eliminated the requirement under federal medical privacy laws that remote medical care be conducted over encrypted software programs, Dr. Bartlett said, adding that sessions over

such platforms as Skype, WhatsApp and Facetime help open doors. That change helped clear another hurdle for some: tech-

nological capabilities, she said.

Coronavirus shelter-in-place rules "just happened so suddenly that for everybody, access to care became complicated," she said. "Necessity is the mother of invention."

Whether workers comp care can be conducted in this format is a common question, said Dr. Lisa Figueroa, Raleigh, North Carolina-based vice president of medical operations and national medical director of telemedicine for Concentra.

"We certainly understand that not all workers comp injuries are appropriate for telemedicine," she said. "It is all based on the mechanism of injury. Somebody who falls 15 feet from a ladder? That would not be appropriate for telemedicine. But the sprains and strains of the upper extremities, your abrasions, dermatitis ... there are many to list. Many workers comp injuries can be seen over telemedicine."

Dr. Figueroa said doctors can examine such things as range of motion, bruising and swelling to begin treatment. For existing patients switching to telemedicine, the "transfer of care" has been in Concentra's operations since it introduced telemedicine in 2017.

Whether the current medical climate will permanently help usher in telemedicine remains to be seen, experts say. "The regulations are changing daily," Ms. Schnure said.

Dr. Bartlett and others are optimistic. "This is a big wakeup call to all of society that telehealth is here to stay, and it is a very helpful way to practice," she said.

"Health care is going to be forever changed by this event," said David Lupinsky, Sacramento, California-based vice president of medical review services for CorVel Corp., which provides nurse triage and telehealth services for employers. "What was once novel will start to become the usual," he said in a CorVel webinar in April on virtual care.

EASING OF FEDERAL MEDICAL PRIVACY LAWS MAY HELP PROVIDERS

As many workers compensation processes move online to fill a gap in services due to the COVID-19 pandemic, industry experts say cyberattacks are more likely, but changes to federal health information privacy rules may protect those who deal with data.

Companies working with injured workers have access to significant amounts of personal information for claimants, including health care records, addresses, Social Security numbers and other information that hackers target.

In the workers comp sector, the likelihood of a data breach often depends on the security controls a company has in place, including the security controls of third parties where

information is shared, said Patrick McCrann, Cleveland-based chief information security officer at AmTrust Financial Services Inc.

"I would really look at any type of workers compensation information, whether it's held at a corporation or with a (third-party administrator) ... even with the insurance carrier, wherever that data is held, it's incumbent upon whichever organization to make sure they're adequately protecting it," said Stephanie Snyder, Chicago-based senior vice president, commercial strategy leader at Aon PLC.

Access to sensitive information should also be restricted because the most common cause of data breaches is employees, she said.

"Unfortunately, humans tend to be the weakest link," said Nikki Ingram, Schaumburg, Illinois-based cybersecurity risk engineer at Zurich North America. "It's easier for the unsophisticated attacker to go after the human element."

But phishing attacks, where employees typically are tricked by scam emails, can be sophisticated and targeted, she said.

"Attackers are opportunistic ... they are going to use the things that are on people's minds to try to attack people," said Wesley McGrew, Starkville, Mississippi-based director of cyber operations for Horne Cyber, a unit of consulting firm Horne LLP. "There's already coronavirus phishing scams

and scam websites."

Meanwhile, the recent relaxing of federal medical privacy laws that previously required technology that is compliant with security rules, such as the use of encrypted software, could protect workers compensation providers from penalties for data breaches, according to experts.

"The (telemedicine) market was in some ways restricted because these providers had to be compliant and had to ensure that the technology was consistent with (U.S. Department of Health and Human Services) mandates," said David Katz, partner in the Atlanta office of Adams and Reese LLP.

Angela Childers



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Biometric technology raises liability concerns

BY CLAIRE WILKINSON

cwilkinson@businessinsurance.com

The use of biometric technology is expanding as businesses look beyond passwords to make financial transactions safer, to reduce fraud, and to better secure access to their premises.

In the era of COVID-19, biometrics companies are adding new features to detect illness and body temperature, for example, that could be deployed by organizations.

But as facial recognition, fingerprint, voice recognition and other biometric technologies become more commonplace, especially in customer-facing sectors such as retail and hospitality, there are growing concerns around data privacy and security, experts say.

Companies deploying the technologies are also seeing heightened exposure to litigation as more states enact laws to regulate the collection and use of biometric data, experts say.

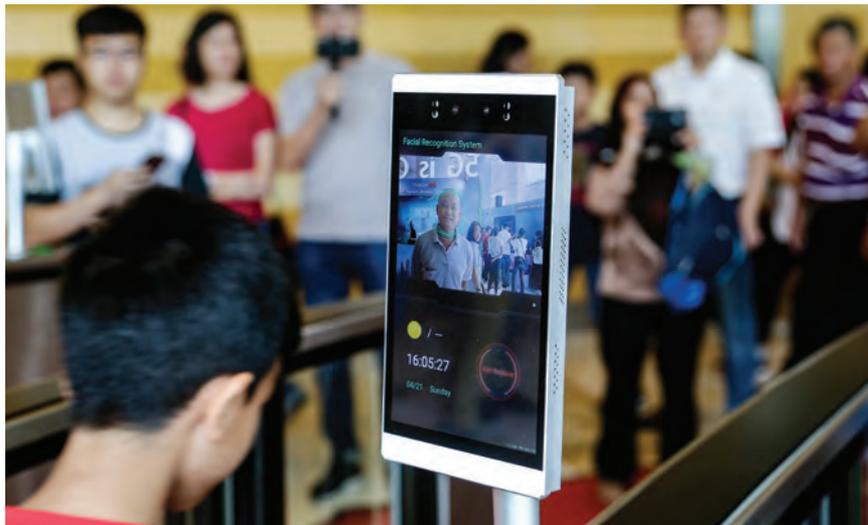
Biometrics use creates “an immediate intersection between very personal and private and sensitive things” that are the equivalent of health care records, said Chad Pinson, president of Stroz Friedberg LLC, an Aon PLC company in Dallas.

“This is a personal concern and a regulatory concern. There are laws around privacy and health care records and security,” Mr. Pinson said.

“In other words, some of the things that can work well for us and are convenient for us are intersecting right up against some of the things people hold most dear and sacred,” he said.

Companies use biometric technologies for several reasons, the main purpose being identity verification, said Walker Taylor IV, Wilmington, North Carolina-based senior managing director of Arthur J. Gallagher & Co.’s life sciences practices group.

On the one hand, “it can be harder to steal biometric information than just a password, so companies can protect sensitive data and track the use of entries and exits,” Mr. Taylor said.



BIOMETRIC TECHNOLOGIES INCLUDE:



FINGERPRINTS: Use of ridges and valleys on surface tips of human fingers to identify an individual.



FACE: Analysis of facial features or patterns to identify or verify an individual.



EYE: Use of features and patterns in iris and retina to identify an individual.



VOICE: Use of a person's voice as a method of identifying, verifying and authenticating an individual.



BEHAVIORAL: Analyzing a person's gait or typing characteristics to determine identity.

Source: Biometrics Institute

However, since biometrics are unique physical identifiers, there are associated risks, including possible hacking and theft of this information, and the potential for false positives in the employment context if an employee is terminated, harassed or discriminated against, he said.

Biometric privacy laws have become a big risk to companies, especially for larger firms that operate in multiple jurisdictions, said Laura Lapidus, New York-based risk

control director for CNA's management liability business.

While there is no federal law on biometric privacy, the 2008 Biometric Information Privacy Act in Illinois allows private actions by individuals and class-action lawsuits.

“You may not have your home office in Illinois, but if you operate in Illinois and have employees on a biometric time clock in Illinois you'd better make sure you are compliant with the Illinois law,” Ms. Lapidus said.

It's not just Illinois' BIPA that companies need to be concerned about, experts say.

Texas and Washington also have biometric privacy laws in place, while California includes biometric information within the California Consumer Privacy Act that went into effect Jan. 1, 2020.

A growing number of states have also introduced proposed legislation on biometrics regulation, including Arizona, Massachusetts, New York, South Carolina and West Virginia.

As the laws catch up to biometrics, there has been an increase in claims associated with using these technologies, said Gamelah Palagonia, senior vice president for network security, data privacy and technology errors and omissions, at Willis

Towers Watson PLC.

For example, BIPA's private right of action allows for statutory damages of \$1,000 per negligent violation and \$5,000 if it's egregious, she said.

Noncompliance fines are “a huge exposure for companies that may not have known they were exposed to these laws,” Ms. Palagonia said.

For this reason, it's critical for companies that collect and use biometric data to follow protocols to gain the necessary consent for the collection of that information, she said.

“There are so many protocols around the collection of this data that you just can't do it ad hoc. You have to establish protocol for gaining consent, and consent has to be specific to the use it's being collected for,” Ms. Palagonia said.

From the perspective of a risk manager or treasurer, part of the challenge for businesses is that the adoption of biometric or other technologies can represent a “massive shift in their risk profile,” said Adam Peckman, New York-based director and global practice leader of Aon PLC's cyber solutions practice.

“Their risk profile has shifted from one where traditionally they didn't have any concerns around privacy or cyber liability, to now potentially holding or processing more of that data,” Mr. Peckman said.

“They are trying to get their heads around that and then stress test the traditional risk financing insurance programs to see how they handle the new reality they face,” he said.

Biometrics is making cyber insurance more relevant to non-traditional buyers, Mr. Peckman said.

“If you're a manufacturer or a retailer and you're looking to adopt this technology and haven't been buying cyber (coverage), you need to have greater affirmative coverage around these exposures,” he said.

Policyholders should review their insurance coverages to determine how they apply to biometric technologies, experts say.

PRIVACY VIOLATIONS MAY BE COVERED, BUT CHECK THE FINE PRINT

Policyholders should talk to their brokers and insurers to better understand exactly how biometrics-related exposures are treated under their insurance programs, according to experts.

Cyber liability, employment practices liability, general liability, and technology errors and omissions are some of the insurance coverages that may come into play, they say.

Businesses need to reach out to their broker and insurer and “have an honest

conversation,” said Kevin Sandelin, Boca Raton, Florida-based director of risk management services at Argo Group.

It's also a good idea for companies to consult with in-house, third-party counsel to explain how they are using biometric technologies, and work with an IT organization to address compliance issues, Mr. Sandelin said.

“There should be more conversation with the insurance industry around what does it mean to use and hold (biometrics)

data and is there coverage,” he said.

If a company is using a biometric timeclock in Illinois and hasn't notified and obtained written consent, an employee could file a lawsuit alleging that it failed to follow biometric privacy law, said Laura Lapidus, New York-based risk control director for CNA Financial Corp.'s management liability business.

An employment practices liability policy may cover the exposure, but “we are seeing more insurers exclude these

types of claims,” Ms. Lapidus said.

Exclusions have also been added on general liability policies, but every policy is different, she said.

An Illinois appeals court recently upheld a lower court ruling that an insurer must defend a nail salon charged in a putative class action with sending a customer's fingerprints to a third-party vendor in an alleged violation of the Illinois Biometric Information Privacy Act.

Claire Wilkinson

Increased use of M&A deterrents may spur rise in D&O litigation

BY JUDY GREENWALD

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The recent proliferation of “poison pills” — shareholder rights provisions adopted by companies’ boards to discourage hostile takeover bids — could lead to more directors and officers liability litigation, experts say.

Furthermore, the increased number of the provisions means companies anticipate more mergers and acquisitions activity, which is often followed by D&O litigation, these observers say.

More poison pills are being announced. According to data compiled by law firm DLA Piper, there were 17 traditional poison pills adopted in March by U.S. companies, while the previous monthly high since January 2017 was three. By April 22, the total had increased to 41, according to the law firm.

Driving the increase, experts say, is the recent stock market turmoil that has been fueled by the coronavirus pandemic, which has left company boards feeling vulnerable to hostile takeovers (see sidebar).

The wide variety of companies that have adopted the provisions include Tulsa, Oklahoma-based pipeline operator Williams Cos.; Grand Prairie, Texas-based Six Flags Entertainment Corp.; and Dallas-based restaurant chain Dave & Buster’s Entertainment Inc.

In addition to those that have already introduced poison pills, a “vast number” more have them on the shelf, ready to use should the need arise, said Sanjay M. Shirodkar, of counsel at DLA Piper in Washington, who is co-head of the firm’s public company and corporate governance practice.

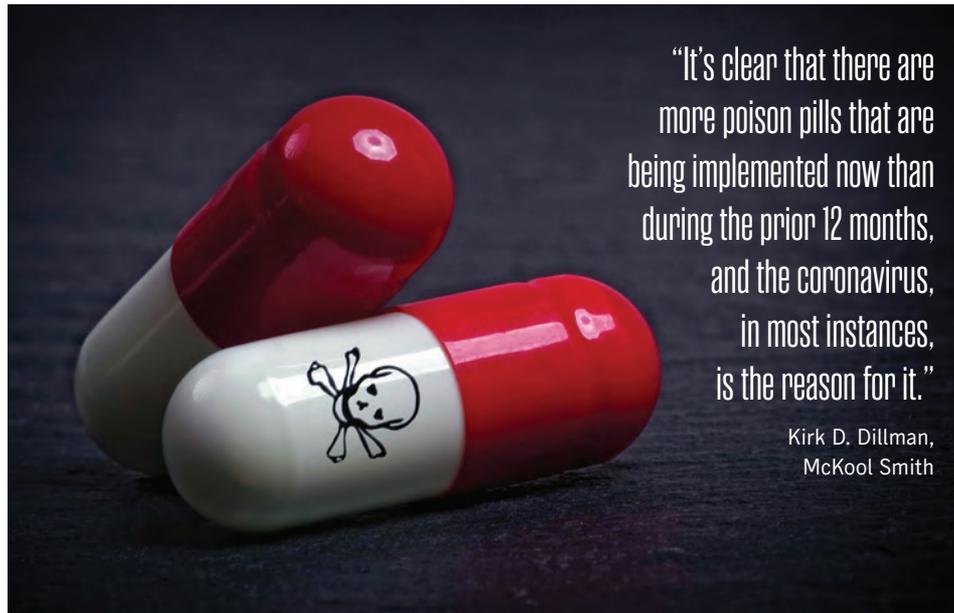
“It’s clear that there are more poison pills that are being implemented now than during the prior 12 months, and the coronavirus, in most instances, is the reason for it,” said Kirk D. Dillman, a principal with McKool Smith in Los Angeles, who specializes in complex litigation.

Boris Feldman, a partner with Wilson, Soncini, Goodrich & Rosati in Palo Alto, California, who represents businesses, said with “everybody’s stock in the toilet” companies may become short-term takeover targets and want to protect themselves against opportunistically timed bids.

