

MEDICAL DEVICES: Failures cause pain in treating worker injuries - **PAGE 10**

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JULY 2019

**SPECIAL
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COVER STORY

Poaching suits alleging brokers breach nonsolicitation and noncompete agreements when they jump to a different firm appear to be on the rise. While consolidation and a war for talent appears to be fueling the trend, risk managers can be left in the middle while brokers fight it out. **PAGE 20**

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SPECIAL REPORT: BROKER PROFILES & RANKINGS

Business Insurance's annual Broker Profiles issue details changes in the ranks of the 10 largest insurance brokers worldwide and the top 100 brokers of U.S. business, highlights market trends and profiles the leading brokerages. **PAGE 25**

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Workers comp claims made by ex-workers who claim injuries after a separation require careful handling, attorney Anthony Natale III writes. **PAGE 49**

VIEW FROM THE TOP

DAVID WALSH

David Walsh established CFC Underwriting Ltd. as a managing general agent in London nearly 20 years ago to offer newly developed cyber liability insurance coverage but had to wait until about 2015 before the cyber market started to take off. He discusses developments in the cyber liability market, how technology is changing insurance, and the outlook for Lloyd's amid proposed reforms of the market and the prospect of Brexit. **PAGE 18**



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AI use surges ahead of regulatory framework

BY CLAIRE WILKINSON

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The emerging and expanding use of artificial intelligence and machine learning by organizations across different industry sectors is driving federal and state regulatory efforts to develop a framework or standards to guide the use of the technologies.

As regulators, insurers and others in the insurance industry seek to develop regulations and guidance on the use of algorithms or artificial intelligence systems, keeping regulators informed on developments will be key to ensure that concerns about consumer protection don't stifle innovation, experts say.

Communication is "imperative" so that regulators understand what insurers are doing and understand the benefits to everybody, said Stephen Clarke, vice president of government relations for Jersey City, New Jersey-based Verisk Analytics Inc.

"People tend to take a very Orwellian perspective on artificial intelligence ... If we cannot tell our story effectively, you perhaps will see more (cautious) legislators and regulators throwing up roadblocks."

Stephen Clarke,
Verisk Analytics Inc.

"People tend to take a very Orwellian perspective on artificial intelligence and machine learning and think of the worst. A lot of that has to do with a lack of specific knowledge," he said.

"It's not just insurance carriers that ben-



efit from deploying these technologies, it's the policyholder. You can deliver a better customer experience when you're allowed to use some of these tools," said Mr. Clarke.

"If we cannot tell our story effectively you perhaps will see more (cautious) legislators and regulators throwing up roadblocks," he said.

Jon Godfread, insurance commissioner for North Dakota, said that "five to 10 years down the road, artificial intelligence and machine learning will be a natural part of most industries."

"While we're on the front end of trying to understand what goes into these algorithms and what the models look like, we've also got to be cognizant that the reality is our consumers are going to be demanding these services," said Mr. Godfread.

Part of the challenge is that technological developments, such as artificial intelligence tools, may not fit into a regulated environment, said Mark Radcliffe, a partner at East Palo Alto, California-based DLA Piper U.S. LLP.

"Insurance companies — and regulators, too — need to demand more transparency from the tools," said Mr. Radcliffe.

Flexibility will be critical to any legislative or regulatory steps in the artificial intelligence area, experts say.

Natalie Pierce, San Francisco-based co-chair of the robotics artificial intelligence and automation industry practice group at employment law firm Littler Mendelson P.C., said that what follows may be a set of AI standards that keep pace with evolving technologies, similar to the way international and safety organizations have dealt with safety issues around robots and collaborative robots, also known as "cobots."

"It's not that we've updated our Occupational Safety and Health Administration standards so that we have real regulations that tell employers exactly how to bring these technologies onto the factory floor, into the workspaces and laboratories. It's just that we have strong and capable private and government organizations working together to create best standards and practices," said Ms. Pierce.

These standards have resulted in many positive developments such as a reduction in worker injuries and increases in safety practices because "they are agile and flexible enough to change with the changing technologies," she said.

The regulatory and statutory regime that has been set up for the insurance industry is flexible and gives regulators tools to carry out their prime objectives of consumer protection and financial solvency, according to Mr. Clarke.

"If you look at the protections already built into the rating law where rates must be adequate, but may not be excessive nor unfairly discriminatory, and also the Unfair Claims Settlement Practices Act, there are a lot of protections already there today that work well in any environment," he said.

But whether it is possible to legislate or even regulate something as fast paced as artificial intelligence technology remains to be seen, experts say.

"What exists today in the rule-making and set of laws in the United States and around the globe just aren't prepared for the level of change," said Frank Sorrentino, Englewood Cliffs, New Jersey-based chairman and CEO of ConnectOne Bank.

"We've been through this before. There have been other points in history where there's been this dramatic innovation taking place in the marketplace... We will have to figure this one out too," said Mr. Sorrentino.

"If you look at the turn of the century, we've had these similar jumps in technology before and we've been able to figure it out and work through it," said Mr. Godfread.

"It's about putting up fence posts and guideposts. When you start to get specific and say you can or cannot use this data set or you can or cannot use this certain piece, the minute you put that on paper it's out of date," he said.

"It's about the spirit of the law and how it's being applied," he said.

REGULATORS STRIVE TO CATCH UP AS TECHNOLOGY EVOLVES

It will take time for regulatory agencies to build up the talent and knowledge needed to monitor evolving artificial intelligence technologies, observers say.

Many regulatory offices don't have the expertise to assess and implement artificial intelligence regulations, said Sharad Sachdev, AI and analytics lead for Accenture PLC's Insurance practice.

"How do you monitor the bias in a data set if the talent that's sitting on the monitoring side doesn't understand it?"

said Mr. Sachdev.

"It's important to recognize there's going to be a little bit of lag by the time talent comes up to speed on the regulatory side," he said, adding that this is a resource gap that affects industry in general, not just regulatory agencies.

Even commercial companies are



having difficulty hiring artificial intelligence resources, said Mark Radcliffe, a partner at East Palo Alto, California-based DLA Piper U.S. LLP.

"Data scientists

are very expensive and it's difficult for the government sector to compete in this area," Mr. Radcliffe said.

Insurance regulators are in the process of building the appropriate skill sets to regulate artificial intelligence, said Stephen Clarke, vice president of government relations for Jersey City, New Jersey-based Verisk Analytics Inc.

"It's a new field, and many of the colleges and universities are for the first time having some focus on data science and data development programs," Mr. Clarke said.

Claire Wilkinson

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Flood planning efforts gain attention

BY GLORIA GONZALEZ

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Mapping and mitigation of flood risks is getting more attention at the federal level after years of lobbying efforts by industry stakeholders, experts say.

The Federal Emergency Management Agency has historically been given limited resources to update flood maps and to support and promote mitigation of flood exposures for properties covered by the National Flood Insurance Program even though floods are the most common and costly natural disaster in the United States, but a new effort to extend the NFIP could change that.

In June, the U.S. House of Representatives Financial Services Committee approved H.R. 3167, the National Flood Insurance Program Reauthorization Act of 2019, on a bipartisan 59-0 vote. The measure includes a five-year extension for the NFIP, which had been given 12 short-term extensions and lapsed twice since fiscal year 2017.

"I wish it was longer than five years, but five years at least gives us some breathing room," said John Burkholder, chair of the Risk & Insurance Management Society Inc.'s external affairs committee.

The bill would provide \$500 million a year over five years for flood mapping and requires FEMA to utilize updated mapping technology, such as LiDAR, and ensure that maps are adequate for identifying future flood risk.

"One of the things that the catastrophes of the last several years has shown us is that our mapping is still inadequate," said Chad Berginnis, Madison, Wisconsin-based executive director of the Association of State Floodplain Managers. "FEMA is still really only mapping the 100-year floodplain and the 500-year floodplain, but the required elements are future conditions mapping, residual risk mapping — the residual risk of flood even in areas that are protected by dams and levees — ... and also expanding the maps in the country to areas of potential development and growth."

The bill would create a new flood zone that accounts for levee-affected areas on flood maps and provides for insurance rates in accordance with the protection afforded by the levees.

Areas protected by levees have a unique flood risk, Mr. Berginnis said. "The flood risk is fairly low until a certain flood height is reached, and then if Mother Nature throws a bigger flood at you, the risk all of a sudden becomes catastrophic because the levee gets overtopped. The current flood zones we have are not reflective of the levee risk."

The mapping provisions are "extraordinarily important," in part because they help ensure that mitigation efforts target the right



Congress is considering legislation that includes improved mapping for flooding, such as floods that affected Fort Smith, Arkansas, in May. REUTERS

SIGNIFICANT OTHERS

Significant flood events — defined as those with 1,500 or more paid losses or a major hurricane — have been costly for the National Flood Insurance Program in recent years.



Source: Federal Emergency Management Agency data, current as of March 21

locations, Mr. Burkholder said. "To address a risk, you have to have the right information," he said.

On the mitigation front, the bill would provide \$200 million each year for five years for the predisaster hazard mitigation program and create the first community assistance program for floodplain management by providing community assistance grants and technical assistance, among other steps — funding the effort with \$20 million each year for five years.

"I think they did a very good job of addressing some concerns," said Patty Templeton-Jones, president of Wright Flood, a Write Your Own insurer in St. Petersburg, Florida. "Mitigation and mapping — these are all very important things."

The bill would authorize the FEMA Administrator to supplement the Increased Cost of Compliance program, which provides up to \$30,000 to help cover the cost of miti-

gation measures to reduce flood risk, by raising the maximum amount to \$60,000. Currently, an ICC claim must count toward the total claim of the property, which becomes "problematic when a building is substantially damaged," but the bill would allow ICC benefits to be in addition to the maximum limit under a standard policy — \$500,000 for nonresidential properties, Mr. Berginnis said.

"Those changes are much more reflective of the true cost of doing those kinds of mitigation activities as well as giving folks that have been substantially impacted the ability to tap into ICC," he said.

The bill also authorizes FEMA to enter into agreements with eligible states to establish a flood mitigation assistance revolving loan fund to decrease flood risk, supporting eligible activities such as elevation or home relocation. But the bill did not place much emphasis on the problem of repetitive loss properties, which have historically accounted for 25% to 30% of the program's losses, said Laura Lightbody, director of the Flood-Prepared Communities initiative of the Pew Charitable Trusts in Washington.

"This is a problem that we have focused a lot on not only because these properties are a financial drain on the federal insurance program, (but) they can be a real problem for homeowners and for communities," she said. "But (the bill) could go further in terms of really holding communities accountable to take on these problem areas that have been identified as areas that flood over and over again."

Observers are cautiously optimistic about the bill's chances in the full House and the U.S. Senate, especially because it does not tackle more divisive issues such as how to address the program's nearly \$21 billion debt.

Congress will eventually have to deal with the debt because it is "unsustainable," but it was "wise to go ahead and pull out the issues that have been roadblocks in the past," Mr. Burkholder said.

REAL-WORLD COSTS GET THEIR DUE

A new rating initiative for the National Flood Insurance Program may cause some short-term pain for buyers of flood coverage but is a necessary step toward putting the program on sound financial footing, experts say.

In March, the Federal Emergency Management Agency announced adoption of an approach to rating flood risk — dubbed Risk Rating 2.0 — that experts say can more accurately capture an individual property's true risk of flood and price that risk more appropriately. But in June, Rep. Maxine Waters, D-California, chairwoman of the U.S. House of Representatives Financial Services Committee, vowed to resist efforts to significantly raise premiums.

"The overall intent of it is to make sure policyholders are paying rates that more closely reflect their flood risk," said Laura Lightbody, director of the Flood-Prepared Communities initiative of the Pew Charitable Trusts in Washington. "There may be some short-term heartburn for what could ultimately be a longer-term emphasis on rates reflecting true flood risk."

Rep. Waters said her concerns were rooted in her previous experience with the Biggert-Waters Flood Insurance Reform Act of 2012, which intended to put the NFIP on a more fiscally sound path but featured reforms that Congress rolled back amid pressure from constituents over premium rate increases.

Such concerns are "certainly valid," said Jon Gentile, vice president of government relations for the National Association of Professional Insurance Agents in Washington.

But the initiative has "great potential to advance the entire industry," said John Dickson, president of Aon Edge in Kalispell, Montana.

"Risk Rating 2.0 is intended to say 'if you have a very risky location, you're going to have to pay the right premium for a financial services program to bear that risk,'" Mr. Dickson said. "By its definition, the risky locations are not going to be affordable. They shouldn't be because of the scope of the risk."

Gloria Gonzalez

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Wholesale Specialty Insurance

Pot market tests appetite of cyber insurers

BY MATTHEW LERNER

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As the cannabis industry expands in the United States with increasing numbers of states legalizing some production and sales, firms involved in the sector often are looking to buy insurance coverages to protect their business — including cyber liability insurance.

But unlike other sectors where insurers and brokers are aggressively promoting cyber coverage, few insurance market participants offer cyber insurance to cannabis-related companies, experts say.

The federal classification of cannabis as a controlled substance is the main deterrent to insurers entering the field, as legal uncertainty would surround potential claims, they say.

Yet there is demand for coverage as cannabis manufacturers store digital records of their products' ingredients, much like the pharmaceutical sector, and high-tech growing facilities can be vulnerable to cyberattacks, experts say.

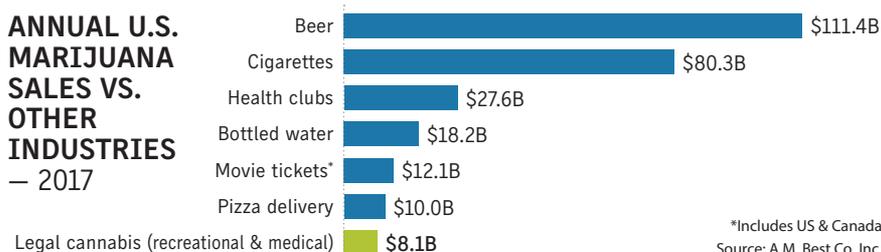
But there is no standard insurance offering for the sector and brokers must court insurers, said Ian A. Stewart, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles, where he heads the law firm's cannabis team working with insurers and brokers.

"For a broker to place cyber insurance for cannabis businesses presently, they have to go to discrete markets on a sort of one-off basis," Mr. Stewart said. Brokers must sometimes "push" insurers to cover cyber risks for cannabis, and an insurer "may look at a potential insured and say OK but not write another," he said.

Broker sources say cyber capacity is constrained in a market with few participants. "The marketplace is limited," said Brian Savitch, senior vice president of financial services with Worldwide Facilities LLC in San Francisco. "There's a handful of markets that are writing cyber for cannabis."



ANNUAL U.S. MARIJUANA SALES VS. OTHER INDUSTRIES — 2017



Lloyd's of London, a traditional market for hard-to-place risks, bars syndicates from writing cannabis-related business in the United States due to its federal illegal status. Last year, however, it permitted syndicates to write cannabis business in Canada, which legalized adult recreational use.

"The cyber market itself isn't all that big — and particularly as it relates to cannabis, certainly much smaller," said Michael Pieciak, commissioner of the Vermont Department of Financial Regulation in Montpelier, which regulates banks, securities, traditional insurance and captive insurers for the state, where marijuana is legal for both medical and recreational use.

Kyle Burnett, regional vice president of property and head of excess and surplus property for Axa XL, a unit of Axa SA, in New York, says he receives submissions

each week and phone calls every month about cannabis-related cyber coverage but the insurer is not covering the risk due to the legal uncertainty.

Alternative risk transfer providers are also looking at the risk.

"Our regulatory people have been very understanding of how hard it is to find some of these niche coverages," said Kevin Cross, founder of the Specialty Agriculture Risk & Financial Association in Grand Rapids, Michigan, who also serves as vice president of the Specialty Agriculture Insurance Company of Michigan, a captive insurer for Michigan cannabis-related businesses.

Mr. Cross said the association hopes to expand to all 33 states that have medical or recreational cannabis provisions, and that in addition to working on title insurance it

is looking to develop a cyber product.

The cannabis industry — from growers to retailers — has cyber exposures like other industries and also has specialty exposures, experts say.

"Cannabis as an industry presents some unique risk exposures," sharing attributes with the agricultural, manufacturing and pharmaceutical sectors, said Patrick Ryder, vice president and management and professional liability segment leader in Denver for Hub International Ltd.

Tracking and tracing of ingredients, such as plants, generates huge amounts of data that is stored and protected, he said. "When you're growing cannabis in California, you're tracking every single plant you grow."

A ransomware attack on industrial systems can cause substantial damage, such as if a breach occurred with the system controlling the nutrients and lighting in a growing operation.

As the cannabis industry expands, so too will its data and cyber exposures.

"We're in the digital age, and that's the way the way the world is going," said Mr. Burnett of Axa XL.

"The industry definitely needs additional markets opening for cyber coverage," said Mr. Stewart of Wilson Elser.

Mr. Savitch of Worldwide said he has placed cyber policies for cannabis-related businesses, mainly with limits of \$1 million and \$2 million, although he has been quoted limits as high as \$5 million.

"It's challenging to build limits," he said, adding that although most of the companies buying the coverage are first-time buyers, some of the larger public Canadian companies have "lofty" valuations and "even some (multistate operators) are making \$50 million to \$200 million annually, which is a pretty sizable company."

"There is not tremendous capacity; there is not tremendous appetite (from insurers); so to build significant limits has proven to be difficult," said Mr. Ryder.

PLACING CYBER RISKS IN CAPTIVES MAY EXPAND CANNABIS SECTOR OPTIONS

Many policyholders in established industries place cyber risks in captives, a risk management strategy that could become more attractive to cannabis-related operations because captives can offer greater control over coverages, experts say.

"Cyber is a conversation a lot of companies are having and they are putting their cyber risks more and more into the captive world and Vermont captives," said Michael Pieciak, commissioner of the Vermont Department of Financial

Regulation in Montpelier, which regulates banks, securities, traditional insurance and captive insurers.

Michigan's Specialty Agriculture Risk & Financial Association, an alternative risk transfer provider to the state's cannabis industry, is in "the research phase" of putting together a cyber policy, according to founder Kevin Cross, also vice president of captive the Specialty Agriculture Insurance Co. of Michigan in Grand Rapids.

The captive's first product is a financial responsibility coverage mandated by

the state for cannabis licensees, which comprise the groups' memberships.

Under Section 408 of the state's Medical Marijuana Facilities Licensing Act, an applicant/licensee must provide proof of financial responsibility in an amount not less than \$100,000 for liability for "bodily injury" to "lawful users" resulting from the manufacture, distribution, transportation, or sale of "adulterated marijuana."

The group is now working on a title insurance product for real estate purchases.

A captive cyber insurance product, Mr.

Cross said, would be "created for members," and thus be more specific to their needs.

"We do have conversations with our clients about captives, and cyber risk is something we have considered putting into captives, but once you get carriers willing to write cyber in this space, the premiums are still pretty attractive, so there's more of a transfer appetite," said Patrick Ryder, vice president and management and professional liability segment leader in Denver for Hub International Ltd.

Matthew Lerner

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Comp payers wary of implanted pain relievers

BY ANGELA CHILDERS

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Ineffective medical devices can trigger significant increases in the cost of a workers compensation claim, but insurers have no recourse but to pay for the devices in most instances, experts say.

Spinal cord stimulators are some of the most problematic implants, according to various insurers, with a recent study showing a high removal rate of the pain relief devices. More information on the devices should be shared with health care providers, patients and others to resolve the problem, experts say.

Spinal cord stimulators are implanted and deliver low-voltage electrical current to the spinal cord to block pain, according to the American Association of Neurological Surgeons in Rolling Meadows, Illinois, which estimates that about 50,000 spinal cord stimulators are implanted worldwide each year. Since 2005, the devices have been recalled at least 20 times, according to a search of the U.S. Food and Drug Administration's recall database.

"Spinal cord stimulators are a problem for all of us when they fail," said Julie Fortune, chief claims officer for Charlotte, North Carolina-based claims administration company Arrowpoint Capital Corp. "They can balloon the cost and add to the length of a claim."

One of the biggest challenges with the devices is that there is no objective way to know if a spinal cord stimulator works, said Dr. Teresa Bartlett, senior medical director at Memphis, Tennessee-based Sedgwick Claims Management Services Inc. Whereas a physician can tell whether a heart defibrillator is working based on a patient's heartbeat, a patient self-reports whether a spinal cord stimulator has effectively reduced his or her pain. And despite the issues, if it's deemed reasonable and necessary, the comp insurer must pay for it.

"There are doctors who specialize in (spinal cord stimulators) and will convince patients that it will help them, but we don't see a lot of success with them at all," she said. "It's frustrating — I wish the rest of the



states would go by the way of Washington."

In Washington state, the Division of Labor and Industries will not pay for spinal cord stimulators in workers compensation for any reason. Likewise, the state will not pay for intrathecal pumps, which use a catheter to deliver medications near the spinal cord, or lumbar fusion surgeries if degenerative disk disease is present, said Gary Franklin, the division's medical director and a research professor at the University of Washington in Seattle, who says his research revealed that the average cost of a spinal cord stimulator over five years is more than \$100,000.

Washington state, which has a monopolistic workers comp program, passed legislation in 2006 to create its Health Technology Assessment program, which reviews the efficacy, safety and cost effectiveness of medical devices, and followed that up with legislation in 2012 requiring

that state covered health care insurers — which includes workers comp — can only pay for medical devices determined to be safe and effective under the HTA program. No other state has a similar law at this time, he said.

A quarter of patients who had failed back surgeries and received spinal cord stimulation surgery had their devices removed within six years, according to a May study published in the medical journal *Neurosurgery*.

In a 2018 study published in the *Journal of Biology and Medicine*, researchers said that the spine implant and devices industry is expected to reach \$16 billion by 2020, and that the average cost of a surgery is around \$30,000 with an annual maintenance cost of \$10,000 if the patient has post-operative complications, which the researchers said was "quite frequent." *Business Insurance* reached out to AANS

and the International Neuromodulation Society, but neither association responded to requests for comment.

Coding in workers compensation has made it very difficult to find how many of the devices fail the patients, said Christine Sims, medical case management director at Denver-based Pinnacol Assurance. But her research of Pinnacol claimants revealed significant costs associated with spinal cord stimulator failure, including one claim from 1985 that has racked up more than \$3 million in claims costs and is still active.

Spinal cord stimulators are the most frequent failed medical device for workers compensation claimants at Portland, Maine-based The MEMIC Group, said Tom Wiese, vice president of claims. The devices "more often fail than succeed," and he estimates that they cause complications in MEMIC comp patients 90% of the time, and that many will undergo multiple surgeries before the device is removed.

When the insurer finds out a spinal cord stimulator has been proposed, the claim goes through utilization review and alternative pain management programs are offered "because (spinal cord stimulators) are just not successful," said Mr. Wiese. "It's not just the additional cost of the surgery and surgical instruments, but also the cost of the disability that you're paying on the claim."

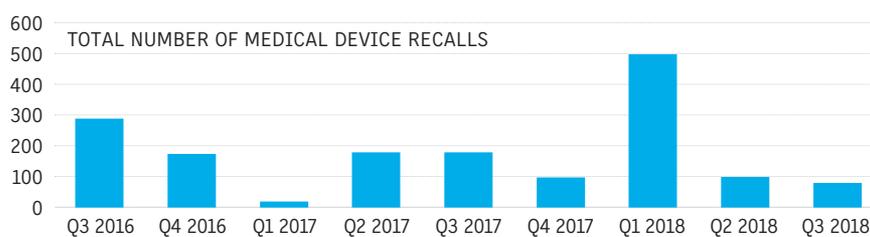
Robert Baer, claims executive at Arrowpoint, said he would like to see more information regarding the problems with spinal cord stimulators in the medical community that treats workers comp patients, as well as the quasi-judicial bodies that make care determinations.

"The injured worker needs to have the understanding that this may not be the answer and may not address their chronic pain," Mr. Baer said, "and keep that in mind going through the process to have one of these implanted."

"We need to start being a little more proactive with alternative therapies ... we've got to find a way to help patients deal with the pain rather than a surgery," said Dr. Bartlett of Sedgwick. "It ends up causing more problems."

DEVICE RECALLS SPIKE

The number of medical device recalls spiked in the first quarter of 2018, with 42% related to a quality issue, according to Stericycle Inc., a consulting company for companies in highly regulated markets.



Source: Stericycle Inc.

STATES CRACK DOWN ON EXPERIMENTAL TREATMENTS IN WORKERS COMP

Workers compensation insurers are generally required to cover any medical care that is "reasonable and necessary," and implanted medical devices are no exception, but some states have workers compensation statutes that specifically exclude experimental treatments.

Florida's comp laws state that a "service should be widely accepted among practicing

health care providers, based on scientific criteria, and determined to be reasonably safe. The service must not be of an experimental, investigative or research nature."

