

SAFETY SUIT: Legal fight looms over scope of OSHA citations - **PAGE 8**

BUSINESS INSURANCE®

www.businessinsurance.com

AUGUST 2018

SPECIAL REPORT

LIABILITY
REPORT:
ALTERNATIVE
RISK TRANSFER

PAGE 22

DEEP DIVE ON DIVERSITY EFFORTS

Annual *BI* survey shows that perceptions differ on the insurance sector's record on creating a more inclusive workplace

PAGE 16

crystalclear

POLICY WORDING

Casualty

Executive & Professional

Healthcare Professional

Homeowners

Medical Stop Loss

Property

Programs

Surety

Travel



Berkshire Hathaway
Specialty Insurance®

www.bhspecialty.com

Atlanta | Boston | Chicago | Houston | Indianapolis | Irvine
Los Angeles | New York | San Francisco | San Ramon | Seattle | Stevens Point
Auckland | Brisbane | Dubai | Dublin | Düsseldorf | Hong Kong | Kuala Lumpur
London | Macau | Melbourne | Munich | Perth | Singapore | Sydney | Toronto

CEO
Adam Potter

PUBLISHER
Peter Oxner
(Chicago)
poxner@businessinsurance.com

EDITOR
Gavin Souter
(Chicago)
gsouter@businessinsurance.com

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

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

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

REPORTER
Rob Lenihan
(New York)
rlenihan@businessinsurance.com

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

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

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

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

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

**MAJOR ACCOUNTS DIRECTOR -
MIDWEST & WESTERN U.S.**
Keith Kenner
(Chicago)
kkenner@businessinsurance.com

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

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

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

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

MARKETING MANAGER
Katie Kett
(Portland)
kkett@businessinsurance.com

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

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

Business Insurance is published by Business Insurance Holdings.



INSIDE



PERSPECTIVES
Hamilton Insurance's Pina Albo makes the case for generational diversity. **PAGE 21**



Milliman's Maigh Wright discusses employment practices liability in the #MeToo era. **PAGE 27**

- ▶ **LEGAL BRIEFS**
Recent court opinions **PAGE 13**
- ▶ **OPINIONS**
Alternative pain therapies deserve a chance to succeed **PAGE 26**
- ▶ **MARKET PULSE**
Products, deals and more **PAGE 28**
- ▶ **PEOPLE**
Insurance industry moves **PAGE 29**

CORRECTION
The ranking of the 100 Largest Brokers of U.S. Business that appeared in the July edition misstated the name of the 57th ranked brokerage. The firm is "Baldwin Risk Partners L.L.C." not "Baldwin Krystyn Sherman Partners L.L.C."

COVER STORY

The 2018 *Business Insurance* diversity survey revealed insights on industry practices in recruiting and retaining a diverse workforce. Respondents, broken out by race, gender and generation, described how they see their companies in terms of efforts to accommodate the needs of a diverse workforce, as well as opportunities for advancement into the management ranks and more. **PAGE 16**

SPECIAL REPORT: ALTERNATIVE RISK TRANSFER

Captive insurers gain traction as an option for covering cyber exposures; new rules governing cyber insurance likely; the market for covering medical malpractice risks in captives hardens; opioids and cyber risks top concerns in health sector. **PAGE 22**

NEWS ANALYSIS

FOR BREAKING NEWS COVERAGE, VISIT

businessinsurance.com

RISK MANAGEMENT

Shift in labor rules begins with employer-friendly changes introduced by Republican rule-makers. **PAGE 4**

WORKERS COMP

Federal regulators keep targeting multiple employers for worksite safety violations. **PAGE 8**

INTERNATIONAL

Mauritania is behind its neighbors in terms of insurance penetration and faces structural challenges. **PAGE 12**



VIEW FROM THE TOP

MARK WATSON

Mark Watson has been CEO of Argo Group International Holdings Ltd. since 2007. The Hamilton, Bermuda-based specialty insurer and reinsurer just relocated its New York offices to the city's downtown tech hub to facilitate its efforts in recruiting software engineers, Mr. Watson says. In this month's issue, he discusses technology in insurance, recruiting, market changes and other topics. **PAGE 14**



OFF BEAT

The survivors of various singers get it on with copyright suits against Ed Sheeran. **PAGE 30**



NLRB rule signals shift in employers' favor

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

The National Labor Relations Board's approval of an employer no-camera rule is just the beginning of anticipated handbook rule changes for employers under the now Republican-dominated agency, experts predict.

In June, NLRB General Counsel Peter B. Robb issued a memo that provides new guidance on employer handbook policies and states that ambiguities should no longer be interpreted against the employer.

The 20-page memo covers rules including insubordination, confidential information, defamation, use of the employer logo, authorization to speak for the company and rules banning disloyalty.

The memo referred to the board's December ruling that overturned a 2004 decision and held that Chicago-based Boeing Co. had lawfully maintained a no-camera rule in its employee handbook.

The *Boeing* rule prohibited employees from using camera-enabled devices to capture images or video without a valid business need and an approved camera permit.

Citing the *Boeing* rule, the NLRB said in a June 14 advice memo that two workplace rules, one prohibiting use of logos without express written approval, and another prohibiting use of proprietary and confidential information that includes "user information," were not overly broad.

The memo was written by Jayme L. Sophir, associate general counsel, division of advice, to San Francisco-based NLRB Regional Director Jill H. Coffman, and concerned San Francisco-based Lyft Inc., the ride-sharing service. The rules are in Lyft's terms of service agreement.

The Robb guidance is welcome to employers, say experts.