“In recent years, in part because of activist pressure, companies discarded some of the arrows in their defensive quiver,” including poison pills. “I think they’re now going to rearm,” he said.

Gregory V. Gooding, a partner with Debevoise & Plumptre LLP in New York, who is a member of his firm’s M&A group, said poison pills are being introduced because “boards view their stock as being significantly undervalued as a result of the recent price declines.”

This creates “the possibility that somebody could build a large position in their shares for



“It’s clear that there are more poison pills that are being implemented now than during the prior 12 months, and the coronavirus, in most instances, is the reason for it.”

Kirk D. Dillman,
McKool Smith

SHAREHOLDER RIGHTS PLANS

- Were introduced in the 1980s and upheld by the Delaware Supreme Court in 1985.
- Are often intended to deter hostile takeover attempts.
- Can be adopted without shareholder approval, although proxy advisory firms recommend that this be obtained.
- Have several permutations, with boards deciding when these plans are triggered.
- Are gaining in popularity, compared with recent years, because of stock market turmoil, which has led to a decrease in U.S. companies’ equity value, triggering concerns about hostile takeover attempts.
- Could signal increased mergers and acquisition activity, which in turn could lead to more Directors and Officers liability litigation.

Sources: *Business Insurance* interviews, reports

a lot less money than it could have done three months ago,” he said.

Thomas O. Gorman, a partner with Dorsy & Whitney LLP in Washington, whose practice includes defending companies in Securities and Exchange Commission investigations and enforcement actions, said it can be assumed if a long-standing company has just introduced a poison pill “they have some concerns about a takeover bid” that may lead to shareholder litigation.

Michael P. McCloskey, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in San Diego, who is a member of his firm’s securities and commercial litigation practices, said if a poison pill discourages a deal that a minority shareholder feels he would have benefited from “you’ve got yourself a lawsuit.”

Some observers believe courts may be sympathetic to companies if poison pills lead to litigation filed against them.

Historically, corporate activists have been given a lot of latitude by the courts, Mr. Feldman said. But there may be a “sea change” in

how courts respond to litigation filed by activist shareholders against poison pills.

“I think you may see a reversal in judicial sentiment, to be less accommodating to activist investors,” Mr. Feldman said. He said he was not referring to institutional investors, who “have a lot of credibility in court” but to plaintiff attorneys who are seeking “to make a quick buck.”

Dan A. Bailey, a member of law firm Bailey Cavalieri LLC in Columbus, Ohio, who represents directors and officers and insurers, said, “There’s quite a bit of case law that’s developed over the last 20 years about what those poison pills should and should not say, what circumstances should or should not exist in order to justify the adoption of those poison pills, so there’s a pretty good road map for counsel in evaluating whether it is appropriate to adopt a poison pill.”

Many times, it is appropriate, he said. “As a general matter, they’re recognized as appropriate” if they are done in a way that is “consistent with that line of cases,” Mr. Bailey said.

Meanwhile, some observers believe the poison pills themselves are a portent of M&A activity, which in turn often leads to D&O litigation.

Shareholders litigated 82% of M&A deals valued at over \$100 million in 2017 and 2018, according to a report issued in September by San Francisco-based Cornerstone Research.

Poison pills are intended to discourage hostile takeovers. “We haven’t seen a large volume of hostile acquisitions in many years,” Mr. Bailey said. If they do increase, they are likely to result in more D&O litigation, he said.

“The question is whether the D&O litigation we see is going to be severe and result in significant loss payments by carriers or whether it’s just going to be nuisance litigation,” Mr. Bailey said, adding, “The big majority are nuisance claims.”

‘POISON’ CREATED TO FIGHT HOSTILE TAKEOVERS

A “poison pill” or shareholder rights plan is generally intended to deter hostile takeover attempts, experts say.

While there are different varieties, basically they give current shareholders the right to buy additional shares at a steep discount.

“Everyone gets to buy those shares except for the hostile takeover, the uninvited guest,” said Thomas L. Hanley, chair of the public companies practice group at Stradley Ronon Stevens & Young LLP in Philadelphia.

The poison pills are triggered when share purchases by these “uninvited guests”

reach a certain stock ownership threshold, which can range as high as 20% or as low as 5%, Mr. Hanley said.

Companies are adopting the plans “to address the market dislocation, and the threat that they could potentially be subjected to opportunistic share purchases by activist investors trying to take advantage of depressed stock prices caused by the pandemic,” said J. Timothy Mast, a partner with Troutman Sanders LLP in Atlanta, who represents companies in complex business disputes.

The tactic emerged in the 1980s to address corporate raiders, observers say. The Delaware Supreme Court approved their use in its 1985 ruling in *Moran v. Household International Inc.*

In that case, the court ruled a shareholders rights plan’s adoption was within the company directors’ authority because, in accordance with the business judgment rule, they had acted on an informed basis, in good faith, and in the belief their action was in the company’s best interests.

Judy Greenwald

Post-offer tests spot concerns before claims

BY ANGELA CHILDERS

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The premise behind gauging the health and capabilities of a new hire to help weed out workers who might not be able to physically perform essential job duties is that the practice can lead to a reduction in workers compensation claims, experts say.

Dubbed post-offer employment testing, the examinations should create “a microcosm of the workday,” said Daniel Sanchez, Jacksonville, Florida-based vice president of operations for OnSite Physio LLC.

The test should include the essential functions of the job, how many times over the course of an eight-hour shift those functions are repeated, the specific ways the tasks are performed, the time and effort each task requires and the space in which the tasks are performed.

On average, about 9% to 12% of candidates fail their post-offer tests, according to Mr. Sanchez, who added that the failure rate is “very dependent on the industry and the strenuous nature of the job.”

The increasingly popular practice leads to savings, experts say, citing older, yet still relevant studies.

A 2011 study published in the journal *Work* found that post-offer physical capacity testing for work placement resulted in an overall decrease in shoulder injuries among workers and a 37% decrease in shoulder-related medical costs, and a 2005 study of nearly 2,500 published in the *American Journal of Industrial Medicine* found that candidates who failed to pass a post-offer functional capacity evaluation of the essential functions of their job had a 33% incidence of lower back injuries compared with just 3% of those who passed the test.

Employers accustomed to seeing a number of musculoskeletal disorders, or



CLAIM HOTSPOT: MUSCULOSKELETAL INJURIES

- There were more than **270,000 workplace-related musculoskeletal injuries** reported in 2018, according to the U.S. Bureau of Labor Statistics, accounting for **more than 27%** of all workplace injuries in the U.S.
- The median days away from work to recover from such an injury was **12 days**, according to the bureau.
- The World Health Organization says musculoskeletal injuries account for the greatest proportion of lost productivity in the workplace and that this lost productivity costs the U.S. **more than a percent of gross domestic product** annually.

cumulative trauma injuries, in particular can see a reduction in such injuries and corresponding workers compensation claims from implementing such post-offer employment testing, said Michelle Despres, vice president and national product leader of physical therapy at Jacksonville, Florida-based One Call Care Management Inc.

And employers are particularly vulnerable to such claims in the first year of employment, experts say.

One key to successfully creating a post-offer employment test is ensuring that the designer of the test understands all of the essential functions of a job, said Ben Haynes, Centennial, Colorado-based program manager of workforce solutions at Briotix Inc., a workplace rehabilitation and injury prevention provider.

For example, for designing a test for a baggage handler, an employer would gauge whether a worker can lift the maximum weight bags a set number of times, measure their ability to use the necessary force to push and pull cargo doors and carts, observe whether a new hire can kneel in a confined space, such as the cargo area, and continue to lift, push or pull baggage, and rotate their bodies to stack baggage while in those awkward positions, he said.

Tests need to be tailored to specific job categories, Ms. Despres said. For instance, an airline saw a high rate of injuries reported by gate agents and began testing that

job category for a new hire’s ability to lift a suitcase off a scale and haul to a nearby conveyor belt, she said.

Briotix’s clients report an average worker test failure rate of about 12%, said Bob Stoner, Denver-based senior vice president of workforce solutions at Briotix Inc.

A post-offer, fit-for-duty screening can also catch previous injuries, Ms. Despres said. For instance, if a worker with a limited range of motion in one shoulder from a previous injury is hired and later files a claim for that same shoulder, that degree of prior impairment will be on record, and maximum medical improvement will be when he is able to move his shoulder back to that prior level, she said.

“It could change the whole end of that claim,” Ms. Despres said. “It could also change an impairment rating in states that allow for apportionment” for disability.

Some employers use the tests for return to work purposes as well to determine if an injured worker is fit for return to duty or for competence testing, experts say.

“Some companies use it for baselining annually,” she said. “If someone fails a part of it, the company may have in place a remedial program” for the worker or a “boot camp” of sorts to improve the employee’s strength.

The tests also can weed out people who never show up for testing or don’t respond to attempts to schedule, Mr. Sanchez said, and one of his clients counts those cases in its test failure rates because, “in their minds, that person would have been a headache to work with.”

But this type of testing isn’t beneficial for all employers.

For instance, a preventive program is a better fit for companies with high turnover rates, Ms. Despres said. And those with low injury rates are “probably doing something right” and would also not benefit, Mr. Sanchez said.

TESTING MUST BE CONSISTENT TO AVOID LEGAL EXPOSURE

Post-offer employment testing may help reduce injury rates for some employers, but those who fail to conduct tests consistently and fairly could run afoul of disability and employment laws, experts say.

To perform post-offer employment testing, you “cannot use conditional offers,” said Anne-Marie Foster, a partner at Chicago-based law firm Nyhan, Bambrick, Kinzie & Lowry P.C. “It has to be a legitimate offer — either an existing spot for whoever you’re offering the job or the reasonable expectation that there will be an opening for the person in the near future.”

And every person who receives an offer must pass the same exam.

“You have to make sure it’s uniform,” she said. “That’s when employers get into trouble with the Americans with Disabilities Act.”

All tasks have to be functionally based and have to “be essential” job duties or the employer could risk violating the ADA or inviting a complaint by the Equal Employment Opportunity Commission, said Michell Despres, vice president and national product leader at Jacksonville, Florida-based One Call Care Management Inc.

If a candidate is unable to perform an essential task but can do it with an accommodation, that must be considered, Ms. Foster said.

“Sometimes there is ... a reasonable accommodation,” Ms. Foster said. “Sometimes there is not. But you have to engage in the inquiry.”

Employers also face legal exposure if they fail to ensure that testing for a certain job position is consistent across all of its locations, said Daniel Sanchez, Jacksonville, Florida-based vice president of operations for OnSite Physio LLC.



“Everybody needs to be lock step in making sure they are treating the test in the same way,” he said. If possible, tests should also use the same equipment that the worker will be using to perform essential job duties because it “adds validity to the test and also makes the test more legally defensible.”

Angela Childers

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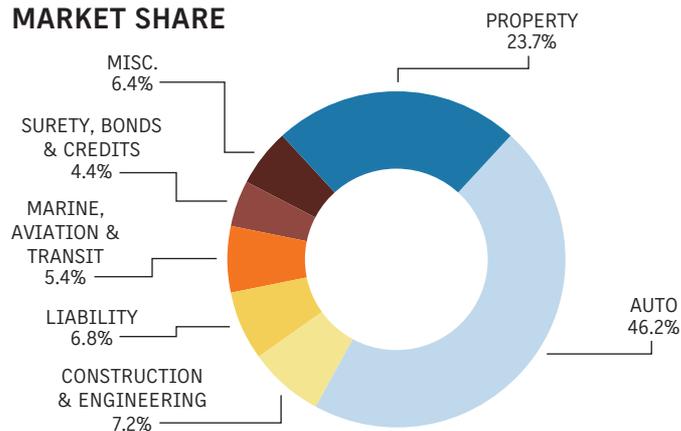
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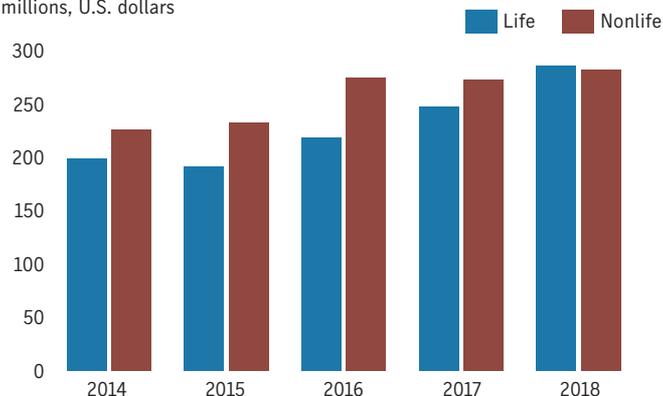
Ghana is one of the larger insurance markets in West Africa and follows similar trends as nearby Nigeria. It is supervised by the National Insurance Commission, which has been one of Africa's more proactive and involved regulators. The NIC has ambitious goals for the industry and continues to introduce measures aiming to shape and control market behavior. Competition in the insurance market is fierce. Following years of poor experience for auto insurance, the market secured a substantial increase in the basis of tariff rates. From July 1, 2015, the basis of the tariff rates was increased by 280% for a private individual with a standard car. In addition, the NIC set minimum rating levels for all other nonlife classes in April 2016, but the enforcement of minimum rates is inconsistent.

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 bodily injury (not currently fully enforced)
- Professional indemnity for insurance brokers and loss adjusters
- Liability against oil pollution of Ghanaian waters by vessel owners
- Aviation liability
- Liability insurance in respect of commercial buildings during construction.

NONADMITTED

Nonadmitted insurance is not permitted in Ghana, because the law provides that insurance must be purchased from locally authorized insurers. There are no exceptions specified in the legislation to the general prohibition on nonadmitted placements, other than permission may be sought from the regulator for such a placement.

INTERMEDIARIES

Brokers and agents must be authorized to conduct insurance business. Intermediaries are not allowed to place business with nonadmitted insurers unless given specific exemption by regulators. Intermediaries involved in nonadmitted placements must be registered with the National Insurance Commission. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Market practice appears largely to conform to insurance legislation.

MARKET DEVELOPMENTS

Updated April 2020

- The National Insurance Commission announced new minimum capital requirements for insurance entities in June 2019. The new minimum capital for insurers, both life and nonlife, is 50 million Ghanaian cedi (\$9.63 million), up from 15 million Ghanaian cedi. Reinsurers need to hold at least 125 million Ghanaian cedi and insurance brokers and loss adjusters 500,000 Ghanaian cedi. The new limits apply to all new and pending applications. Existing companies will have to comply by June 2021.
- The Enhanced No-Claims Bonus Directive in respect of auto insurance prohibits the application of a no-claims bonus to new third-party liability insurance written after January 2019 and introduces a flat premium for all auto policies and third-party components included in auto insurance policies. The directive is expected to bring some pricing consistency to the highly competitive motor insurance market.
- A further change in auto third-party sums insured is that effective July 1, 2019, all auto third-party liability policies have limited sums insured. The usual limit applied is 50,000 Ghanaian cedi (\$9,626) per passenger plus medical expenses.
- The Central Bank of Ghana revoked the licenses of five Ghanaian banks and combined them under one new state-owned entity in August 2018. The reported reasons behind the collapse ranged from insufficient corporate governance to unprofessional lending and potential criminal behavior. The Bank of Ghana's actions have had a detrimental effect on the investment portfolios and public perception of all financial services companies, including insurers.