California's formulary is based on the American College of Occupational and Environmental Medicine, which does not recommend spinal cord stimulators, except for select patients with complex regional

pain syndrome.

In some cases, courts have held that workers comp insurers are not required to pay for the implantation of some devices. In *Harborth v. State ex rel. Department of Workforce Services*, the Wyoming Supreme Court denied in 2018 a worker's request for the implantation of artificial spine disks because the treatment could

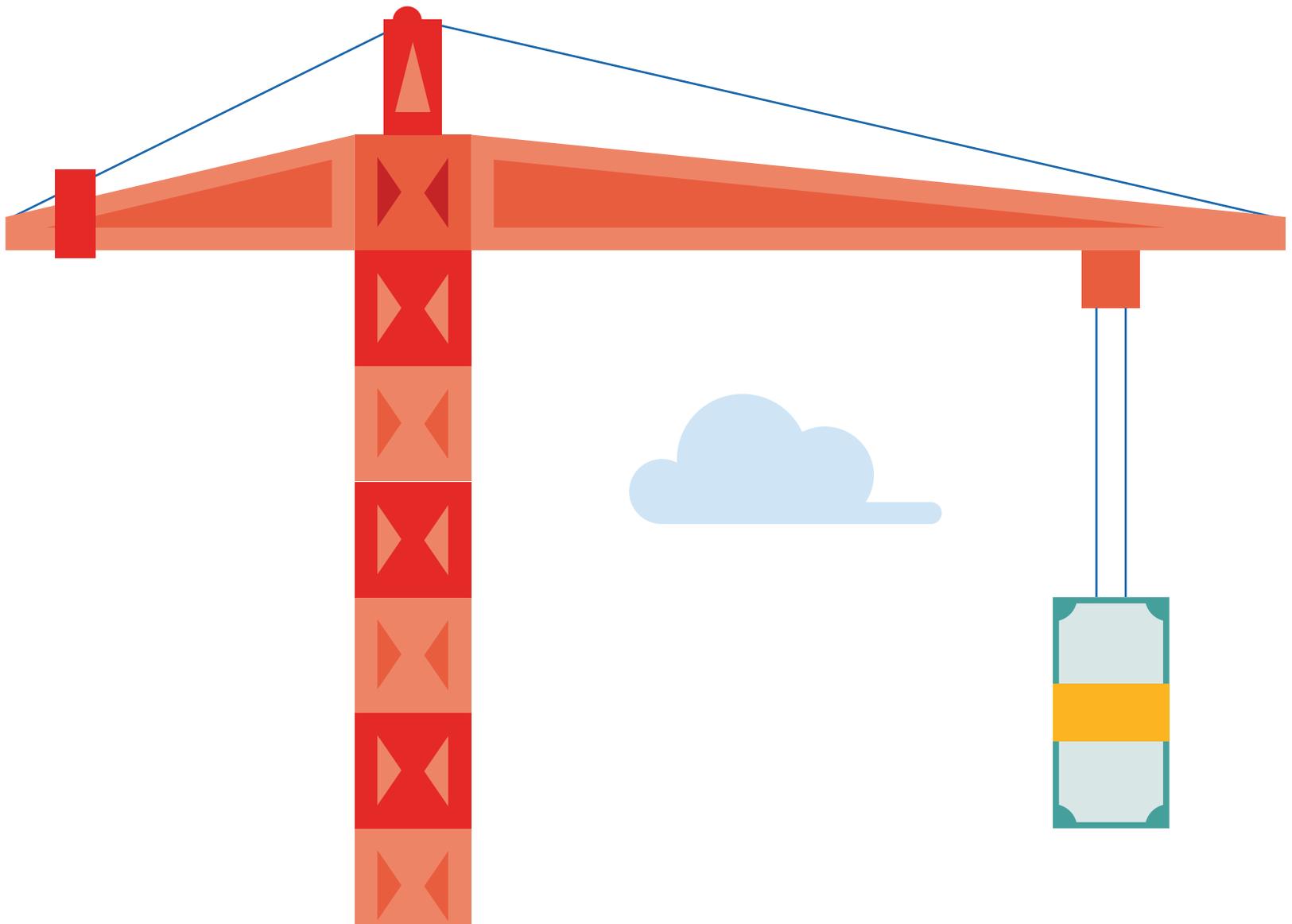
not be shown to be "safe and effective."

Thomas Holder, president of the Workers Injury Law & Advocacy Group, said he is concerned with unilateral denials and noted that when insurers deny surgical procedures, that his clients are "just sitting there waiting for medical care in pain — not improving and not being helped to return to the workforce."

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Opioids linger in legacy comp claims

BY LOUISE ESOLA

lesola@businessinsurance.com

While the overall use of opioids among injured workers is trending downward due to the combined efforts of doctors, insurers, pharmacy benefit managers and regulators, older claims remain troublesome, experts say.

These “legacy claims” include opioid prescriptions that are several years old and may include other drugs aimed at addressing the side effects of opioids, ranging from constipation to insomnia. The claims represent a disconnect between prescribing physicians, claims handlers, nurse case managers and oftentimes lawyers because of the lack of weaning protocols to address longtime opioid use.

“We’ve created a very desperate situation here,” said Chris Hart, a former pharmacist and recovering opioid addict in Findlay, Ohio, who now teaches courses on dependency and withdrawal.

“People who are injured have been on these medications for a long time, and if they go off, withdrawal symptoms kick in,” he said.

Withdrawal can happen on the first day of weaning and can trigger symptoms such as heart palpitations, cramping, tremors and more pain, he said.



A LASTING LEGACY

An analysis of claims data for 1,030 California workers injured in 2013 and 2014 who were taking opioids in higher doses found that nearly half were weaned off opioids within two years.

- 47% of injured workers with chronic opioid use weaned off the painkillers completely within 24 months;
- Injured workers who did not wean reduced their opioid dosage by an average of 52%;
- The median time from chronic opioid use to weaning completely was eight months.

Source: Workers Compensation Insurance Rating Bureau of California, 2018

“I have people who have not been able” to navigate the complicated health scenarios involved in weaning, said Mike Pringle, Manchester, New Hampshire-based medical case manager who oversees chronic pain services for the Windham Group Inc.

Heart conditions and fear of pain are among the biggest hurdles, he said.

A challenge in addressing legacy claims is that most stakeholders do not know how many active claims fit into the category.

California, for example, in its formulary for injured workers that requires utilization reviews for all opioid prescriptions, mandated that doctors create weaning programs for long-term opioid patients by April 2018. A spokesman with the Department of Industrial Relations told *Business Insurance* in an email that it is not tracking patients who are under



weaning programs and did not respond to follow-up questions on why.

“The problem with (California’s guidelines) is they didn’t put any teeth in it,” said Dr. Michael Coupland, West Palm Beach, Florida-based network medical director for IMCS Group Inc., a national network of clinicians who focus on opioid treatment disorder among injured workers.

A doctor he works with in California, for example, oversees 13 clinics with an estimated 7,000 comp patients. As many as 5,000 of them would require a weaning program created by a doctor, under the state formulary rules, he said.

“That was untenable,” Dr. Coupland added. “The goal is philosophically aligned, but the scope of the problem is just too large.”

Ohio is another state that has made headlines in its tackling of the opioid epidemic in workers compensation. A spokeswoman with the Ohio Bureau of Workers’ Compensation reported that the number of opioid doses prescribed in the system fell 66% in seven years.

But the state does not carve out older claims from its data, so it’s unclear whether the drop represents fewer opioids in newer claims or the older ones where an injured worker might have been prescribed opioids for several years, according to the spokeswoman.

Several insurers and pharmacy benefits managers also said they did not have this type of data.

AmTrust Financial Services Inc. in May reported that it saw the percentage of claims with opioids decrease to 25% in 2018 from 60% in 2017, partly due to improved monitoring of all claimants prescribed opioids. The New York-based insurer intends to look into how many of the older claims specifically are seeing reductions, Melissa Burke, Southington, Connecticut-based head of managed care and clinical for AmTrust, told *Business Insurance*.

Tracking such legacy claims is not simple, other experts say.

“There are no easy ways of finding who these claimants are,” said Marcos Iglesias, Sunrise, Florida-based chief medical officer for Broadspire Services Inc., the third-party administrator unit of claims manager Crawford & Co.

“Legacy claims have been open for years, and many of them predate our success in reducing opioids,” he said.

Doctor coding may have something to do with it, according to Dr. Iglesias. Doctors are not putting in their charts or coding for payers key words or phrases such as “opioid use disorder” or “dependence,” he said. Doctors are mostly billing for a primary diagnosis, with little to no details on opioid dependency, which in most cases would trigger the necessity to wean, he said.

Dr. Iglesias estimated that one in four older workers comp claims with opioids attached would fall under opioid dependency or opioid use disorder.

“We have no reason to think we are immune to this,” he added. “To me, that is frustrating that we can’t pinpoint them that easily.”

Gathering data on the claims is further complicated by patients who use a primary care physician under their group health program to access opioids, which is common, said Dr. Teresa Bartlett, Troy, Michigan-based senior medical officer for Sedgwick Claims Management Services Inc. “There are so many variables we don’t know,” she said.

Another problem is that in some older claims indemnity has settled and it is just the medical component remaining, according to Dr. Bartlett. In some scenarios a longtime doctor “pushes back” on reducing opioids for the patient, whom the doctor considers “stable,” she said.

Until recently, “nobody has been paying attention to” legacy claims, she said.

WORKERS TAKE DRUG FIGHTS TO COURT

Injured workers who lose their opioid prescriptions are engaging attorneys to try to maintain access to the drugs, according to legal experts.

Charles Cochrane, a Roseville, Minnesota-based attorney whose practice, Cochrane Law Offices, sees mostly injured workers, estimates that half of his caseload is “fighting about narcotics.”

In one such case, decided by the Supreme Court of Minnesota in April, the employer was trying to force weaning for a metal worker who had been on a steady dose of opioids since an ankle injury in 2002 left him with “complex regional pain syndrome,” according to documents in *William H. Johnson v. Darchuks Fabrication Inc. et al.* The court ruled that the employer can apply its treatment parameters if it has accepted the injury as compensable, which it had, and if doctors can gauge whether the treatment is medically necessary. The case was remanded back to a lower court to consider the employer’s proposal to monitor the claim over continuing the drug protocol.

“The problem is for his condition, there is no treatment” other than drugs, said Mr. Cochrane. “We have tons of such people in this office.”

“We are seeing more and more of these (employers) coming back saying we are going to take you off of these medications,” said Sam Marcellino, Columbus, Ohio-based associate at Barkan Meizlish LLP, which represents injured workers. “These are legacy claims where people have been taking these medications for years. They are not drug addicts. They are taking these for relief.”

Such cases will continue to increase as insurers and regulators try to rein in opioid prescribing, said Eugene Keefe, Chicago-based partner at Keefe, Campbell, Biery & Associates LLC, a comp defense firm.

“The good thing about most (workers compensation) hearing officers across the country is they are not going to order a lifetime of narcotics,” he said.

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Catastrophe losses spill into comp sector

BY ANGELA CHILDERS

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Natural catastrophes can cause significant disruptions in the workers compensation sector ranging from interrupting medical care and payments for injured workers to displacing the employees at insurers and third-party administrators charged with handling their cases to triggering an uptick in claims from first responders after events.

While some states have eased regulations for workers comp insurers in the wake of a disaster, others have been slow to respond, leading insurers to come up with their own strategies for ensuring continuity of care for injured workers, experts say.

Seven of the most expensive natural disasters in history occurred in the past decade, and the losses in 2017, largely caused by hurricanes Harvey and Irma, were the most catastrophic on record, causing \$312.7 billion in economic damages, according to the National Oceanic and Atmospheric Administration. Last year was the fourth-highest disaster loss year due to the California Camp and Woolsey fires and hurricanes Michael and Florence, according to the agency.

“What we’ve seen is a shifting toward more disasters of larger proportion at an accelerated rate,” said Lisa Anne Bickford, Sacramento, California-based director of workers compensation government relations at Coventry Workers’ Comp Services. “It’s not the isolated event anymore as much as it used to be. This is something becoming increasingly problematic.”

Jennifer Wolf, executive director of the Middleton, Wisconsin-based International Association of Industrial Accident Boards and Commissions, said some jurisdictions have “very nimble, very robust infrastructure in place” that can help respond to not only natural disasters, but events such as an epidemic like the early 2000s outbreak of SARS.

Before hurricanes Harvey and Irma hit landfall in the southern United States in 2017, the Texas workers compensation insurance commissioner issued an emer-



REUTERS

The aftermath of catastrophic flooding, such as that from Hurricane Florence in eastern North Carolina in September 2018, can reverberate in the workers compensation space.

gency declaration waiving penalties for insurers and third-party administrators and allowed injured workers to seek care in non-network facilities. The bulletin also eased prescription requirements to allow pharmacies to provide 90-day supplies of drugs and extended deadlines for medical examinations. Florida issued a similar bulletin, and the Carolinas and Georgia have previously issued similar declarations.

In California, Gov. Gavin Newsom has allotted \$550 million toward wildfire prevention strategies and issued a state of emergency in late March because tree deaths in the state could create an

“extremely dangerous fire risk.” However, the state has not created a plan for workers compensation in the event of a disaster, said Ms. Bickford.

“In my own state, you would think we would be a leader in this area, but oddly in workers compensation, there is no plan at all in California,” said Ms. Bickford.

The California Department of Insurance did not respond to a request for comment.

Workers comp insurers should have a strategy for dealing with the aftermath of disasters, from torched medical facilities to flooded-out field offices and closed court-houses, said Mark Lechowicz, chief com-

pliance officer at Rolling Meadows, Illinois-based Gallagher Bassett Services Inc.

“How do you get folks treated when you don’t have providers ... what do you do when you have compensability decisions that have to be made” when the courts are closed, said Mr. Lechowicz.

Insurers must be “prepared for an influx of new claims activity, primarily from emergency responders ... and public entities assisting in cleanup efforts and recovery,” said Paul Koziatek, CEO of Bradenton, Florida-based Risk Management America LLC, a safety risk consulting company.

Texas Mutual Insurance Co., based in Austin, had to find a way to ensure injured workers had the means and ability to receive their weekly benefit checks after Hurricane Harvey flooded much of Houston in 2017, and contacted each injured worker residing in an affected area to set up direct deposits, said Kim Haugaard, senior vice president of policyholder services.

While insurers may want to look to their insurance commissioners for guidance in developing a workers compensation disaster plan, they need to ensure they have solid business continuity plans that make communication a priority, said Mr. Koziatek.

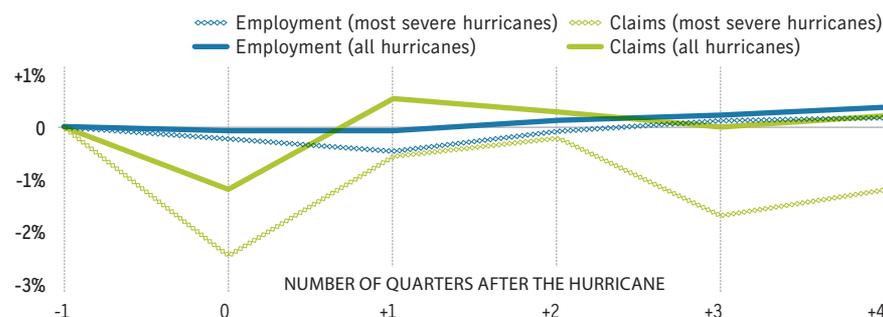
Boston-based Liberty Mutual Insurance Co. established its weather playbook in 2017 to help it identify and contact workers in the path of hurricanes in the Atlantic and afterward to ensure they had medications and could travel to scheduled appointments and procedures, said Doug Anderson, vice president and regional manager of workers compensation claims for Liberty Mutual and Hoffman Estates, Illinois-based Helmsman Management Services LLC.

Insurers also should talk with workers comp policyholders to mitigate the likelihood of future claims by ensuring that the employers communicate with employees to prevent them from entering unsafe facilities because if they are injured it “probably would not be a deniable claim,” Mr. Koziatek said.

“From a workers comp standpoint, you don’t want employees around or near facilities” when a storm hits, he said.

CLAIMS FOLLOWING HURRICANES

Workers compensation claims rose after all hurricanes between 2001 and 2012, but claims rose less after the most severe hurricanes during that time.



Sources: National Council on Compensation Insurance Inc.; US Bureau of Labor Statistics

CALIFORNIA WILDFIRE SAFETY RULES SPARK CONCERNS FOR EMPLOYERS

California is preparing for another potentially disastrous wildfire season, and the controls and personal protective equipment that employers may be required to provide has been hotly debated in recent months.

In April, the Division of Occupational Safety and Health of California proposed an emergency regulation to protect

workers from wildfire smoke, but after stakeholders submitted more than 40 comments, Cal/OSHA rescinded some of its proposed requirements by reducing the air quality index threshold at which employers must take action and not mandating employers provide personal protective equipment for workers who spend only brief periods outdoors.

One of the biggest concerns about the proposed regulation was the requirement of providing N95 masks for any employees exposed to the outdoors, said Trever Neuroth, an associate in the Washington, D.C. office of Jackson Lewis P.C. Without the change, universities and large corporate campuses with employees traversing between buildings outdoors

would have had to provide masks for those workers, which he called “really burdensome.”

The retail cost of the masks is about \$12 each and they filter about 95% of small airborne particles, according to the U.S. Environmental Protection Agency. The rule could take effect as early as July.

Angela Childers

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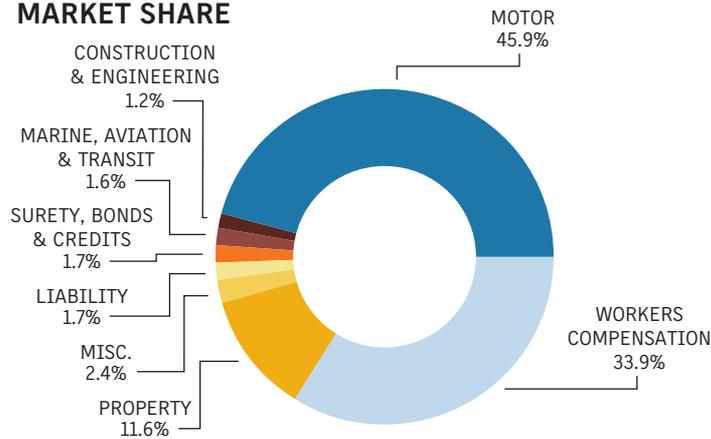
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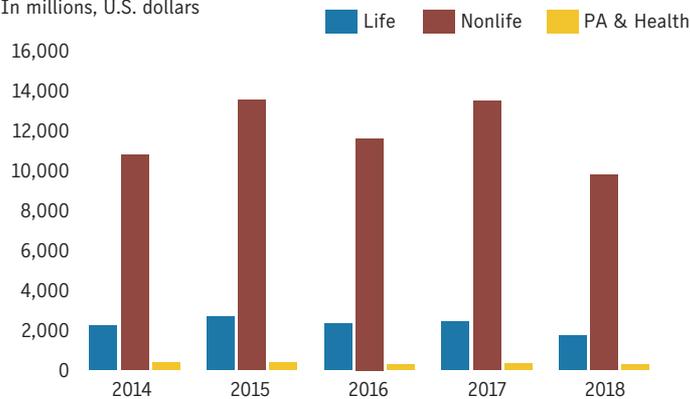
Rich in natural resources with a well-educated workforce and vibrant agricultural sector, Argentina is one of South America's largest economies despite inflation, external debt, capital flight and budget deficits over the past decade. The property/casualty insurance sector is fragmented, with 189 insurers authorized to operate in June 2018. Of those, 121 were property/casualty insurers and 13 were specialist workers compensation insurers. The market faces significant challenges to both real growth and profitability because of Argentina's unfavorable economy. Initial hopes that the administration of President Mauricio Macri, beginning in 2015, would prove successful in stimulating the economy and bringing inflation under control, while boosting lines of business such as construction and marine, have not been realized.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Operational and third-party insurance for providers of public passenger transportation
- Shipowners liability for oil pollution
- Professional liability for reinsurance brokers
- Financial guarantee (bond or liability insurance) for directors and managers of public and private limited companies
- Workers compensation insurance

NONADMITTED

Non-admitted insurance is not permitted because the law provides that insurance must be purchased from locally authorized insurers with some exceptions. It is, however, not entirely clear what these exceptions are, and opinions differ in the market.

INTERMEDIARIES

Intermediaries handling insurance business, whether corporate or individual and whether described as brokers or agents, have to be authorized to operate in the insurance sector. Intermediaries are not allowed to place business with nonadmitted insurers except for P&I.

MARKET PRACTICE

There is a widespread belief that marine cargo business in general, and imports in particular, may be placed directly abroad, and the practice is not uncommon. P&I business may be placed abroad, and it is market practice to do so.



AREA

1,056,641

square miles

POPULATION

45.1

million

MARKET CONCENTRATION

32.2%

market share of top five insurers

2019 GDP CHANGE (PROJECTED)

(1.7%)

MARKET DEVELOPMENTS

Updated June 2019

- Plans announced in the early days of the Macri administration to bring minimum capital requirements up to date for insurers were implemented by a series of resolutions. Increases in 2016 and 2017, threefold for some insurers and tenfold for local reinsurers, were followed by others in November 2018.
- A December 2018 resolution increased minimum compulsory and maximum voluntary third-party auto insurance limits.
- By February 2019, at least 14 of Argentina's 23 provinces and the Autonomous City of Buenos Aires were adhering to the February 2017 workers compensation Law No. 27.348. One of the law's chief goals — to reduce lawsuits arising from workplace accidents — was being achieved. The number of cases for the nine months through September 2018 was 58,123, down almost 40% on the prior-year period.
- In March 2018, Zurich announced, subject to regulatory approvals, the acquisition of QBE's Latin American operations. Including also those in Brazil, Colombia, Ecuador and Mexico. The largest in premium income was the unit that ranked 13th in the Argentinian non-life market in 2018. With Zurich placed 17, and with another vehicle — Zurich Santander — at 39, the combined premiums of the companies would have ranked fifth in the market in that year.

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



Exec not covered by D&O policy

■ A company official charged by the U.S. Securities and Exchange Commission with fraudulent activity is not covered under an exclusion in the firm's directors and officers liability insurer, said a federal appeals court in affirming a lower court ruling.

Daniel Imperato was accused by the SEC with orchestrating a scheme to use Imperali Inc., a West Palm Beach, Florida-based company he owned and controlled, to defraud investors by making it appear the firm "was a thriving multinational corporation with several wholly-owned businesses, when in fact it was nothing more than a shell corporation," according to a 2012 SEC statement.

The U.S. District Court in Miami later ruled for the SEC against Mr. Imperato and issued more than \$3 million in fines, according to the ruling by the 11th U.S. Circuit Court of Appeals in *Atlanta in Daniel Imperato v. Navigators Insurance Co.*

In May 2014, Mr. Imperato filed suit in U.S. District Court in West Palm Beach against New York-based Navigators Insurance Co. seeking indemnification under a D&O policy issued to Imperali. The policy expressly excluded from coverage claims related to "deliberately fraudulent or criminal acts," according to the ruling.

Mr. Imperato alleged Navigators breached the terms of the insurance policy by refusing to indemnify and defend him by training legal counsel for him in the SEC action.

Navigators moved to dismiss the case, which the District Court did. Its ruling was affirmed by a unanimous three-judge appeals court panel. "Because Imperato was found to have engaged in 'deliberately fraudulent' conduct in the SEC action, the plain language of the insurance policy does not cover his legal fees incurred in that action or the judgment entered against him as a result of it," said the ruling, in affirming the lower court's decision.

Meth lab involvement ruled not work

■ The Appellate Division of the Supreme Court of New York ruled that insurers must continue to pay indemnity benefits

to an injured worker who had been incarcerated for involvement in the production of methamphetamine.

The latest ruling in *Robert Stone v. Saulsbury/Federal Signa et al.*, filed in the appellate court's 3rd division in Albany, New York, affirmed the state Workers' Compensation Board's finding that the man who had been collecting indemnity benefits over a compensable injury prior to his conviction and incarceration did not violate state workers compensation laws when he became involved in the production of illegal drugs.

"We are unpersuaded by the carrier's contention that claimant's criminal conduct constitutes work for purposes of Workers' Compensation Law," the ruling states.

"The elements of the crime do not require that any work be performed. Substantial evidence supports the Board's finding that the conviction alone is insufficient to establish any work activity by claimant or that he received any type of remuneration."



Rental firm settles racial harassment suit

■ A nationwide chain of rent-to-own furniture stores will pay \$425,000 to settle a lawsuit charging it with racial harassment in its Jamaica, New York, warehouse, the U.S. Equal Employment Opportunity Commission said.

The EEOC said Atlanta-based Aaron's subjected black employees to a "race-based hostile work environment" in the warehouse. The agency said mistreatment included the regular and open use of derogatory slurs including the "n-word" by warehouse managers, who also directed other vulgar language toward black employees.