It "clarifies that some common types of handbook policies, such as policies that require collegiality, cooperation, teamwork and policies that prohibit common types of problematic conduct remain lawful, notwithstanding some decisions from the prior



RULES ARE RULES

Peter B. Robb, National Labor Relations Board general counsel chairman, divided rules into three categories in his June guidance memo to regional directors and others:

- 1 Rules that are generally lawful to maintain, including those governing civility, insubordination, confidential information, disruptive behavior and defamation
- 2 Rules that warrant individualized scrutiny, such as broad conflict-of-interest rules
- 3 Rules that are generally unlawful to maintain, including confidentiality rules regarding wages, benefits or working conditions

NLRB" while still permitting employers to prohibit insubordination, certain types of disparaging statements and other conduct that can undermine an employer's interests, said William J. Kishman, of counsel representing employers in matters involving employees and labor unions with Squire Patton Boggs in Cleveland.

The guidance removes the possibility of employers being charged with unfair labor practice violations for normal workplace rules and policies, said Michael Starr, a partner in the labor and employment practice of Holland & Knight L.L.P. in New

York. "I think the major implication of this is that it restores the law to where it really had been about 15 or so years ago, before the labor board tried to regulate more intensely in this area," he said.

William H. Floyd III, a partner and labor and employment law specialist with Nexsen Pruet L.L.C. in Columbia, South Carolina, said: "Under the prior administration's interpretation, there was a lot of discretion and uncertainty as to which policies should be enforced, and what their content should be."

The new administration's policy "makes it more balanced evenly, weighing the employer's need to communicate information, and the employee's rights" under the National Labor Relations Act.

The guidance "means that more handbook rules are going to be found to be lawful," said Barry J. Kearney, of counsel with Cozen O'Connor P.C. in Washington and former head of the NLRB's advice division.

By providing examples of the kinds of rules that will be permitted, Mr. Robb's memo guides employers who are drafting new rules or updating old ones "as to how likely the general counsel would view them to be lawful or unlawful," he said.

"There's more of a balance in the way they're trying to view things, so it's not necessarily so pro-worker, and there is some recognition there" of business interests, said Fiona W. Ong, an employer defense attorney and partner with Shawe Rosenthal L.L.P. in Baltimore.

In the *Boeing* case, for instance, the approach now is not whether the rule could affect or chill worker rights, but whether it is likely to do so. "It brings back an element of common sense to the rule to what it was intended to do, rather than the most extreme position someone could take on the rule," Ms. Ong said.

Labor and employment law attorney Dabney D. Ware, of counsel at Foley & Lardner L.L.P. in Jacksonville, Florida, said the prior rulings "were so convoluted that it created a lot of opportunity for companies to be held liable for something where they were really just asking everyone to play nice together."

Meanwhile, experts say one case ripe for reconsideration is *Purple Communications Inc. and Communications Workers of America, AFL-CIO*, which allowed workers to use employer email systems for union business. It requires employers to make their corporate email systems available for group discussion among employees about the terms and conditions of their employment during nonwork time, including for union organizing. The 2014 ruling overturned a 2007 decision that said employees did not have a right under the NLRA to use employer-owned email for organizing purposes. *Purple Communications* "was a real game changer" that "caught employers a little flat-footed," said Ms. Ong.

Mr. Robb did not mention the ruling in his most recent guidance but cited it in a December memo asking regional officers to submit cases involving significant legal issues, including those that overruled precedent and involved one or more dissents.

Purple Communications is "really the next shoe to drop," said Steven M. Bernstein, a partner and labor attorney with Fisher & Phillips L.L.P. in Tampa, Florida.

AGENCY PRIORITIES CHANGE AS USUAL UNDER NEW ADMINISTRATION

The National Labor Relations Board's current actions will follow its traditional practice of changing its rules to reflect the current administration's political philosophy, say observers.

During the Obama administration, its policies reflected both Democratic policies and its interest in remaining relevant in a period of declining union membership.

Michael Lotito, co-chair of Littler Mendelson P.C.'s Workplace Policy

Institute in San Francisco, said during the Obama administration, "clearly, there was this fight for relevance, but then there was also this extremely expansive way of looking at Section 7 rights," the provision of the National Labor Relations Act that gives workers the right to organize.

William J. Kishman, of counsel with Squire Patton Boggs in Cleveland, said, "I don't think that pure politics direct the NLRB's decision-making process, but Democratic

appointees historically view matters from a more pro-union, pro-employer standpoint."

The NLRB is more politically driven than most agencies "so it's not unusual for the law to just bounce back and forth between the Democratic and Republican administrations, which in some ways is unfortunate because the law never stays in the same place," said Christopher V. Bacon, counsel with Vinson & Elkins L.L.P. in Houston.

The agency has become increasingly politicized over the past decade, which "makes for a very volatile regulatory environment," said Steven M. Bernstein, a partner with Fisher & Phillips L.L.P. in Tampa, Florida.

"It makes it difficult for businesses who depend on certainty in their strategic planning, but that trend doesn't seem to be slowing down," he said.

Judy Greenwald



**It may be natural.
But it doesn't have
to be a disaster.**

**Get a one-of-a-kind commitment
to your clients' bigger-than-life risks.**



At Lexington Insurance, we've been at the forefront of managing hurricane risk for half a century. We employ the latest in storm modeling technology and hundreds of the industry's most experienced professionals to help your clients plan ahead and minimize the impact before, during, and after the storm. For more information on this year's hurricane season, visit www.lexingtoninsurance.com/catinfo

Lexington Insurance Company, an AIG company, is the leading U.S.-based surplus lines insurer.