AREA

92,098

square miles

POPULATION

29.3

million

MARKET CONCENTRATION

52.9%

market share of top five insurers

2019 GDP CHANGE (PROJECTED)

7.1%

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Theater chain sues for coronavirus cover

■ A Sugar Land, Texas-based dine-in movie theater chain sued Lloyd's of London underwriters for coronavirus-related losses under the pandemic event endorsement in its business interruption coverage.

According to the suit filed in U.S. District Court in Houston, the insurers indicated in March that coronavirus claims would not be covered under the policy because it was not one of the named diseases listed in the endorsement, which provides up to \$1 million in coverage.

In the case, *SCGM Inc. v. Certain Underwriters at Lloyd's*, the movie theater chain said Lloyd's began marketing its pandemic endorsement after the 2014 Ebola crisis when other insurers excluded communicable disease coverage.

"In exchange for a significant premium paid by the insured, Lloyd's Pandemic Event Endorsement purported to provide coverage for insureds who experience financial damages from business interruption during pandemic," court papers say.

SCGM added the endorsement to its business interruption coverage last June, the suit states.

SCGM closed its operations on March 17 after restaurants in the Houston area were ordered to offer only carry-out services. On March 19, Texas authorities imposed severe restrictions on public gatherings to try to slow the spread of the coronavirus, court papers say.

SCGM notified Lloyd's of its business interruption claims on March 18 and received a response the same day stating that COVID-19 "is not covered under the Pandemic Event Endorsement as it is not a named disease on that endorsement," the suit states.

According to the policy wording included in court documents, the endorsement covers 25 named diseases, and their mutations and variations, ranging from avian flu to zika, including "Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease."

According to the suit "SARS-CoV-2 is the causative virus for the COVID-19 disease implicated in the ongoing 2019-2020 coronavirus pandemic."

SCGM is seeking a declaratory judgment that its business interruption losses related to the coronavirus are covered under the policy.

The company's suit is one of many seeking business interruption coverage related to the COVID-19 outbreak (see story page 27).

Widow can't sue parent companies

■ A divided Arkansas Supreme Court ruled that the state workers compensation exclusive remedy provision makes parent companies immune to a negligence lawsuit filed by the widow of a steel plant worker killed on the job.

In February 2014, Michael Myers was employed at Arkansas Steel Associates LLC in Newport, Arkansas, when a ladle of molten steel spilled from a hot metal crane and engulfed his body. The company did not dispute that his death was work related and paid workers compensation survivor benefits to his widow, Mary Myers. Ms. Myers subsequently filed a wrongful death suit against Arkansas Steel Associates' parent companies, with seven corporations listed as defendants.

The Arkansas Workers' Compensation Commission, which received the case from a circuit court, concluded that parent companies of a direct employer are immune from tort liability under the exclusive remedy law.

The state's highest court was divided in affirming the commission's decision that the parent companies were immune, with two justices concurring, one concurring "without opinion," one dissenting and one not participating.



Markel unit prevails over ambulance firm

■ A Markel Corp. unit is not obligated to defend or indemnify an Indiana ambulance company that didn't list one of its ambulances, which was later involved in a fatal accident, on its policy, a federal appeals court ruled in affirming a lower court's decision.

In 2016, Chester Stofko was driving his car when an ambulance owned by Cedar Lake, Indiana-based United Emergency Medical Services LLC collided with it, fatally injuring him, according to the ruling by the 7th U.S. Circuit Court of Appeals in Chicago. At the time of the accident, United was insured by Markel Insurance Co., a unit of Glen Allen, Virginia-based Markel Corp. In 2015, United's administrative director asked his agent to remove the ambulance from its list of insured vehicles because of motor problems, which was done.

United later decided to put the ambulance back on the policy, and on March 30, 2015, the administrator sent an email to the agent making the request, but the agent said he did not see it before the accident, and it was never added to the policy.

Markel filed suit in U.S. District Court in Hammond, Indiana, seeking a declaration that it had no duty to defend or indemnify the ambulance company or its driver. The district court ruled in Markel's favor and was affirmed by a unanimous three-judge appeals court panel.

Nurse's knee injury ruled compensable

■ A nurse who injured her knee while helping lift a patient but failed to immediately report her injury is eligible for workers compensation benefits, an appeals court in Arkansas ruled.

Melissa Herring had worked as a licensed practical nurse for the Fulton County Hospital for almost 10 years when in mid-May 2017, while working a 12-hour day shift as the only nurse on the floor when the hospital usually staffed two, she "felt a pop" in her knee while holding up a patient who would have collapsed, according to documents in *Fulton Risk Management Services v. Melissa J. Herring*, filed in the Court of Appeals of Arkansas, Division I in Little Rock. "Although she felt a tightening on the inside of her knee, she did not report an injury and continued her shift for the next one and a half hours," documents state.

When she finally told a supervisor "five days after it occurred" she was told it was "too late" to report it, documents state.

An administrative law judge denied Ms. Herring benefits, "finding she failed to satisfy her burden of proving that a work-related injury arising from her employment was the cause of her left-knee injury." The state Workers' Compensation Commission reversed, finding Ms. Herring "proved by a preponderance of the evidence she sustained a compensable left-knee injury."

The appellate court ruled unanimously, writing that it found Ms. Herring's testimony "credible as to how her injury occurred" and that "(t)here is substantial evidence to support the Commission's award of benefits."

DOCKET



SHERIFF'S EMPLOYEE LOSES COMP OVER LYING

An injured employee with the Albany County Sheriff's Department lost her access to workers compensation benefits due to lying, the Appellate Division of the Supreme Court of New York ruled. The worker suffered a compensable foot injury in 1997 and later amended her claim to include other injuries including mental "stressors." According to documents in the case, she lied about running a photography business while she was out on leave, and, after telling a doctor that she had no mental health history, medical records proved otherwise.

PROBATION OFFICER WINS ADA APPEAL

A federal appeals court has reinstated an Americans with Disabilities Act lawsuit filed by a Phoenix probation officer who was terminated after she asked for extended medical leave. Nannette Hummel, an adult probation officer with Maricopa County, requested Family and Medical Leave Act leave to undergo and recover from partial knee replacement surgery, according to the ruling by the 9th U.S. Circuit Court of Appeals in San Francisco. Ms. Hummel was terminated by the department in 2014 after she asked for extended leave, according to court papers.

ACCOMMODATION CASE SENT BACK TO STATE

A federal appeals court has asked New York's highest state court to consider whether Philadelphia Indemnity Insurance Co. must defend a psychotherapy center in a failure-to-accommodate lawsuit. Fanni Goldman, who is deaf, sued the Brooklyn Center for Psychotherapy for discrimination against her in violation of the Americans with Disabilities Act, the Rehabilitation Act and state law after it allegedly refused to schedule an appointment for her 7-year-old son because of her disability, saying it could not provide interpreter services, according to the 2nd U.S. Circuit Court of Appeals in New York.



Danielle Lisenbey is the global president of Broadspire Services Inc., the third-party administrator for Crawford & Co. Having studied engineering in college, she began her career in insurance working in medical management systems. In 2012 she became the first female member of Crawford & Co.'s global executive team and in 2013 was named a Woman to Watch by *Business Insurance*. Ms. Lisenbey, who is based in Atlanta, recently spoke with *Business Insurance* Assistant Editor Louise Esola on workers compensation industry challenges as the world grapples with COVID-19 infections among workers and what's to come. Edited excerpts follow.

Danielle Lisenbey

BROADSPIRE SERVICES

Q COVID-19 has in store many changes for workers compensation. What are some of the issues you are seeing?

A Most of the occupational disease illness statutes have been on the books for many years and were not created with a global pandemic contemplated at all. We have not seen this since the Spanish Flu in 1918. Now we are seeing states issue emergency orders to modify those statutes for a period of time, at least in effect during the pandemic, until it is under control. I anticipate folks will take a step back and really look at what needs to be inclusive. Also, the state's technology solutions have been under tremendous strain and not designed for this situation, so you will see changes at the state level around their technology solutions. Also, doctors have had to pivot to telemedicine.

Q Viruses aren't something one sees often in workers comp. How is your company handling the situation?

A While this virus isn't something we have seen in recent times, it is viewed in workers comp as an occupational disease or illness. We've had to take a step back, take a hard look at our best practices and standard operating procedures around this and modify them quickly to reflect the circumstances of what we are working with right now. Before COVID-19 the most well-known occupational disease within workers comp that was pretty substantial was asbestos. So you can look at some of the things we've learned back then from that.

We have brought in experts to speak to our adjusters and nurses, to train and educate them from a new perspective. We have outlined some of our core services and modified them for our client base, whether it's stress management, telemedicine or tele-rehab. The most important thing we have had to do is heighten communication and use different communication tools for our staff, our clients and the injured workers we serve.

Q Facing a possible onslaught of claims stemming from the virus, what are some best practices you'd like to see?

A There's still a lot that we don't know. Everything changes on a daily

basis. Compensability decisions are very dependent on the claim and the state. It would be better if there was a better best practice or solution around this, maybe on a national basis for a crisis such as COVID-19 and a more streamlined process working with carrier, clients, attorneys, if its applicable on decisions on compensability. Could we come together better as a union, so to speak, on these circumstances? I think that would be great, but I don't think it will ever happen.

that more on a permanent basis for the simple, quick and easy hearings. The states' technology solutions were strained to their limits. We will see quick upgrades and improvement. There will be more telemedicine, tele-rehab and communications tools for more personal interactions with injured workers. At the end of the day we will all have to do a "lessons learned." We moved our claims workforce to work at home in days and the feedback from our clients is that it was pretty much seamless.



Q There are a lot of people in insurance who came from other fields. Can you talk about how you went from studying engineering to here?

A I went to a conference and the speaker asked everyone to raise their hand if you came into the industry unintended. Almost everybody raised their hand. So I believe my story is similar to many in that I didn't plan on ending up in the insurance industry. It kind of just happened.

My quick story is, many years ago I answered an ad for a supervisory job for a company in Florida called Medical Audit Services. They had been recently acquired by Kemper Insurance. They were looking for someone who had people and process skills. So the person who actually hired me said, "Hey, I can teach you the business because you have those basic skills, and I need to bring on more states in bill review and case management now that we have been acquired by Kemper. We will become their medical management arm and you have those skills." That was 28 years ago and here I am.

Q Is extensive use of telemedicine here to stay?

A I think it is. I do believe we will see this change because of COVID-19. Telemedicine has been around for quite some time. We've seen a significant uptick in the thousands of percentage points in volume. Many years ago, people went to see their regular doctor. It became routine that you would start seeing the physician's assistant and not the actual doctor. It was a big change. Now I see telemedicine to be the next evolution. We are going to see that more and more, and I think it's here to stay.

Q Do you see any other new solutions cropping up to handle these changes and concerns?

A I can't say I have any concerns other than the resource pressure. I see potential changes around evaluating the pros and cons of the virtual handling of hearings. Some may move toward

Q What was it like to be the first female member of Crawford's global executive team?

A Frankly, it was intimidating with that initial, "I am the only woman sitting here." I had to do a self-reflection. Being in engineering in college, I could remember being in classes and being the only female in the room. I had two brothers; I was the only girl. I would capitalize on those experiences and use that as a roadmap. It really comes down to how you treat people. Your gender doesn't really matter.

While this virus isn't something we have seen in recent times, it is viewed in workers comp as an occupational disease or illness. ... Before COVID-19 the most well-known occupational disease within workers comp that was pretty substantial was asbestos. So you can look at some of the things we've learned back then from that.



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BUSINESSES TRY TO KEEP PACE WITH HACKERS

But ransomware risk can only be minimized as cyber criminals start to target less-secure home systems



BY JUDY GREENWALD

jgreenwald@businessinsurance.com

Businesses may be running a race they ultimately cannot win as criminal hackers stay one step ahead in developing ransomware, but they can minimize their risk.

The incidence of ransomware has become much more prevalent in recent months, while monetary demands have multiplied, observers say.

The issue may be further exacerbated by the recent increase in employees working from home during the COVID-19 pandemic, who may be using systems less secure than those in their offices.

Hackers are becoming increasingly sophisticated as well as more targeted in their ransomware attacks, experts say, in some cases quietly penetrating and assessing businesses' computers, including backup plans, long before they even make their presence known.

"Home networks are not necessarily as secure as the ones in offices, and so those are situations that malicious actors can leverage."

Michelle Chia,
Zurich North America

Still, businesses can take steps to minimize if not eliminate their ransomware risk (see story page 20).

Meanwhile, cyber liability insurers continue to offer ransomware coverage as an integral part of their policies, although

there has been some discussion of introducing ransomware sublimits. (see story page 20).

Beazley PLC said in a March report that reported ransomware attacks against its clients increased 131% in 2019, with the sums demanded increasing exponentially.

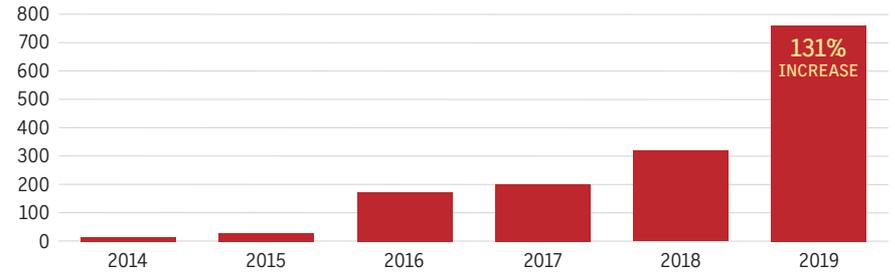
Experts characterize ransomware attacks as falling into two general categories: The first is the more established "smash and grab" approach, in which cyber criminals hit a large number of easily penetrated companies and threaten to block access to their files unless they pay relatively small sums of money.

The second approach, which is often used against more sophisticated, larger companies, is where hackers conduct reconnaissance on a firm's system, learn as much information as they can, penetrate their backup systems, investigate through U.S. Securities and Exchange Commission filings their finances, and then make a ransomware demand calibrated to how much they can reasonably expect the company to pay.

Ransomware "is becoming more of a problem because it's happening far more often than it has in previous years," said Brad Gow, Purchase, New York-based cyber product leader for Somp International Holdings Ltd.

THE RISE OF RANSOMWARE

The number of ransomware attacks reported to specialty insurer Beazley increased significantly in 2019.