Black workers were also assigned more difficult tasks and longer delivery routes than others at the warehouse, the EEOC said.

The EEOC charged the firm with violating Title VII of the Civil Rights Act of 1964.

Under a consent decree, Aaron's will pay \$425,000 to harassment victims. The

decree also requires Aaron's to maintain an antidiscrimination policy, provide equal employment opportunity training to all its New York City area employees and report future Aaron's employee race discrimination complaints to the EEOC.

EEOC New York District Director Kevin Berry said in a statement, "Racist behavior and the use of racial slurs by supervisors profoundly alter the work environment for employees. Employers should know if this illegal conduct is tolerated or left unaddressed, the EEOC will hold employers accountable."

Asked to comment, Aaron's responded with the statement: "We are focused on making Aaron's a great place to work for people of all genders, races and creeds."

Chipotle must face retaliation charge

■ A federal appeals court has overturned a lower court ruling and reinstated a retaliation charge filed by a black Chipotle Mexican Grill Inc. supervisor who was fired after complaining a black worker had been discriminated against.

The 6th U.S. Circuit Court of Appeals in Cincinnati, though, affirmed dismissal of the supervisor's discrimination claim, according to the ruling in *Alashae Crawford v. Chipotle Mexican Grill Inc.*

In March 2014, a short time before her termination, Ms. Crawford had complained to her manager at a Cincinnati Chipotle restaurant that he was purposely interfering with a worker getting his back pay. The manager, who is Hispanic, allegedly responded that Ms. Crawford was only defending the worker because she is black.

After her termination, Ms. Crawford filed suit against Newport Beach, California-based Chipotle in U.S. District Court in Cincinnati, charging discrimination and retaliation. The court granted the restaurant chain summary judgment dismissing both charges.

In reinstating the retaliation charge, a unanimous three-judge appeals court panel said, "A reasonable jury could conclude, given the context of this case, that Crawford engaged in protected activity by protesting what she believed was a racially discriminatory refusal to give (the worker) his back pay."

The accusation "did not come out of left field," said the ruling. Ms. Crawford "had previously approached (the manager) with complaints of racial favoritism and she specifically identified the failure to pay (the worker's) back pay as the discriminatory practice."

The ruling, however, affirmed dismissal of Ms. Crawford's discrimination charge, stating she had "failed to make out a prima facie case of race discrimination."

The case was remanded for further proceedings.

DOCKET



EXCLUSIVE REMEDY BARS GROIN CLAIM

A firefighter failed to show his captain intentionally kicked him in the groin during a demonstration and that he and the fire department were liable for his injuries, the Court of Appeals of California in Los Angeles ruled in *Joshua Tibbett v. Los Angeles County Fire Department*, affirming a jury's verdict. Mr. Tibbett's injury claims were barred by the exclusive remedy of workers compensation, as the fire captain did not intend to harm him, the jury held.

OFFSHORE WORKER NOT DUE OVERTIME

Offshore drilling workers come under federal wage law, not California law, said the U.S. Supreme Court in a unanimous ruling that overturned the 9th U.S. Circuit Court of Appeals and denied an oil rig worker salary for time spent on standby. The Outer Continental Shelf Lands Act extends federal law to the subsoil and seabed of the Outer Continental Shelf and all its attachments, the Supreme Court said in *Parker Drilling Management Services Ltd. v. Brian Newton*. "Given the primacy of federal law on the OCS ... it would make little sense to treat the OCS as a mere extension of the adjacent State law," the court said.

INSURER'S ACTIONS CAUSED YAHOO HARM

A jury in U.S. District Court in San Jose, California, found an American International Group Inc. unit acted in bad faith when it failed to defend Yahoo Inc. in class action lawsuits over scanning email content, and awarded it \$618,380 in attorney's fees. In *Yahoo! Inc. v. National Union Fire Insurance Co. of Pittsburgh, Pa.*, the jury answered "yes" to the questions of whether Sunnyvale, California-based Yahoo had proved by a preponderance of evidence that National Union acted in bad faith when it failed to defend it, and if its conduct was a factor in causing it harm.



David Walsh established CFC Underwriting Ltd. as a managing general agent in London nearly 20 years ago to offer newly developed cyber liability insurance coverage but had to wait until about 2015 before the cyber market started to take off. In the meantime, CFC entered other lines such as professional liability and intellectual property. Accessing capacity from about 35 Lloyd's of London syndicates, CFC offers a range of specialty coverages, often related to technology exposures. Recently, Mr. Walsh spoke with *Business Insurance* Editor Gavin Souter about developments in the cyber liability market, how technology is changing insurance, and the outlook for Lloyd's amid proposed reforms of the market and the prospect of Brexit. Edited excerpts follow.

David Walsh

CFC UNDERWRITING

Q What is the state of the cyber insurance market?

A We are at really interesting times. We had over 1,000 claims last year, and we are covering pretty much everything that the reasonable customer thinks they should be covered for. As a market, if there is a gray claim, we are paying it because for any emerging market the last thing we need is bad publicity.

It does feel like the product is in a really good place, but I think that the market needs to move on. Certainly, what we are trying to do is move our energy from arguments over small differences in coverage between us and our competitors and move it on to making sure that we are handling claims in the best way possible for our customers.

There's a tendency that comes out of the liability market to put a load of lawyers on a claim, but the typical cyber claim is someone reaching out in the middle of the night saying, "Our systems are down, I've got a ransom note, what do we do about it?" So, I don't think we need to go to an expensive New York law firm to work on that; we just need to get some serious expertise to them as soon as possible and get them back up as soon as possible.

Q What about the cost of the coverage?

A It's basically reduced over the past few years, along with the coverage growing. Along with that dynamic, we are seeing the frequency increase — claims more than doubled in the past year — and we are also seeing the severity of claims growing, for a number of reasons, including because criminals realize they can ask for more money, particularly when a customer is insured. So that's why we are trying to spend our energy right now on making sure we can handle the claims as speedily as possible.

Q There's been some hardening in various lines. Are you not seeing that in cyber?

A No, I don't think we are. It's obviously a problem for selling cyber when other insurance lines are going up

because, if it's a new purchase, it puts the insurance spend budget under stress. In the U.S., increases in (directors and officers liability) premiums have slightly blunted growth in cyber this year.

Q How competitive is the cyber market now?

A There's loads of competitors, and there's a real breadth as well. We've got lots of MGAs in the space, the big insurers are growing, and then you've got quite a lot of insurtech-type providers. There's over 70 or 80, I would think. There's no shortage of competitors.



Q How do you see insurtech changing the property/casualty market overall?

A I think we are at a really interesting time with insurtech. As an industry, we seem to be completely paranoid about getting disrupted by someone — from the dot-coms to the Googles and the Amazons of the world, and now insurtech — but over the past few years, insurtech has morphed from this monster that's going to kill us to a bunch of companies that are going to provide really useful services that we can all use. So I think companies that embrace and drive change and want to use insurtech products sensibly and intelligently are going to really prosper.

We have a quote-and-buy cyber website where we ask the customer one question and then we scrape thousands of pieces of information from the internet

and we provide a quote in seconds.

Q What's the question?

A What is their domain name. Simply from their domain name, we'll scrape from the internet how many employees they've got, how big they are, some security issues and so forth, and provide a quote there and then. That's using a lot of insurtech-type providers who are providing the information for us. So I think as an industry we need to stop being so fearful of insurtech and start embracing how it can help us do our jobs better.

Q As a London-based firm using Lloyd's syndicates, what do you see as changes needed at Lloyd's?

Lloyd's had two years of quite severe losses, and they have to do something about it pretty fast. The new CEO has a lot of energy, generated a lot of enthusiasm and seems to be doing all the right things. The change they are talking about, which is still under consultation, is wide-ranging, so it will be interesting to see. At the end of the day, all these things come down to execution.

Q Another issue affecting the London market is Brexit. How do you see that influencing the way the market operates?

A Lloyd's set up an office in Brussels with a parallel set of regulations, so we essentially mirror all our contracts with our carriers with a European equivalent, and we now have a European office with a mirrored set of capacity arrangements. I'm not sure anyone wants to predict anything about Brexit now, but we are all assuming it will happen, and we have an operation in Europe that's ready to trade on that basis. And I think most people in London have done something similar.

Lloyd's has seen it as an opportunity to get closer to European customers. Historically, Lloyd's has been more successful in the English-speaking countries, such as the U.S., Australia and Canada, than in countries that are only a few miles away.

We are seeing (claims) frequency increase and we are also seeing the severity of claims growing, for a number of reasons, including because criminals realize they can ask for more money, particularly when a customer is insured.



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*A+ (superior) A.M. Best Financial Strength Rating (FSR) current as of May 2019. See [ambest.com/ratings/guide.pdf](https://www.ambest.com/ratings/guide.pdf) for rating information.

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BROKER LAWSUITS PROLIFERATE AS TALENT MOVES ON

A hot economy and a spate of broker mergers and acquisitions create disruptions



BY JUDY GREENWALD

jgreenwald@businessinsurance.com

Mergers and acquisitions, a talent shortage, competition for business and anger over alleged disloyalty are fueling increased litigation in the brokerage sector as firms more frequently charge departing employees with violations of nonsolicitation and noncompete agreements.

Risk managers confront dilemmas when brokers depart

Risk managers face tough choices when a favorite producer with whom they have important business relationships and sometimes social relationships, too, leaves the brokerage firm they use.

“Relationships are an essential piece to effective risk management,” Gloria Brosius, president of the Risk & Insurance Management Society Inc., said in a statement.

“Risk financing programs are dependent on the strong and candid relationships risk professionals build with their brokers, as well as the services and products offered by providers,” said Ms. Brosius, who is also director of risk management and insurance for Pinnacle Agriculture Distributions Inc. in Loveland, Colorado.

“When a broker changes firms, we must thoroughly assess the situation and make the decision that best supports our



organization’s goals,” she said.

Options include moving their account to the producer’s new employer, staying with the brokerage and working with other producers, or moving to a third broker.

“The policyholder is the one that ultimately has the right to make any decision he wants,” said Frederick J. Fisher, president of El Segundo,

California-based Fisher Consulting Group Inc.

“You have to go back to the basic value proposition of why you’re using that broker” in the first place and what value they bring, said Peter Viscardi, former director, risk management and environmental affairs, for conglomerate American Brands Inc., which has since

been dissolved.

“If the value is unique,” whether in terms of the broker’s institutional knowledge of your company, superior technical knowledge or superior market ability, “you might want to consider retaining them,” even in their new firm, said Mr. Viscardi, who is now a Springfield, Tennessee-based senior adviser with Hanover Stone Partners LLC.

However, risk managers should look at their broker service agreements “to make sure you don’t unwittingly violate the term of those agreements,” said Mr. Viscardi.

Insureds do not want to be in a position where they are deposed, said Stanley L. Lipshultz, a North Bethesda, Maryland-based consultant. They just go to a third agency and say, “You guys can duke it out. I just don’t want to be involved.”

Judy Greenwald

Recent litigation has included several suits filed in the wake of Marsh & McLennan Cos. Inc.’s acquisition of Jardine Lloyd Thompson Group PLC, but litigation involving several other brokers has also been filed.

Amid warring brokers, risk managers — who can do business with whomever they choose — are left to decide whether to remain with their departing producer, stay with their current firm, or going to a third broker (see related story).

There are steps, though, brokers on both sides of the issues can take to avoid problems when individual employees or teams of brokers are poached by rival firms (see story, page 23).

“There’s kind of a talent war to drive organic growth. We’ll continue to see teams being brought over, and to the extent that they’re violating restrictive covenants, litigation will likely ensue.”

Timothy J. Cunningham,
Optis Partners LLC

Recent litigation includes:

■ Guy Carpenter & Co. LLC filed suit over three Guy Carpenter officials leaving to join Lockton Cos. LLC. Lockton said in March it had formed a global reinsurance business called Lockton Global Re and hired the three executives.

■ Lawsuits were filed in multiple courts by Lockton earlier this year alleging rival brokerage Alliant poached more than two dozen staff from a Denver-based Lockton unit. In June, the Delaware Chancery Court granted Lockton a preliminary

injunction in the case.

■ Marsh LLC sued NFP Corp. for allegedly poaching 13 former JLT Specialty Insurance Services Inc. real estate employees. Marsh filed a separate lawsuit against four of the employees who left JLT to work for New York-based NFP.

■ In June, a federal appeals court vacated a preliminary injunction order issued by a lower court against Alliant, which allegedly poached the employees of Camden, New Jersey-based Corporate Synergies Group LLC, stating Alliant had given inadequate notice of the injunction.

■ In April, an Illinois appeals court affirmed a lower court ruling in favor of a benefit broker’s former president who is now a Hub International Ltd. official, who was charged with violating his noncompete agreement. Downers Grove, Illinois-based Axion RMS Ltd. had filed suit against its former president Michael Booth, who is Hub International’s president of employee benefits and chief sales officer of Hub International-Midwest. The court said the noncompete agreement was unenforceable because he had served less than two years after signing the agreement.

■ In July 2018, a federal judge denied a Willis Towers Watson PLC unit’s petition for a temporary restraining order against Brent Hartman, a construction insurance broker, and Alliant, which Mr. Hartman had joined the previous week. The case was later settled.

■ In April 2018, a Pennsylvania judge dismissed a request from Wells Fargo to stop a group of former brokers in Pittsburgh who joined rival EPIC Insurance Brokers & Consultants from soliciting business from their former clients.

The litigation, which is usually settled before trial, is often motivated as much by anger as it is by business reasons, say experts.

The snubbed brokerage will often seek a preliminary injunction against departing workers, although their success may hinge on the terms of their noncompete or nonsolicitation agreements, with courts generally reluctant to enforce agreements they consider too restrictive. Noncompete agreements restrict employees from going to a competitor after their employment’s termination, while nonsolicitation agreements permit former workers to work for a competitor, but restrict their access to prior clients.

The recent high-profile cases signal an increase in broker vs. broker litigation, say some experts.

“It’s increasing because there are certain firms ... that are really aggressively recruiting people without any consideration given to the existence of noncompete agreements,” said John J. Kelly, managing partner of consulting firm Hanover Stone Partners LLC in New York.

“We have seen an uptick in litigation in this area over the past several years, particularly as the economy has strengthened here in Arizona,” said Myles P. Hassett, of the Hassett Law Firm PLC in Phoenix.

“There’s kind of a talent war to drive organic growth,” said Timothy J. Cunningham, managing director of Optis Partners LLC in Chicago. “We’ll continue to see teams being brought over, and to the extent that they’re violating restrictive covenants, litigation will likely ensue,” he said.

Daniel P. Hart, a partner with Seyfarth Shaw LLP in Atlanta, said while he is unsure if there has been an uptick in such litigation, “as the economy moves into more of an information economy, I think it’s inevitable that there will be an increase in suits involving restrictive covenants.” Certainly, in the insurance industry, “relationships and confidential information

WHAT’S A RISK MANAGER TO DO WHEN A FAVORITE BROKER MOVES TO A COMPETITOR?

OPTIONS INCLUDE:

- Staying with their old firm
- Going immediately to their broker’s new firm
- Staying for a while at their old firm to see how things shake out before moving to the new firm
- Moving a part of their business to the new firm but otherwise remaining with their old firm
- Moving all or part of their business to a third firm

Source: *Business Insurance* interviews

are at the heart of a company’s assets.”

“Typically, business concerns are driving the issue,” said Paul A. Lauricella, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Albany, New York.

“As the insurance brokers continue to consolidate, the value of the books of business goes up,” he said. “The impact of one broker or team of brokers leaving has a more substantial impact on that organization, so the more consolidation there seems to be, the bigger the impact and the more reason to fight over those noncompete agreements.”

Mr. Lauricella said litigation is driven by a combination of anger and business reasons, but “typically it’s probably more the anger,” with the former broker feeling, “

See **NONCOMPETE** next page

NONCOMPETE

Continued from previous page

"I hired this employee or this broker and I gave them a book of business to work on," and made them broker of the year, "and lo and behold, this what he or she does," Mr. Lauricella said. "I've never had an unemotional noncompete litigation case."

"It's analogous to divorce," said Mr. Hassett. "You have people who have forged, sometimes over many years, a close working relationship, when one of those parties decides that the relationship is over. There are feelings of anger and betrayal that rise to the surface, which may dominate the thinking of otherwise rational people."

In litigation, "both sides accuse the other of doing terrible, dastardly things," Mr. Cunningham said.

The poached company will "paint this picture of this disloyal employee who did all these terrible things, and in turn the defense paints the employer as this draconian sweatshop. But that's common in litigation," Mr. Cunningham said. "Judges see through that."

Mr. Lauricella said most of these cases settle.

However, he added, "it depends on what you mean by settling. They often settle before a full trial, but in these cases there's often a preliminary injunction hearing" to determine whether those who left the business should be at least temporarily stopped from continuing to compete with the former employer "while the issues are being hashed out in the case."

"The standard for getting a temporary injunction necessarily involves getting into the issue of whether the noncompete agreement is valid and reasonable in scope and duration."

Paul A. Lauricella,
Wilson Elser Moskowitz Edelman & Dicker

In 2017, for instance, Brown & Brown Inc. said it was receiving \$20 million in a settlement of litigation over hiring of several of its employees by Lake Mary, Florida-based broker AssuredPartners Inc.

"But the standard for getting a temporary injunction necessarily involves getting into the issue of whether the noncompete agreement is valid and reasonable in scope and duration," Mr. Lauricella said.

"Does it protect legitimate business interests?" he said. "The judge's decision on that injunction motion is often what drives a settlement in the case because if it's granted, then the broker who left is now, by court order, forced to stop com-

peting, at least until another court hearing is held, but that could be months and months down the road."

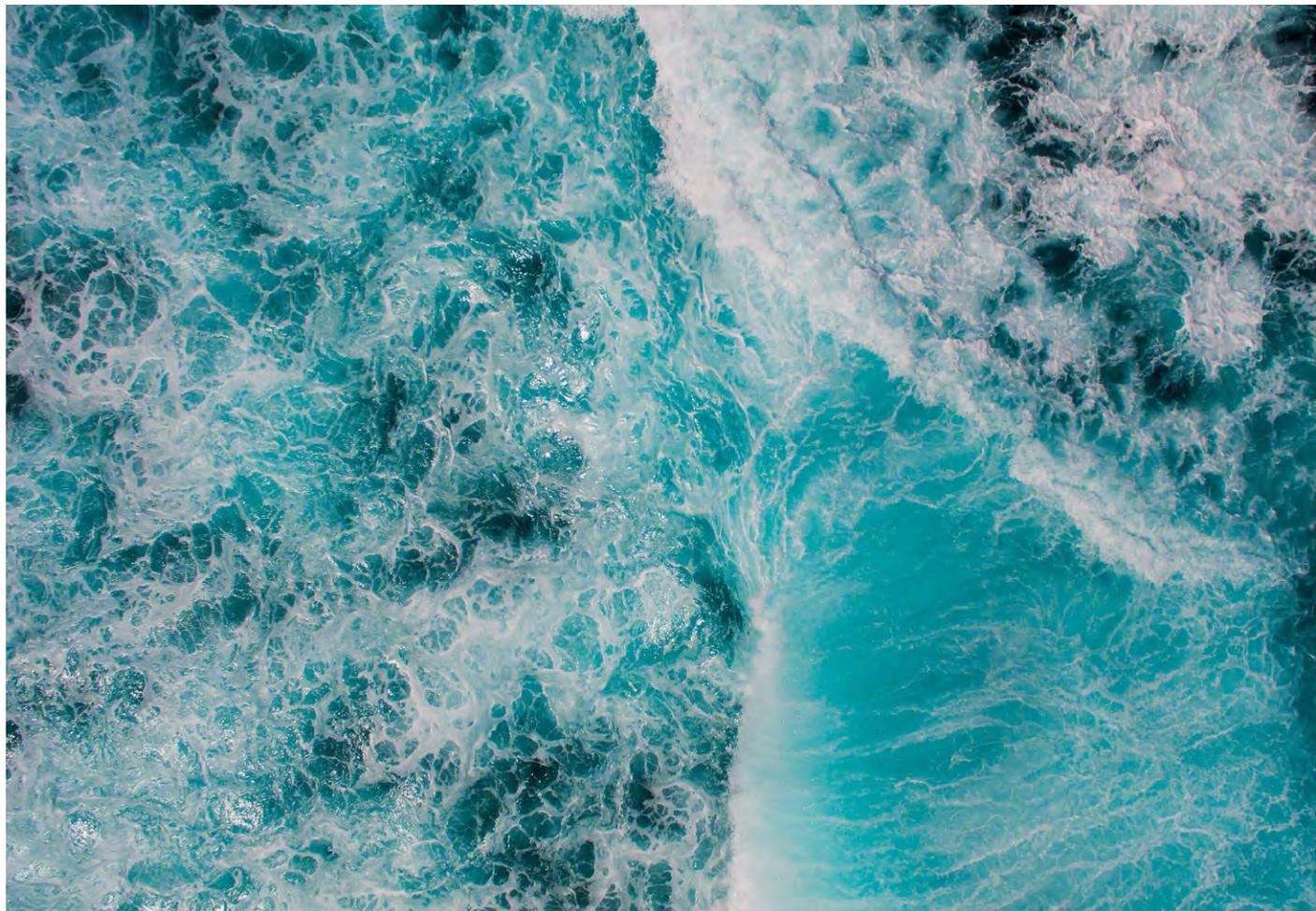
Mr. Hassett said also the use of alternative dispute resolution approaches, such as mediation or arbitration, are increasing because "the expense involved in taking these kinds of case to trial can be very large."

Meanwhile, in conducting the litigation, courts tend to look unfavorably on non-compete and nonsolicitation agreements that are too broadly written, say experts.

It has been difficult to claim producers have been poached because they are essentially free to choose where they work, according to E. Al Diamond, president of Cherry Hill, New Jersey-based

Agency Consulting Group Inc.

Olie Jolstad, a principal at Olie Jolstad & Associates in West Linn, Oregon, a consultant, said in one case in which he was involved, the noncompete agreement said the broker "could not transact a business of insurance within a 75-mile radius of Dallas," which would have eliminated cities including Fort Worth, Plano and



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“The judge said, ‘You can’t deny this guy a right to make a living,’” but the court did call for a financial remuneration to the poached company, he said.

Noncompete agreements “vary widely from state to state,” said Mr. Hart. “Increasingly, many states are taking actions to reduce noncompete, and to

some extent customer nonsolicitation agreements, with lower level employees,” he said.

“A handful of states like California have more or less outright barred customer nonsolicitation and noncompete agreements, but most states follow what’s known as the reasonableness rule, in that they will enforce these kinds of agreements if they

are reasonably limited as to time, geography and scope,” said Mr. Hart.

Even in states where noncompete agreements are not permitted, Mr. Hart added, “The law still protects trade secrets, and to the extent that an outgoing broker is alleged to be using a confidential client list or other confidential information,” the former brokerage is still potentially protected.



FOREWARNED IS FOREARMED: BROKERS CAN REDUCE RISKS

Brokers can take steps to avoid becoming embroiled in noncompete litigation, both as the accused poacher and the alleged victim of poaching, say experts.

One measure is to have restrictive covenant agreements “that are appropriately tailored to the brokers and are enforceable under the applicable law,” said Daniel P. Hart, a partner with Seyfarth Shaw LLP in Atlanta.

Brokerages should also take “commonsense, appropriate measures to protect their confidential information, including limiting the ability of brokers or others to transfer important data to personal devices and, perhaps most importantly, implementing a culture of compliance, where everyone in the organization understands the importance of protecting trade secrets and confidential information and understands that the company will go after malefactors if they violate their obligations,” said Mr. Hart.

Myles Hassett, of the Hassett Law Firm PLC in Phoenix, said, “A remedy that is now more commonly used to minimize the fallout from a broker’s departure is to negotiate in the broker’s employment agreement a buyout.”

Terms may vary, “but usually it will place a monetary value on the book of business that is serviced by the departing broker,” establishing a formula as to the amount that will be paid, perhaps by the departing broker’s new employer.

If a broker says they are leaving, “talk to them, talk to the competitor,” who “often gets dragged into these lawsuits, too,” said Paul A. Lauricella, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Albany, New York. “What I do is, write the new employer a letter saying, ‘Oh, you should know that this person you’re about to hire has a noncompete contract or agreement with us’” and hiring them now would tortiously interfere with that contract, “so if you want to get dragged into this, go and hire him.’ It sometimes causes the new employer to back off,” Mr. Lauricella said.