AIG is the marketing name for the worldwide property-casualty, life and retirement, and general insurance operations of American International Group, Inc. For additional information, please visit www.aig.com. Products and services are written or provided by subsidiaries or affiliates of American International Group, Inc. Not all products and services are available in every jurisdiction, and insurance coverage is governed by actual policy language. Certain products and services may be provided by independent third parties. Insurance products may be distributed through affiliated or unaffiliated entities. Surplus lines insurers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.

Tariff disputes may foreshadow more clashes

BY JUDY GREENWALD

jgreenwald@businessinsurance.com

The main concern businesses have about the U.S. trade dispute with China and other countries could ultimately be less about the tariffs that have been imposed than about the new regulations and judicial rulings that may result from the increased international tensions, say experts.

Political risk and trade credit market participants, who say the conflict-ridden situation could eventually lead to reduced capacity and increased rates, have already observed an increase in submissions.

Much attention has focused on the Trump administration's imposition of tariffs on goods from China and other countries, which have responded by levying their own tariffs. There has been concern particularly about China because of the extent of its trading relationship with the United States. The U.S. has imposed tariffs on goods including foreign steel, aluminum, automotive parts and food ingredients, while China's tariffs have included crude oil and soybeans.

However, "The economics and ease of doing business within a country like China have a far greater risk than the headline tariffs that we hear about - and the fact that it is China has its own challenges," said Jerry Paulson, Chicago-based producer and partner, credit, political and financial risks for Lockton Cos. L.L.C.

In a way, "the tariffs themselves don't matter that much," said Rob Nijhout, executive director of the Amsterdam-based International Credit Insurance & Surety Association. The bigger problem is the uncertainty the situation creates, he said. "Traders and insurers like certainty and a clear landscape."

China could retaliate in the form of nontariff barriers, which "could essentially become weapons, and this could escalate into some discriminatory measures being put towards U.S. investors" such as by restricting currency transfers or holding up goods in customs, said Laura Burns, Potomac, Maryland-based senior vice president, U.S. political risk product leader, political and credit risks for Wil-



REUTERS

President Donald Trump delivered remarks before signing a memorandum on intellectual property tariffs on high-tech goods from China in Washington in March. Political risk and trade credit insurance experts say they have seen increased submissions since Mr. Trump's imposition of increased tariffs on some foreign goods.

lis Towers Watson P.L.C. "That changes fundamentally the investment climate of these countries' risk and could lead, obviously, to more underwriter scrutiny" and potentially, more claims, and ultimately to less capacity appetite to cover investment risks, she said.

The situation "may lead to a change in how U.S. creditors are treated in foreign markets, especially China," said Clay Sasse, New York-based managing director with Aon P.L.C.'s trade credit practice.

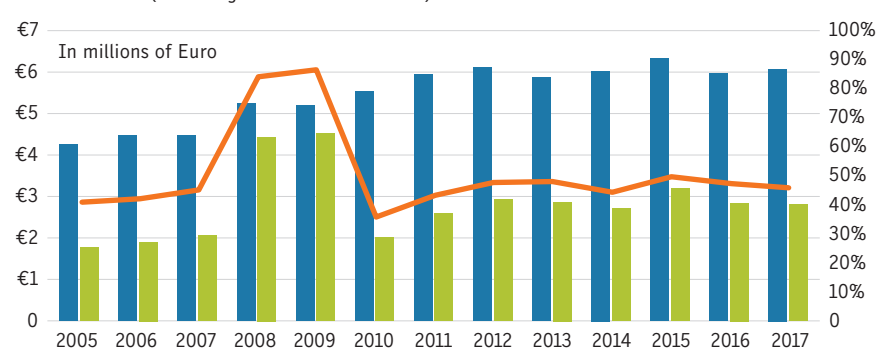
"Foreign creditors don't always have a

simple and easy time" of going through other countries' court systems, he said, and debtors "may feel emboldened" into believing they have more of a home court advantage than they did a year ago.

Claims could arise from governments issuing punitive new rules that prevent companies from operating in foreign countries, said Daniel Riordan, president of political risk, credit and bond insurance in New York for XL Group Ltd., which does business as XL Catlin. He said those can often be as equally difficult as tariffs.

TRADE CREDIT INSURANCE

ICISA members (excluding reinsurance members)



Source: ICISA

POLITICAL RISK, TRADE CREDIT COVERAGE INTERTWINED, BUT DISTINCT

Political risk and trade credit insurance are intertwined, with many insurers offering both, but they are also distinct in significant ways.

Trade credit insurance, which was first offered in the 1800s, protects policyholders from the nonpayment of commercial trade debt. According to the Amsterdam-based

International Credit Insurance & Surety Association, a trade credit insurance policy will pay out a percentage of the outstanding debt, which usually ranges from 75% to 95% of the invoiced amount.

Political risk insurance provides coverage against government actions that can cause insureds a loss, including confiscation, ex-

propriation, nationalization and political violence. Its origins are in the 1948 Marshall Plan, which encouraged American investments to rebuild war-torn Europe.

Political risk insurance is offered through private insurers as well government entities such as the Overseas Private Investment Corporation.

"There is some discussion that China is using border inspections as a way to get back at the U.S., slowing things down, holding things up at the border," said Robert D. Atkinson, founder and president of The Information Technology and Innovation Foundation in Washington, a research and educational institute focused on the intersection of technological innovation and public policy.

"If it starts to escalate, the Chinese in particular have the ability to do essentially whatever they want because there's no independent judiciary, there's no real rule of law," said Mr. Atkinson.

Meanwhile, submissions are up. "We have seen some uptick in submission activity, particularly from trading companies and exporters," Mr. Riordan said.