Source: Beazley PLC

Two or three years ago, ransomware was spread randomly, but "today, the bad guys have really gotten more serious about it, and they're using phishing attacks or (remote desktop protocol) attacks to get into a network and spend three or four weeks escalating privileges, mapping everything out, understanding where the critical systems and backups are" before launching their attack, he said.

Criminals target businesses that rely heavily on data and observe systems so they understand how that data is backed up and secured before they launch an attack, said Michael Born, senior vice president and cyber liability product leader at Berkley Re Solutions, a W.R. Berkley Corp. unit, in Overland Park, Kansas.

Michelle Chia, New York-based head of professional liability and cyber for Zurich North America, noted that more people are now working from home, and "the home networks are not necessarily as secure as the ones in offices, and so those are situations that malicious actors can leverage."

In some cases, more pressure is being placed on target companies. "Malicious actors have raised the bar. They've included a time element, which creates a sense of urgency," Ms. Chia said. They demand ransom payment within a few hours under the threat of releasing sensitive records, she said.

See **RANSOMWARE** next page

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RANSOMWARE

Continued from previous page

Some hackers threaten to reveal the identity of organizations that have been hacked, which could have a reputational impact on their business, although the threat's effect has diminished as more companies become ransomware victims, said Dan Burke, San Francisco-based national cyber practice leader for Woodruff Sawyer & Co.

Prime targets

While every company is vulnerable, small to medium-sized enterprises are favorite targets. These are firms "big enough to be worth stealing from, but not big enough to have a dedicated (IT) staff," Mr. Gow said.

"Those types of organizations tend to be less sophisticated and therefore the bad actors are looking at these organizations as more the low-hanging fruit in terms of looking to get that pay day out of a ransomware attack," said Stephanie Snyder, senior vice president, commercial strategy leader-cyber solutions, in Chicago for Aon PLC.

Managed service providers, companies that remotely manage customers' IT infrastructure, are also favorite targets "because when (hackers) successfully attack an MSP, they can affect hundreds of thousands of organizations, so it's sort of a one-stop shop," said John Farley, managing director of the cyber liability practice for Arthur J. Gallagher & Co. in New York.

Most ransom demands are for \$100,000 or \$150,000, "but there's an increasing frequency of reports where hackers are demanding seven figures," said Matthew

McCabe, general counsel on cyber policy for Marsh LLC.

Companies often conclude it is wise to pay the ransomware. While the FBI recommends against it, "in some cases it's the most direct and reasonable method for a problem to go away," so "it's done very much on a case by case basis," Mr. Gow said.

"It depends on what is best for your business," Mr. Born said. "If you're looking at, in essence, going out of business, or losing a lot" from a ransomware attack, then paying it "might be the best business decision."

Even if companies pay the ransom, typically in cryptocurrency, it may take at least several days to return to full operation, experts say.

"When (hackers) successfully attack a (managed service provider), they can affect hundreds of thousands of organizations."

John Farley,
Arthur J. Gallagher & Co.

"There is absolutely still a large delay in recovering and getting back to normal even after" the key is returned, which is "where business interruption (coverage) comes into play," said Marcin Weryk, New York-based head of cyber-West and South at Axa XL, a unit of Axa SA. He said the "vast majority" of hackers provide the key once the ransomware is paid.

Recovery time is directly proportional to the data, its complexity and the num-

ber of autonomous systems and hosts that make up an integrated system, said C.J. Dietzman, Charlotte, North Carolina-based managing director of Aon Cyber Solutions.

Refuse to pay

Meanwhile, more companies that are confident about their backups are refusing to pay. "About half of ransomware demands are being paid. The other half have backups and are choosing not to pay," said Anthony Dagostino, New York-based global cyber and technology practice leader for Lockton Cos. LLC.

"Those that do choose to pay are able for the most part to negotiate the demand down, so that does help," he said.

"We've been seeing more and more companies taking the position they're not willing to pay ransom, and that's a decision insurance carriers leave to the business," said Kelly Castriotta, Chicago-based head of product development and North American cyber underwriting lead for Allianz Global Corporate & Specialty SE, financial lines, North America. Companies are in a better position to do so if they have business continuity and incident response plans, she added.

Stopping the ransomware perpetrators can be hard because many are in eastern Europe, where they are not vigorously pursued by their governments, experts say.

"They're outside the reach of the FBI and any U.S. enforcement," Mr. Gow said.

Criminals will probably always be one step ahead, experts say. "That's the story of cybersecurity, and it always has been," Mr. McCabe said. "The ultimate question is, are we keeping pace with the sophistication of the hackers, or are we closing the gap?"

MORE TALK THAN ACTION ON SUBLIMITS

Coverage for ransomware payments is an integral part of cyber liability insurance coverage and subject to policies' full limits, but as ransomware claims increase, more insurers may introduce sublimits, observers say.

"Cyber extortion events have been routinely covered by the cyber insurance industry for more than a decade, and continue to be," said Matthew McCabe, general counsel on cyber policy for Marsh Inc.

Insurers cover the demand payment, expenses associated with forensic analyses and consulting fees, he said.

There has been discussion in the market concerning ransomware sublimits, but so far they have not been widely introduced, observers say.



"There has not been, in my view, a commitment to sublimit the insurance, but it sure is being discussed," said Kelly Castriotta, Chicago-based head of product development and North American cyber underwriting lead for Allianz Global Corporate & Specialty SE, financial lines, North America.

The market is "still very competitive," and if one insurer were to offer a ransomware sublimit, it would be very easy to find three others who offer full limits, said Robert Horn, New York-based vice president, management professional and cyber solutions, for Alliant Insurance Services Inc.

Ransomware payments "are just part of the larger losses we're seeing," including business interruption expenses, said Marcin Weryk, New York-based head of cyber-West and South at Axa XL, a unit of Axa SA.

Ransomware payments may become more commoditized, much like kidnap and ransom insurance, so that both insurers and the criminals "will get to this place where everyone understands how it works, so it will be relatively predictable," said Michael Born, senior vice president and cyber liability product leader at Berkley Re Solutions, a W.R. Berkley Corp. unit, in Overland Park, Kansas.

"This process has already been streamlined," said Mr. Weryk, adding that the insurer has vendors on its panels who specialize in negotiating with criminals. "There's almost this language that our negotiators speak to the hackers" because they do it so often, he said.

Judy Greenwald

HOW TO PREVENT SUCCESSFUL RANSOMWARE ATTACKS

Steps to take to prevent successful ransomware attacks include adequate backups, two-factor authentication and employee training, along with incident response and business continuity plans, experts say.

Backup systems that are strictly separate from primary systems are critical.

"First and foremost, have a backup that is regularly backed up, is accessible, and is separate from the primary data so a hacker can't encrypt both primary and backups," said John Farley, managing director of the cyber liability practice for Arthur J. Gallagher & Co. in New York.

Organizations should also have antivirus software on both their primary and backup systems, said Michael Born, senior vice president and cyber liability product leader at Berkley Re Solutions, a W.R. Berkley Corp. unit, in Overland



Park, Kansas.

Companies should work closely with their cyber insurers on this issue, said Marcin Weryk, New York-based head of cyber-West and South at Axa XL, a unit of Axa SA. "We can not only save time," but the vendors with which the insurer works can be helpful as well, he said. "The point is, if you have an insurance policy, make sure you use it," he said.

Companies should also have a formal patching process to address

vulnerabilities in their software once they become known, Mr. Farley said.

Experts also stress the value of two-factor authentication, which adds a second layer of security by confirming users' identity.

Once companies that have been hacked obtain an encryption key to unlock their systems and data, they should have a forensics firm assess the key to make sure there are no back doors "leaving an easy way" for the hackers to return, said Dan Burke, San Francisco-based national cyber practice leader for Woodruff Sawyer & Co.

Employee training on phishing emails is also critical, said Ayesha I. West, vice president, cyber liability, at Everest Insurance, a unit of Everest Re Group Ltd. in New York. "Employees are the easiest vector for a criminal to get in."

Judy Greenwald

COVID-19 PUTS HEALTH BENEFITS COSTS IN FOCUS

Virus-related losses to businesses could be offset by fewer elective procedures

BY GAVIN SOUTER

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Many organizations are recalibrating employee benefits programs as they adapt to the health care crisis and economic turmoil resulting from the coronavirus pandemic.

The higher cost of providing medical services to COVID-19 patients will likely be offset by reductions in elective procedures during the crisis, benefits consultants say. But the precipitous fall in economic activity during the coronavirus lockdown is putting huge financial pressure on employers, which will almost certainly hit their benefits budgets.

BENEFITS

Continued from previous page

Some employers will likely change the structure of their medical benefit plans and curb ancillary benefits as they face a downturn in revenue and profit, they say.

Employers are also altering retirement savings plans in light of the crisis, including suspending 401(k) matches, and will likely make more changes in the future (see related story).

One consequence of the crisis that could reduce future costs is the big uptick in the use of telemedicine, which could change medical treatment protocols over the long term, they say.

The coronavirus pandemic hit several months after the start of most benefit plan years. While health care insurers have relaxed rules and are allowing new members to join midterm, larger employers are generally not making significant benefits changes.

Most middle market and upper middle market employer clients are not changing their health care benefits plans during the crisis, said John Miyata, Chicago-based

executive vice president at Hays Cos., a unit of Brown & Brown Inc.

“They are all on 12-month plans, and no one is saying, ‘We need to fundamentally alter the plans in place,’” he said.

However, employers are grappling with how to treat contractions in their workforces, Mr. Miyata said. Many employers are furloughing workers, and some are continuing to pay benefits during furloughs. For laid-off workers, some employers are subsidizing COBRA premiums “to the extent that they can,” he said.

“For many employers, it’s reasonable to expect that the cost of the virus will be roughly offset by a reduction in other care over the period.”

Chris Calvert,
Segal Group Inc.

Some employers are looking to “create some sense of normalcy” and keeping furloughed employees on benefits, said Cory Jorbin, chief compliance officer,

West region employee benefits for Hub International Ltd. in Phoenix.

“In some cases, they are picking up the tab, recognizing that employees don’t have an income,” he said.

As employers prepare for 2021 employee benefit plan enrollment, they are reviewing costs incurred due to the pandemic, Mr. Miyata said.

While costs related to COVID-19 treatment can be high, especially if it includes treatment in an intensive care unit, some of those costs are offset by the decline in elective surgery during the crisis, he said.

“For many employers, it’s reasonable to expect that the cost of the virus will be roughly offset by a reduction in other care over the period,” said Chris Calvert, national corporate health practice leader at Segal Group Inc. in New York.

It is still too early to predict how long the pandemic will last, but so far “in the working-age population, the impact of COVID-19 has been relatively modest,” said Eric Grossman, senior partner at Mercer LLC in Norwalk, Connecticut.

While some elective procedures or treatments have only been postponed, others, such as physical therapy sessions, regular

check-ups and some lab tests, will have been canceled and there will not be a need to “catch up,” he said.

In its first-quarter results conference call with analysts, United Healthcare said elective deferrals had offset costs related to COVID-19.

But economic fallout from the crisis may lead to adjustments for health care plans in the future, because employers were already experiencing rising costs but were operating in a tough labor market, Mr. Grossman said.

“There are things that companies had been considering anyway because health care costs remain high, but maybe they weren’t pulling the trigger as aggressively,” he said.

For example, employers may look to enroll more people in high-deductible health care plans, adopt different provider network strategies or narrow formularies in efforts to control costs, Mr. Grossman said.

Given the economic environment, smaller employers especially will face cost pressures, said Carrie B. Cherveney, senior vice president, strategic client solutions for Hub’s risk services division in West Palm Beach, Florida.

Benefits question puts pressure on 401(k) contributions

The financial crisis induced by the coronavirus pandemic has put pressure on retirement savings plans as employees tap into the funds to access needed cash and employers reduce such benefits to cut expenses.

Several large employers have suspended 401(k) matches and more changes are likely as the crisis continues, benefit consultants say.

Defined contribution plans are seeing two main activities from employees, said Amy Reynolds, a partner and U.S. defined contribution leader at Mercer LLC in Richmond, Virginia.

First, market volatility has led to reduced account values in 401(k) plans, which has led to more phone calls and inquiries from workers concerned about their retirement savings, she said.

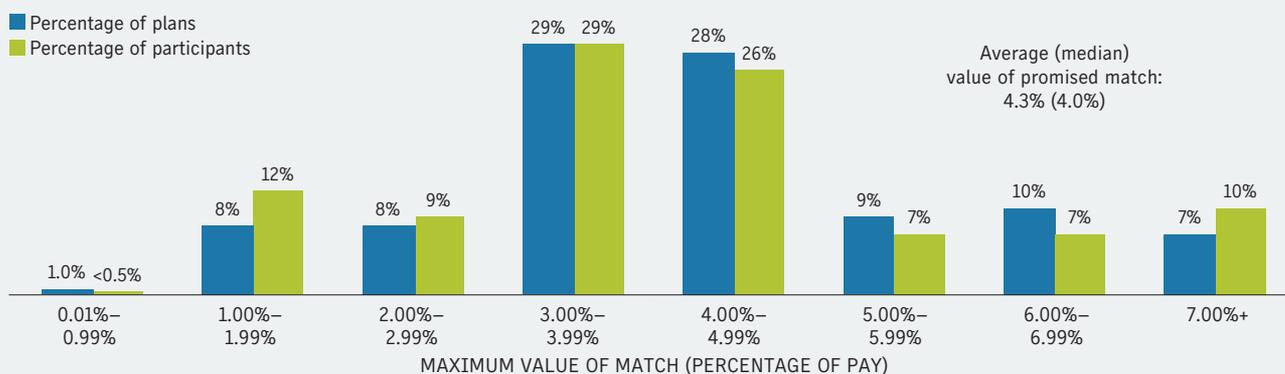
“In most cases, employers are providing them with information and reminding them that the plans are long-term vehicles and it’s not in their best interest to respond to market volatility,” she said.

Secondly, under the terms of the federal coronavirus relief law, penalties for withdrawing funds early were eased, which allows employees in financial difficulties to access needed money but could jeopardize their retirement income, Ms. Reynolds said.

Although, the rules also prolong the period that employees can pay back

DISTRIBUTION OF PROMISED MATCHING CONTRIBUTIONS — 2018 ESTIMATED

Vanguard defined contribution plans permitting employee-elective deferrals with a single- or multi-tier match formula



Source: Vanguard, 2019

any withdrawals they make, “almost nobody will pay it back,” said John Lowell, partner and pension consultant at October Three Consulting LLC in Atlanta. “It’s unlikely they will have spare cash in the next few years.”

And new money going into the funds has declined as some employers have reduced or suspended their contribution matches. According to a 2019 report by investment management firm the Vanguard Group, employer match contributions to defined contribution plans vary widely, but the average value of a promised match is 4.3% of pay.

Since the onset of the coronavirus several large employers, including Marriott

International Inc. and Amtrak, announced delays or suspensions for 401(k) matches.