Judy Greenwald



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BROKER PROFILES & RANKINGS



Acquisitions, economy fuel broker growth

BY GAVIN SOUTER

gsouter@businessinsurance.com

INSIDE

▶ WORLD'S 10 LARGEST BROKERS

All the big brokers reported increased revenue, but the rankings still changed from the prior year. **PAGE 26**

▶ 100 LARGEST U.S. BROKERS

Business Insurance's 2019 propriety survey of the 100 largest insurance brokers of U.S. business. **PAGE 28**

▶ TOP 10 BROKER PROFILES

Learn more about the world's Top 10 brokers and how they view their successes and challenges. **PAGE 32**

The red-hot market for brokerage mergers and acquisitions continued to reshape the rankings of the largest global and U.S. brokers last year, with some substantial and longtime firms being absorbed by even larger rivals.

The biggest name to disappear was London-based Jardine Lloyd Thompson Group PLC — previously the seventh-largest brokerage in the world — which was bought by Marsh & McLennan Cos. Inc., extending its lead as the longtime largest brokerage (see profile, page 32).

Marsh & McLennan and its operating units also bought up several other brokerages among the Top 100 brokers of U.S. business over the past 12 months, including Wortham Insurance & Risk Management, which ranked No. 33 last year, Bouchard Insurance Inc., ranked 74th, and Lovitt & Touche Inc., ranked 77th.

Other significant names no longer in the

Business Insurance Top 100 include 2018's No. 21, Integro Group Holdings LP, which sold its U.S. operations to EPIC Insurance Brokers & Consultants; No. 22, Hays Companies, which was bought by Brown & Brown Inc.; and No. 32, Regions Insurance Group Inc., bought by BB&T

See **BROKERS** page 30

SPECIAL REPORT

A DECADE OF GROWTH*

Due largely to consolidation, the world's 10 largest insurance brokers posted a 9.7% gain, or \$4.6 billion, from last year, inclusive of pro forma revenue reflecting the acquisition of Jardine Lloyd Thompson PLC by Marsh & McLennan Cos. in April 2019.



¹Including pro forma revenue reflecting the acquisition of Jardine Lloyd Thompson PLC by Marsh & McLennan Cos. in April 2019.
Source: BI survey

WORLD'S 10 LARGEST INSURANCE BROKERS

Ranked by 2018 brokerage revenue

2019 rank	2018 rank	Company/office/website	Officers	2018 brokerage revenue	2017 brokerage revenue	% increase (decrease)	Employees	Offices	PERCENTAGE OF REVENUE*							
									Commercial	Wholesale	Reinsurance	Personal lines	Employee benefits	Services	Investments	Other
1	1	Marsh & McLennan Cos. Inc. ¹ New York www.mmc.com	Daniel S. Glaser, president/CEO	\$16,839,000,000 ²	\$14,035,000,000	20.0% ²	75,000	727	48.5%	0%	9.3%	0%	30.3%	12.2%	0.6%	(0.9%)
2	2	Aon PLC London www.aon.com	Gregory C. Case, CEO	\$10,717,000,000	\$9,966,000,000	7.5%	50,000	550	47.3%	0%	15.9%	0%	35.2%	0%	0.5%	1.1%
3	3	Willis Towers Watson PLC London www.willistowerswatson.com	John Haley, CEO	\$8,413,000,000	\$8,116,000,000	3.7%	43,300	425	26.4%	4.0%	10.6%	0.8%	49.3%	7.8%	0%	1.2%
4	4	Arthur J. Gallagher & Co. Rolling Meadows, Illinois www.ajg.com	J. Patrick Gallagher Jr., chairman/ president/CEO	\$5,106,500,000	\$4,539,400,000	12.5%	30,362	867	30.3%	10.6%	0%	3.2%	16.0%	13.5%	26.4%	0%
5	6	Hub International Ltd. Chicago www.hubinternational.com	Martin P Hughes, executive chairman; Marc Cohen, president/CEO	\$2,146,659,000	\$1,870,974,000	14.7%	11,465	447	48.8%	5.9%	0%	17.3%	27.0%	0.7%	0.4%	0%
6	5	BB&T Insurance Holdings Inc. ³ Parsippany, New York www.bbt.com	John Howard, chairman/CEO	\$2,016,267,000	\$1,918,256,000	5.1%	7,240	135	30.8%	46.8%	0%	7.1%	10.9%	3.8%	0.7%	0%
7	8	Brown & Brown Inc. ⁴ Daytona Beach, Florida www.bbinsurance.com	J. Powell Brown, president/CEO	\$2,009,856,649	\$1,857,270,207	8.2%	9,590	291	30.5%	36.7%	0%	6.5%	16.7%	9.4%	0.1%	0.1%
8	10	Lockton Cos. LLC ⁵ Kansas City, Missouri www.lockton.com	David Lockton, executive chairman; Ron Lockton, president/CEO	\$1,705,989,000	\$1,564,289,000	9.1%	7,500	95	60.0%	3.7%	2.2%	1.3%	32.0%	0%	0.9%	0%
9	9	USI Insurance Services LLC Valhalla, New York www.usi.com	Michael J. Sicard, chairman/CEO	\$1,665,445,136	\$1,635,038,677	1.9%	7,360	164	52.1%	2.1%	0%	5.5%	39.1%	0%	0.3%	0.8%
10	14	Acrisure LLC Caledonia, Michigan www.acrisure.com	Gregory Williams, president/CEO	\$1,378,108,087	\$1,026,298,945	34.3%	6,267	407	54.6%	2.8%	3.4%	10.9%	27.0%	0%	0.2%	1.0%

*Percentage of revenue may not add up to 100% due to rounding; ¹Acquired John L. Wortham & Son LP, Aug. 2, 2018; Bouchard Insurance Inc., February 2019; Jardine Lloyd Thompson Group PLC, April 1, 2019; Lovitt & Touché Inc., April 2, 2019; ²Pro forma to reflect acquisition of Jardine Lloyd Thompson Group PLC in April 2019; ³Acquired Regions Insurance Group Inc., July 1, 2018; ⁴Acquired The Hays Group Inc. et al., Nov. 16, 2018; ⁵Fiscal year ending April 30.
Source: BI survey



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SPECIAL REPORT

100 LARGEST BROKERS OF U.S. BUSINESS*

Ranked by 2018 brokerage revenue generated by U.S.-based clients

2019 rank	2018 rank	Company	2018 U.S. brokerage revenue	% increase (decrease)
1	1	Marsh & McLennan Cos. Inc. ^{1,2}	\$7,524,000,000 ³	9.4% ³
2	2	Aon PLC ¹	\$4,654,393,100	5.5%
3	3	Willis Towers Watson PLC	\$3,954,110,000	3.7%
4	4	Arthur J. Gallagher & Co. ¹	\$3,574,550,000	14.1%
5	5	BB&T Insurance Holdings Inc. ^{1,4}	\$2,016,267,000	5.1%
6	6	Brown & Brown Inc. ^{1,5}	\$2,009,856,649	8.2%
7	8	Hub International Ltd. ¹	\$1,674,394,020	14.7%
8	7	USI Insurance Services LLC ¹	\$1,665,445,136	1.9%
9	10	Alliant Insurance Services Inc. ¹	\$1,346,159,749	19.8%
10	13	Acisure LLC ¹	\$1,322,983,764	30.2%
11	9	Lockton Cos. LLC ⁶	\$1,288,021,695	11.3%
12	12	AssuredPartners Inc. ^{1,7}	\$1,223,074,154	20.0%
13	11	NFP Corp.	\$1,196,160,000	16.3%
14	14	BroadStreet Partners Inc.	\$604,575,000	26.4%
15	15	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants ^{1,8}	\$579,241,525	54.7%
16	17	Risk Strategies Co. Inc. ¹	\$366,508,421	42.2%
17	24	Alera Group ¹	\$340,500,000	76.7%
18	25	Digital Insurance Inc., dba OneDigital Health and Benefits ¹	\$313,167,808	65.5%
19	18	Leavitt Group ¹	\$254,917,000	8.0%
20	19	CBIZ Benefits & Insurance Services Inc. ¹	\$237,100,000	2.2%
21	20	Paychex Insurance Agency Inc. ⁹	\$231,400,000	2.3%
22	26	Holmes Murphy & Associates Inc. ¹	\$209,620,404	19.0%
23	23	Insurance Office of America Inc. ¹	\$206,234,662	5.2%
24	27	Higginbotham ¹	\$200,000,000	15.9%
25	28	Cottingham & Butler Inc. ¹	\$187,256,000	11.3%
26	30	Cross Financial Corp., dba Cross Insurance ¹	\$167,000,000	6.4%
27	29	The IMA Financial Group Inc.	\$162,366,331	5.6%**
28	39	The Hilb Group LLC ¹	\$141,726,418	24.6%
29	35	Hylant Group Inc.	\$138,736,384	9.3%
30	34	Woodruff Sawyer & Co.	\$138,500,000	8.3%
31	36	PayneWest Insurance Inc.	\$130,364,466	10.1%
32	37	BXS Insurance Inc.	\$118,986,043	1.6%
33	31	AmeriTrust Group Inc. ¹	\$115,827,000	(22.7%)
34	40	Prime Risk Partners Inc. ¹	\$114,958,650	6.1%
35	41	Assurance Agency Ltd.	\$114,825,000	9.5%
36	38	Heffernan Group ¹	\$102,527,412	(11.8%)
37	43	Insurica Inc. ¹	\$102,507,246	5.8%
38	42	Relation Insurance Inc.	\$98,800,000	1.9%
39	46	Associated Benefits and Risk Consulting	\$92,642,930	11.6%
40	45	Eastern Insurance Group LLC ¹	\$92,139,308	10.3%
41	44	Insurors Group LLC	\$90,852,000	7.0%
42	47	Oswald Cos.	\$85,476,600	3.2%
43	48	Propel Insurance	\$84,311,325	9.4%
44	57	Baldwin Risk Partners LLC	\$79,773,650	39.5%
45	53	ABD Insurance & Financial Services Inc.	\$79,099,180	22.9%
46	51	Lawley Service Inc. ¹	\$76,725,149	7.5%
47	49	Horton Group Inc.	\$75,554,444	4.3%
48	50	Marshall & Sterling Enterprises Inc. ¹	\$74,913,952	4.8%
49	52	TrueNorth Cos. LLC ¹	\$74,300,000	12.1%
50	55	M3 Insurance Solutions Inc.	\$67,218,378	11.9%

2019 rank	2018 rank	Company	2018 U.S. brokerage revenue	% increase (decrease)
51	56	Towne Insurance Agency LLC ¹	\$65,720,364	9.7%
52	54	Houchens Insurance Group Inc.	\$62,187,516	2.5%
53	63	James A. Scott & Son Inc., dba Scott Insurance	\$61,589,000	13.3%
54	60	Parker, Smith & Feek Inc.	\$60,425,000	8.8%
55	62	Graham Co.	\$58,740,136	5.2%**
56	58	Huntington Insurance Inc.	\$57,937,770	2.8%
57	61	Starkweather & Shepley Insurance Brokerage Inc. ¹	\$57,034,282	3.3%
58	59	LMC Insurance & Risk Management Inc. ¹	\$56,850,264	1.9%
59	64	Sterling & Sterling LLC, dba SterlingRisk	\$54,039,111	1.9%
60	65	Bowen, Miclette & Britt Inc.	\$51,786,324	4.7%
61	67	Frost Insurance Agency Inc.	\$49,648,036	6.0%
62	68	Bolton & Co.	\$48,551,757	4.1%
63	72	Shepherd Insurance LLC ¹	\$48,145,910	11.7%
64	66	Moreton & Co.	\$46,838,000	(3.7%)
65	69	Rose & Kiernan Inc.	\$46,752,000	8.1%**
66	100	Acentria Insurance ¹	\$46,456,900	63.6%
67	75	Corporate Synergies Group LLC	\$46,319,815	2.1%**
68	70	Riggs, Counselman, Michaels & Downes Inc.	\$45,827,330	2.6%
69	71	M&O Agencies Inc., dba The Mahoney Group	\$45,093,691	4.3%
70	79	Armfield, Harrison & Thomas Inc., dba AHT Insurance ¹	\$44,887,726	13.6%
71	NR	Sunstar Insurance Group LLC ¹	\$43,000,000	35.6%
72	73	Gowrie Group	\$42,669,000	5.1%**
73	84	Ansary & Associates LLC ¹	\$42,355,023	18.6%
74	78	Robertson Ryan & Associates Inc.	\$41,066,957	3.2%
75	NR	HMS Insurance Associates Inc.	\$41,037,272	4.4%
76	81	Charles L. Crane Agency Co.	\$40,947,000	8.8%
77	85	Sterling Seacrest Partners Inc.	\$39,430,552	12.4%**
78	NR	First Insurance Group LLC	\$39,407,967	6.4%
79	80	Fisher Brown Bottrell Insurance Inc.	\$39,091,105	2.4%
80	82	James G. Parker Insurance Associates	\$37,575,000	0.8%
81	83	The Loomis Co.	\$37,125,000	2.7%
82	76	M&T Insurance Agency Inc.	\$36,258,361	12.5%**
83	86	SullivanCurtisMonroe Insurance Services LLC	\$35,787,000	2.4%
84	89	Christensen Group Inc.	\$34,125,566	6.3%
85	96	Rich & Cartmill Inc. ¹	\$33,551,322	11.0%
86	97	HNI Risk Services	\$33,392,496	10.5%
87	101	Kapnick Insurance Group ¹	\$33,295,000	17.9%
88	87	R&R Insurance Services Inc.	\$33,200,000	(1.5%)
89	94	The Partners Group Ltd. ¹	\$33,091,931	6.9%
90	95	MJ Insurance Inc.	\$33,064,630	7.3%
91	90	Cobbs Allen ¹	\$32,911,464	3.1%
92	91	Haylor, Freyer & Coon Inc. ¹⁰	\$32,816,520	4.4%
93	93	PSA Insurance & Financial Services Inc. ¹	\$31,603,689	1.2%
94	92	People's United Insurance Agency Inc.	\$30,733,000	0.4%**
95	98	Tompkins Insurance Agencies Inc. ¹	\$29,748,000	2.8%**
96	NR	World Insurance Associates LLC ¹	\$29,542,180	59.3%
97	99	Tricor Inc. ¹	\$29,071,000	(0.6%)
98	103	Murray Securus ¹	\$28,660,000	4.1%
99	106	Insgroup Inc. ¹	\$28,020,000	14.8%
100	105	The Buckner Co. Inc.	\$27,716,422	9.0%

*Companies that derive more than 49% of their gross revenues from personal lines are not ranked; **2017 restated; NR = Not ranked; ¹Reported U.S. acquisitions; ²Acquired John L. Wortham & Son LP, Aug. 2, 2018; Bouchard Insurance Inc., February 2019; Jardine Lloyd Thompson Group PLC, April 1, 2019; Lovitt & Touché Inc., April 2, 2019; ³BI estimate of pro forma revenues to reflect acquisition of Jardine Lloyd Thompson Group PLC in April 2019; ⁴Acquired Regions Insurance Group Inc., July 1, 2018; ⁵Acquired The Hays Group Inc. et al., Nov. 16, 2018; ⁶Fiscal year ending April 30; ⁷Acquired Tolman & Wiker Insurance Services LLC, Feb. 1, 2019; ⁸Acquired Integro Insurance Brokers, Jan. 1, 2019; ⁹Fiscal year ending May 31; ¹⁰Fiscal year ending Aug 31.
Source: BI survey

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Continued from page 25

LEADING U.S. COMMERCIAL RETAIL BROKERS

Ranked by 2018 commercial retail brokerage revenue from U.S. offices*

Rank	Company	2018 revenue	% increase (decrease)
1	Marsh & McLennan Cos. Inc.	\$3,753,000,000 ¹	31.7% ¹
2	Aon PLC	\$2,020,000,000	9.5%
3	Arthur J. Gallagher & Co.	\$1,374,645,000	10.9%
4	Willis Towers Watson PLC	\$996,000,000	2.7%
5	Alliant Insurance Services Inc.	\$951,713,823	19.4%
6	USI Insurance Services LLC	\$877,380,672	1.6%
7	Hub International Ltd.	\$835,400,000	10.3%
8	Lockton Cos. LLC ²	\$760,484,000	9.9%
9	Acrisure LLC	\$704,534,461	19.4%
10	BB&T Insurance Holdings Inc.	\$625,082,000	13.4%

*Excludes revenue from placement of employee benefits; ¹BI estimate to reflect acquisition of Jardine Lloyd Thompson Group PLC, which was completed in April 2019; ²Fiscal year ending April 30. Source: BI survey

LARGEST BENEFITS BROKERS

Ranked by 2018 global benefits revenue

Rank	Company	2018 employee benefits revenue	% increase (decrease)	% of 2018 gross revenue
1	Marsh & McLennan Cos. Inc.	\$5,089,000,000 ¹	12.4% ¹	30.3% ¹
2	Willis Towers Watson PLC	\$4,196,000,000	2.2%	49.3%
3	Aon PLC	\$3,461,000,000	5.8%	32.1%
4	Arthur J. Gallagher & Co.	\$1,107,368,000	9.9%	16.0%
5	NFP Corp.	\$680,986,000	12.8%	54.7%
6	USI Insurance Services LLC	\$659,353,785	8.3%	39.1%
7	Hub International Ltd.	\$580,710,000	15.9%	27.0%
8	Lockton Cos. LLC ²	\$550,672,000	12.3%	32.0%
9	Alliant Insurance Services Inc.	\$362,510,887	15.4%	26.8%
10	Acrisure LLC	\$353,875,335	22.1%	25.4%

¹Pro forma to reflect acquisition of Jardine Lloyd Thompson Group PLC; ²Fiscal year ending April 30. Source: BI survey

LARGEST PRIVATELY OWNED BROKERS*

Ranked by 2018 brokerage revenue

Rank	Company	2018 brokerage revenue	% increase (decrease)
1	Hub International Ltd.	\$2,146,659,000	14.7%
2	Lockton Cos. LLC ¹	\$1,705,989,000	9.1%
3	USI Insurance Services LLC	\$1,665,445,136	1.9%
4	Acrisure LLC	\$1,378,108,087	34.3%
5	Alliant Insurance Services Inc.	\$1,346,159,749	19.8%
6	NFP Corp.	\$1,246,000,000	16.3%
7	AssuredPartners Inc.	\$1,231,448,000	20.0%
8	BroadStreet Partners Inc.	\$604,575,000	26.4%
9	Edgewood Partners Insurance Center, dba EPIC Insurance Brokers & Consultants	\$588,420,891	52.3%
10	Risk Strategies Co. Inc.	\$366,508,421	42.2%

*Companies that derive more than 49% of revenue from personal lines are not ranked; ¹Fiscal year ending April 30. Source: BI survey

Insurance Holdings Inc.

In addition, an increasingly large group of highly acquisitive brokerage firms continued to buy numerous small brokers and agents. Leading the pack was Acrisure LLC, which bought more than 100 firms last year, has continued on a tear in 2019 and is now the 10th-largest brokerage worldwide (see profile, page 39).

The roll-up of smaller rivals widens the gap between the largest brokers in the Top 100 and the rest, with 13th-place NFP Corp. reporting nearly twice the 2018 brokerage revenue of the 14th-place firm, BroadStreet Partners Inc., which also grew significantly.

Many of the acquisitive brokers are backed by private equity firms, which are attracted by the repeat revenue that brokers typically provide through high client retention ratios and annual premium and commission payments.

And as technology plays a bigger role in the brokerage business, many smaller firms are more willing to sell because “the average firm doesn’t really have the skills, capabilities and resources to really understand how to position themselves, and there’s a lot of anxiety,” said John Wepler, chairman and CEO of Marsh, Berry & Co. Inc., a consultant and M&A advisory firm in Woodmere, Ohio.

As a result of the need for technology and other factors, brokerage M&As will likely accelerate even more over the next several years, including mergers involving private equity-backed firms, he said. “Of the 25 private equity-funded brokers, we think there will be three of those in the next 12 months that transact to another firm,” Mr. Wepler said.

But it’s not just acquisitions driving growth; increasing insurance rates and a buoyant economy are also contributing to organic growth for brokerages.

“The two primary drivers of growth are premium volume — how much stuff there is to insure — and how much does it cost to insure it; that is, GDP and rates,” said Meyer Shields, managing director at Keefe, Bruyette & Woods Inc. in Baltimore.

Rate increases vary but are being seen across many lines, brokerage executives say.

“If you look at the average rate increases across the full industry, I think you’re still within a 2% to 3% range,” said John Howard, chairman and CEO of BB&T Insurance in Parsippany, New Jersey. “There are certain lines of business that are really challenged now, and those lines of business have seen some pretty significant rate increases and appetite changes,” he said.

Average increases are in the low single digits, said John Doyle, president and CEO of Marsh LLC.

“Prices were up in the first quarter by 3%, which is a couple of hundred basis points higher than a year ago and close to 100 basis points higher than the fourth quarter. But it’s quite uneven. There are products and geographies where prices continue to decline, and then there are products and geographies where prices are up a bit more consistently,” he said.

“There’s a little bit of a tailwind in terms of rates, but it’s modest ... our clients growing will have a greater impact,” said Gregory L. Williams, president and CEO of Acrisure in Caledonia, Michigan.

General economic growth is driving business and increasing demand for brokerage services, said Peter Clune, U.S. president and chief operating officer of Lockton Cos. LLC in Kansas City, Missouri.

“Our clients have had great success in the economy over the past few years,” Mr. Clune said. They “require advice to make sure their balance sheets are correctly protected.”

Overall, rate increases are being smoothed out by greater use of data and analytics, said J. Patrick Gallagher Jr., chairman, president and CEO of Arthur J. Gallagher & Co. in Rolling Meadows, Illinois.

“Management is considerably more well-informed today than they were, and that comes down to data and the ability to mine their data, so CEOs know if they need rate or don’t need rate, they know where that is geographically, and they know it by line,” he said.

And brokers can help clients manage through rate increases, said Marc Cohen, CEO of Hub International Inc. in Chicago.

“That process needs to begin 120 to 180 days before a renewal, where we begin to educate the client about the marketplace, about the reasons why insurance rates are going up, and start to have the discussion about alternative insurance products and structures that could be options for them as they think about their insurance program moving forward,” he said.

Angela Childers, Gloria Gonzalez, Judy Greenwald and Matthew Lerner contributed to this story.



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1 Marsh & McLennan Cos. Inc.

2018 brokerage revenue: **\$16.84B**
Percent increase (decrease): **20%**

Marsh & McLennan Cos. Inc.'s acquisition of fellow top 10 brokerage Jardine Lloyd Thompson Group PLC was driven by a desire for growth and reflects an insurance sector increasingly accustomed to major mergers and acquisition activity.

On April 1, the New York-based brokerage completed the acquisition of JLT for \$5.6 billion and assumed JLT debt of about \$1 billion, according to U.S. Securities and Exchange Commission filings.

"JLT is a competitor we admired for a long time," said John Doyle, president and CEO of Marsh LLC, the company's main brokerage unit. "There's real competitive spirit and client focus at JLT that I'm quite excited about. The deal is about growth. It's about growth in talent and growth in capabilities. They have great talent in the specialty business. They bring terrific distribution to us in some attractive markets around the

world, and I like the way they approach the business."

Marsh & McLennan's 2018 brokerage revenue increased 20% to \$16.84 billion — a pro forma figure reflecting the impact of the JLT acquisition — extending its lead as the longtime largest broker in the *Business Insurance* rankings.

"I don't expect, at least from Marsh, another blockbuster like this, but I do think there is going to be more acquisition throughout the year," said Doug Pawlowski, Chicago-based senior director on Fitch Ratings Inc.'s insurance team.

Marsh & McLennan Agency LLC completed seven acquisitions in 2018, closed the acquisition of Clearwater, Florida-based Bouchard Insurance Inc. in February and announced the acquisition of Phoenix-based Lovitt & Touché Inc. in April, as part of the company's ongoing efforts to expand its middle-market business, according to SEC filings.

"For the near term, we've shared with our investors that we've prioritized MMA as the area where we will focus our inorganic efforts," Mr. Doyle said.

Marsh completed five acquisitions in 2018 — including Houston-based Wortham Insurance & Risk Management, the then 35th-largest broker of U.S. business.

Analysts view the combined strength of the Marsh-JLT entity as largely a positive for risk managers.

"It's good news and bad news from the perspective of risk managers," said Meyer Shields, managing director at Keefe, Bruyette & Woods Inc. in Baltimore. "If you have a company with greater resources, (you) can access more services, more knowledge on a global basis. That's positive, and as risk management becomes more sophisticated and less about buying an insurance policy for a low price, having access to that ability and the resources that the combined entity has are increasingly important."

"On the less positive side ... Marsh as a combined entity can extract more compensation for itself because it's bringing more to the table. I'm not remotely suggesting that it's disproportionate with the value they bring,

but part of the process is that you have a more formidable service provider."



John Doyle

There is a "big competitive market out there," Mr. Doyle said. "This is not about extracting improved economics from the existing marketplace. It's about growing and convincing more clients that the talent from these two teams is so compelling that they should bring more of their business to us."