"This is front-page news," he said. "If you're on the board of directors of a major trading company or exporter, you're going to be concerned about it. Your risk management teams should be thinking about it" and assessing the situation.

"The only place we've seen pretty noticeable activity would be in the steel and aluminum sectors," which is the first place where the tariffs took effect, said Aaron Rutstein, Hunt Valley, Maryland-based senior manager-buyer underwriting for trade credit insurer Atradius Risk Services Americas. "There's definitely been a rush of new application volume coming in."

He said, "We haven't seen a real increase as of yet in claims activity related to this, and I don't know that we will near term, because it all comes down to a function of credit quality" and it is unlikely large amounts of coverage are being approved for those who are not creditworthy.

The market remains competitive, say observers. "Capacity is still very ample," said Mr. Nijhout. "We're still in very soft market conditions."

But the current situation could lead to higher rates. "I would definitely look for increased insurance costs across the board for direct foreign investments in countries" where there is trade conflict, said Marc Wagman, New York-based managing director, trade credit and political risk practice group, for Arthur J. Gallagher & Co.

Rob Nijhout, executive director of the International Credit Insurance & Surety Association, said if significant trade barriers are thrown up in retaliation for tariffs, "then that is what we would call a political risk rather than a credit risk." The group recommends its insureds insure against this.

Judy Greenwald

Broker M&As drop below record levels

BY TIMOTHY J. CUNNINGHAM AND DANIEL P. MENZER

There were 280 announced and reported mergers and acquisitions for U.S. and Canadian insurance agents and brokers during the first half of 2018 compared with 333 in the same period 2017, a drop of nearly 16%.

Still, it represents the second-highest total of any six-month period on record, behind only the first half of 2017.

For the quarter, there were 135 transactions announced, down from the 147 reported in Q2 2017. While these numbers represent meaningful reductions in the number of M&A transactions, there have not been any signs of a drop in aggressive buyer behavior or willing sellers coming to the table, and 2017 was more of a blip in the deal pace than a repeatable performance.

Quarterly totals for 2018 have exceeded all prior quarters except for 2017.

Through the past six months, private equity/hybrid-backed Caledonia, Michigan-based Acrisure L.L.C. reported the most activity with 41 closed transactions, down from 48 for the same period last year. Chicago-based Hub International Ltd. was second, completing 33 transactions, up from 21 in 2017 (see chart).

Consistent with what we have seen in recent years, the private equity-backed/hybrid group continues as the most active buyers, with eight of the top 10 in the group. Additionally, the concentration of acquisitions by the top 10 buyers continues to increase, responsible for 62% of the total announced transactions in 2018 compared with only 55% in 2017.

The PE/hybrid group accounted for 188 of the 280 total transactions thus far in 2018, or 67%. This ratio has been increasing steadily from approximately 37% in 2014. There were six new PE/hybrid buyers so far in 2018, although only one had more than one completed transactions. In total, there were 27 separate buyers making up the PE/hybrid group in 2018.

Privately owned brokerage acquisitions held steady at 55 transactions from 44 separate buyers compared with the second half of 2017, but decreased from 82 transactions from 66 unique buyers in the first half of 2017. The private buyer totals from 2017 represent the highest number of both transactions and unique buyers from this buyer group. Of the 44 separate buyers in 2018, 26 were first-time buyers. See adjacent chart for a summary of the different buyer-group activity since 2013.

Property/casualty brokers continued to dominate the sell-side M&A landscape, with 150 of the 280 year-to-date transactions, or 54% of the total, up slightly from

TOP BUYERS

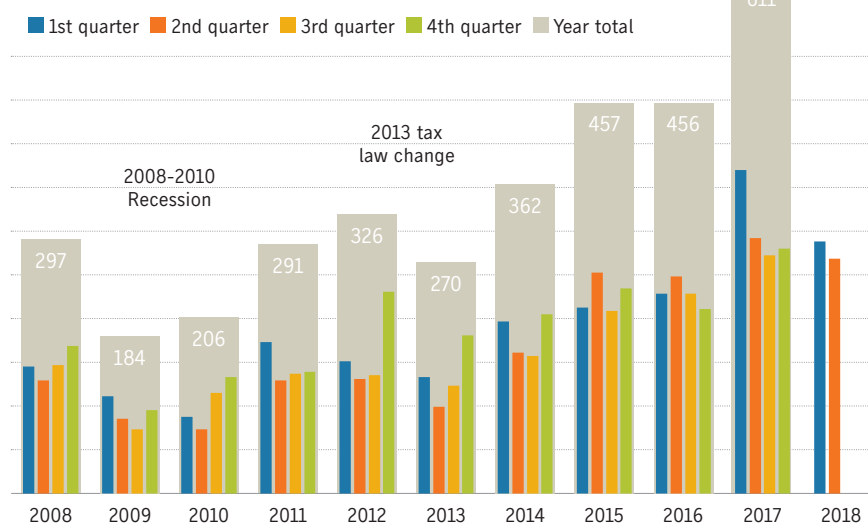
The top 10 most acquisitive buyers of insurance agencies and brokerages in the U.S. and Canada in 2018

Buyer	Company type	6-Months	
		2017	2018
Acrisure L.L.C.	Private equity-backed/hybrid	48	41
Hub International Ltd.	Private equity-backed/hybrid	21	33
AssuredPartners Inc.	Private equity-backed/hybrid	12	19
Arthur J. Gallagher & Co.	Public	19	15
BroadStreet Partners Inc.	Private equity-backed/hybrid	18	14
Alera Group	Private equity-backed/hybrid	27	14
OneDigital Health and Benefits	Private equity-backed/hybrid	5	13
NFP Corp.	Private equity-backed/hybrid	10	11
Seeman Holtz	Private equity-backed/hybrid	10	7
Brown & Brown Inc.	Public	3	7

Source: Optis Partners L.L.C.