Other employers are reducing matches, Ms. Reynolds said.

Employer matches have been one of the key tools employers use to encourage employee retirement saving, Mr. Lowell said.

“One of the reasons why employees defer (pay) is to get at least as much as the match,” he said.

In addition, widespread pay cuts will likely further diminish employee retirement saving deferrals, Mr. Lowell said.

The financial strains caused by the pandemic, however, could create opportunities for employers that are

not hit hard economically to review their benefit plans as the labor market loosens, he said.

“They should look long and hard at surveys, particularly on the type of employees they want to attract, and ask what they are craving for,” Mr. Lowell said.

While defined benefit plans are unlikely to make a comeback, hybrid plans, such as cash balance plans, might prove more attractive to employees following the crisis, he said.

“There’s a lot of data from millennials showing that they want some kind of guaranteed lifetime income,” Mr. Lowell said.

Gavin Souter

“Employers will be strategic,” she said. “They don’t want to reduce coverage, but when it comes to the life or death of the business, they are going to have to make really difficult choices.”

Prior to the pandemic, employers were looking to 2021 and considering changes, “but now there’s the question of what will their budget pressures be and what will their workforce look like. For many it will be smaller and more part-time workers,” Mr. Calvert said. “And there will be additional pressure to cut benefits to save jobs.”

In addition to pushing cheaper high-deductible plans, some employers may increase employee premium contributions and shift more non-major medical benefits, such as dental and vision benefits where employers may pay some of the costs, to voluntary benefits, he said.

Job contractions could also mean that smaller employers will change their benefits offerings because they will fall below the Affordable Care Act mandate, Ms. Cherveney of Hub said. The ACA requirement to provide affordable health care coverage applies to companies with 50 or more full-time employees.

One of the most significant trends arising out of the pandemic has been the

“Employers are promoting telemedicine, employees are using it, and providers are embracing it; that’s a long-term game changer.”

Julie Stone,
Willis Towers Watson PLC

increased use of telemedicine services as medical office and hospital visits have been curbed.

“When people need care, this is often their only option,” Mr. Calvert said.

“Employers are promoting telemedicine, employees are using it, and providers are embracing it; that’s a long-term game changer,” said Julie Stone, managing director, health and benefits North America for Willis Towers Watson PLC in Parsippany, New Jersey.

In addition to diagnosing and treating physical ailments, telemedicine is also being used to treat mental health claims, which could be of benefit to some patients



after the crisis is over, she said.

“It removes a barrier because patients are in their own space and don’t have to travel,” however, there remains a shortage of mental health providers so “there’s still challenges,” Ms. Stone said.

As telemedicine takes hold with wider adoption, and if the trend toward remote care continues after the pandemic for follow-ups or other appointments that can be handled virtually, employers need to consider costs because telemedicine providers usually charge less for care than physicians charge for office visits, Mr. Calvert of Segal said.

“What will be the tradeoff for employers

when employees have virtual visits with their own physicians?” he said.

Employee assistance programs are also being used more frequently, and employers are communicating more often with employees about the availability of the services amid heightened concerns over alcohol and substance abuse during the pandemic, Ms. Stone said.

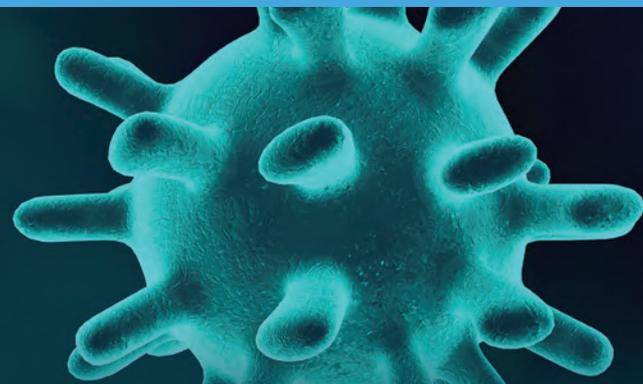
Including virtual options for EAPs is also enhancing the programs, said Mr. Miyata of Hays. For example, employees forced to remain at home may be more susceptible to depression and providing virtual EAP resources can help those workers access help, he said.

New Analytic-Powered COVID-19 Calculator Estimates Medical Costs

Care Bridge International, a data analytics corporation, announces a new COVID-19 Calculator that estimates the true exposure of medical treatment and costs related to COVID-19 claims.

One of the biggest challenges insurance companies will face in the coming months will be how to effectively handle the deluge of claims related to COVID-19. For a lot of organizations, this sudden uptick in claims activity will put an enormous strain on resources that are already at capacity.

As a public service during this difficult time, Care Bridge International is offering a FREE interactive tool at www.AnalyticPoweredCOVID19.com for businesses who need to understand the average medical costs associated with a COVID-19 diagnosis for a Workers Compensation claim, Group health or General Liability claims or the costs for Medicare beneficiaries.



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CLAIMS MANAGEMENT

Telecommuters herald new era for claims

BY ANGELA CHILDERS

jgreenwald@businessinsurance.com

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Claims professionals adjust, as states ease restrictions on mental health injuries for workers comp. **PAGE 26**

▶ COVID-19 DISPUTES HEAD TO COURT

Dozens of companies have filed suit seeking business interruption coverage for coronavirus losses. **PAGE 27**

▶ RESEARCH & DATA

Top third-party administrators, services, types of claims, revenue and more. **PAGE 28**

More employees are working from home than ever before and any injuries they sustain while on the job may be compensable.

Prior to the outbreak of the coronavirus pandemic, about 16% of the U.S. work force worked remotely part of the time, according to 2018 figures from the U.S. Bureau of Labor Statistics. In a report last month, the Brookings Institute estimated that more than half of workers in America now work from home, and the institute's researchers predict that some of the jobs will continue to be performed remotely after the pandemic.

This vast increase in telecommuters, lack of adjuster experience investigating telecommuting injuries and a dearth of case law on the subject (see related story) presents challenges for employers and insurers when a work-from-home workers compensation claim is filed, experts say.

"Without question, COVID-19 has created a huge uptick in telecommuters and it's happened so fast that employers have not really had the chance to prepare for it," said Mike Fish, Birmingham, Alabama-based founding member for workers comp defense firm Fish



“With all of these people working from home, unsupervised, and many under a great deal of pressure ... there are going to be opportunistic efforts to file dubious claims because desperate times call for desperate measures.”

Aaron Bergman, ConventBridge Group

Nelson & Holden LLC and president of the National Workers Compensation Defense Network.

At AmTrust Financial Services Inc., workers comp claims filed by telecommuting workers have been few, but “the mere fact that you have a larger number of people working from home” makes increased telecommuter comp claims more likely, said Brent Bland, Dallas-based senior vice president and head of workers compensation claims for the insurer.

Claims professionals should implement a structured policy to address work-from-home claims, he said.

When a work-from-home injury is reported, one of the first steps is determining whether the employer has a telecommuting policy, whether that policy requires work to be performed in a designated area during fixed office hours, whether the injury corresponds with that area and time frame and if there are potential deviations from work performed, he said.

For example, if an employee has left the workspace to retrieve copy paper and along the way decides to take a load of laundry out of the dryer and sustains an injury, is that still in the course and scope of their work, Mr. Bland said.

Slips, trips and falls are the most fre-

quent work-from-home comp claims, with trips over cords among the most common tripping hazard, said Cynthia Curd, Atlanta-based national vice president of claim operations, quality and compliance for Broadspire Services Inc., a subsidiary of claims management firm Crawford & Co. Tripping over pets is another common slip, trip and fall claim, said Mr. Fish.

When an injury occurs, it’s critical to get basic information immediately, including the worker’s version of what happened, where it happened, when it happened, how it happened and who was involved, said Matthew Harmon, senior vice president of claims at The MEMIC Group in Portland, Maine.

“If it’s a fall down the stairs, have them explain how this is related to their job and not just being at home,” he said. “In a severe injury or accident, the most critical piece of information is the ambulance run sheet. Information recorded as closely as possible to the incident is usually the most accurate.”

With many employees working in locations where employers can’t control the ergonomic setup, Mr. Harmon expects to see an increase in cumulative trauma work-from-home comp claims.

“I think we could start seeing an increase

in repetitive motion injuries sooner rather than later, within the next month or two,” he said. “Have the employee take photos of the workstation from all angles — this will be something that will help the (treating provider) identify maybe what the cause of the problem is or make recommendations for changes to help alleviate the problem.”

With unwitnessed claims and an economic downturn, there is a potential for fraud, said Aaron Bergman, Tampa-based field investigator for claims investigation company ConventBridge Group.

During the 2007-2009 recession, rough-

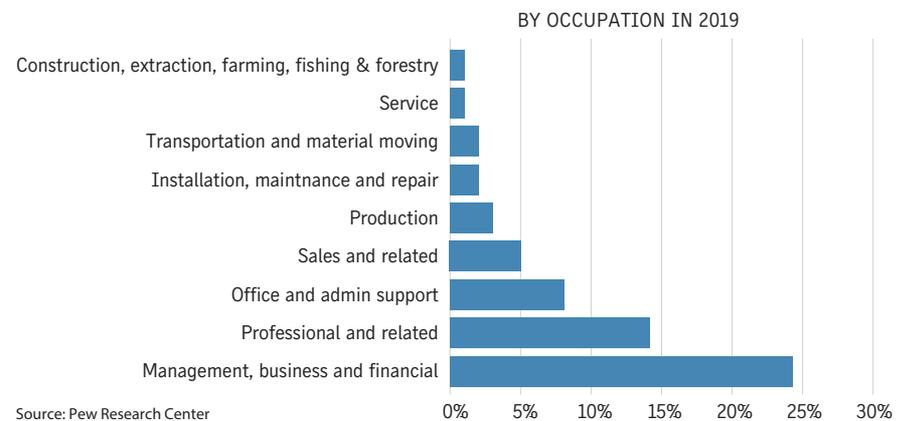
ly 80% of the incoming workers compensation claims he saw were post-termination injury claims, and many came with red flags, Mr. Bergman said.

“With all of these people working from home, unsupervised, and many under a great deal of pressure ... there are going to be opportunistic efforts to file dubious claims,” he said. “I think we’re going to see a lot of very dubious claims because desperate times call for desperate measures.”

While workers may not think there is a way for employees to refute a work-from-home accident, pulling personnel files may be the first step to identifying a red flag in a claim, Mr. Bergman said.

Performance issues, attendance issues, personality conflicts, whether the worker was on the verge of termination — those are some of the issues that may point to a claim being questionable because a “problem employee will attempt to use a workers comp claim to fend off personnel action.”

ACCESS TO TELEWORK IN U.S. PRIVATE SECTOR



Few legal precedents for work-from-home injuries

Experts expect an uptick in work-from-home workers compensation claims, but when those cases are examined, there is little case law to draw on.

“There are probably less than 10 actual (high-level) telecommuting cases that I’m aware of” that deal with work-from-home injuries, said Mike Fish, Birmingham, Alabama-based founding member for the comp defense firm Fish Nelson & Holden LLC.

A few trip-and-fall cases involving

telecommuters have been tried.

In a 2000 Utah case, *Ae Clevite Inc. v. Labor Commission*, the Utah Court of Appeals in Salt Lake City affirmed a workers comp commission’s decision to grant workers compensation benefits to a man who became a quadriplegic after he fell in his driveway. The commission found that the accident arose out of his employment because he fell while salting his driveway so the postal carrier could deliver a box of work materials he was expecting.

An Oregon appellate court in 2011 in *Sandberg v. JC Penney Co. Inc.* overturned a commission ruling and found that a worker’s injuries sustained after she tripped over her dog were compensable since she was performing the requirements of her job when the incident occurred.

In a more recent case, however, a Florida district court of appeals in Tallahassee in *Sedgwick CMS v. Valcourt-William* last year denied workers comp benefits to a

woman who worked from home and sustained an injury after she tripped on one of her dogs while refilling her coffee cup in her kitchen.

Two judges dissented from the majority, arguing in a dissent that the analysis used by the majority “reverses decades of precedent regarding the compensability of workplace injuries under Florida workers’ compensation law.” Mr. Fish expects the decision to be revisited by a higher court.

Angela Childers

Early intervention aids mental claims

BY LOUISE ESOLA

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A bus driver is robbed at gunpoint. Another driver witnesses a suicide: a person leaping in front of the massive vehicle.

Such are the events that can trigger mental injuries among transportation workers — real examples that call for special care in workers compensation claims handling, said Agnes Hoerberling, president of Intercare Holdings Inc., a Rocklin, California-based third-party administrator whose clients include transportation companies. “They may pretend they are coping, but inside they are suffering,” she said.

State laws and the increasing acceptance of psychological injuries are helping to determine when a worker may need time off or compensation for a nonphysical condition, including post-traumatic stress disorder, anxiety and depression, she said.

As of 2019, all but 16 states accept workers compensation mental injury claims where no physical ailment is present, according to data compiled by the Cambridge, Massachusetts-based Workers Compensation Research Institute. The institute’s April 2019 report on state laws reveals the intricacies and rules of each: At least one state — Florida — only allows a PTSD, mental-only claim if a worker is a first responder. Minnesota’s acceptance of mental claims stops at PTSD; ailments such as depression and anxiety alone are not permitted in comp.

PREVALENCE OF PTSD

- PTSD is directly associated with exposure to trauma
- PTSD affects 3.6% of the U.S. adult population
- 37% of those diagnosed with PTSD are classified as having severe symptoms
- Women are significantly more likely to experience PTSD than men
- Symptoms of PTSD usually begin within three months after experiencing or being exposed to a traumatic event.

Source: National Alliance on Mental Health

While many states have passed workers compensation reforms clearing the red tape for first responders whose careers often involve witnessing and responding to traumatic acts, PTSD can affect any worker who observes a workplace tragedy, experts say. Mass shootings, plant explosions, maimings in manufacturing and store robberies are among the incidents mentioned by experts as having links to mental injury claims.

Getting the initial diagnosis isn’t always clear cut, as experts say the mental injury might not present itself immediately or may be overlooked. That’s why managing mental injury claims requires extra skills, and many TPAs and insurers are adapting to the evol-



ing demands.

“There is a broader acknowledgment of the impact of mental health and recovery; it’s just as important as a physical treatment,” said Michelle Tucker, Sacramento, California-based vice president of enterprise operations and national claims for CorVel Corp., a TPA. “From a claims perspective, we were not there 20 years ago.”

What can trigger a claim or intervention has also changed, with employers recognizing that a worker might need assistance following an incident despite not being injured physically, Ms. Hoerberling said.

“It goes back to really being an empathetic communicator” following an incident, she said. “Individuals react differently to certain incidents, and some people’s coping mechanisms are better than others’. You are better off doing an early intervention than waiting for a more severe claim to be filed later on.”