Several high-profile former JLT executives have left since the merger was announced, including Mike Rice, executive chairman of JLT Specialty USA. Other JLT executives secured key positions in the combined entity, including Dominic Burke, previously CEO

of JLT, who became vice chairman of Marsh & McLennan, a member of its executive committee and chairman of Marsh-JLT Specialty.

"We announced a few hundred leadership appointments prior to close, really trying to make the decisions as early as we could so that once we did close, we could hit the ground running," Mr. Doyle said. "I think that's served us well so far and was an important step for us to take to accelerate the process as best we can. For some, we always knew it wouldn't be what they want, and that's OK. Some of them maybe didn't get the leadership roles that they hoped they would as we went through that process. But so far so good."

At the international level, former JLT executives Nick Harris and Andre Louw became CEO and chairman of Pacific, respectively, for Marsh.

"When we look at Asia-Pacific, that's where Marsh has bolstered its talent and capabilities on a proportional basis most significantly," Mr. Shields said.

Gloria Gonzalez

2 Aon PLC

2018 brokerage revenue: **\$10.72B**
Percent increase (decrease): **7.5%**

Aon PLC continued to rebrand as a unified firm and expanded its restructuring process over the past year while establishing units to promote new business lines.

The brokerage also made several acquisitions, though fewer than in 2017, and flirted with the idea of buying one of its principal rivals.

Meanwhile, it saw solid increases in revenue and organic growth as property/casualty rates increased and the U.S. economy continued to grow.

Aon, the longtime second-largest brokerage in the world, reported brokerage revenue of \$10.72 billion in 2018, a 7.5% increase over the prior year and a sharp contrast to the 14.1% decline in 2017, which reflected the sale of its benefits outsourcing business.

Aon reported 5% organic growth in 2018, which accelerated to 6% in the first quarter of 2019.

"Aon has developed a consistent track record of organic growth and margin expansion," said

Meyer Shields, managing director at Keefe Bruyette & Woods Inc. in Baltimore.

And "2018 was easier than 2017" because insurance rates have increased, he said.

The 2017 sale of the outsourcing business was followed by a rebranding effort to bring its various operating units under the single Aon name with five "solution lines": commercial risk, reinsurance, retirement, health, and data and analytics.



John Zern

"All five solution lines have great growth traction," said John Zern, CEO of global health solutions and CEO of North America, commercial risk and health solutions for Aon. "New clients and retention rates have never

been higher."

And the brokerage continues to expand its operations through investments in analytics across numerous exposures and business lines and has put considerable resources into growing intellectual property risk management and insurance operations, among other things, he said.

Last year, Aon launched an intellectual property unit.

"There's still an educational process for clients depending on their industry and size," but "we think there's a tremendous upside," Mr. Zern said.

The intellectual property unit was later placed under the auspices of Aon's New Ventures Group to help "incubate" the unit, he said.

The New Ventures Group was formed in October last year to promote innovation across Aon.

Tony Goland, Aon's chief human resources officer, was named chief innovation officer and is responsible for organizing the new group. Other members of the group include Greg Case, Aon's CEO; Christa Davies, its chief financial officer; Bryon Ehrhart, global head of strategic

growth and development; and John Bruno, Aon's chief operations officer and CEO of data and analytic services.

The New Ventures Group "can be game changing for us as we think about big ideas that require a different level of intensity," Mr. Zern said.

The 2017 outsourcing divestiture was also followed by a restructuring program, which was expanded in the fourth quarter of last year.

In its annual 10-K statement filed with the U.S. Securities and Exchange Commission, Aon said it expects to eliminate an estimated 4,800 to 5,400 jobs as a result of the restructuring program, up 12.5% from 4,200 to 4,800 estimated job cuts reported in its previous annual filing.

A high-profile departure was Tom Fitzgerald, who had worked at the brokerage for 27 years, most recently as chief executive of Aon broking. Aon announced his departure in January and in February announced his responsibilities would be taken on by Lambros Lambrou, who later was named chief commercial officer and CEO of global specialties.

Aon made eight acquisitions in 2018 for a combined \$58 million, according to its 10-K, compared with 17 acquisitions for \$1.03 billion in 2017.

In 2019, the firm completed one acquisition in the first quarter, but perhaps the most significant acquisition news was one that did not happen: the purchase of rival Willis Towers Watson PLC.

Aon announced in March that it was considering a bid for Willis Towers Watson, a deal that could have created a firm with more than \$19 billion in annual revenue. After news of the potential bid became public, however, Aon quickly announced it would not proceed further with the talks.

The disclosure of the talks and quick abandonment was "an unusual situation" created by regulatory requirements in Ireland, where Willis Towers Watson is domiciled, "but by their very nature brokers are going to be regularly talking with each other," said J. Paul Newsome, managing director for equity research at Sandler O'Neill & Partners in Chicago.

Gavin Souter



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3 Willis Towers Watson PLC

2018 brokerage revenue: **\$8.41B**
Percent increase (decrease): **3.7%**

Willis Towers Watson PLC continued to pursue a strategy of acquiring companies either connected to or adjacent to its core businesses while completing its integration of two legacy companies in 2018.

The brokerage also made headlines in March with the disclosure and subsequent abandonment of a bid for Willis Towers Watson by a key competitor.

While 2018 marked the third and final year of the integration process following the January 2016 completion of the \$18 billion merger of London-based brokerage Willis Group Holdings PLC and New York-based consulting firm Towers Watson & Co, Willis Towers Watson “made a lot of progress in financial performance and started to see the potential that exists,” said Todd Jones, global head of corporate risk and broking.

Willis Towers Watson reported \$8.41 billion in brokerage revenue in 2018, a 3.7% increase from the

prior year, and delivered organic growth of 5% overall. It remains No. 3 in *Business Insurance’s* 2019 ranking of the world’s largest insurance brokers.

“As an industry we operate in a lot of dynamic markets, so we have political challenges, economic challenges, risk issues that are more prevalent in some parts of the world than others. In all those situations ... each of our businesses had their own unique challenges, but each responded very well and delivered results in 2018 that were very helpful to the overall performance,” Mr. Jones said.

In December 2018, Willis Towers Watson, through its majority-owned London-based broker Miller Insurance Services LLP, completed the acquisition of Alston Gayler, a U.K.-based insurance and reinsurance broker for \$67 million.

Then in April 2019, Willis Towers Watson announced it was buying Fort Lee, New Jersey-based direct-to-consumer health care organization MG LLC, which does business as Tranzact, for \$1.2 billion. The deal is expected to close in the

third quarter of 2019.

Both deals reflect Willis Towers Watson’s strategy of making acquisitions in areas either connected to or adjacent to its core businesses, said Mr. Jones.

Willis Towers Watson CEO John Haley signaled at an investor day earlier this year that mergers and acquisitions historically have been and continue to be a core part of the brokerage’s growth strategy, but the company is a “discriminating buyer,” said Mr. Jones.

“We are not looking to do deals just to do deals,” he said.

For every eight to 10 target organizations that Willis Towers Watson considers, one may pass through the filter in terms of its cultural and strategic fit, and “if they get through that filter, we believe we represent an interesting home for organizations that may be looking to find the right strategic home,” Mr. Jones said.

The Tranzact acquisition should help the company access the double-digit growth potential of the Medicare space, according to analyst C. Gregory Peters, a managing director in the equity

research department at St. Petersburg, Florida-based Raymond James & Associates.

“They identify levers and opportunities, and the Tranzact acquisition is one of the levers (Willis Towers Watson) has identified which will help position them to further organic revenue growth,” said Mr. Peters.



Todd Jones

Earlier this year, a story broke that Aon PLC, the world’s second largest brokerage, was looking to make a bid for Willis Towers Watson. However, the transaction didn’t completely make sense “because there could have been some antitrust issues,” said Elyse Greenspan, director of equity research for property/casualty insurance at Wells Fargo

Securities LLC in New York, especially given that Jardine Lloyd Thompson Group PLC had to sell its aerospace practice as part of its acquisition by Marsh & McLennan Cos. Inc.

While ongoing consolidation and competition in the brokerage sector creates potential opportunities for Willis Towers Watson from a talent and client perspective, it’s important not to get distracted, Mr. Jones said.

“We want to be thoughtful about the talent opportunities and make sure that there’s a cultural fit and that the acquisition of talent supports the overall strategy. On the client side I have yet to meet the client that says less choice is good ... so we want to be an alternative for those clients that are looking for the capabilities and credentials that we can bring,” he said.

“We need to pay attention to what’s happening externally and make sure Willis Towers Watson takes advantage of the opportunities to become a better organization. But our priority needs to be with our clients,” said Mr. Jones.

Claire Wilkinson

4 Arthur J. Gallagher & Co.

2018 brokerage revenue: **\$5.11B**
Percent increase (decrease): **12.5%**

Acquiring talent and market share through smaller, strategic acquisitions continued to be Arthur J. Gallagher & Co.’s modus operandi in 2018.

The Rolling Meadows, Illinois-based brokerage completed another 44 acquisitions in 2018 — including several overseas — with an estimated annual revenue of about \$317.9 million and added an additional 3,500 employees to its workforce.

In the past 30 years, the brokerage has completed more than 500 acquisitions, said J. Patrick Gallagher Jr., the company’s chairman, president and CEO.

“2018 was sort of a vintage year for Gallagher,” said Mark Dwelle, director of insurance equity research at RBC Capital Markets LLC in Richmond, Virginia. “(The brokerage) continued to be very active on the merger and acquisitions front, adding a lot of good properties in the U.S. and Europe, and has continued on with that trend in

the early part of 2019.”

With a 12.5% increase in brokerage revenue over 2017 — totaling \$5.11 billion in 2018 — Gallagher retained its No. 4 spot in *Business Insurance’s* 2019 ranking of the world’s largest brokerages.

Premium rate increases and value-added services have contributed to increased organic growth in the five largest brokerages, which combined showed a 4% organic growth rate in 2018, said Martha Butler, senior director of New York-based Fitch Ratings Inc.



J. Patrick Gallagher Jr.

Gallagher’s organic growth rate of 5.9% led its large broker peers in 2018, said Mr. Dwelle, noting that the company has “really been delivering” on both internal and

external factors.

Mr. Gallagher attributes the organic growth to its aggressive focus on sales and client retention.

Acquisition activity among brokerages increased again in 2018 over 2017, and brokerages’ appetite for acquisitions “just keeps ramping up,” said Ms. Butler.

Gallagher has been more active than most of its peers on the acquisition front, said Mr. Dwelle.

Mr. Gallagher says the company will continue with its aggressive acquisition strategy and buy firms that fit in with the brokerage’s collegiate culture and tuck them into the company’s existing businesses.

“The opportunity for us to do acquisitions is better than it’s ever been,” he said. “That means we get to take a step back and be picky. And what we’re picky about is culture.”

In March, the company also made a significant move into the aerospace industry through the acquisition of Jardine Lloyd Thompson Group PLC’s aerospace division. This acquisition

gave Gallagher JLT’s global aerospace retail and wholesale insurance broking division, and an additional 250 employees, according to a Gallagher statement.

Marsh & McLennan Cos. Inc., which acquired the rest of JLT, was compelled by European Commission regulators to divest the aerospace division for fear the Marsh/JLT combination would significantly reduce competition in that sector. Although financial details of the agreement, which was finalized in June, were not released, JLT valued the deal at about \$250.9 million.

Mr. Dwelle said the acquisition gives Gallagher “a new capability.”

Mr. Gallagher said the aerospace acquisition will provide significant growth opportunities internationally. In 2018, the company generated approximately 30% of its combined brokerage and risk management revenue outside of the U.S. In 2009, 11% of its revenues were derived internationally, according to Securities and Exchange Commission filings.

Mr. Gallagher says Gallagher has growth plans in every country and plans to continue its strategic acquisition strategy both in the U.S. and globally. “We’re expanding literally everywhere around the world,” he said.

For example, Gallagher is in the process of building its South American operations, which contributed to \$32.3 million in revenue in 2018 through the acquisition of local family-owned brokerage firms, and the brokerage currently has a presence in Chile, Peru, Columbia and Argentina.

The company also continues to focus on developing future talent. This year, Gallagher expanded its internship program, bringing on another 100 college students to bring the global intern total to 500.

“We’re introducing these college students to this great industry,” said Mr. Gallagher. “We’re probably not going to hire more than 100 of them, but by showing them the many opportunities this industry has to offer, in a sense we’re really contributing to the whole industry.”

Angela Childers

5 Hub International Ltd.

2018 brokerage revenue: **\$2.15B**
Percent increase (decrease): **14.7%**

Hub International Ltd. continued its acquisition focus in 2018 as a new private equity firm acquired a minority share of the brokerage.

In October, Hub announced Toronto-based private equity firm Altas Partners LP acquired a minority stake, with the Altas transaction valuing the Chicago-based brokerage at more than \$10 billion, according to a company statement last year. But despite some earlier speculation to the contrary, the brokerage is expected to continue to be majority owned by San Francisco-based Hellman & Friedman LLC, which bought Hub in 2013.

Hub reported \$2.15 billion in 2018 brokerage revenues, a 14.7% increase from a year earlier, putting it in the No. 5 position in *Business Insurance's* ranking of the world's largest commercial insurance brokers, a notch up from its ranking last year.

The Chicago-based brokerage completed 66 acquisitions in 2018, accounting for more than \$200 million in additional revenue over the past year, said CEO Marc Cohen.

"What makes the number both impressive and sustainable is the fact that we really opened up new windows of opportunity in the (merger and acquisition) space," Mr. Cohen said.

In the past, Hub tended to focus on "traditional acquisitions," including property/casualty transactions in the United States and Canada, he said. But "in 2018, we really expanded the acquisition pool" to include employee benefit agencies in Canada and 401(k) agencies in the United States, Mr. Cohen said.

"We have a specific strategy to acquire (managing general agencies) across all of North America," he said.

The acquisitions reflect a combination of the "heated acquisition environment with the fact that we've really expanded the types of agencies that we're looking to acquire and bring into the

organization," Mr. Cohen said.

From an acquisition standpoint, the company expects to surpass its 2018 results this year, according to Mr. Cohen, who succeeded longtime chief Martin Hughes in January 2018. Mr. Hughes remains executive chairman of the brokerage.

Hub prides itself on its integration process, Mr. Cohen said. "The difference between us and many of the brokers whom we compete with in the acquisition space is, we've got a corporate infrastructure to source the potential acquisition candidates.

"Then we have committed and dedicated assets within our field operations that have full-time representatives to integrate the acquisitions into our culture, including providing to them a roadmap that's necessary to take advantage of the resources and the expertise we've got throughout the organization."

"They've built an impressive track record of acquisitions," said Timothy J. Cunningham, managing director at Optis Partners LLC, a Chicago-based

M&A advisory firm and consultancy. "They've done a good job of integrating their acquisitions."

"One of the things that they sell to potential acquisition targets is they, and all the other private equity-based firms, do a mix of cash and some equity. But they sell the benefit of the equity" and how its value has increased over the years, Mr. Cunningham said.



Marc Cohen

This past year, Hub acquired a small business platform in Windsor, Ontario, and established a call center in Chicago — both designed to handle transactional personal lines business, which is essentially its first step into the services center arena, Mr. Cohen said.

But the company sees expanding this business into the small commercial insurance and employee benefits area "down the line," he said.

Five years is often the traditional time frame for private equity investments.

"The private equity world is in love with insurance brokers, and all these transactions have seen an uptick in value," but it is unknown if this will last, Mr. Cunningham said.

Mr. Cohen said he anticipates Hub will continue to be private equity-owned for at least the next five to six years.

Altas "has a long-term view of companies that they invest in, and Hellman & Friedman, with confidence after the typical private equity term of five years, made the decision to remain an owner of Hub for an additional term," selling only a portion of their equity, Mr. Cohen said.

As to eventually becoming publicly held, "everything is on the table," but it is "not a topic of discussion at this point," Mr. Cohen said.

Judy Greenwald

6 BB&T Insurance Holdings Inc.

2018 brokerage revenue: **\$2.02B**
Percent increase (decrease): **5.1%**

A major merger involving its banking parent could provide new growth opportunities for BB&T Insurance Holdings Inc. as it accesses a swathe of potential new insurance customers, the brokerage's senior executive and analysts say.

The potential new business to be derived from the merger between BB&T Corp. and SunTrust Banks Inc., which is due to close later this year, will be in addition to already robust organic growth reported by the brokerage.

BB&T Insurance moved to sixth position in *Business Insurance's* 2019 ranking with \$2.02 billion in brokerage revenue, a 5.1% increase over the prior year.

The bank-owned broker added 540 jobs in 2018 to reach 7,240 staff across 135 offices, up from 107 in 2017, according to *BI* data.

Once the bank merger is completed, the combined entity will be named "Truist," and will be the sixth-largest U.S. bank holding company.

All the insurance brand names will remain, said John Howard, chairman and CEO of BB&T Insurance Holdings, with change limited to the "top of the house" when BB&T Insurance Holdings, which houses the insurance operations, becomes Truist Insurance Holdings.

Retail brokerage operations continue under the McGriff Insurance Services brand, which was introduced following the acquisition of Regions Insurance last year.



John Howard

"SunTrust does not have a comparable insurance business, so we see this as being a really attractive opportunity for our insurance business," Mr. Howard said.

The combination could increase

cross-selling opportunities for the insurance brokerage operations, said Brian Klock, managing director for Keefe, Bruyette & Woods Inc. in Boston, extending insurance sales to the integrated SunTrust customer base.

"The organic growth in their insurance business is going to be focused on how they can first integrate both companies and then can they cross-sell to some of it," he said.

Mr. Klock notes that insurance brokerage makes up 23% of pro forma fee business of \$8 billion for the combined entity, which is roughly equivalent to BB&T's 2018 insurance revenue.

After 6% organic growth during 2018, BB&T Insurance Holdings improved to 6.7% organic growth during the first quarter of 2019, Mr. Howard said.

Market conditions are "more challenging (for buyers) this year than they were last year," Mr. Howard said, and rising rates are reflected in the broker's organic growth.

"Their peer group, by our standards, organic growth was about 4.4%," for 2018, said John

Wepler, chairman and CEO of Marsh, Berry & Co. Inc., a Woodmere, Ohio-based merger and acquisition advisory and consulting firm to the insurance sector.

The acquisition of Regions Insurance Group Inc. in April 2018 added \$46 million in revenue to the insurance operations, Mr. Klock said, accounting for some of the unit's overall growth from roughly 16% of revenues previously.

Regions also expanded BB&T geographically, Mr. Howard said, giving the brokerage a presence in Arkansas, Louisiana, and Indiana. The Regions integration is complete, he said. "The system conversions are complete and all of the rebranding has taken place."

Mr. Wepler said the brokerage has invested significantly in technology.

"They're leaning into technology a lot more than most in the industry, and I think it has to do with the fact they have a strong, stable, long-term capital partner," Mr. Wepler said. "They did not buy off-the-shelf software. They built a proprietary system that

would meet their needs."

Acquisitions should continue, according to Mr. Wepler. "They're acquisitive, but they're not just rolling up \$5 million and \$10 million shops. They're looking at finding those firms with a strategic fit."

Mr. Klock said there is a decreasing supply of bank-owned insurance brokerages to serve as potential further acquisition candidates for BB&T.

"Our focus isn't only on bank-owned insurance businesses," Mr. Howard said, adding that BB&T has acquired brokerage businesses from "a variety of forms of ownership."

"BB&T has been in the insurance business for many, many years," Mr. Wepler said. "It's been core to their business model since the beginning, they believe in it and it's part of their culture."

"We've more than doubled the size of BB&T's insurance business in the past seven years, and with the upcoming merger of equals, will provide us with even greater growth opportunities in the future," Mr. Howard said.

Matthew Lerner

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7 Brown & Brown Inc.

2018 brokerage revenue: **\$2.01B**
Percent increase (decrease): **8.2%**

Brown & Brown Inc. continued to pursue a disciplined acquisitions strategy in 2018 while it looked to strengthen expertise and build talent across its business.

The Daytona Beach, Florida-based brokerage announced the most acquired revenue in the history of the firm in 2018 — \$323 million in annualized revenue — taking its 2019 brokerage revenue up 8.2% to \$2.01 billion and moving the brokerage to No. 7 in *Business Insurance's* 2019 ranking, up from No. 8 in 2018.

Brown & Brown made 23 acquisitions last year, the largest of which was the \$700 million acquisition of Minneapolis-based Hays Group Inc. in the fourth quarter of 2018, according to J. Powell Brown, the brokerage's president and CEO.

Hays, which had significant portfolios of property/casualty and employee benefits business, strengthened Brown & Brown's employee benefits capabilities

and was a "very good fit culturally," Mr. Brown said.

"We had a large employee benefits presence and wanted to further expand it, and this is complementary to what we were trying to build," he said.

The deal added 750 staff to Brown & Brown and there was no consolidation of offices, Mr. Brown said.

"We're investing in all four segments of our business — retail, national programs, wholesale and services. Last year we did an acquisition in all four of those segments," Mr. Brown said.

So far in 2019, Brown & Brown has made 11 acquisitions, representing more than \$40 million in annualized revenue, Mr. Brown said.

"We would consider any firm that fits culturally and makes sense financially whether it was \$5 million of revenue, or \$200 million like Hays," he said.

Amid ongoing merger and acquisition activity across the industry, the competition for brokerages continues to drive high valuations, but Brown & Brown continues to take a disciplined

approach, according to outside analysts.

"For a good portion of 2018, Brown & Brown wasn't necessarily doing a lot of deals. Deals were either expensive or somehow didn't fit within the company," said Elyse Greenspan, director of equity research for property/casualty insurance at Wells Fargo Securities LLC in New York.

"We saw a little bit of a slower start to the year, and then (acquisition activity) did pick up with Hays and other acquisitions in the back half of last year," she said.

"We believe Brown & Brown is exercising some discipline around price and culture, making sure there is a fit with respect to their acquisition activity," said analyst C. Gregory Peters, a managing director in the equity research department at St. Petersburg, Florida-based Raymond James & Associates.

Brown & Brown's growth strategy, like that of many brokerages, is "a combination of both organic growth and acquisitions," said Mr. Brown.

Across its four divisions, Brown & Brown's organic rev-

enue growth was 2.4% in 2018. Organic growth for the retail segment was 3% in 2018, while national programs declined 0.9%, wholesale grew 5.7%, and services grew by 3.4%.

Claims-processing revenue from catastrophe events in 2018 was lower than 2017.



J. Powell Brown

"Brown & Brown's 2017 results did include some upside in and around the flood-related revenue that ran during the year that did not repeat in 2018," said Ms. Greenspan. Brown & Brown is a service provider for the National Flood Insurance Program.

When isolating the decrease in flood claims revenue in 2018 compared with 2017, Brown & Brown "grew approximately 4%

for the year," said Mr. Brown.

Economic growth is driving brokerage revenue growth, while rate increases in some lines are a positive development, Mr. Brown said.

"We have lots of commission business, and we have some fee business, so if we did have rate pricing pressure that would benefit us slightly; but we've always said that exposure units such as payrolls, sales, number of vehicles, number of employees, impact our business more than rates," said Mr. Brown.

Acquiring talent to add to the brokerage is a greater challenge, he said.

"Our greatest challenge and our greatest asset are the same thing — it's talent. The economy as it slows down will come back at some point. The biggest challenge in opportunity for us is getting and retaining more high-quality teammates," said Mr. Brown.

"We're continuing to look for more talented people who can help us solve or deliver solutions to our customers."

Claire Wilkinson

8 Lockton Cos. LLC

2018 brokerage revenue: **\$1.71B**
Percent increase (decrease): **9.1%**

Lockton Cos. LLC values its private independent brokerage status, and there are no plans for that to change even as it expands into new geographies and builds its reinsurance infrastructure, according to company officials.

The Kansas City, Missouri-based brokerage reported \$1.71 billion in 2018 brokerage revenue, a 9.1% increase from the year earlier, putting it in the No. 8 position in *Business Insurance's* 2019 ranking of the world's largest commercial insurance brokers, two notches up from the previous year's ranking.

"I couldn't be more pleased with our year-end results," said Ron Lockton, president and chief operating officer.

Lockton remains the only privately held broker among *Business Insurance's* top 10 commercial brokerages not backed by a private equity firm or a hybrid of private equity and private ownership.

Mr. Lockton said that as a "truly

independent" firm, "when we talk about value creation, we always mean about creating value for our clients" without being concerned about creating value for shareholders or investors.

"We feel that staying private or independent is a competitive advantage," and there are no plans to change, he said.

Lockton is an attractive employer, according to company officials and an analyst.



Ron Lockton Peter Clune

"We're having a lot of people reach out to us, wanting to join us, because our model is differentiated right now," said Peter Clune, president and chief operating officer of U.S. operations.

The company has hired 160 producers and hundreds of asso-

ciates over the past few years and "that's really contributing to our growth," he said.

"A little old company headquartered in Kansas City has become a small global powerhouse, and I believe in some cases has become a very preferred employer," said Timothy J. Cunningham, managing director of Optis Partners LLC, a mergers and acquisitions advisory firm and consultancy in Chicago.