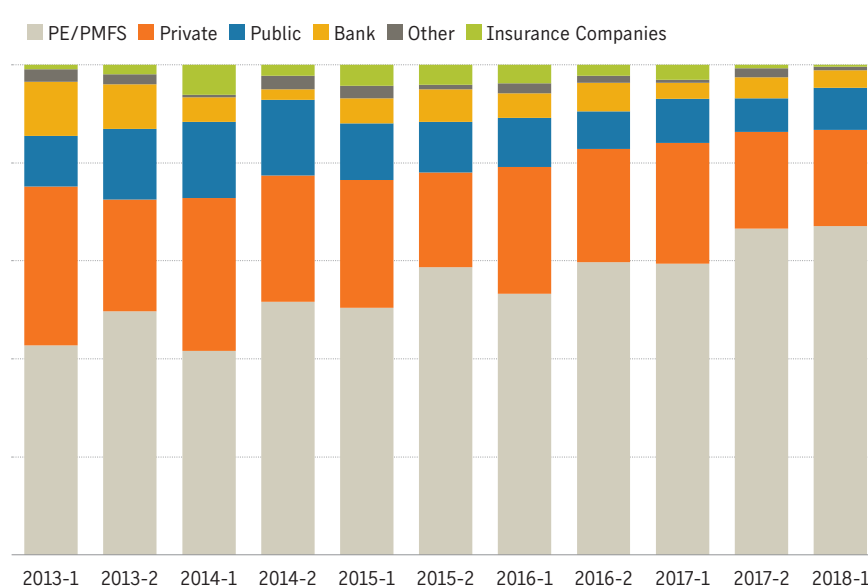
TEN YEARS OF DEALS (2008-2018)

Insurance agency and brokerage acquisitions by quarters



Source: Optis Partners L.L.C.

TOTAL TRANSACTIONS BY BUYER TYPE (2013-2018)



Source: Optis Partners L.L.C.

the 50% share for all of 2017. Employee benefits brokers were acquired in 68 transactions, or 24%, down from 29% in 2017.

Through June 30, 2018, there were several significant transactions:

- Atlanta-based BB&T Insurance Holdings Inc. announced its acquisition of Memphis, Tennessee-based Regions Insurance Group Inc. in April, ranked as the No. 33 agency in 2017.
- Also in April, Newport Beach, California-based Alliant Insurance Services Inc. acquired New York City-based Crystal & Company.
- Two privately held agencies, Tacoma, Washington-based Propel Insurance (No. 48 in the 2018 *Business Insurance* broker ranking) and Chicago-based Ryan Specialty Group L.L.C., announced partnerships with private equity companies.
- Although not included in our totals, Acrisure completed its acquisition of London-based Beach & Associates earlier this year as its first transaction outside North America.

M&A activity in the insurance brokerage sector continues at a brisk pace, albeit short of the 2017 levels, with agency valuations and multiples reaching levels seldom seen before. And with new private equity-backed buyers still entering the picture, the demand for insurance agency acquisition opportunities is unlikely to wane any time in the near future.

Agency valuations from external buyers as seen over the past several years have created a material gap to internal agency perpetuation values, causing many baby-boomer and other agency principals to reconsider their long-term plans. However, with the diverse group of buyers in the marketplace today, agency principals can be very selective in what they want in a buyer and transaction structure while still taking advantage of current market conditions.



Timothy J. Cunningham and Daniel P. Menzer are principals at Optis Partners L.L.C., a Chicago-based investment banking and financial consulting firm that serves the insurance distribution sector. Mr. Cunningham can be reached at cunningham@optisins.com or 312-235-0081; Mr. Menzer can be reached at menzer@optisins.com or 630-520-0490.

Battle lines drawn in multiemployer case

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

Federal workplace safety regulators persist in their efforts to hold multiple employers on a worksite responsible for safety violations even as an appeals court prepares to review a decision that could affect the policy.

The U.S. Occupational Safety and Health Administration, still without a confirmed assistant secretary, has not deviated from the more aggressive enforcement path forged under the Obama administration, including with regard to citing multiple employers on a worksite in the event of a fatality or serious injury, experts say.

“I have not seen any change in the way OSHA’s implementing the multiemployer worksite policy with the change in administrations, (which is) different from what we’ve seen with the National Labor Relations Board and other governmental agencies where leadership has changed and the decision-makers have somewhat changed from the Obama administration to the Trump administration,” said Joseph Spitzzeri, Chicago-based shareholder with Johnson & Bell Ltd. and co-chair of the firm’s construction and employment groups.

In 1999, OSHA issued a multiemployer citation policy directive clarifying conditions under which it may cite creating, exposing, correcting and controlling employers. The creating employer creates a hazard that violates an OSHA standard, the exposing employer exposes its employees to a hazard it caused or one caused by another employer, the correcting employer has responsibility for fixing the hazard, and the controlling employer has general supervisory authority over the entire worksite, meaning the employer is able to correct violations or have them corrected.

The 5th U.S. Circuit Court of Appeals in New Orleans, which oversees cases originating out of Louisiana, Mississippi and Texas, is scheduled to hear oral arguments



ANATOMY OF A SAFETY BATTLE

The U.S. Department of Labor and Hensel Phelps Construction Co. are set for a critical battle over the U.S. Occupational Safety and Health Administration’s ability to cite controlling employers for workplace safety hazards under the agency’s multiemployer citation policy within the 5th U.S. Circuit Court of Appeals’ jurisdiction.