“It’s really important for insurers and employers to understand first and foremost that these are very real and scary situations, and dealing with a workers comp claim, that can be scary,” said Carolyn Turpin, Rocklin, California-based vice president and regional manager with Helmsman Management Services LLC, the TPA for comp insurer Liberty Mutual Insurance Co.

Karen Thomas, CorVel’s Washington-based director of case management innovation, oversees nurses and case managers. The No. 1 skill on the first phone call? “Listening,” she said. “Anxiety, depression and other mental health issues are issues nurses are trained to know. (There are) some signs and symptoms that pop up early on that the individual may not even know about,” Ms. Thomas said.

Once a mental injury is identified, employers and insurers should act fast, Ms. Hoerberling said.

“We immediately get the worker help by

referring them to a psychologist or psychiatrist,” she said. “Addressing that early is critical. We found that doing that early as a best practice can really curb some of the issues that come up later on. If you do not address it immediately, it comes back nine to 12 months after the incident, and sometimes the case goes to litigation and then it prolongs the claim.”

Among the worst ways to engage a worker in the claims process following a mental injury is to tangle them in bureaucratic red tape, such as medical forms and questionnaires, said Dr. Anthony Ng, Mansfield, Connecticut-based regional medical director for Hartford Healthcare’s Behavioral Health Network.

“Even if you are helping someone with a claim on a good day (the paperwork) might be tricky. Take somebody who is mentally stressed, and they can’t process it,” he said. “That pressure alone can add to the stress. You need a case manager who will work with them on this.”

Once the claims process begins, case managers can continue to check in with the worker and treatment, said Ms. Thomas, whose team typically uses videoconferencing to communicate with injured workers.

“It’s very important for nurses to monitor the physical reactions — eye movements, body language,” she said. “It enables them to make that connection because isolation can be a big challenge” and lead to greater mental injury.

“You never want to make an assumption or have that one-size-fits-all mentality,” Ms. Thomas said. “Everybody has their own problems or perspectives.”

“These cases tend to be highly sensitive, and we want to make sure that our case handlers understand that it’s not just getting people back to work,” Ms. Turpin said.

“At the end of the day, we are talking about people and their livelihood and their ability to thrive,” she said.

EMPATHY HELPS RECOVERY

Mental injury claims, as with any workers compensation claim, have the potential to go sour, with doubts on causation, haphazard claims management, and lack of understanding coming into play, according to experts.

“Emotional intelligence” and empathy can make all the difference in managing such complex claims where an injury is less objective than a physical one, said Jeff Adelson, Newport Beach, California-based partner with the workers comp defense firm Adelson McLean P.C., which represents employers. He said those dealing with injured workers should understand the “fragile state” of mental injuries.

“On the defense side, we always say, ‘That’s not stressful,’ and people are not empathetic to stress claims,” he said. “You need to handle that gently and cautiously. ... You need to be careful with how they are treated.”

“Everybody thinks that everybody is the same and that everybody’s reactions to certain events is going to be the same, and it’s not. There needs to be trust. And once that trust is breached, that injured worker is going to run to an attorney.”

Carolyn Turpin, Rocklin, California-based vice president and regional manager with Helmsman Management Services LLC, the third-party administrator for Liberty Mutual Insurance Co., said the delicate nature of mental claims is at the forefront of the claims process.

“We try to put ourselves in the shoes of the injured worker,” she said. “When someone says, ‘We want to look into your claim and investigate’ ... that’s off-putting. We say something along the lines of, ‘we received your claim and we would like to gather more information.’ (We) try not to make this adversarial.”

Staying engaged throughout the recovery process can also make a big difference, said Karen Thomas, Washington-based director of case management innovation at CorVel Corp. “That’s probably the most important part. ... We talk a lot about checking in.”

Louise Esola

Policy wordings tested by interruption losses

BY MATTHEW LERNER

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Business interruption claims have fast become one of the principal legal battlefronts between commercial policyholders and insurers since the outbreak of the coronavirus pandemic.

Dozens of businesses, including numerous restaurants, have filed state and federal lawsuits against their insurers seeking declaratory rulings that income lost due to government-mandated lockdowns is covered by insurance.

Insurers argue that many of the policies include exclusions for virus-related losses and most of those that don't still won't cover lost income because physical damage to an insured property must occur to trigger claims payments.

As the legal fights begin, attorneys on both sides are examining potential legal precedents, policy wordings and jurisdiction issues.

While there are few past rulings that directly apply to coronavirus-related cases, several cases centering on contamination, including rulings on the applicability of pollution exclusions, will likely be cited in courtroom arguments, experts say.

"The focus of the insurance world is business interruption, and BI claims are coming into insurers at a rate never seen before," said Jared T. Greisman, partner in New York with Goldberg Segalla LLP.

One of the key issues will be whether there has been any direct physical loss or damage, he said.

Policyholders have contended in many of the suits filed that coronavirus contamination constitutes physical damage under the civil authority clause in their policies (see related story).

Policy wordings on physical loss may also be important and the phrase "loss or damage" could widen the coverage trigger, said Bob Rutter, a partner at Rutter & Russin LLC in Cleveland, who represents several policyholders seeking coverage for COVID-19 losses.

"Presumably, they use two different words because they mean two different things. So, loss must mean something different to damage," he said. For exam-



ple, odors or airborne contaminants could cause a loss of use or another direct loss that is not the same as physical damage, Mr. Rutter said.

Exclusions for virus-related losses will also be important. "Most insurers have chosen, particularly after the SARS epidemic, to make clear that pandemic-related losses — communicable disease, virus-related losses — are excluded," Mr. Greisman said.

The standard Insurance Services Office Inc. virus and bacteria exclusion has been in use since 2006.

Other exclusions, including pollution exclusions, may also be cited, said Lynda Bennett, partner and chair of the insurance recovery group at law firm Lowenstein Sandler LLP.

Pollution exclusions can be broadly worded, she said, and while some jurisdictions apply exclusions broadly "there are just as many other jurisdictions that say otherwise."

The origin of exclusions, including the ISO exclusion, will also be examined, said Angela Elbert, chair of Neal Gerber Eisenberg LLP's insurance policyholder practice group in Chicago.

The drafting of the ISO exclusion could be viewed as a tacit admission or "at least an acknowledgement that physical loss or dam-

age would be caused by a virus," she said.

"I think it's really important to show that the insurance companies acknowledged in 2006 that a virus could constitute physical loss or damage to property, and as a result of that they need to exclude it from an all risk policy that would cover everything that wasn't specifically excluded," Ms. Elbert said.

In addition to exclusions, some policies expressly provide coverage for communicable diseases, but they generally include sublimits on the order of \$25,000 and \$50,000, she said.

FM Global has offered communicable disease response and interruption coverage with a sublimit since 2016, said Jeffrey J. Beauman, vice president-chief underwriter at the mutual property insurer in Johnston, Rhode Island.

The coverage has a dual trigger — contamination of a site and closure due to government order or based on the decision of the organization's executive management, he said.

"We do expect that, through the adjustment process, we will find some coverages in many policies," Mr. Beauman said.

The state or jurisdiction in which cases are heard may affect the outcome of legal dis-

ISO VIRUS EXCLUSION

An Insurance Services Office Inc. exclusion in effect since 2006 for many business owners policies includes this wording:

"We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease."

Source: Court filings

BUSINESSES SUE TO SECURE CORONAVIRUS COVERAGE

Starting in mid-March, dozens of lawsuits have been filed in state and federal courts across the country by restaurants, taverns, theaters and other businesses seeking business interruption coverage for coronavirus-related losses.

The arguments in the lawsuits vary, but common themes include assertions that the presence of the coronavirus in or around a building constitutes physical damage.

Coverage is triggered under the civil authority section of many policies, which

applies to the government-mandated closures of businesses that were ordered in attempts to stem the spread of the virus, policyholders argue in the lawsuits, several of which seek class-action status.

The policies vary but fall into three broad categories: policies that include an endorsement offering coverage for virus-related losses, which is a factor in a suit filed in a Texas court (see story page 15); policies that include a virus exclusion; and policies that don't include

a virus endorsement or exclusion.

In the suits involving a virus exclusion, some of the policyholders argue that the compulsory closure of a property constitutes physical loss regardless of the exclusion.

The suits have been filed against a broad range of insurers, including mutuals such as Society Insurance Inc. in Fond du Lac, Wisconsin, which faces multiple suits, and large commercial insurers such as Chubb Ltd., Hartford Financial Services Inc. and Travelers Cos. Inc.

putes over business interruption coverage.

"I think where will matter," said Sharon D. Stuart, chair of the Insurance and Reinsurance Committee of the International Association of Defense Counsel and founding partner of law firm Christian & Small in Birmingham, Alabama. "Some of these early cases are going to be filed in states where there's a strategic reason for doing so."

Potential precedential rulings also vary by state, said Mr. Greisman of Goldberg Segalla. "Precedent includes cases where courts have said that in order to have direct physical damage there has to be some tangible damage, which we typically think of as visual," he said.

"In states which have considered substances such as noxious dust and gaseous substances as physical damage, it remains to be seen whether or not the courts will view coronavirus as direct physical loss or damage," Mr. Greisman said. "We believe states which have ruled such does not constitute physical damage will not view coronavirus as physical damage."

In the 2014 ruling *Gregory Packing Inc. v. Travelers Property Cas. Co. of America*, a U.S. District Court in New Jersey found that covered property damage had occurred when ammonia was accidentally released into a facility, rendering the building unsafe until it could be aired out and cleaned.

In *Mellin v. Northern Security Insurance Company Inc.*, a couple sought a declaratory ruling that their homeowner's policy with Northern Security included coverage for losses to their condominium caused by cat urine odor.

The lower court granted summary judgment to Northern Security, but the New Hampshire Supreme Court overruled the trial court.

The high court ruled that the couple were not required to demonstrate a "tangible physical alteration" to the unit to prove that it was rendered permanently uninhabitable.

"Rather, to demonstrate a physical loss" under their coverage, the policyholders had to establish "a distinct and demonstrable alteration to the unit."

Gavin Souter contributed to this article.

Travelers filed a counter suit last month against two of its policyholders, Los Angeles-based law firm Geragos & Geragos and its managing partner Mark J. Geragos. The insurer argues that coverage was barred under the virus exclusions in the policies and that "Even without reference to their exclusions, the Policies require 'direct physical loss or damage' to property, and the presence or suspected presence of a virus does not constitute the requisite 'direct physical loss or damage,'" the suit states.

Gavin Souter

SPECIAL REPORT

THIRD-PARTY ADMINISTRATORS

LARGEST THIRD-PARTY ADMINISTRATORS*

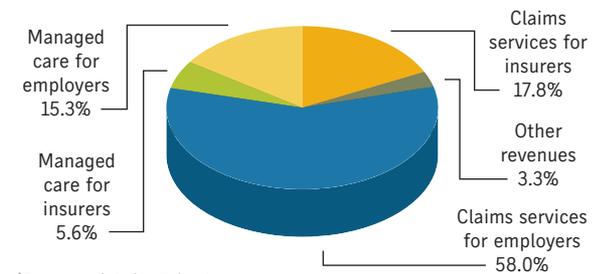
Ranked by 2019 gross revenue

Rank	Company	TPA services provided	Gross revenue 2019	Gross revenue 2018	% increase (decrease)	Total number of claims-handling staff	Officers
1	Sedgwick Claims Management Services Inc. ¹	Multiline**	\$3,504,017,191	\$2,747,553,408	27.5%	23,677	David A. North Jr., president-CEO; Michael A. Arbour, group president; Robert J. Peterson, group president
2	UMR Inc. ²	Employee benefits only	\$1,230,000,000	\$965,000,000	27.5%	3,800	Scott Hogan, president-CEO
3	Crawford & Co./Broadspire	Multiline**	\$1,047,627,000	\$1,122,979,000	(6.7%)	5,701	Harsha V. Agadi, president-CEO
4	Gallagher Bassett Services Inc.	Multiline**	\$977,111,429	\$950,783,602	2.8%	5,379	Scott Hudson, president-CEO; Mike Hessling, CEO-North America
5	CorVel Corp.	Multiline**	\$596,000,000	\$588,000,000	1.4%	1,368	Gordon Clemons, chairman; Michael Combs, president-CEO
6	Meritain Health	Employee benefits only	\$547,700,000	\$508,500,000	7.7%	N/A	Melissa Elwood, COO
7	ESIS Inc.	Multiline**	\$460,520,000	\$448,400,000	2.7%	1,412	Keith Higdon, president
8	Helmsman Management Services LLC	Multiline**	\$345,205,364	\$316,657,773	9.0%	1,900	David Dworz, president-CEO
9	Trustmark Health Benefits ³	Employee benefits only	\$226,984,104	\$218,146,764	4.1%	561	Nancy Eckrich, president-CEO
10	Cannon Cochran Management Services Inc., dba CCMSI	Multiline**	\$160,000,000	\$150,000,000	6.7%	1,008	G. Bryan Thomas, president-CEO

*Companies listed in BI directory; **Includes employee benefits and/or property/casualty and/or workers compensation; ¹Acquired York Risk Services Group Inc. in Sept 2019; ²Acquired HealthScope Benefits in March 2019; ³Formerly CoreSource Inc. Source: BI survey

TPA REVENUE*

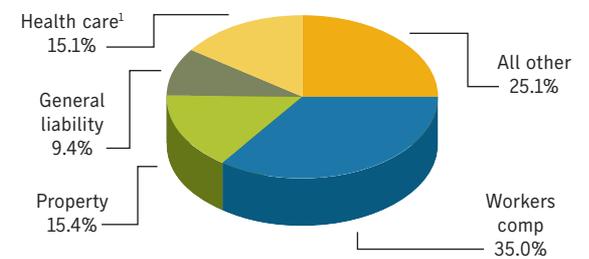
Percentage of 2019 revenue from all services provided



*Companies listed in BI directory

TYPES OF CLAIMS MANAGED*

Percentage of claims by category

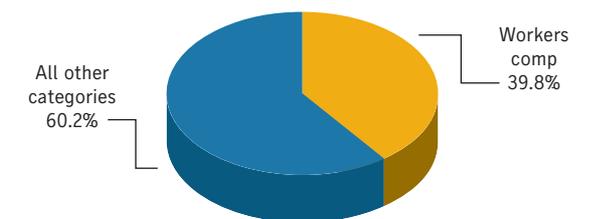


*Companies listed in BI directory

¹Includes medical, vision, dental and prescription drugs

VALUE OF CLAIMS PAID*

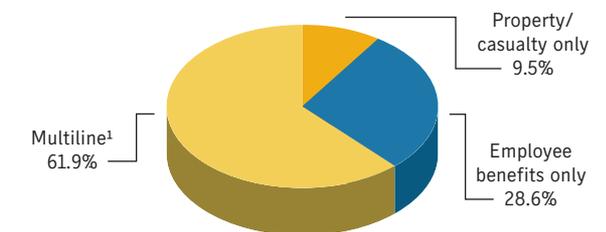
Based on the amount of claims paid in 2019