The brokerage has enthusiastically embraced insurtech. Mr. Lockton pointed to Said Taiym, who joined Lockton as executive vice president-chief digital officer in 2018 from Lansing, Michigan-based AF Group, a Blue Cross Blue Shield of Michigan unit, where he was senior vice president and chief information officer.

While Mr. Taiym has been at Lockton for less than a year, "he's mapped out a digital strategy over the last year to help us improve security and operational efficiency and harness the power of data for the benefit of our clients as we continue to refine our client engagement processes."

Lockton is making investments both to automate the transactional side of the business as well as to focus on analytics "to provide deeper insight to our clients," Mr. Clune said.

The brokerage is also entering new geographical areas around the United States, including New Orleans and Pittsburgh.

"Then at the same time we're recruiting deeper within 'verticals' and specialties," he said. "Construction, real estate, private equity and health care are four of the specialties that we're having huge growth in, and we've also added a power team to our energy practice this year."

Mr. Lockton said, "We talk about industry specialization as being vertical, but we're also product driven," which includes "building out our cyber team and expertise on a global basis."

Another potential area of growth for Lockton is in reinsurance, with the broker announcing in March that it was forming a global reinsurance business called Lockton Global Re, and hiring three former Guy Carpenter & Co. LLC executives to run it. But Guy Car-

penter filed suit in May against the executives over their departures. Mr. Lockton and Mr. Clune did not add to the brokerage's previous statement that the executives "determined that the best place to build a career in reinsurance brokerage is with Lockton."

Lockton officials also had no additional comment on litigation that Lockton filed against Alliant Insurance Services Inc. earlier this year for allegedly poaching 26 of its employees.

Lockton makes relatively few acquisitions. "We've grown more organically, but we wouldn't rule out looking at acquisitions going forward," Mr. Lockton said.

Last year, Lockton purchased a 50% stake in Turkey-based marine broker Omni Insurance and Reinsurance Brokerage Services Inc. The deal was part of Lockton's global marine strategy, said Mr. Lockton.

"I would say that we are probably more acquisitive internationally than we have been in the U.S. in the past, and we continue to look for ways to scale or business internationally," he said.

Judy Greenwald

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9 USI Insurance Services LLC

2018 brokerage revenue: **\$1.67B**
Percent increase (decrease): **1.9%**

Fallout from the integration of former rival Wells Fargo Insurance Services USA Inc. cramped USI Insurance Services LLC's revenue growth last year, but the brokerage remains well positioned for future expansion, analysts say.

In particular, USI's investment in technology helps facilitate communication and collaboration throughout the firm, they say.

The Wells Fargo Insurance deal in 2017 more than doubled USI's revenue. USI maintained its ninth spot in *Business Insurance's* 2019 rankings with \$1.67 billion in 2018 brokerage revenue, but that represented less than a 2% over 2017's pro forma revenue.

The limited increase in revenue is a result of an expected decline in Wells Fargo Insurance revenues resulting from the departure of producers prior to the announced sale of the business to USI, which USI has largely

stemmed, according to Ed Bowler, USI's chief financial officer. The lack of investment in the Wells Fargo business prior to the announced sale was also a drag on growth, he added.

Over the past two years, however, the brokerage has added more than \$600 million in revenue and 3,000 staff through mergers and acquisitions, according to Mike Sicard, chairman and CEO of USI. Other significant acquisitions include the May 2018 closing of the previously announced purchase of Key Insurance & Benefits Services Inc., formerly part of KeyBank, headquartered in Buffalo, New York.

Mr. Sicard said "the past 18 to 24 months have been one of the most exciting growth periods" since he joined the broker as chairman and CEO in 2007.

USI's proprietary Omni technology system helps the broker, analysts said.

"They've created a platform that stitched together a question and answer system for thousands of employees," so each individual employee can draw upon the collective expertise of the whole,

said John Wepler, chairman and CEO of Marsh, Berry & Co. Inc., a Woodmere, Ohio-based merger and acquisition advisory and consulting firm.

USI's Omni system is "unique to the market" and represents significant investment over multiple years, he said.

"We're looking to lead the technological revolution in our industry," Mr. Sicard said. "We're still in the early stages of where this is going to go. The transactional parts of our business will increasingly become automated."

"One of the things that helps USI integrate is the fact they do have a pretty impressive technology platform with Omni," said Julie Herman, director in New York with S&P Global Ratings Inc.

Integration is a strength of the broker, analysts said.

"USI is very big on that full integration and bringing everybody into that platform to drive growth and efficiencies," said Stephen Guijarro, director in New York with S&P Global Ratings, adding that USI does not appear to be focused on "pure

aggregation."

The integration of Wells Fargo's insurance business is going well, he said.

"Losing less revenue than anticipated is one of the signals the transaction is integrating pretty successfully," Mr. Guijarro said. "Their track record has shown that they've done a pretty successful job with integration."



Mike Sicard

Recent increases in property/casualty insurance rates help USI, the analysts said.

"Rates overall are up a little bit more so than last year, so that's a positive for USI and the brokers," Ms. Herman said.

"The market environment is helping brokers now more than hurting them because you have

positive rate and you still have positive exposure," Ms. Herman said, but she cautioned that S&P Global has a base case risk of recession at 20% to 25% over the next 12 months.

USI has some attributes that distinguish it among brokers.

USI, Mr. Wepler noted, previously had been a publicly traded company before being taken private in 2007, differentiating them from other privately backed brokers. "They have the systems, procedures, corporate governance that goes with a publicly traded company. That gives them a little more stability than others."

USI also has "uniquely patient capital" in owners Kohlberg Kravis Roberts & Co. LP and Montreal-based pension fund Caisse de dépôt et placement du Québec, which bought the brokerage in March 2017, Mr. Wepler said.

This gives the brokerage a "long view," he said. "They're focused on the types of investments they need to make today that will propel the company five, 10, 15 years from now," such as the Omni system.

Matthew Lerner

10 Acrisure LLC

2018 brokerage revenue: **\$1.38B**
Percent increase (decrease): **34.3%**

Acrisure LLC first entered *Business Insurance's* ranking of the Top 100 brokers of U.S. business six years ago at No. 85 with less than \$30 million in 2012 revenue.

Today, after about 380 acquisitions, it's one of the 10 largest brokers in the world with more than \$1.3 billion in revenue.

The extraordinary growth of the Caledonia, Michigan-based brokerage, which specializes in placing insurance for small and medium-sized businesses, is founded on an ability to process triple-digit numbers of acquisitions annually and maintain solid organic growth.

Acrisure also operates under the radar, choosing not to announce most of its acquisitions and allowing the brokers and agencies it purchases to continue to operate under their existing names or with little or no associated corporate branding.

"They are the most aggressive acquirer in the business, having

closed over 100 deals in 2018 and nearly 100 in 2017," said Timothy J. Cunningham, managing director of Optis Partners LLC, a mergers and acquisitions advisory firm and consultancy in Chicago. "And their model is unique in that they don't rebrand, and they allow their acquisitions to maintain their local identity."



Gregory L. Williams

The brokerage also stands apart from many other acquisitive brokers with member firms owning most of the parent company, rather than giving majority ownership over to private-equity backers.

The ownership structure and maintenance of existing brands helps Acrisure attract high-quality firms, said John Wepler, chairman and CEO of Marsh, Berry

& Co. Inc. in Woodmere, Ohio.

"Many firms that are growing and perpetuating and don't need to do a transaction find this model refreshing, and they would not have sold had they not come in contact with this new, different environment," he said. "They don't look at it as an acquisition, they look at it as an investment."

Founded in 2005 by CEO Gregory L. Williams, who had a background in banking and telecommunications, and Executive Vice President Ricky L. Norris, who had an insurance background, the firm acquires brokerages by paying most of the consideration in Acrisure stock.

"Because they are shareholders, they see the benefit of utilizing the resources we provide," such as technological support and access to experts in other Acrisure units, Mr. Williams said. "From the inside out, we are very connected. They are not all flying the same flag, but they work very collaboratively together."

Acrisure bought 102 businesses in 2018, compared with 59 by its closest rival. Most of the deals were sourced by people from

firms previously bought by Acrisure, Mr. Williams said.

"We can do high-volume M&A because it's not a disruptive process to the business that we've partnered with and we don't have a heavy integration model at the time of the acquisition," Mr. Williams said.

The firm expanded in the Midwest but adopted a national strategy in 2013 and raised private-equity capital. Following a management buyout in 2016, Acrisure is more than 80% owned by people working in the business, which reassures agencies that the firm won't be "flipped" to a private equity firm or taken public, he said.

Last year, several of its private-equity investors — Blackstone Group LP, GSO Capital Partners and Tactical Opportunities — invested an additional \$2 billion in Acrisure, largely by buying out or returning capital to other investors.

The size of the deals Acrisure completes varies, Mr. Williams said. "We do some deals for a \$500,000 book of business, and we'll soon be doing a deal with a

company that's got \$90 million in revenue."

Going forward, the brokerage is looking to do more larger deals, he said.

In addition, the firm wants to grow its international business. Last year, it bought reinsurance brokerage Beach & Associates Ltd., which has operations in Bermuda, London, Toronto and Zurich, as well as the United States. About 4% of Acrisure's revenue is derived from businesses outside of North America, but "over the next 12 months, it might be as high as 7% or 8%," Mr. Williams said.

"But it's not just an M&A story," Mr. Williams said. Over the past eight years, Acrisure's average annual organic growth is close to 5%. In addition, it has an EBITDA margin — earnings before interest, tax, depreciation and amortization divided by revenue — of 37%, he said.

The growth has necessitated a larger head office, and Acrisure plans to move to a new location in Grand Rapids, Michigan, next year.

Gavin Souter

Workers Comp

For the past several years, *Business Insurance* has produced *Workers Comp*, a specialty magazine covering the workers compensation market, trends in the sector and providing insights to help workers comp professionals do their jobs. Moving forward, to offer the resource to a greater number of readers, *Workers Comp* will become a special, twice-yearly feature section in *Business Insurance*. We hope you enjoy the articles, interviews and data in the following section and would welcome any feedback.

—Gavin Souter, editor



Insurtech tools offer bottom-line solutions

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

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Insurtech's application to workers comp. **PAGE 47**

Insurtech advances in the workers compensation industry have spread beyond the claims arena to being more proactively utilized to create safer workplaces by predicting potential injuries and mitigating the risks before they occur.

But the use of tools ranging from big data to artificial intelligence is still somewhat limited because of employee concerns about the privacy of their personal information and legacy systems that frustrate their full implementation.

“It’s in the workers comp insurers’ interest to make sure these technologies are deployed and used effectively, because it affects their bottom line,” said Sam Friedman, insurance research leader for the Center for Financial Services with Deloitte Services LP in New York.

“They’ve always been very proactive and this is a great toy store for people in the workers comp industry.”

Workers compensation insurers are increasingly focusing on the challenges that innovation can help them overcome, with these insurers citing system/process

inefficiencies as the top challenge at nearly 83%, according to a September 2018 report by Oldwick, New Jersey-based ratings firm A.M. Best Co. Inc.

“There are a lot of efficiencies being created” by the use of technology and analytics “to reduce loss costs and keep people out of accidents and/or get them back to work,” said Jim DiVirgilio, Hartford, Connecticut-based chief regional claims officer for the Americas and head of U.S. claims for XL Insurance America Inc., a unit of Axa XL, a division of Axa SA. It is “a burgeoning area, but certainly not a fully developed area.”

Insurers are investing in various technologies, with 25% investing in big data, 25% in cloud computing, and 21% in artificial intelligence, according to the Best survey.

“Workers comp is definitely showing a little more diversification in terms of different ways innovation is being utilized and having an impact when you compare it to some of the other lines on the commercial side,” said David Blades, associate director in the industry research and analytics department of Best.

In terms of “claims targeting over the years, we’ve been doing a lot of predictive modeling and that’s been evolving with more data,” said Chris Knight, vice president of analytics and innovation for EPIC Risk Consulting in Atlanta. “Now we’re

using that more to drive specific actions based on the outcomes, and (third-party administrators) are starting to integrate more into claim delegation and understanding what outcome is likely and what should change to impact the claims.”

“Workers comp is definitely showing a little more diversification in terms of different ways innovation is being utilized and having an impact when you compare it to some of the other lines on the commercial side.”

David Blades, A.M. Best Co. Inc.

Such tools are being increasingly utilized in risk mitigation efforts as well, experts say. For example, wearable technology is being deployed to track employees and notify employers that an employee may be missing or in distress. Technology is also being utilized to improve hazard communication with employees and demonstrate more ergonomically sound work practices, which have the multiple benefits of being safer for employees as well as faster and

more efficient, experts say.

“It’s really giving us the opportunity to take that data and get far upstream to understand where the risk factors are for employees, whether that be chemical exposures, falls from heights, ergonomic risk factors (or) stress factors, to allow us to see trends ... all the way down to the individual to then be able to tailor interventions, whether they be companywide interventions or specifically targeted at a particular high-risk individual to prevent a workers comp claim from ever becoming a claim,” said Stephen Craig, San Francisco-based senior vice president with Chubb Global Risk Advisors.

But there are discussions on the claims side about how far to take technology in terms of interacting with injured employees and how much to automate tasks around payments and directing medical care because “we risk taking that too far,” Mr. Knight said.

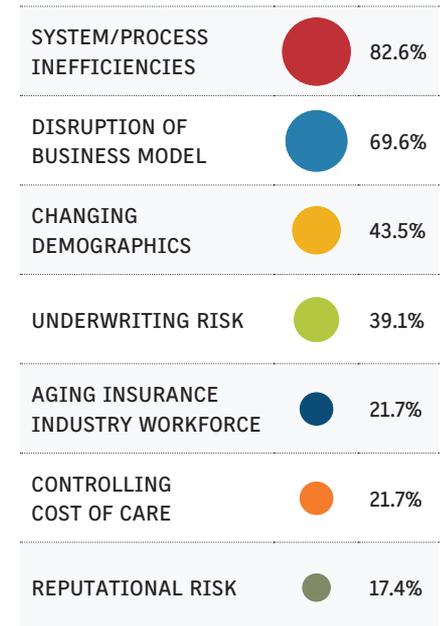
Meanwhile, underwriting risk is a challenge that 39.1% of workers compensation insurers say innovation can help them overcome, according to the Best survey.

“The shift that we’re seeing is much more reliance on data-driven underwriting rather than an individual underwriter’s personal experience,” said Karlyn Carnahan, San Francisco-based head of the Americas for the property/casualty

INNOVATING TO SURVIVE

Workers compensation insurers are increasingly focusing on the challenges that innovation can help them overcome, according to a 2018 survey.

What are the most important challenges innovation can help overcome?



Source: A.M. Best Co. Inc. data and research

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Take time to find the talent to implement innovation

Finding and hiring qualified data scientists may be a challenge for the workers compensation sector as it moves to continue incorporating innovative technology into its operations, experts say.

While comp insurers generally understand how critical innovation is to their businesses and are making significant investments, the vast majority do not have personnel dedicated to innovation, according to a September 2018 study by A.M. Best Co. Inc. While more than a quarter of these insurers had cross-functional teams focused on innovation, only 9.1% have a dedicated innovation team, while 21.2% did not.



“Even where we see some reason for optimism in terms of the insurance industry and the utilization of innovation, the fact that you still had 21% even on the workers comp side that had no specific personnel at this time focused on innovation told you that we’re still in some ways at the beginning stages of recognizing how impactful innovation can be, and that there are still some management teams that have been slow to recognize the need to utilize some of these tools to help them move forward in this marketplace,” said David

Blades, associate director in the industry research and analytics department of the Oldwick, New Jersey-based ratings firm. “You can think about those being key targets for consolidation on a going-forward basis.”

Many companies currently outsource data evaluation and predictive modeling functions, experts say. The Best survey found that 15.2% of workers comp insurers outsourced to a service provider or consultancy.

“Talent’s an issue,” said Sam Friedman, insurance research leader for the Center for Financial Services with Deloitte Services LP in New York. “You don’t just pop open a box and read the instructions. You need people that know what you’re doing. You need people either on-site, or you can outsource this to people who are experts in this kind of data analysis and can help you turn it into actionable insights rather than just raw data. That should be an interesting challenge and could theoretically be an obstacle.”

Gloria Gonzalez

worker experience.”

“I hope that insurance companies are beginning to move past using technology to manage their internal processes and begin using technology to deliver better customer experience,” Ms. Carnahan said.

The actual collection, integration and analysis of data itself is also a challenge, experts say.

“The first challenge is if you’ve been around a long time, then I guarantee your data is dirty,” Ms. Carnahan said. “If you are a carrier that has grown through acquisitions and has multiple systems, I guarantee your data is hard to get to. If you’re a small workers comp carrier, it’s hard to have enough data to be statistically credible.”

Much of the effort to date has focused on structured data when unstructured data from different sources such as doctors notes could lead to fresh insights that could keep workers safe, Mr. Knight said.

The ability to format such data “has opened up a whole new world of analytics and predictions that haven’t been available,” he said.

And “the goal of all this monitoring is to actually do something with” the data, Mr. Friedman said. “You can hook up the whole world and generate incredible amounts of data, but the key is to make sure someone is actually looking at it and analyzing it through some algorithm and figuring out where the red flags are so that we can flag a situation in real time.”

The mere speed of the insurtech evolution may continue to be a challenge for the insurance industry, experts say.

“This is what scares me right now — the unknown,” Mr. Galusha said. “I wake up every morning worried that there will be some new development in insurtech that could help us do our job that I don’t know about. The challenge for safety professionals and work comp managers is how do you stay on top of what’s out there?”

practice of Celent LLC.

Complicated barriers

But with the insurtech evolution come challenges, and data privacy tops the list of concerns, experts say.

“Employees are concerned about this new technology as an invasion of their privacy, and that will be a significant challenge that will have to be overcome,” said Joe Galusha, group managing director and U.S. leader of Aon Global Risk Consulting in Southfield, Michigan. “We have to be really clear and communicate well the intent of what we’re doing. When an employee understands that the reason we want them

to use these wearables is to make that job safer for them and that’s the sole intention of it, we’ll have better success in executing.”

The rules and behaviors around workers allowing their companies or their companies’ insurers to access wearables data is going to hold back widespread adoption to a certain extent, and it will be key to watch how regulations evolve when companies require workers to wear clothing with embedded sensors so they can monitor the data in the hopes of preventing accidents, said Mark Purowitz, global insurtech leader for Deloitte.

While there are innovative players in the market, some insurers and TPAs have not been successful in adopting technolo-

gy because their systems date back to the 1990s, and the complexity of how they operate is very high, said Dr. Joe Rubinsztain, CEO of Fort Lauderdale, Florida-based ChronWell Inc., which utilizes artificial intelligence in providing coordinated care solutions to commercial workers comp insurers and self-insured clients.

In addition, their internal teams may be “very resistant to change” and more focused on streamlining their systems and preserving the old way of doing business rather than disrupting the system, he said.

“Comp probably needs a redesign from the ground up,” he said. “A silver bullet is highly unlikely to change the injured



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Wearables track, assist older workforce

BY ANGELA CHILDERS
 achilders@businessinsurance.com

Employers are seeking creative technological solutions to deal with the challenge presented by a surge of aging employees in the workforce.

Wearable technologies ranging from exoskeletons to sensors that record lifting movements or blood pressure are increasingly being used to help aging employees perform their jobs safely, experts say.

Medical costs for workers compensation claims for those 65 years and older are roughly a quarter higher than claim costs for all workers, and older workers also have a higher proportion of injuries from falls, slips and trips, according to data from Boca Raton, Florida-based National Council on Compensation Insurance Inc.

Employees aged 65 and older tripled in the workforce between 1988 and 2018, and their numbers are projected to continue to grow over the next decade, according to the U.S. Bureau of Labor Statistics.

“The workforce is getting older, people are working longer, and employers are ... facing challenges in planning for their workforce and their future,” said David Schatsky, managing director in the New York City office of Deloitte LLP.

Telematics and wearables are becoming more relevant because of employers’ efforts to create more age-friendly work environments and because of the significance of the impact of aging revealed in Aon PLC’s claims data, said Joe Galusha, group managing director and U.S. leader of Aon Global Risk Consulting in Southfield, Michigan.

“We identified that workers 45 and older had an average cost of claim that was 73% higher than their younger counterparts,” he said.



Lost-time claims tended to be nearly two weeks longer on average compared with younger workers and litigation rates were 35% higher, he said.

Many wearables can give immediate feedback on an individual’s body positioning and forces that can help that employee immediately modify lifting, twisting or bending behaviors, which can be particularly helpful for workers as they age, said Bill Spiers, vice president and risk control services practice leader for Kansas City, Missouri-based Lockton Cos. Inc.

“Some (wearables) we see offer great biometric feedback, particularly for an older employee,” said Matt Zender, senior vice president of workers compensation strategy for New York City-based AmTrust Financial Services Inc. Devices can be used to monitor heart rates, stress levels and provide indicators of over-exertion, he said.

Woody Dwyer, second vice president of workers compensation with Hartford, Connecticut-based Trav-

elers Cos. Inc., said that as workers age, they develop sarcopenia, which is the progressive loss of skeletal muscle mass due to the aging process, according to Rochester, Minnesota-based Mayo Clinic.

One such device Travelers demonstrated was a rechargeable, cellphone-sized sensor that employees can strap onto their bodies at the beginning of a shift. The device then collects the worker’s movement, vibrates to alert workers when the forces they are using to lift are excessive or if they are performing unsafe movements like swinging or twisting, and offers a rating score at the end of a shift. This score can show supervisors who worked safely or who needs extra coaching.

“These sensors could potentially be used to understand the risk of a job and how to mitigate that for the aging workforce,” said Mr. Dwyer.

Other wearables, such as exoskeletons, do not collect information, but can offset weight during a manual

pickup or hold a worker’s arms overhead for tasks such as installing overhead electrical wiring.

“One of the key things when we talk about items that assist a worker is that they’re really there to assist, not amplify,” said Christopher Hayes, risk control second vice president of transportation services at Travelers. “Technology that is wearable ... can assist with the task, but it doesn’t replace a risk management system that focuses on the employee.”

Costs for these technologies vary widely, said Mr. Dwyer. Non-data driven devices like exoskeletons may cost \$5,000 to \$10,000 per unit while data-collecting wearables will have a per-device cost as well as a monthly data fee, he said.

“It’s easy for employers to identify that their older workers are very often their most valuable workers — many times they’ve been with (the company) the longest and have a wealth of experience,” said Mr. Zender. “It’s harder to identify the cost of the devices and the risk of potential injury.”

The companies creating these technologies are still trying to prove the benefits they deliver, said Mr. Schatsky, which is one reason why companies in more dangerous fields where “the stakes are rather higher” are the earliest adopters, he said.

The value of workers aged 45 and up has never been greater than today, said Mr. Spiers.

“Their skills, knowledge and experience, when you lose them from an injury, it really hurts your production,” he said. “As our bodies age ... when we’re injured at work, the healing is going to be slower, and we’re going to have other issues (like comorbidities) that affect that. We’re trying to protect that group of workers.”

Gloria Gonzalez contributed to this report.

RISING RISK

Older workers suffer a higher number of falls, slips and trips compared with their younger counterparts.

SHARE OF INJURIES CAUSED BY FALLS, SLIPS AND TRIPS

AGES 16-19

20%

AGES 20-24

17%

AGES 25-34

19%

AGES 35-44

21%

AGES 45-54

25%

AGES 55-64

33%

AGES 65 AND OVER

44%

Source: National Council on Compensation Insurance Inc.



EMPLOYERS MUST BE EXTRA CAUTIOUS OF AGE BIAS EXPOSURE

Employers need to be careful that their use of wearables for employees does not make them vulnerable to age discrimination complaints, experts say.

If an employer is using wearable technology to monitor health conditions such as blood pressure and passes over an older worker with consistently high blood pressure for high-stress, higher-reward projects, that employer could be opening the door to discrimination claims, said Jennifer Rubin, an employment lawyer and partner with Mintz, Levin, Cohn, Ferris,

Glovsky and Popeo P.C. with offices in New York City and San Diego. Likewise, it could also be problematic if an employer is designating particular categories of employees to be provided with wearables.

“Anytime you use the word ‘special,’ you could be accused of making that determination on a discriminatory basis,” she said.

Unintended bias could also be an issue, said Kraig Marini Baker, a partner in the Seattle office of Davis Wright Tremaine LLP. For example, an older worker using

an assistive wearable technology like an exoskeleton could be perceived by others as unable to carry as much as an employee not using the technology.

Another issue could be if an employment decision was made based on wearable data that showed a worker’s performance had declined because a plaintiff’s lawyer may see an opportunity to sue if the company has not acted consistently with regard to all employees whose performance had decreased, he said.