- On March 4, 2015, OSHA inspected a Hensel Phelps worksite, leading to OSHA issuing a citation alleging willful violation of the Occupational Safety and Health Act with a proposed \$70,000 penalty.
- On April 28, 2017, an administrative law judge of the Occupational Safety and Health Review Commission vacated the citation, citing 5th Circuit precedent when only a subcontractor’s employees are exposed to the hazardous condition, with the ruling becoming a final order of the review commission on June 2, 2017.
- On July 31, 2017, the department appealed the decision to the 5th Circuit, with oral arguments scheduled for Aug. 8.

Source: Occupational Safety and Health Review Commission and 5th U.S. Circuit Court of Appeals documents

in a key case involving OSHA’s use of the multiemployer doctrine on Aug. 8 in *Secretary of Labor v. Hensel Phelps Construction Co.*

Secretary of Labor v. Hensel Phelps Construction Co. Hensel Phelps was the general contractor on a Texas library project and was hit with a willful citation and a proposed \$70,000 penalty by OSHA, but challenged its liability as a controlling employer. An administrative law judge of the Occupational Safety and Health Review Commission ruled that the Occupational Safety and Health Act and regulations implemented under the statute require the protection of an employer’s own employees from workplace hazards and vacated the citation — a decision being appealed by the Trump administration.

The law judge based the decision on a 1981 ruling by the 5th Circuit called *Melzerine v. Avondale Shipyards Inc.*, which held that the OSH Act and its safety standards protect only an employer’s own employees, but that decision involved a subcontractor employee’s negligence action against higher-level contractors, lawyers note.

“It wasn’t an OSHA case and it wasn’t referencing the multiemployer doctrine at all,” said Raymond Perez, of counsel and a labor and employment attorney in the Atlanta office of Jackson Lewis P.C. “Certainly, the Department of Labor does

not want a rogue circuit to undermine this multiemployer citation policy that they’ve had for decades.”

The 5th Circuit is known to be an employer-friendly jurisdiction.

“It’s always easier to practice in the 5th Circuit than the 9th Circuit,” said Carrie Hoffman, a Dallas-based partner with Foley & Lardner L.L.P. “It’s hard to imagine the 5th Circuit is going to reverse itself. I understand why Hensel Phelps is interested in pushing this issue forward in the 5th Circuit. I don’t know if it would be worth it in any other.”

The 2nd, 6th and 9th circuits have upheld OSHA’s multiemployer citation policy. “I haven’t seen another circuit court that would invalidate the multiemployer worksite doctrine,” said Mark Kittaka, a Columbus, Ohio-based partner with Barnes & Thornburg L.L.P. and administrator of its labor and employment law department. “For the vast majority of the country, it’s going to be business as usual for OSHA multiemployer worksite issues.”

In California, for example, regulators with the California Department of Industrial Relations – Division of Occupational Safety & Health have been “more aggressive” in their enforcement of the state’s multiemployer citation policy than federal OSHA, and there is no case similar to Hensel Phelps on the horizon in the 9th Circuit that would challenge that authority, said Lisa Prince, a partner focusing on Cal/OSHA regulatory defense with Walter & Prince L.L.P. in Los Angeles.

OSHA’s stance on the multiemployer worksite doctrine could change once a new head is confirmed, but President Donald Trump’s nominee, Scott Mugno, said during a confirmation hearing that the agency’s doctrine “seems to have worked very well over the decades.”

“This has certainly been their position for a long time, and the change of administration ... doesn’t really change their overall enforcement strategy,” Mr. Perez said.

CIRCUIT COURT SPLIT COULD PROMPT HIGH COURT REVIEW

If the 5th U.S. Circuit Court of Appeals in New Orleans upholds a decision restraining the U.S. Occupational Safety and Health Administration’s policy of citing multiple employers for hazards on the same worksite within its jurisdiction, that would constitute a circuit court split that could make the issue ripe for U.S. Supreme Court review.

In *Secretary of Labor v. Hensel Phelps Construction Co.*, the U.S. Department of Labor is asking the 5th Circuit to take into account the 1984 U.S. Supreme Court case

Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc., which calls for courts to defer to an agency’s reasonable interpretation of an ambiguous statutory provision it implements or enforces.

“If they lost, the Secretary of Labor would certainly appeal it to the Supreme Court,” said Raymond Perez, of counsel in the Atlanta office of Jackson Lewis P.C.

Situations where courts previously have not abided by the so-called Chevron deference typically relate to position shifts

emanating from a change in administration, said Mark Kittaka, a Columbus, Ohio-based partner with Barnes & Thornburg L.L.P. For example, wage and hour law interpretations and opinions often undergo “a 180-degree change” every four or eight years, leading courts to reject deference because there is no explanation for the shift. “Here, this has been pretty much the same since 1999,” when OSHA first issued its multiemployer citation policy, he said. “It’s going to be harder to say it’s not entitled to deference

because it has been pretty consistent.”

But the Chevron deference could be vulnerable to being overturned by the high court, with Associate Justice Neil Gorsuch on the court since April 2017 and U.S. Circuit Judge Brett Kavanaugh recently nominated. “The history of Gorsuch and Kavanaugh has been to question the government’s reach and the government’s interpretations of their standards,” Mr. Perez said.

Gloria Gonzalez

Go with one of
the best names in the
insurance business.

That's what we did.