*Companies listed in BI directory

TYPES OF SERVICES PROVIDED*

Percentage of TPAs handling multiline¹, employee benefits only and property/casualty only in 2019



*Companies listed in BI directory

¹Includes employee benefits and/or property/casualty and/or workers compensation Source: BI survey

LARGEST CLAIMS-HANDLING TPAs*

Ranked by 2019 gross revenue from claims handled for employers

Rank	Company	2019 revenue ¹
1	Sedgwick Claims Management Services Inc.	\$1,619,071,318
2	UMR Inc.	\$1,230,000,000
3	Gallagher Bassett Services Inc.	\$573,714,101
4	Meritain Health	\$509,000,000
5	Crawford & Co./Broadspire	\$451,200,000

*Companies listed in BI directory; ¹Excludes managed care and medical billing services Source: BI survey

LARGEST MULTILINE¹ TPAs*

Ranked by 2019 gross revenue from claims handled for employers

Rank	Company	2019 revenue ²
1	Sedgwick Claims Management Services Inc.	\$1,619,071,318
2	Gallagher Bassett Services	\$573,714,101
3	Crawford & Co./Broadspire	\$451,200,000
4	ESIS Inc.	\$301,650,000
5	Helmsman Management Services LLC	\$162,965,766

*Companies listed in BI directory; ¹Includes employee benefits and/or property/casualty and/or workers compensation; ²Excludes managed care and medical billing services Source: BI survey

LARGEST BENEFITS-ONLY TPAs*

Ranked by 2019 gross revenue from claims handled for employers

Rank	Company	2019 revenue ¹
1	UMR Inc.	\$1,230,000,000
2	Meritain Health	\$509,000,000
3	Trustmark Health Benefits ²	\$201,472,686
4	Alicare Inc.	\$63,000,000
5	Health Plans Inc.	\$45,854,387

*Companies listed in BI directory; ¹Excludes managed care and medical billing services; ²Formerly CoreSource Inc. Source: BI survey

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- Business interruption
- Cleaning and decontamination
- Remote claims management through self-serve technology
- COVID-19 return-to-work screening
- Leave and disability benefits management
- Families First COVID-19 Relief Act compliance tracking

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Origami Risk expands RMIS to address virus

■ Origami Risk LLC has expanded its risk management information system to help employers address exposures related to COVID-19, Origami Risk said in a statement.

New features, accessible on desktops, laptops, and mobile devices, include online mapping and visualization tools using publicly available incident data sources such as the Johns Hopkins University COVID-19 case map, audits with which employers can track health and safety concerns, exposure tracking enabling employers to capture and track COVID-19 related data, and location-specific disaster notifications, the statement said.

The new features also integrate with enterprise risk management, governance, risk and compliance, disaster recovery and business continuity management, and safety and loss prevention, the statement said.

AIR Worldwide unveils COVID projection tool

■ Catastrophe risk modeler AIR Worldwide has launched the Verisk COVID-19 projection tool, AIR said in a statement.

Using AIR's pandemic modeling data, the interactive tool provides COVID-19 case and death projections worldwide for the next four weeks, with data updated on a daily basis, the statement said.

Modeled projections of the pandemic are available globally at a country level, and outputs factor in variations in data availability and reliability, including underreporting, the statement said.

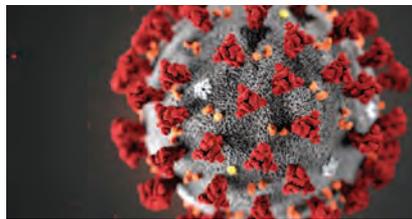
The projection tool uses data from an AIR catastrophe model and account for the effectiveness of containment measures, including the impact of social distancing, isolation, quarantining, and other mitigation factors, the statement said.

The tool is being provided to communities, businesses, governments and insurers to allow "a better understanding of what the near future of the COVID-19 pandemic could look like," Doug Fullam, director of life/health modeling at AIR, said in the statement.

Claims manager boosts decontamination service

■ Crawford & Co. has expanded its Contractor Connection decontamination service to clean and restore sites in the U.S. exposed to the coronavirus to help minimize business interruption, the Atlanta-based claims manager said in a statement.

The decontamination service, which will soon be available in Australia, Can-



Paradigm extends cat care to virus patients

■ Paradigm Management Services LLC has expanded its care management processes used for managing catastrophic injuries to assist workers requiring medical care to recover from COVID-19, the Walnut Creek, California-based case management services provider said.

"The rapid spread of COVID-19 presents the workers compensation industry with a complex set of risk decisions and challenges that require clinical management resources that Paradigm has developed and evolved over the past 30 years of managing catastrophic injuries," said Kevin Turner, CEO of Paradigm Catastrophic Care Management.

Through its systematic care management process, the company said it can establish a treatment plan with specific clinical and time-based outcomes for individuals with a COVID-19 diagnosis to reduce the duration of functional disability associated with COVID-19 complications, acute respiratory distress syndrome, post-intensive care syndrome and associated post-traumatic stress disorder.

ada and the United Kingdom, provides access to more than 700 licensed and insured biohazard contractors across the U.S., the statement said.

Contractors on call can respond within an hour of a notification to the Contractor Connection 24/7 call center to clean and restore affected sites, Crawford said.

All contractors are vetted by Contractor Connection and monitored during the cleaning process, the statement said.

Contractor Connection is part of Crawford's Environmental Hazards services and performs preventive cleaning, decontamination and biohazard waste disposal,

according to information published on the Contractor Connection section of the Crawford website.

Aon launches COVID-19 tracking app for employers

■ Aon PLC has launched an interactive web application that aims to help employers forecast the impact of COVID-19 on employee populations throughout the U.S., including medical costs, absenteeism and the potential need to shift work operations.

Aon's COVID-19 Employee Impact Model combines employer-specific demographic data on employee populations and dependents covered by the employer's health plan with geographic infection rates from epidemiologic models, Aon said in a statement.

Information is updated daily based on the spread of the virus, social distancing measures taken by local governments, and the current figures of confirmed patients, hospitalizations, deaths, and testing and treatment patterns. By selecting a date, employers can see projected cases and medical claims costs.

The tool allows employers to view employee population impact by geographic area over time; estimate the number of mild cases, hospitalizations, intensive care unit visits and fatalities based on specific population demographics; and estimate health care costs associated with testing and treatment, the statement said.

The application initially will be available in the U.S. and is intended for employers with at least 300 employees, Aon said, adding that it will soon be expanded globally.

Aon is also looking to add metrics that model workers compensation claims, time lost, salary replacement costs, disability and life insurance, and cost savings of deferred elective medical procedures, the statement said.

Sedgwick widens absence management services

■ Sedgwick Claims Management Services Inc. announced the expansion of the company's disability and absence solutions for mid-size employers in the market.

Memphis-based Sedgwick's disability, leave of absence and compliance program has been offered to large employers and allows for "one unified system and obtain all necessary information along the continuum of employee absence," according to a statement.

The data enables employers to discover underlying reasons for excessive absenteeism and develop appropriate interventions, from wellness to organizational development, according to the statement.

DEALS & MOVES

Marsh unit acquires rival broker Assurance

Marsh LLC's middle-market unit bought Assurance Holdings Inc., which is the 35th largest brokerage of U.S. business.

Schaumburg, Illinois-based Assurance will operate as the Midwest regional headquarters of Marsh & McLennan Agency LLC and will be led by its current CEO Tony Chimino, Marsh said in a statement.

Terms were not disclosed.

Assurance has 525 staff, Marsh said.

Private equity firm buys California retail brokerage

Private equity firm HGGC LLC acquired Woodland Hills, California-based retail brokerage PCF Insurance Services LLC for an undisclosed amount.

With 400 staff, PCF provides commercial and personal lines and employee benefits products to more than 40,000 customers across the United States, HGGC said in a statement.

Under the deal, management, employee owners and existing investor BHMS Investments LP have retained minority stakes in PCF, HGGC said.

Alera buys brokerage in Washington area

Alera Group has acquired Silver Spring, Maryland-based Georgetown Insurance Services Inc., the brokerage announced.

Terms of the deal were not disclosed.

Georgetown places commercial and personal lines business and "works closely with the construction, manufacturing, real estate and transportation industries," according to a statement from Deerfield, Illinois-based Alera.

The deal marks Alera's first property/casualty acquisition in the Washington area, according to the statement.

Wholesaler expands footprint with purchase

Boston-based wholesaler One80 Intermediaries has acquired International Excess Program Managers, a Beachwood, Ohio-based wholesaler and program manager that operates in 50 states.

IEPM specializes in property, liability, inland marine, errors and omissions, directors and officers, commercial auto and umbrella coverage, One80 said in its statement. Terms were not disclosed.

IEPM also builds tailored multistate insurance programs for specialty industries, associations and groups of policyholders, according to the statement.

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Crisis speeds us to virtual future

One thing many of us have gotten used to over the past couple of months as we adapt to the coronavirus lockdown is virtual meetings.

No longer secluded when in the confines of our homes, we log on to video conferencing platforms and open our houses and apartments for the world to see.

For those of us lucky enough to have jobs that can be carried out from home, the technology is a great enabler. We can see our colleagues and others as we chat, attend virtual events and webinars, and even socialize with friends and family at a safe distance.



Gavin Souter
EDITOR

None of this is new, but necessity is proving the mother of adoption. Once the lockdown is lifted or a vaccine is developed — whatever it is going to take to move past this crisis — the question is open as to whether we'll all stop Zooming, start traveling to conferences again and even shake hands to the same degree as we did before the pandemic.

Maybe we'll be so comfortable with our new business set-ups that in-person interactions won't take place so frequently.

One area where it already looks like there is no turning back is telemedicine. As we report in stories on pages 8 and 21, doctors and patients are using telemedicine for appointments much more extensively simply because they have no other choice. Prevented from attending medical appointments due to social distancing restrictions, patients needing elective or nonemergency care can speak to or see doctors online and get the care they need.

It's still in its early days and we'll have to see how all involved ultimately judge the forced experiment in virtual care. My own experience with telemedicine, which was some time ago, is limited to calling a hotline in the middle of the night and telling a nurse about severe abdominal pains I was experiencing. Very politely, she effectively told me to stop being an idiot and go to the emergency room. Sound advice because a few days and incisions later I was fine.

Such triage work, follow-up appointments or simple diagnoses seem like a natural fit for telemedicine. And as technology uptake accelerates, home testing and more complex diagnosis will also likely become more commonplace.

For workers compensation payers and patients, the advantages seem obvious. But there will be issues to iron out, one of which is cost. Telemedicine doctors are usually different than patients' regular doctors and generally charge less for virtual office visits than brick-and-mortar office visits. If, and when, traditional medical practitioners move online more extensively there will have to be conversations about cost cuts and safeguards to ensure that the right treatment is being offered and in the right context.

If not, it'll be back to the waiting room for us all.

TELEHEALTH SERVICES SKYROCKET

According to cloud communications company Vonage, traffic run through its system showed:

- ★ **727% increase** in telehealth services between February and March.
- ★ One customer, cloud-based telemedicine technology provider Doxy.me, reported **139,000 new providers** and **1.35 million patients** using telemedicine in one week.

COLUMN

Cyber threats hit home

BY CLAIRE WILKINSON
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The rate of COVID-19 infections isn't the only thing that's increased over the past couple of months. The number of telecommuters and children online working and playing from home is at a scale that's hard to quantify. As a parent, limits on screen time go out the window when trying to balance work and homeschooling. Hackers with too much time on their hands know that kids are online, too, and are taking advantage of this. Take our recent experience.

My older son's penchant for Roblox, the global online game platform that lets users build and create virtual worlds, has been reinvigorated and with that has come a real-life lesson in cybersecurity. The other day he tried to log on only to find that his account had been compromised, and not two days later the same thing happened to his younger brother. After multiple emails with Roblox support, one account has been restored, minus a pet unicorn.

We've since learned that in Roblox you need a verified email address so you can turn on two-factor authentication, which can provide an extra layer of security for the account. As with all online systems, it's a good idea to check privacy settings regularly. Beware, too, of COVID-19 email and phishing scams that are targeting streaming services like Netflix and Disney+.

For businesses, too, the cybersecurity threat is amplified by the sheer volume of employees working from home. As our cover story highlights, the incidence of ransomware has become more prevalent

and hackers are growing more sophisticated and targeted in where and how they launch their attacks. Specialist insurer Beazley PLC recently reported a 131% increase in ransomware attack notifications against its clients in 2019, and an exponential increase in the sums being demanded.

Fortunately, there are risk management steps businesses can take to minimize the impact of such attacks, as we report. Anti-virus and backup systems are part of the answer, but working with an insurer to mitigate vulnerabilities and having a cyber liability policy in place that provides coverage for ransomware payments are increasingly valuable defenses in the cybersecurity toolbox.

This time last year at the Risk & Insurance Management Society Inc. annual conference in Boston, the usual stream of brokers, insurers, and cyber and technology consultants were touting their various coverages and services to help organizations protect themselves against rising cyber risks. Yet in one-on-one meetings with executives it was clear that take-up of cyber coverage still wasn't anywhere near the market growth that has been projected.

If there is an upside to the disruption of the COVID-19 pandemic it is that perhaps risk managers will finally see the justification for the cyber insurance coverage that insurers have long been peddling. So long as insurers have enough capital to handle the rising risk.

For risk managers, the hefty responsibility to manage the surging cyber risk that a virtual workforce and operation presents is a burden that can be made more manageable with insurance — provided that coverage is affordable and actually indemnifies them for the losses they face.

Quarantines and cancellations in the age of the COVID-19 pandemic

Movie theaters, gyms, hotels and golf courses have been forced to close temporarily. Long-standing sporting events, such as the NCAA basketball tournament, the Masters golf tournament, the Kentucky Derby and the Olympics, have been canceled or significantly postponed. Broadway has gone dark, theme parks such as Disney World have shuttered, and musical performers have called off their tours. The economic implications of such closures and cancellations is likely to be staggering. It is thus anticipated that an increasing number of businesses will look to their insurance policies to mitigate their losses.

Event cancellation

Some policyholders may have purchased a specialized insurance policy that could provide coverage for the damages resulting from the necessary cancellation or curtailment of an event. Event cancellation policies generally do not require a specific type of event to trigger a covered loss, provided that the claimed loss is beyond the policyholder's control. If a covered loss occurs, these policies generally indemnify the policyholder for any expenses incurred, as well as any lost revenues caused by the necessary cancellation, although this is not always the case. In the context of the COVID-19 pandemic, it is important to note that many existing policies specifically exclude losses caused by pandemics or government-ordered quarantines.