Angela Childers



PHIL WALLS

MYMATRIXX

Once a self-professed introvert, Phil Walls said his background as a retail pharmacist speaking with customers regarding their prescriptions helped pave the way to where he is now. As chief clinical officer for workers compensation pharmacy benefits manager myMatrixx, a subsidiary of Express Scripts Holding Co., Mr. Walls educates clients and the industry on trends in prescriptions for injured workers. With more than 40 years of experience, he recently spoke with *Business Insurance* Reporter Louise Esola about his passion and priority of recent years: educating the industry on the dangers of opioid abuse. Edited excerpts follow.

PEOPLE IN COMP

One of the biggest challenges we have oftentimes is an injured worker may not understand all of the nuances of workers compensation and it gets confusing. Oftentimes when there's a delay at the pharmacy counter, it can be seen as a workers compensation failure rather than an important quality check.

Q What drove you to work as a pharmacist? Was it the people aspect or the science?

A It is more the science aspect. As a young man, I was looking at my opportunities, and as a chemist, your opportunities are very, very limited. That caused me to look at pharmacy, where the job market was primarily good. And I realized I would be able to use my knowledge of chemistry in a very practical application.

Q Your career spans several decades. How has the field of pharmacology evolved?

A During the 1960s, colleges of pharmacy taught their students to follow the doctors' orders, to never question doctors' orders. In the 1970s, when I was in pharmacy school, all that was changing. We were realizing that drug therapy was a lot more complex, that there were dangers associated with drug therapy, and that physicians simply were not in a position to know all of that and to be able to manage the drug therapy as appropriately as to be desired. And that is when pharmacists started to take on that clinical, concentrated role.

Q You've also watched this synergy grow between the insurance companies, the PBMs and the doctors. How has that evolved?

A Improvement is happening even as we speak. Almost every physician has a laptop in the examination room. They enter the prescription electronically. They hit send, and the pharmacy receives an electronic prescription. The real promise in e-prescribing is to move information from the point of dispensing back to the point of prescribing. Regarding a dangerous drug interaction, rather than waiting until the patient is at the pharmacy counter, let's immediately alert that prescriber at the time he or she is writing the prescription so they

can make their change while that file is in front of them, while that patient is in the room. That way when the patient shows up at the pharmacy counter, they won't be dealing with delays. That's huge in workers compensation, because one of the biggest challenges we have oftentimes is an injured worker may not understand all of the nuances of workers compensation and it gets confusing. Oftentimes when there's a delay at the pharmacy counter, it can be seen as a workers compensation failure rather than an important quality check. Those delays can cause ramifications all the way to an injured worker contacting an attorney because they feel like something isn't being handled the way it should be.

Q Regarding opioid prescribing, doctors on one hand don't want their patients in pain, but they also don't want them taking a dangerous drug. What is the solution?

A A physician has so many challenges when it comes to managing pain. Back in the 1990s, physicians received the worst information that they ever could have regarding pain management that pain is the fifth vital sign. During that era, all the focus was placed on trying to make sure that patients did not experience pain. Now most patients are going to experience pain. And to set the bar they should not have (pain) is unrealistic. It all comes back to patients having to understand that a pain-free life may not always be possible and there are reasons for that. Pain has to be managed, but it may be unrealistic to think that we can create a pain-free environment for a patient.

Q You suffered an injury in the past and have some experience with pain. Can you tell me more?

A Many years ago, I fell and injured my back. The physician determined that it was a herniated disc, pain from a pinched nerve. He offered me options. He said we can do surgery. Being in this industry

as long as I have, I was very concerned about surgical outcomes, and so I said no, thank you. He offered opioids, and again, knowing the dangers associated with opioids, I said no, thank you. He asked me what I was doing for pain. I said over-the-counter ibuprofen. He asked me if that was working, and I said it was. And he said, well, just continue taking that. And so here I am decades later. When my back flares up, ibuprofen does just fine. I tell that story because what most people don't realize is that ibuprofen is more effective in treating pain than opioids are. It's a much better agent in helping with that type of pain. I tell that story because it's such a good way to help people understand the importance of being an informed consumer.

Q I've interviewed injured workers who say they had no idea that hydrocodone was this dangerous drug that the news was talking about. They didn't make the connection because it didn't say opioid on the bottle. What's going on here?

A Most people taking opioids never thought of it as so. The stat I've heard is one in three people do not realize their drug is an opioid. That's a huge concern. Pharmacists need to be much more proactive when dispensing opioids. Make sure the patient understands that hydrocodone, Norco, Vicodin, whatever the name happens to be, is an opioid to help them make that connection for themselves.

Q Quality of life is something mentioned in comp circles nowadays. What are some of your hobbies?

A It's all about family. My wife and I have been married for 36 years. We have four kids, seven grandkids, another one on the way, and it's all about them. I also read a lot — and not all about drug therapy. I enjoy writing. My wife and I both enjoy outside activities, gardening, things of this nature. So that's it. It's a full life.



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THE FORUM

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MODERATOR



Richard Lenkov, capital member, Bryce Downey & Lenkov LLC

Mr. Lenkov's practice areas include insurance litigation and workers compensation, among others. With nearly 20 years of experience, he serves as co-chair of the Claims and Litigation Management Alliance's Workers Compensation Committee.

There is no shortage of service providers seeking to work with you. What qualities do you look for in a partner?

ERIC SPALSBURY: It may sound academic, but being intimately connected to the client and possessing a somewhat innate knowledge of a client's operations is paramount to the success of an enterprise risk management process on many levels. In a dynamic environment, strategic planning and tactical decisions must be able to occur without the client reviewing every detail.

CASSANDRA GOMEZ: Commitment to communication. Without communication and updates, that service provider's efforts are not seen and therefore cannot add value to the progress on that case. When I am considering a change in a service provider, I will check the reputation of that provider as well. The workers compensation industry is a close-knit community and we all work with similar providers, so checking with industry partners is a must if I have no prior experience with that provider.

At what point in the process is it important to bring on a service provider?

SPALSBURY: This depends on the situation and variables involved. In some instances, immediate engagement is critical. This determination needs to be ingrained in the client management procedures and occur consistently from claim to claim and situation to situation. Whether to engage a resource and the specific resources available should

be assessed in the opening rounds.

GOMEZ: Workers compensation claim handling varies depending on the case, the insured and the company you work for. Each entity may have requirements that make that decision for you. For example, a client may require a nurse on every time loss file or utilization review on every surgery. The important aspects to always remember are the requirements of your client or company and the facts of your claim.

How do you provide resources to your clients to truly add value to the claim, justifying your additional costs?

KEVIN GRODNICK: Clients value insight into what potential jurors think a case is worth or jurors' views on certain issues specific to a case. We provide online jury research that allows clients to accurately value a case early on, giving them an opportunity to make a smart settlement or litigation management decision that will save them money in the long run. Clients are finding that spending a small amount of money up front on jury research saves them even greater sums of money on settlement/defense costs.

ANTHONY CANNIZZO: I like to be involved early in a claim before major decisions have been made. Clients willing to staff counsel on cases early and spend resources on useful discovery — such as doctor cross examination or surveillance — have better and quicker resolutions.

What should service providers avoid when trying to help manage cases efficiently?

GRODNICK: Avoid telling your client what you think they want to hear instead of what the client needs to hear. We are often approached to do focus groups on cases to verify the client's position on how much a case should settle for or to confirm that a case is a "slam dunk" for the defense at trial. Unfortunately, many times what we learn in research does not reflect the client's original notions on the value of the case. We advise the client on how to apply what we've learned in research in order to reshape the trial strategy or settle the

case for a different sum than expected.

CANNIZZO: Avoid personalizing cases.

SPALSBURY: Avoid utilizing a strictly formulaic approach — be creative and open to options. Every event is unique and requires open dialogue in how best to manage it. Prior lessons should always be considered. I believe that getting together and having open-forum discussions on challenging claims is beneficial. Make the time, schedule a conference room, order a pizza and bounce the details and options around!

GOMEZ: Do not forget who your customers really are. I have seen providers that have worked with a client for a long time and become very comfortable with them. Then the client decides to hire a new (third-party administrator). Instead of working with the new TPA, that provider begins going directly to the client for their communication, leaving the new TPA out of the decision-making.

What is the single most important thing that our readers should do today to manage their claim efficiently?

GRODNICK: Get a feel for the case early on in the litigation process, by asking "what is this case worth?" and "what are my strengths and weaknesses?" By assessing cases early on, clients can quickly eliminate cases that are not favorable to their position, sooner rather than later. Early assessment also allows clients to identify points of strength, either towards settlement or throughout the discovery phase, providing the strongest possible position and a higher level of confidence.

CANNIZZO: Having an attorney whom you trust and who has the ability to adapt to your needs is vital to achieving your goals.

SPALSBURY: Establish processes for immediate notification and thorough information sharing by your business partners. If you do not have an e-tool for communicating incidents and managing information flow, you are behind the times. Telephone notification has gone the way of the dodo.

GOMEZ: Keep in steady contact with the providers; they have been added to the file to bring value and efficiency to the case. If the handler has to consistently follow up for updates, then it is taking away from the actual aspect of moving the claim to conclusion. This goes for the claim handler as well. If they are not communicating with their customers (insured, providers, claimants), the case will not progress.

MEET THE PANEL



Anthony Cannizzo is a partner and member of the workers compensation team at Manning & Kass, Ellrod, Ramirez, Trester LLP's Los Angeles office. He

has spent more than 15 years litigating on behalf of domestic and international companies including restaurants, hotels, airlines, manufacturers, movie studios, stadiums and entertainment companies.



Cassandra Gomez is a workers compensation supervisor at CorVel Corp. in Downers Grove, Illinois. CorVel provides risk management

solutions for the workers compensation, auto, health and disability management industries nationwide. She has over 30 years of experience from operations to training.



Kevin Grodnick is director of business development for Magna Legal Services in Chicago. Magna Legal Services provides litigation support services

to law firms, corporations, and governmental agencies throughout the nation.

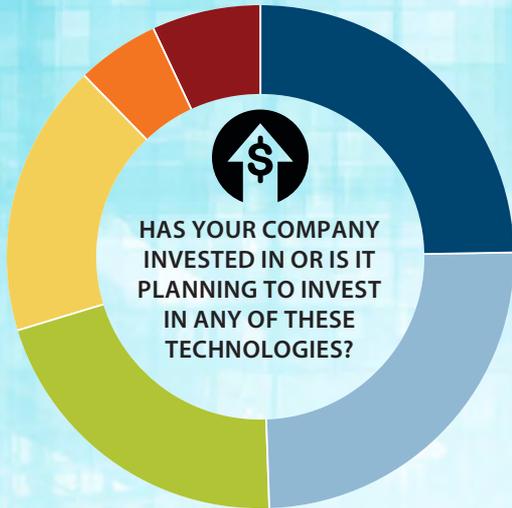


Eric Spalsbury is director of risk management for Stanley Steemer International Inc. in Dublin, Ohio. He has worked for the large U.S.-based residential

and commercial cleaning company for over 12 years. He has over 36 years of experience managing risk at various levels and oversees all aspects of risk control, including insurance/risk transfer, loss control/safety, fleet maintenance and claims/litigation management. He is president and a longtime member of the Board of Directors of the Central Ohio Chapter of the Risk & Insurance Management Society Inc.

INSURTECH EVOLUTION IN COMP SPREADS FAR AND WIDE

Workers compensation insurers are investing or planning to invest in numerous technological innovations.

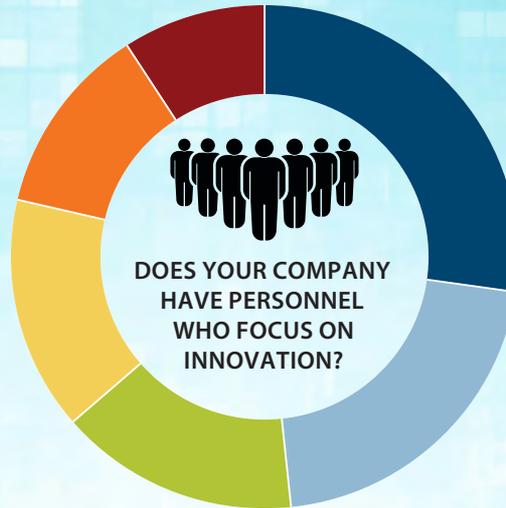


- Big data: 24.6%
- Cloud computing: 24.6%
- Artificial intelligence: 21.1%
- Internet of things: 17.5%
- Blockchain: 5.3%
- None at this time: 7%

Source: A.M. Best Co. Inc. data and research

LACKING DEDICATION TO THE CRAFT OF INNOVATION

While workers compensation insurers understand that innovation is critical to their businesses and are making significant investments, the vast majority of these insurers do not have personnel dedicated to innovation.



- Cross-functional team: 27.3%
- None at this time: 21.2%
- Outsourced to service provider or consultancy: 15.2%
- Other: 15.2%
- Chief innovation officer: 12.1%
- Dedicated innovation team: 9.1%

Source: A.M. Best Co. Inc. data and research

TRIPLE DEATH RISK AT >64

Workers age 65 and over had the highest fatal injury rate of all workers.

RATE OF FATAL WORK INJURIES PER 100,000 FULL-TIME EQUIVALENT WORKERS BY AGE GROUP, 2017

ALL WORKERS
3.5

AGES 16-17
0.8

AGES 18-19
2.6

AGES 20-24
2.2

AGES 25-34
2.5

AGES 35-44
2.9

AGES 45-54
3.3

AGES 55-64
4.6

AGES 65 AND OVER
10.3

Source: U.S. Bureau of Labor Statistics

DEATHS BASED ON AGE GROUP

The largest number of fatal work injuries involved workers in the 55-to-64 and 45-to-54 age groups

NUMBER OF FATALITIES PER AGE GROUP, 2017

UNDER 16 YEARS
15

AGES 16-17
7

AGES 18-19
62

AGES 20-24
293

AGES 25-34
872

AGES 35-44
907

AGES 45-54
1,059

AGES 55-64
1,155

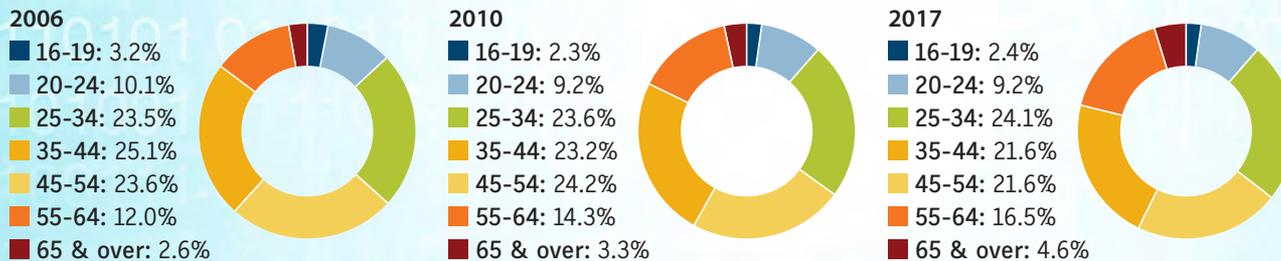
AGES 65 AND OVER
775

Source: U.S. Bureau of Labor Statistics

BURNING THE MIDNIGHT OIL

Aging workers are putting in more hours of work in recent years than they did in 2006.

PROPORTION OF HOURS WORKED BY AGE



Source: National Council on Compensation Insurance Inc.

SAFETY INVESTMENTS

Wearable technology is being used in many market segments to improve worker safety.



Venture capital investment in wearable startups has grown to more than **\$4 BILLION** since 2014



The global market for wearables is expected to **GROW 41%** annually and exceed \$60 billion in 2022

Source: Deloitte LLP

WEARING TECHNOLOGY ON THE SLEEVE

By 2020, more than 75 million wearables will permeate the workplace, according to research firm Tractica LLC.



FITNESS devices are the most prevalent wearable, followed by smart watches



MEN are more likely to adopt smart glasses and watches



WOMEN are more likely to value devices that improve productivity



HEALTH information is most sought after by employees, especially women



ADOPTION of wearables declines with age, but those 35 to 49 are more likely to own smartwatches

Source: PricewaterhouseCoopers LLP

Battling brokers risk losing focus

Ongoing disputes between insurance brokerage firms and their former employees are proving a distraction to transformations happening in the brokerage arena.

A string of recent court filings show some quite bitter arguments between brokerage firms and producers over alleged breaches of nonsolicitation and noncompete agreements. As we report on page 20, while the agreements can be hard to enforce, particularly in states such as California, those difficulties don't appear to be diluting attempts to stop departing employees from taking business with them when they walk out the door.



Gavin Souter
EDITOR

Often, both sides see right as clearly being on their side: Brokerage firms feel that the ex-employees benefited from their brands and resources to win or maintain accounts; individual brokers resent implications that they are somehow tied to a firm in perpetuity.

While most of the disputes are settled, they can still have lasting effects in an era of consolidation when some of the individual brokers inadvertently find themselves back with their old employer after a takeover.

Caught in the middle are risk managers. While brokers and firms fight over who has the right to keep servicing clients, risk managers face choices over what is most important — their relationship with individual brokers or the brokerage firms they contract with.

A simple answer would be for them to use their leverage as buyers and move to another firm altogether. But as the number of brokers capable of servicing multinational accounts shrinks through mergers and acquisitions, that becomes less of an option, particularly for large clients.

All this is taking place against a backdrop of increasing sophistication in the brokerage sector. As we report in our annual profiles of the top brokers on page 25, the past year has seen an acceleration in M&A activity, which in part is being driven by a need for brokers to offer better, quicker services to their clients. Some longstanding brokerages — not always small firms — realize that they need to make significant investments in technology if they are to continue to compete in an increasingly digitized sector. As a result, some are choosing to cash out or become parts of bigger organizations with more resources.

Brokers, still the key business partners of most commercial buyers, have the opportunity to make those ties even stronger by offering greater risk management insights and services through those technology services. But if the ties are weakened through public fights over who has the right to keep cashing the commission checks, there are many technology-empowered firms outside the business itching to step in and disrupt the whole process.

There are good reasons for both sides of the poaching disputes to work out more realistic employment contracts that value what everyone brings to the table and keep the focus where so many brokers assert it should be: on the client.

COMPETITIVE JUICES

U.S. trade secret and noncompete legislation continues to evolve, although only California, North Dakota and Oklahoma ban employee noncompete agreements.

- ★ All 47 U.S. states permitting employee noncompetes allow these agreements to protect trade secrets or confidential business information.
- ★ 22 U.S. states exempt professionals such as broadcasters and physicians from noncompete agreements, half of which provide some exemption for certain health care professionals. All states exempt lawyers based on state ethics rules.
- ★ 42 U.S. states allow courts to fix overly broad noncompetes.

Source: Russell Beck, Beck Reed Riden LLP

VIEW FROM WASHINGTON

Safety guidance on hold

And then there was one. James J. Sullivan Jr. was sworn in as a commissioner on the Occupational Safety and Health Review Commission in August 2017, and for a 20-month period all was right as the review commission set about its important work of tackling a years-long backlog of appeals of workplace safety citations and penalties.

During that relatively short period, the employer community received key guidance on the U.S. Occupational Safety and Health Administration's use of the general duty clause to cite employers for workplace safety hazards in situations where the agency does not have a specific standard governing a particular hazard. For example, the review commission rejected OSHA's attempted use of the clause to cite an employer for heat-related hazards, but upheld its use in a horrific case in which a social services employee was fatally assaulted by a schizophrenic client of the employer.

But nothing lasts forever. Heather MacDougall shocked attendees at an American Bar Association meeting in San Juan, Puerto Rico, in March by announcing she would be stepping down as chairwoman of the review commission by the end of that month. With Commissioner Cynthia Attwood's term expiring on April 27, that left Mr. Sullivan as the last review commissioner standing.

This means the work at the review commissioner level has ground, at least publicly, to a halt because it takes the affirmative votes of two commissioners to decide a pending case. Even when there are two commissioners, it can be more difficult to reach an agreement to dispose of a pending case because both must agree on all the issues.

When the review commission is fully staffed, it plays a critical role in ensuring that OSHA can

legally justify its citations against employers for violating workplace safety regulations and that the agency acts within the scope of its legislative authority. When the review commission is not fully staffed, employers are left in a terrible limbo awaiting their workplace safety fates. Employers may not always like the decisions the review commission makes, but at least they know where they stand and have some type of guidance for their health and safety programs going forward.

Mr. Sullivan may be alone on the review commission island for quite some time. Even if the president



Gloria Gonzalez
DEPUTY EDITOR

announces new nominations to the commission, there is already a long list of nominations that the U.S. Senate seemingly cannot break through as nearly every nomination is subject to a partisan and/or procedural debate. Even relatively noncontroversial nominations such as Scott Mugno — the former vice president for safety, sustainability and vehicle maintenance

at FedEx Ground, a unit of FedEx Corp., nominated by President Donald Trump in October 2017 to head OSHA — fall victim to these disputes, with Mr. Mugno withdrawing his nomination in May. Just as it is doubtful that a new head of OSHA will be nominated and confirmed ahead of the 2020 presidential elections, the review commission may continue to be short-staffed for the foreseeable future, once again extending a backlog of important workplace safety cases to be decided.

Workers comp claims by former employees require clear procedures, careful handling



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It was the infamous Don Vito Corleone who came to the conclusion that “revenge is a dish that tastes best when it is cold,” in Mario Puzo’s authentic novel “The Godfather.” Clearly, Don Vito understood that vengeance meted out during the heat of the moment led only to mistakes and failure.

This sage advice is lost in the world of workers compensation when employees become separated from employers. All too often, the knee-jerk reaction of a self-proclaimed scorned employee is to later allege that, prior to the separation date, a work injury took place that is causing their disability. This fact pattern has been in play since the inception of workers compensation laws and remains one area where the employer is rightfully in the catbird seat. Employers and their workers compensation insurers need to be aware of the proclivity for this pattern to rear its ugly head in cases involving employee separation and also plan to defend these cases with steadfast and common sense evidence.

While workers compensation laws vary from state to state, the underlying theories of compensability are virtually universal and create a fertile backdrop for post-employment separation injury allegations. After all, a claimant need only prove that a previous workplace injury is causing disability (despite a separation) to perfect a colorable claim for benefits. The employer, on the other hand, will argue that an employee’s noninjury-related separation is the cause of the lost earnings and not a work injury. The finder of fact weighs the testimony and makes a legal conclusion based on the preponderance of the evidentiary record. So the stage is set, the players are named, and the employer has one thing on its side — the facts.

The three most common areas of separation that later devolve into workers compensation claims are discharge for cause, voluntary resignation and economic lay-off. All three involve common emotional stressors for some employees with feelings of anger, indignation and ultimately retribution. Unfortunately, when dealing with disgruntled employees, truth sometimes takes a back seat to garnering what is thought to be “rightfully mine.”

All employers and their insurers should now expect that after a separation, a claim for benefits for a “phantom injury” could ultimately be filed. Preparing for such an eventuality is paramount in any blueprint for workers compensation defense.

Defending these cases can benefit from claimants acting hastily after an employment separation. The starting point for any defense will center on notice of the injury. No matter how claimant-oriented the jurisdiction, an employee who gives

notice of a prior workplace injury only after being separated from employment will likely be found less credible.

Moreover, some jurisdictions will allow dismissal of the claim for lack of timely notice — a fact that can benefit the employer in all cases.

To combat this, there is the propensity for claimants to bypass this problem by simply testifying that an injury was “reported to a supervisor” at the time of its occurrence. Employers should be wary of this tactic and establish codified work rules for the reporting of a work injury. If an employee is required to make a written report of a work injury at the time of its occurrence, the same employee is going to be hard-pressed to argue after an employment separation that a prior work injury was reported when no paperwork exists. All notice defenses can be perfected through simple-fact witness testimony and documentary evidence. Most post-employment separation work injury claims are dismissed on this premise.

In most cases, it can be easily proved that the claimant was performing their job without a problem prior to the separation with no complaints of pain or notice of injury and absolutely no record of medical treatment.

Common sense should dictate the employer’s secondary avenues of defense. If a claimant was truly injured prior to an employment separation, there should be a record of some kind of medical treatment for that injury. When defending a claim, employers have the right to undertake hospital, pharmacy and diagnostic test searches. If a claimant has not been treated for the alleged injury at all or did not begin to seek treatment for the injury until well after a separation, the claimant’s credibility is once again shrouded in considerable doubt. In most cases, it can be easily proved that the claimant was performing their job without a problem prior to the separation with no complaints of pain or notice of injury and absolutely no record of medical treatment. Under this scenario, it violates the rules of common sense to even attempt to assert the occurrence of some previous, phantom injury after an employee has been separated.