BB&T Insurance Services recently acquired Regions
Insurance Group, and we will now operate under one of
the most-respected names in the business:



www.McGriffInsurance.com

Pinning down acupuncture rules for comp

BY LOUISE ESOLA

lesola@businessinsurance.com

Alternative therapies are mentioned often by participants in the workers compensation sector trying to manage injured workers' pain while shifting away from the industry's dependence on opioids — and acupuncture is the talk of the town.

States are working on making it easier to provide such treatment, but more work needs to be done to get insurers to cover the costs and regulators to approve providers, experts say.

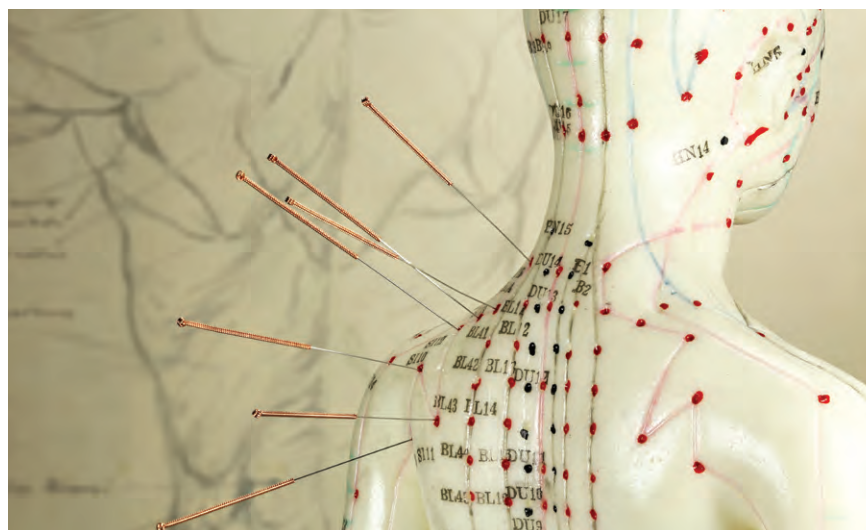
"We are all over the place" with acupuncture, said Mori West, Torrance, California-based chief executive officer for AcuClaims Inc., which handles billing nationwide for acupuncturists, working with both group health insurers and increasingly workers compensation insurers. The guidelines for acupuncture "are not entirely spelled out and open to interpretation in some states."

The therapy involves inserting hair-thin needles into pressure points and pain receptors on the body, helping to reduce inflammation, relax muscles, and reduce pain, all working in concert to provide a greater range of motion, said James Shinol, Huntington Station, New York-based president of the Acupuncture Society of New York and dean of the New York College of Health Professionals.

Treatments can cost \$60 to \$100, and multiple treatments — capped in most states — are usually required for effectiveness, according to guidelines in several states.

But acupuncture wins when comparing treatment costs to that of opioid dependency, experts say.

"It's less expensive than pharmaceuticals," said Dean Stiles, Wayne, Pennsylvania-based director of network management for Genex Services Inc. "People can't return to work and do their jobs if they have (opioids) in their system. For the overall claims costs, it appears (acupunc-



WASHINGTON STATE: ACUPUNCTURE PILOT PROJECT



- 256 claimants undergoing treatment as of July 2018
- 208 acupuncture providers approved
- Patient treatments limited to 10 visits
- Patients submit to functional questionnaire to gather data

Source: Washington State Department of Labor and Industries

ture) is less expensive."

Some states such as California and Oregon are more accepting of acupuncture than others, experts say.

"California is on the forefront," said Mr. Stiles. "They are on the top end of regulating it, while in some states (regulations) don't even mention acupuncture or alternative therapies."

"Other places, within workers comp, (treatment) is heavily regulated," he said. "If a primary care physician wants to push alternative medicine and they get buy-in from the adjusters or claims managers, then it is a seamless process. If the patient wants to go off-script (with acupuncture) it can become one of those things where the

bill might be paid, it might not."

The state of Washington, long lobbied by acupuncture professional associations and patients, has been collecting data on the treatment for injured workers suffering from lower back pain since late 2017, said Zachary Gray, an epidemiologist overseeing the data gathering program through the Washington State Department of Labor and Industries. The tracking will help tweak guidelines, which have been in place for years, he said.

"We are focusing on pain and function and getting people back to work ... we want to see how it's working," he said.

At least half of states include acupuncture in medical treatment schedules, and in some cases have included acupuncture in fee schedules. In some states, it's up to the medical provider to recommend acupuncture, said Ms. West.

But complications within New York's workers compensation regulations, which allow for acupuncture but set limitations on providers, encouraged lawmakers to pass a bill that would broaden what is available for injured workers. As of late July, S.B. S6666 sits on Gov. Andrew Cuomo's desk. It's the third time lawmakers have tried to change the issue in New York that limits

who can provide acupuncture, but the bills have been vetoed every time, said Mr. Shinol. The governor's office did not return requests for comment.

In New York, a workers comp insurer is required to pay for acupuncture if the provider is both a medical doctor and a licensed acupuncturist — "like finding a unicorn" in some parts of the state, said Mr. Shinol.

"Half of the carriers realized how ridiculous this is and they pay for licensed acupuncturists" (who are not medical doctors too), he said. But the other half of insurers are denying payment based on the provider requirements.

"This is definitely an industry trend," said Carlos Mota, Anaheim, California-based director of medical review services for Genex Services Inc. "Other states will begin to incorporate not only acupuncture but other therapies into the fee schedule, such as massage therapy."

Anecdotally, acupuncture — often coupled with other therapies such as massage and physical therapy — is having its heyday as far as injured workers go, Mr. Gray and others said.

"More patients are asking for it," said Ms. West. "They say, 'I don't want a cortisone shot (for inflammation). I don't want to go under the knife. They want to try acupuncture first.'"