COVID-19 caused the cancellation: When evaluating event cancellation claims related to COVID-19, there are several factors that might affect the existence of coverage or the amount of damages. For a cancellation or postponement of an event to constitute a covered event, policies generally require that the policyholder show that it is unable to commence or keep open the event. For events that were scheduled to begin in early 2020, this may require an investigation as to whether the cancellation or delay was required by COVID-19, was an opportunistic decision or was caused by another event that may be excluded under the policy. For canceled events that were scheduled to take place later in the year, the policyholder may have to show that it was unfeasible to make alternative arrangements for the event.

Pandemic- or quarantine-caused losses: Another factor to consider is whether there are any policy exclusions applicable to a COVID-19 claim. For example, many event cancellation policies specifically exclude losses caused by pandemics

or quarantines. However, some insurers offer endorsements that will provide coverage in the case of a pandemic. As is always the case with insurance, the specific wording of the policy must be scrutinized.

Event cancellation policies generally also exclude pre-existing circumstances, which may preclude coverage under policies issued in 2020 — after the outbreak was first reported in Wuhan, China — even if COVID-19 is not identified as a specifically excluded risk. Additionally, the policy may contain an exclusion for pollution or contamination, which may apply to COVID-19 based on the policy wording.

Damages: Calculating the amount of covered damages from a canceled or curtailed event is likely to present difficult questions and may require detailed investigation. Event cancellation policies generally require that any covered damage be caused directly by the cancellation or curtailment, requiring a fact-specific determination if claimed damages are too remote to be covered. In addition, depending on the policy language, lost profits may or may not be covered. If lost profits are covered, calculating those profits may require production of documentation by the policyholder, and possibly the retention of an expert to assist in the adjustment.

Business interruption

Business interruption insurance compensates a business for its lost profits and certain expenses when operations are affected by physical damage to insured property caused by a covered peril that prevents normal operations. These policies may also provide coverage for lost profits or extra expenses resulting from an interruption of business at the premises of a customer or supplier. The coverage can be purchased as a standalone product or as part of a comprehensive property policy. These policies contain specific limitations to the scope of coverage that will be relevant to the current pandemic. Insurers and policyholders should therefore carefully consider the policy terms for COVID-19-related losses under such policies.

Virus exclusion: Business interruption policyholders will first need to consider whether the policy contains an exclusion that applies to losses related to a virus or illness. The virus exclusion, which originates from a form published by the Insurance Services Offices Inc. and is part of its standard property policy, excludes coverage for any “loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” The exclusion explicitly

applies to “forms or endorsements that cover business income, extra expense or action of civil authority.” Other policies may include “virus” within the definition of “pollution or contamination,” which is also subject to exclusion. Even if such exclusions are present, there may be avenues to coverage so the language of any exclusion must be scrutinized closely.

Damage to property: In policies in which the virus exclusion is not present or found not to apply, other terms in the policy will have to be considered. For example, business interruption policies typically only cover losses caused by, or occurring in connection with, “physical loss or damage” to the insured's property.” However, the question of whether the presence of a harmful substance, like the coronavirus, constitutes loss of or damage or destruction to a property is highly fact-dependent. Courts have found for example that the presence of mold does not constitute physical damage. But, they have also found that vapors, odors, or fumes do constitute physical loss or damage.

Quarantine-caused losses: Another important additional consideration is whether the business interruption policy will extend to losses associated with government-enforced quarantines or travel restrictions. While many business interruption policies do include coverage for certain losses caused by the actions of civil authorities, policyholders often will need to establish physical loss or damage to nearby property caused by a covered peril. Policies also generally require that the business disruption be the result of a specific order by authorities that prohibit access to the insured property. Therefore, many policies may not cover situations where a business is interrupted or severely impacted by government directives that do not amount to an outright prohibition on operations. As such, whether a business interruption policy covers losses will depend heavily not only on the scope and terms of the policy, but also on the terms of the relevant order issued by the government authority.

Extent of covered losses: Business interruption policies can also differ with regard to the language used to describe the extent and scope of covered losses. Although business interruption insurance is generally regarded as a means of replacing lost income, business interruption claims often arise in situations in which the economic impact can stretch well beyond the policyholder's own business. To address this, courts have taken two approaches: 1) an “economy ignored” approach, which looks backward and measures the policyholder's loss only against pre-catastrophe business lev-



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els but does not take into consideration the impact of actual post-catastrophe conditions on the economy, market or demand; and 2) an “economy considered” approach, which seeks to place the policyholder in the position that it would have occupied in the actual post-catastrophe environment had it been able to continue its operations. On this issue, the determination of which approach a court will use most often depends on the language of the policy, as opposed to the forum interpreting the policy.



UP CLOSE

Susan Finbow

NEW JOB TITLE: Toronto-based global head of FINEX financial institutions, Willis Towers Watson PLC

PREVIOUS POSITION: Toronto-based financial institutions industry practice leader, Marsh Canada

OUTLOOK FOR THE INDUSTRY: I would anticipate the current rate increase environment will continue throughout 2020 and likely into 2021. However, unlike the last hard market, underwriters appear to be taking a more measured approach with the underwriting levers they have at their disposal — rate, limit, retention and risk selection.

GOALS FOR YOUR NEW POSITION: One of my short-term goals is to connect with existing and former clients to sense-check our value proposition: What should we do more of? What should we do less of? What should we do differently?

CHALLENGES FACING THE INDUSTRY: The upward pricing pressure in the market continues to affect clients in all industries. However, there are a myriad of challenges faced by financial institutions clients — consumer indebtedness, cybersecurity, stock market volatility, geopolitical uncertainty, evolving global regulatory landscape, (environmental, social and governance) disclosure litigation, etc.

FIRST EXPERIENCE: My first experience in the insurance business was in the early '80's. I was hired as a summer intern in the finance group of an insurance brokerage firm.

ADVICE FOR A NEWCOMER: The insurance business is a relationship business, and to be successful, you need to establish a network and foundation of trust with clients, colleagues and industry peers. How you interact with people really matters — it's not only a reflection of the person you are, it can also reflect on the organization you represent. I would add that it's OK to be ambitious, but you need to balance that with competence, authenticity, patience and humility.

DREAM JOB: Journalism and investigative reporting have always been of interest to me.

LOOKING FORWARD TO: Since I started in my new role, we have been practicing social distancing. I am really looking forward to a return to normal operations so I can get out and meet with clients and colleagues around the world. FaceTime and Skype are effective tools that we have all embraced during the COVID-19 pandemic. However, I look forward to the day when in-person meetings are possible once again.

COLLEGE MAJOR: I was enrolled in a business administration program in the early '80's. However, I decided not to return as the insurance brokerage firm that hired me as a summer intern offered me a full-time position. When I retire, I will go back to school and finish my degree.

FAVORITE MEAL: Any kind of pasta, preferably in a red or blush sauce.

FAVORITE BOOK: Generally, biographies and non-fictions get my attention. "Becoming," by Michelle Obama, and "Red Notice," by Bill Browder, quickly come to mind.

HOBBIES: Right now, I'm on a fitness journey, but I also enjoy cooking, baking, hiking and reading.

TV SHOW: I watch a few — "Billions," "Succession" and "The Handmaid's Tale." But I also enjoy nonsense reality shows — "The Housewives" franchises are a great escape!

ON A SATURDAY AFTERNOON: Reading and taking long walks with my husband and our dog.

"Unlike the last hard market, underwriters appear to be taking a more measured approach with the underwriting levers they have at their disposal — rate, limit, retention and risk selection."



Axis Insurance, a division of Axis Capital Holdings Ltd., named **Michael Carr** head of U.S. excess and surplus property. Based in the company's Alpharetta, Georgia, office, Mr.

Carr had been executive vice president and head of property at Ethos Specialty Insurance Services LLC.



James A. Kelley has been appointed president of Hanover Specialty Industrial Property. Mr. Kelley replaces James L. Abraham, who is retiring. Mr. Kelley,

based in Worcester, Massachusetts, most recently was senior vice president at AmWINS Group Inc.



Beazley PLC named **Bethany Greenwood** global head of cyber and executive risk, effective in July. Ms. Greenwood joined Beazley last September to lead the London market and U.S.-

based executive risk team. She is based in Boston and will succeed Mike Donovan, who is retiring.



CAC Specialty named Boston-based **Ed Krayner** to the newly created position of senior vice president of CAC Specialty's M&A Solutions team. Mr. Krayner was most

recently a director at Willis Towers Watson PLC.



Liberty Mutual Insurance Group appointed **David B. Williams** to the newly created role of multinational senior vice president and chief underwriting officer

for its global risk solutions operation. Mr. Williams, based in Boston, was most recently financial lines vice president for Chubb North America.



W.R. Berkley Corp. named **Robert Standen** executive vice president. Mr. Standen will be based in Greenwich, Connecticut, in this newly created position. He previously was

president of Key Risk Management Services LLC, a Berkley company.

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New surprise twist for 'Tiger King'

Lions and tigers and polygamy and sequins cowboy shirts, private zoo rivalries, televised death threats, country music videos, wild animals, leopard spandex, and — but wait, there's more!

Enthusiasts of Netflix's "Tiger King" docuseries now have one more surprise twist in the show: star and Oklahoma zoo owner Joe Exotic, born Joseph Schreiber, is now suing the U.S. Department of Interior and the U.S. Federal Wildlife Service. From his prison cell.

According to his lawsuit, accessed by celebrity news site TMZ.com, Mr. Exotic is going after the federal government for placing the "generic tiger" on the endangered species list. Mr. Exotic claims in his lawsuit that this was "only" to put private zoos out of business, and he wants \$78.84 million for the loss of his personal property and loss of 18 years of work with tigers, TMZ reports.

Classy agent helps students

A Bowling Green, Kentucky, State Farm insurance agent is putting the company's slogan "Here to Help Life Go Right" to work by printing and delivering school homework packets for students who may not have access to printers.

Ginger Cleary told The Bowling Green Daily News in April that she remembers the former classmates of her now college-age son came from households without printer access, so she'd make her office available on weekends or after school.

Now she's printing and delivering materials to students facing school closures because of the coronavirus.



CHEERS AND GOOD LIGHTING: HAPPY HOUR GOES VIRTUAL



With a few clicks, co-workers are taking to online work-from-home platforms such as Zoom to do what colleagues do when the day is done: drink.

As reported by numerous news outlets, virtual happy hours are filling that hole in social connections barred by coronavirus quarantining and mandatory telecommuting policies.

"They clink glasses on screens, say 'Cheers!' and make toasts, sometimes with dogs in their laps," reported the Wall Street Journal. The New York Times provided tips on a better online soiree including instructions to "get dolled up." (Because your colleagues don't want to see you in your pajamas?)

The Associated Press went another route, touting: "The hottest new bar's dress code? Your sweatpants. And you don't even have to leave your couch." There's even a new beverage going viral: "quarantini."

Working 9 to 5 means Miller Time

Typically frowned upon, drinking on the job is becoming more widespread during the coronavirus pandemic as more and more workers are telecommuting. Really? Yeth.

An interactive map on Alcohol.org, which conducted a survey of 3,000 telecommuting Americans, found that 67% of workers in Hawaii, 50% of those in Virginia and New Hampshire, 47% of those in Kansas and Idaho, 44% of those in Nebraska, 42% of those in Montana, and 38% of those in California and New York reported that they are drinking while working from home. For the rest of the country, the numbers are in the 20% to 30% range.

Their No. 1 choice of drink? Beer, according to the survey, which also found that one-fifth of workers stockpiled booze for the pandemic.



A street name for tower? That's wack!

Aon PLC remains mum on plans to rename the Willis Tower after it announced plans to purchase Willis Towers Watson PLC and to incorporate all the brokerage services under its own brand. Nobody knows, but Chicago Magazine recently took a stab at it, listing a few contenders for the 110-story skyscraper tower Willis, renamed 11 years ago.

Up first: "Aon Tower." There's already one of those towering over the iconic Chicago skyline. Then there's "233 South Wacker." The address. (Yawn.) "United Tower?" Unlikely; tenant United Airlines opted out of doing so last year, the magazine points out. "Sears Tower?" It's original name; perhaps a nostalgic gift to the city. And finally, there's "Two Three Three" or "The Wacker." The hometown magazine was having none of it: "Could anyone with a straight face really risk the once-proud Sears Tower being nicknamed 'The Wack?'"



2020 CANNABIS & HEMP WEBINAR SERIES

THE STATE OF THE CANNABIS INDUSTRY IN THE WAKE OF COVID-19

Wednesday, May 6 at 12pm-1pm EDT

The COVID-19 pandemic has and will continue to cause a historic shift in the economic landscape across the globe. For cannabis companies, this comes at a time many were already navigating historic shifts in cannabis legalization and the challenges facing a nascent and fast-emerging industry. This panel discussion will examine the new challenges and realities for cannabis businesses in the post-COVID-19 economy, while exploring how risk management practices and insurance markets can and will shape the industry's response.



Wes Hein
Head of Legal, Compliance
& Government
Mammoth Distribution



Gary Kaminsky
Director of Legal
Compliance
Acreage Holdings



Lindsay Robinson
Executive Director
California Cannabis
Industry Association



Dean Rocco
Attorney at Law
Wilson Elser
MODERATOR

STATE OF THE HEMP & CBD INDUSTRY

Wednesday, May 13 at 12pm-1pm EDT

Speaker Panel: Gary Broadbent (GenCanna Global, Inc.), Stephen Konigsberg (Tikun Olam USA), Neil Willner (Wilson Elser)

Moderator: Eduardo Provencio (Mary's Medicinals)

CANNABINOID PRODUCT RISK MANAGEMENT

Wednesday, May 20 at 12pm-1pm EDT

Speaker Panel: Arun Kurichety (KushCo Holdings, Inc.), Tom Lewandowski (Gradient), Rocco Petrilli (NCRMA)

Moderator: Ian Stewart (Wilson Elser)

CANNABIS SPECIALTY LINES, WHERE ARE YOU?

Wednesday, May 27 at 12pm-1pm EDT

Speaker Panel: Summer Jenkins (Cannasure Insurance Services), Corey Tobin (Bolton & Co.)

Moderator: Chris Boden (Crouse & Associates)

CANNABINOID MEDICINE: WHAT PRACTITIONERS NEED TO KNOW

Wednesday, June 3 at 12pm-1pm EDT

Speaker Panel: Brad Hunt (Pro Mal RRG), Dr. Jessica Knox (Doctors Knox), Inc. Dr. Paloma Lehfeldt (Vireo Health)

Moderator: Lori Semlies (Wilson Elser)

CANNABIS UNDERWRITING: DISCERNING GOOD, BAD, AND UGLY

Wednesday, June 10 at 12pm-1pm EDT

Speaker Panel: Erich Bublitz (Admiral Insurance Group), Kevin Maher (Canopius US Insurance)

Moderator: Charles Pyfrom (CannGen Insurance Services, LLC)

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