Employers should also be mindful of the fact that most post-employment separation injury scenarios involve allegations likely based on retribution issues as

opposed to the truth. The finder of fact in these cases will be guided away from the incidents that led to the separation and delivered emotional packets of testimony or evidence delineating how an employee’s personal life has been affected by an alleged prior injury (an irrelevant fact in most workers compensation statutes). While it is not recommended that a workers compensation case be remediated solely into a minitrial as to the efficacy of an employment separation, it is well within the bounds of legitimacy to allow the finder of fact to learn the real reasons behind the separation. A claimant’s discharge for cause for violating a drug policy while working tends to downplay the believability of a later allegation by the claimant that some prior unreported work injury is the “real” cause of the current disability, not the “coincidental” discharge.

Surveillance is another way for the employer to counteract false allegations of injury. Some claimants will argue that a prior unreported work injury, while non-disabling before the separation, is now incessantly disabling. At the same time, these claimants can usually be surveilled undertaking activities of daily living and even working for alternate employers. Video evidence can corroborate the lack of the veracity of the claim when used in conjunction with the other defenses mentioned.

As with any workers compensation case, all defense evidence should be gathered and provided to an independent medical examiner for review at the time of a physical examination. The employer’s medical examiner is an expert in ferreting out malingering behaviors and will be able to provide opinions as to whether a claimant ever really sustained a work injury. No medical treatment at the time of the alleged injury, coupled with spurious medical evidence generated to support a suspect post-employment injury, will result in a favorable report for the employer.

In a post-employment separation workers compensation injury claim, an evidentiary record establishing (a) no notice of injury, (b) no medical treatment for the alleged injury, (c) surveillance showing normal activities, and (d) an IME report documenting no identifiable work injury will usually be enough to propel an employer to a verdict in its favor.

Prior to expending the costs to present this evidence, employers should take advantage of the jurisdictional workers compensation insurance fraud provisions. A claimant who makes false allegations of an injury to an employer or insurer is subject to these provisions. Give them a choice — withdraw the claim or face the consequences — an offer they can’t refuse.

Cyber quotes based on domain name

■ CFC Underwriting Ltd. launched a cyber insurance platform that offers coverage quotes for small and medium-sized businesses based only on the submission of a domain name, with other details being obtained automatically via publicly available information.

The London-based managing general agent said the cyber insurance platform also allows brokers to adjust quotes, including limits and deductibles, without involving an underwriter.

In addition, the system provides brokers with benchmarking information, including average limit purchased and common claims based on a policyholder's size, industry and location, CFC said in a statement.

Beazley expands media coverage

■ Beazley PLC is offering expanded coverage under its MediaTech insurance policy.

New coverages under the policy, which offers limits of up to \$25 million, include business interruption, dependent business interruption, cyber extortion, data recovery costs, e-crime including fraudulent construction and telephone fraud, and criminal rewards, according to a spokeswoman.

Criminal rewards refers to rewards offered for the arrest and conviction of individuals who commit illegal acts related to coverage under the policy, according to the spokeswoman.

Coverage "has been streamlined to provide clear and concise wording and seamless protection, combining comprehensive errors and omissions and media liability insurance with cyber coverage," the insurer said in a statement.

Hartford Steam Boiler, CNA offer remote monitoring

■ Hartford Steam Boiler & Insurance Co. has joined with CNA Financial Corp. to offer its remote sensor monitoring program to the Chicago-based insurer's small and midsize commercial policyholders to help prevent or reduce property damage and business interruption loss.

Using sensors and customized algorithms, HSB's "internet of things" technology is a package of hardware and software, data analytics, back-end operations, targeted alerts and 24/7 monitoring support, Hartford, Connecticut-based HSB, a unit of Munich Reinsurance Co., said in a statement.



Swiss Re, Airbus partner on flood modeling

■ Swiss Re Corporate Solutions Ltd., the commercial insurance arm of reinsurer Swiss Re Ltd., said its flood assessment tool Float will be powered by drone imagery and data from Atlanta-based Airbus Aerial, a unit of aerospace giant Airbus Group.

Float helps companies assess the flood risks of facilities, using drones to capture accurate, location-specific elevation data, Swiss Re said in a statement.

The collected data is transformed into a realistic visualization of the facility, including an interactive simulation that shows potential vulnerabilities and low points.

The collaboration will enable Float customers to bring together data from drones, manned aircraft, satellites and combine it with analytics, asset inspection tools, site monitoring and reporting via Airbus Aerial's cloud-based suite, according to the statement.

Real-time alerts help identify water leaks, temperature extremes and power outages and suggest ways to correct and remediate these scenarios which are key causes of loss for commercial businesses, HSB said in the statement.

Broker launches aviation, aerospace services

■ BGC Insurance Group, a division of U.S.-based brokerage firm BGC Partners Inc., plans to launch a specialist global aviation and aerospace brokerage headed

up by Marcel Chad, a former partner at JLT Aerospace.

Mr. Chad, whose appointment is subject to regulatory approval, joins BGC Insurance as president of the planned new brokerage with immediate effect and is initially based in London, BGC Insurance Group said in a statement.

"The current market is stacked against aviation clients, with three brokers dominating this line of business because of their scale. For a significant independent player like us with a client-focused approach, vision and technical prowess, the gap in the market offers huge disruptive potential," Andrew Wallin, chief commercial officer, BGC Insurance Group, said in the statement.

Marsh, Eos partner on affinity platform

■ Eos Venture Partners Ltd. and Marsh LLC will collaborate to use the broker's Bluestream cloud-based digital broker platform for affinity business.

Affinity is a key area of focus for London-based Eos, a venture capital firm focused on insurance, its founding partner, Sam Evans, said in an email.

"Bluestream provides the underlying infrastructure, ability to engage with multiple partners, manage the insurance capacity on the back end and leverage the broader distribution reach of Marsh and is therefore a great way to accelerate growth and reach new markets," Mr. Evans said.

Bluestream, which Marsh launched in 2018, was designed to integrate with users own systems and offer a streamlined approach to offering insurance products, according to the launch announcement.

Law firm partners with malpractice insurers

■ Law firm Hinshaw & Culbertson LLP is partnering with 14 malpractice insurers to expand its risk management advice and services in a program designed for solo attorneys and small practices.

The Chicago-based law firm said in a statement that its LawyeringLaw.com risk management platform is being offered to firms who are insured by the participating malpractice insurers.

LawyeringLaw.com was designed for solo and small law firms that do not have a general counsel or internal risk management resources, Hinshaw partner Noah Fielder said in a statement.

Resources provided by the program include ethics opinions, state specific materials, sample law firm policies and checklists and targeted information in areas such as cyber risk, according to the statement.

DEALS & MOVES

AmWINS completes wholesaler, MGA buy

AmWINS Group Inc. completed the acquisition of Atlantic Risk Specialists, a wholesale insurance brokerage and managing general agent comprising Atlantic Risk Specialists Inc. and ARS-Latiff LLC.

Terms of the transaction were not disclosed. ARS specializes in difficult and complicated construction risks including New York city contractors, workers compensation and professional lines, Charlotte, North Carolina-based AmWINS said in a statement.

Insurance broker BMS gets cash infusion

BMS Group Ltd. will receive a £500 million (\$635 million) investment from affiliates of Victoria, British Columbia-based British Columbia Investment Management Corp. and Garden City, New York-based Preservation Capital Partners LLP.

The deal is subject to regulatory approvals and is expected to close in the third quarter, BMS said in a statement.

BMS Group's holding company, London-based Minova Insurance Holdings Ltd., will be wound up, while Pioneer Underwriters, which operates syndicate 1980, will be directly owned by Minova shareholders.

Patriot buys New York broker

Patriot Growth Insurance Services LLC has bought Schaefer Enterprises Inc. Terms of the deal were not disclosed.

New York-based Schaefer provides business, personal and program insurance, including general liability, property, professional liability and workers compensation, Fort Washington, Pennsylvania-based Patriot said in a statement.

Liberty invests in autonomous vehicles

Liberty Mutual Strategic Ventures, the venture capital arm of Liberty Mutual Insurance Co., invested in the \$7 million seed financing to Edge Case Research, which helps market autonomous vehicle technologies and services.

The venture includes a pilot program with Edge's Hologram product, which tests software and hardware used by autonomous vehicles to perceive their environment, Liberty said in a statement. The research will help Liberty develop risk management options and pricing for autonomous vehicle companies.

PEOPLE



"In insurance M&A, there is increasing competition among bidders but limited inventory. Further, both the state regulatory and Committee on Foreign Investment in the United States approval processes are becoming increasingly demanding."

UP CLOSE

Bernhardt Nadell

NEW JOB TITLE: New York-based partner, King & Spalding LLP

PREVIOUS POSITION: New York-based partner, Stroock & Stroock & Lavan LLP

OUTLOOK FOR THE INDUSTRY: I think the outlook for insurance (mergers and acquisitions) will reflect continued intense competition between private equity firms and strategic buyers for a limited number of potential acquisition targets, and continued convergence between the objectives of financial and strategic buyers, e.g. strategies looking to maximize the internal rate of return for acquired business units rather than just focusing on "synergies."

GOALS FOR YOUR NEW POSITION: I would like to provide my clients the resources of a large firm with global capabilities. Even U.S. domestic transactions increasingly require international support, as the financing for acquisitions may come from overseas even if the buyer and seller in an acquisition process are U.S.-based.

CHALLENGES FACING THE INDUSTRY: In insurance M&A, there is increasing competition among bidders but limited inventory. Further, both the state regulatory and Committee on Foreign Investment in the United States approval processes are becoming increasingly demanding. Recent experience in the insurance M&A market has shown that a successful experience with one regulator does not ensure an acquirer a smooth process with another regulator.

FIRST EXPERIENCE: I started practicing in this area as an associate in 1998.

ADVICE FOR A NEWCOMER: Familiarize yourself with the regulatory landscape, as well as learning the nuts and bolts of doing transactions.

DREAM JOB: Forest ranger

LOOKING FORWARD TO: I am looking forward to continued collaboration with various teams of highly skilled King & Spalding lawyers in different practice subspecialties, such as private equity in New York; private equity, M&A and banking in Atlanta; regulatory practices in Washington, D.C.; and transactional practices overseas.

COLLEGE MAJOR: Diplomatic history

FAVORITE MEAL: Smoked fish

BOOK: "Prophets of Regulation" by Thomas K. McCraw

HOBBIES: Hiking, photography, travel and tennis

TV SHOW: "The World at War"

ON A SATURDAY AFTERNOON: Hiking, photography, travel and tennis

ON THE MOVE



American International Group Inc. named Bermuda-based **Christopher Schaper** to be AIG Re's CEO. Previously, Mr. Schaper was CEO of Marsh LLC's managing general agent businesses.



Axa XL, the property/casualty and specialty risk division of Axa SA, named New York-based **Robert Klepper** to be chief underwriting officer, short tail insurance lines. Previously, Mr. Klepper was president of client risk solutions for AIG.



TigerRisk Partners LLC hired San Francisco-based **Lindsey Frase** to be a partner and member of the company's North American current client division. Ms. Frase was most recently executive vice president at Willis Re Inc. She was one of *Business Insurance's* Women to Watch in 2015.



Berkshire Hathaway Specialty Insurance Co. established an office in Paris and appointed former Axa XL executive **François-Xavier d'Huart** as country manager. Mr. d'Huart was most recently head of client and broker management for France at Axa XL, a division of Axa SA.



Julie Mix McPeak, former Tennessee Department of Commerce and Insurance Commissioner and immediate past president of the National Association of Insurance Commissioners, joined Greenberg Traurig PA. She will join the law firm's insurance regulatory and transactions practice and help launch its Nashville, Tennessee, office.



American International Group Inc. promoted **David McElroy**, president and CEO of its Boston-based Lexington Insurance Co. unit, to the new position of president and CEO of the North America operations of general insurance.

SEE MORE ONLINE

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



Noah's Ark replica hits choppy waters

It appears a massive replica of an ancient wooden ship that survived flooding of biblical proportions was not built to standard.

The owners of Ark Encounter in Williamstown, Kentucky, are suing their insurer after heavy rains caused nearly \$1 million in property damage to the three-year-old tourist attraction, according to the Associated Press.

They allege that rains in 2017 and 2018 caused a landslide on the access road to the 510-foot-long ark and the attraction's insurers refused to cover the damage, spurring the federal lawsuit seeking compensation and punitive damages, according to the report.

Allied World Assurance Co. Holdings of Switzerland, named in the suit, has not publicly commented.

IRON MAIDEN

Rock band takes name seriously

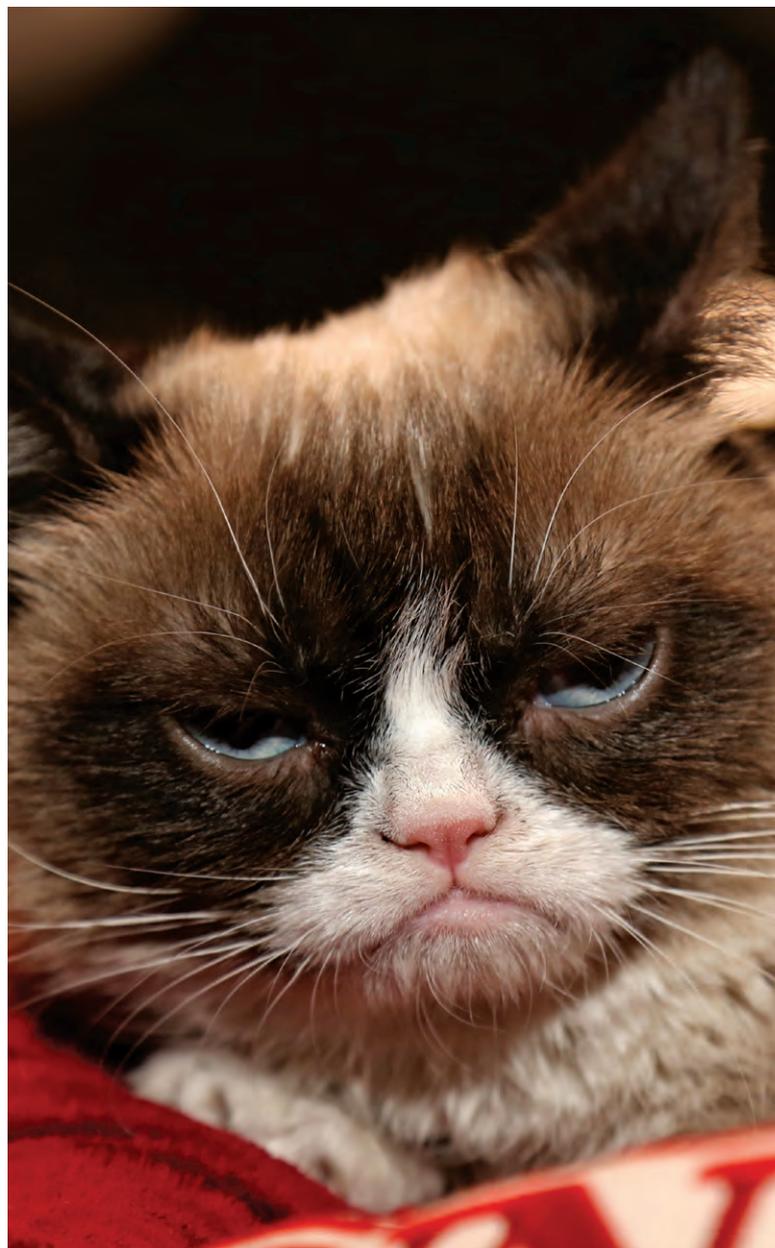
Looks like the heavy metal rock band that famously belted out the lyrics "hallowed be thy name" meant business.

Iron Maiden's holding company on Tuesday filed a \$2 million trademark infringement lawsuit against the video game developer of "Ion Maiden," the Daily Beast reported.

The lawsuit claims entertainment company 3D Realms is conducting trademark infringement, which could lead to "confusion among consumers," the news outlet reported, adding that the band itself has also sold video games in the past.

"Defendant's Ion Maiden name is nearly identical to the Iron Maiden trademark in appearance, sound and overall commercial impression. Defendant also uses the Ion Maiden name to sell merchandise," the lawsuit claims.

SOMETHING ELSE TO BE GRUMPY ABOUT



The death of Grumpy Cat, the evil-eyed pessimistic celebrity kitty made famous in such social media memes as "I had fun once; it was awful" and "I like the sound you make when you shut up," raised a question on Marketwatch.com: are celebrity pets insurable?

The answer just so happens to have been Grumpy Cat's favorite word: "No."

"Pet life insurance exists, but it's a rarely offered product and would be of little help to the owners of a famous pooch or kitty," Marketwatch reported. "It's not designed to cover lost financial opportunities related to pets who double as income generators for their owners."



What the flood do you know?

The National Association of Insurance Commissioners launched an online interactive quiz "What the Flood?" intended to nudge homeowners who may not have adequate flood insurance coverage.

The quiz draws attention to the need for additional flood insurance in addition to standard homeowners insurance "to cover a broken levee" and that sewage backups will need an "insurance rider."

"Not all policies are the same," the NAIC announced in its call for homeowners to check policies and consult an insurance agent to confirm that flood perils are covered.



Tower platform crack puts visitors on edge

As if stepping on a glass floor protruding off the side of one of Chicago's famous skyscrapers isn't scary enough, how about when one sheer, thin layer of said 103rd-floor platform cracks?

Such was the case in June when visitors of the Willis Tower, named for broker Willis Towers Watson PLC, watched in horror as the protective layer over the glass shattered under the feet of a woman and her children, according to media reports.

The protective layer "did what it was supposed to do," CNN reported.

"There was a woman with two kids and they looked really pale and scared because the floor just cracked," a man who filmed the ordeal told CNN.

The glass ledge was made to hold up to five tons, with the shattered protective layer intended to shield the glass from scratching under the feet of about 1.5 million visitors a year, CNN reported.

Below is a Summary Notice of a proposed partial class action settlement reached in a class action lawsuit pending in the United States District Court for the District of New Jersey known as *Lincoln Adventures, LLC et al. vs. Those Certain Underwriters at Lloyd's, et al.* A more detailed version of this Notice is contained in a Long-form Notice posted on the Settlement website at www.SyndicateSettlement.com. You are encouraged to read the Long-form Notice for a more in depth explanation of the proposed partial settlement and your rights as they relate to the Settlement.

IF YOU PURCHASED INSURANCE THROUGH CERTAIN SYNDICATES AT LLOYD'S, LONDON DURING THE PERIOD JANUARY 1, 1997, THROUGH MARCH 25, 2019, YOU COULD GET MONEY FROM A PARTIAL CLASS ACTION SETTLEMENT THAT MAY AFFECT YOUR RIGHTS

A proposed partial class action settlement has been reached with some, but not all, of the Lloyd's Syndicates who are Defendants in the case and sold insurance to policyholders in the United States. Plaintiffs assert causes of action against the Defendants for violation of the Racketeer Influenced and Corrupt Organizations Act, civil conspiracy, and unjust enrichment based on allegations that Defendants engaged in a deceptive scheme to conceal the lack of competition in the Lloyd's Market. The Settling Defendants deny the allegations made against them.

The Syndicates that have settled are Syndicate Nos. 0033, 0102, 0382, 0435, 0570, 0609, 0623, 0958, 1183, 1886, 2001, 2623, and 2987 (the "Settling Defendants"). The Syndicates who are Defendants in the case, but who have not settled, are Syndicate Nos. 0510, 0727, 1003, 1084, 1096, 1245, 2003, 2020, 2488, and 2791 (the "Non-Settling Defendants"). The case will continue to be litigated against the Non-Settling Defendants.

WHAT ARE YOUR LEGAL RIGHTS AND IMPORTANT DEADLINES?

If you do not want to be legally bound by the Settlement, you must exclude yourself in writing from the Class by **August 28, 2019**. The steps you must follow to be excluded are described in the Long-form Notice, which is available at www.SyndicateSettlement.com. You can also obtain a copy of the Long-form Notice by mail or email by calling the toll-free number at 1-877-298-4134 between the hours of 8:00 a.m. and 5:00 p.m. Central Time, or by emailing info@SyndicateSettlement.com. If you do not exclude yourself, but instead stay in the Class, you may object or comment on the Settlement, the Plan of Allocation, the application for attorneys' fees and expenses, or service awards to the class representatives by **August 28, 2019**. The procedure on how to object or comment is described in the Long-form Notice at www.SyndicateSettlement.com.

There is a Fairness Hearing scheduled on **September 18, 2019, at 10:30 a.m. Eastern Time**, at which the Court will consider whether to approve the Settlement, the Plan of Allocation, an award of attorneys' fees and expenses, and service awards for the class representatives. The hearing will take place in Courtroom 5B in the United States Courthouse located at Martin Luther King Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101. The Court may choose to change the date and/or time of the hearing without further notice of any kind. If you plan to attend the hearing, you should confirm the date and time by checking the website at www.SyndicateSettlement.com or by calling the toll-free number at 1-877-298-4134. At the hearing, the Court will consider objections that have been properly made by Class members. If the Court finds the Settlement to be fair, reasonable and adequate, it will approve the Settlement. You may choose to attend the hearing, either in person or through an attorney hired at your own expense, but attendance is not required. If you choose to attend the hearing and intend to make a presentation to the Court, you or your attorney must follow the procedures set forth in the Long-form Notice, at www.SyndicateSettlement.com.

A NOTICE OF INTENTION TO APPEAR MUST BE RECEIVED BY THE COURT AND THE COUNSEL IDENTIFIED BELOW NO LATER THAN AUGUST 28, 2019.

If the Court approves the Settlement, then the Settling Defendants will be dismissed from the case. Class members who have not properly requested exclusion from the Class will be deemed to have released the Settling Defendants from all claims related to the case and will not be able to sue the Settling Defendants for any of the conduct that was the subject of the case. The full text of the Release is set forth in the Long-form Notice at www.SyndicateSettlement.com.

WHO IS INCLUDED IN THE CLASS?

The Settlement affects members of the Class, which are, with certain limited exceptions, all persons and entities in the United States who, during the period January 1, 1997, through March 25, 2019 (the "Class Period"), purchased or renewed a contract of insurance (an insurance policy, not reinsurance) with any of the Defendants. The complete description of the Class is set forth in the Long-form Notice at www.SyndicateSettlement.com.

WHAT DOES THE SETTLEMENT PROVIDE?

The Settling Defendants have agreed to make separate payments to settle the claims against them. The total amount of these payments is \$21,950,000. After deducting the amounts approved by the Court for settlement and claims administration costs, attorneys' fees and litigation expenses, and service awards for the class representatives, these funds will be paid to members of the Class. Each Settling Defendant that pays its individual share is entitled to the release and other provisions of the Settlement. In addition, each of the Settling Defendants that still sell insurance at Lloyd's of London has agreed to implement business reforms for a five-year period. The complete description of these business reforms is set forth in the Long-form Notice at www.SyndicateSettlement.com.

WHO WILL RECEIVE A PAYMENT?

Payments to Class members will be according to the Plan of Allocation, which is included in the Long-form Notice at www.SyndicateSettlement.com. To receive a payment, Class members **must** submit a Claim Form by **October 25, 2019**, as more fully described in the next paragraph.

HOW DO I RECEIVE A PAYMENT FROM THE SETTLEMENT?

To be eligible for a payment, a Class member must submit a Claim Form on or before **October 25, 2019**. Claim Forms are available at www.SyndicateSettlement.com. Claim Forms can be requested from the Claims Administrator by calling the toll-free number at 1-877-298-4134 between the hours of 8:00 a.m. and 5:00 p.m. Central Time, or by email at info@SyndicateSettlement.com. Claim Forms can be completed online at www.SyndicateSettlement.com, or mailed to the Claims Administrator at Syndicate Settlement, c/o A.B. Data, Ltd., P.O. Box 173075, Milwaukee, WI 53217. If the Court finally approves the Settlement, each Class member who wishes to claim part of the Settlement **must** submit a Claim Form by **October 25, 2019**. It is the responsibility of the Class member to provide truthful and accurate information, and to update any information, including contact and address information, to the Claims Administrator, when appropriate.

WHO ARE THE ATTORNEYS FOR THE CLASS AND THE SETTLING DEFENDANTS?

The Attorneys for the Class are:

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Abigail Nitka
MESSNER REEVES LLP
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New York, NY 10022

HOW CAN I OBTAIN ADDITIONAL INFORMATION?

If you think that you may be a Class Member, you can obtain more information, including a copy of the Long-form Notice, the Claim Form, the Settlement Agreement, and other documents relating to the Settlement by visiting www.SyndicateSettlement.com or by contacting the Settlement Claims Administrator at 1-877-298-4134.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK

TAKE THE ROAD LESS HACKED.

Your business may face cyber threats. It takes a partner at the forefront of the cyber curve to help you prepare, respond and recover from the attacks. AIG can help you navigate this ever-evolving, 24/7 world. A world that never sleeps.



Learn more at [AIG.com/cyberedge](https://www.aig.com/cyberedge)

Insurance products and services are written or provided by subsidiaries or affiliates of American International Group, Inc. Such products and services may not be available in all jurisdictions, and coverage is subject to actual policy language. For additional information, please visit our website at www.aig.com.