The risks associated with opioid dependence and withdrawal have also made acupuncture attractive — a common rationale that had 40-year-old Steve DeMarco, a Suffolk County Police Officer, opting for hair-thin needles over pain pills.

"The alternative is pain medication, which causes other issues," he said.

Mr. DeMarco suffers back and neck pain stemming from a reoccurring soft-tissue muscle injury sustained in his work as a police officer. Acupuncture is not an overnight fix — it takes at least four sessions to get him "back to normal," he said. At least once a year he needs a round of treatment, he said. "It's the only thing that keeps me going back to work."

COGNITIVE BEHAVIORAL THERAPY TEACHES 'NEW RESPONSES' TO PAIN

Workers compensation claims managers are starting to see that healing an injury must go beyond the muscle and bones for some patients.

Cognitive behavioral therapy, or CBT, is a buzzword in the alternative therapies discussions in comp circles. It can help an injured worker heal that part of their mind that worries about re-injury or "catastrophizes" the injury, imagining worst-case

scenarios when trying to heal, said Terrence B. Welsh, Columbus, Ohio-based chief medical officer for the Ohio Bureau of Workers Compensation.

The bureau announced in May 2018 that it would be expanding its offerings for injured workers to include behavioral assessments and therapy.

CBT is a type of therapy that focuses on teaching patients "new responses" to pain

or perceptions of pain. "We know this takes a more holistic view of the injured worker and the biopsychosocial aspects. We know that's huge when we see some behavioral barriers to healing," said Dr. Welsh.

"These are normal feelings after injury and we realize some people don't have a coping mechanism and then engage in behavior that impedes their healing," he said, adding that missed appointments for

physical therapy is one common issue when a person is afraid of re-injury or is traumatized by the injury.

Washington state is working to develop a similar program to offer and track CBT's success with injured workers, said Zachary Gray, an epidemiologist in the Office of the Medical Director for the Washington State Department of Labor and Industries.

Louise Esola

Builders call on phone apps to boost safety

BY ROB LENIHAN

rlenihan@businessinsurance.com

The booming construction sector is reckoning with a major safety dilemma as fatalities rise alongside its expanding workforce, driven in part by the aging of the industry's employee base.

Safety experts are looking to mitigate the risk in part through the use of new technologies such as smartphone applications to conduct inspections.

The total number of construction fatalities has been climbing, with 738 deaths reported in 2011 and 991 deaths reported in 2016, according to the most recent data available from the U.S. Bureau of Labor Statistics. The leading causes of deaths in the construction industry were falls, electrocutions, struck by object, and caught in or between equipment, according to the bureau.

Fatalities are increasing alongside rising employment in the construction sector, which totaled 7.2 million jobs in June, the highest level since May 2008 and up 4.1% over the past 12 months, says a report by the Arlington, Virginia-based Associated General Contractors of America.

The construction segment had to make some adjustments following the economic meltdown in 2008, said Danette Beck, Valhalla, New York-based national construction practice leader for USI Insurance Services L.L.C.

"Construction companies had to figure out their balance sheets," she said. "So they kept the most seasoned employees and let go of the junior employees. What you're also seeing is 45- to 60-year-olds who don't bounce back as quickly as 20-year-olds do. Those individuals in their early 20s, late 20s didn't come back when the economy recovered."

Michael Mills, technical director for construction and energy for Liberty Mutual Insurance Co. in Louisville, Kentucky, said "it's not necessarily that the older workers are getting injured more frequently, but when they do get injured it's more severe."

Injuries and illnesses in the construction segment involving days away from work



among employees between 45 to 54 years old totaled 17,590 in 2016, down from 19,210 in the prior year, but up from 15,640 in 2014, according to the bureau. Injuries and illnesses reported in the 55- to 64-year-old range have been climbing steadily, from 6,910 in 2011 to 11,990 in 2016.

A 2012 study by CPWR-The Center for Construction Research and Training in Silver Spring, Maryland, said that while construction work is physically demanding, "older workers may hesitate to switch to less strenuous occupations because a change would entail reduced income or reduced access to pension and health benefits."

"The big challenge that we're facing is an aging workforce," said Geoffrey Price, U.S. construction industry practice leader at Marsh Risk Consulting in Chicago. "As we age, our bodies don't perform as well as when we're in our 20s. Young people these days coming out of college aren't looking to go into the construction industry. They're technologically savvy. They want jobs that are more computer-related, so it's difficult to fill the construction ranks."

The technological evolution

Overall, 88% of contractors use smartphones on their worksites, with applica-

tions and software being the most commonly used safety tool, according to a study by CPWR and New York-based Dodge Data & Analytics released in 2017. For example, 42% of contractors used safety inspection checklist apps or software, up 12 percentage points from a 2012 study, according to CPWR and Dodge.

There are apps that immediately report worksite incidents or conditions and can include audiovisual and photographic illustrations, Mr. Price said via email. Some apps complete electronic safety orders, while others enable a company to identify key performance indicators important to them or their subcontractors, he said.

Many clients are using different safety applications on mobile devices to com-

municate with workers and streamline the pretest hazard assessment, said Phil Casto, Chicago-based senior vice president for risk services at Hub International Ltd.

"Before it was a piece of paper you had to fill out, now it's a little bit more intuitive," he said. "It's a series of questions that a foreman goes through on his app, after he completes the questionnaire that turns into his toolbox talk for the day."

A toolbox talk is a safety meeting — often conducted weekly — that focuses on safety issues related to a specific job. Hundreds of topics are available in various apps, or new topics can be created based on a particular job, Mr. Casto said.

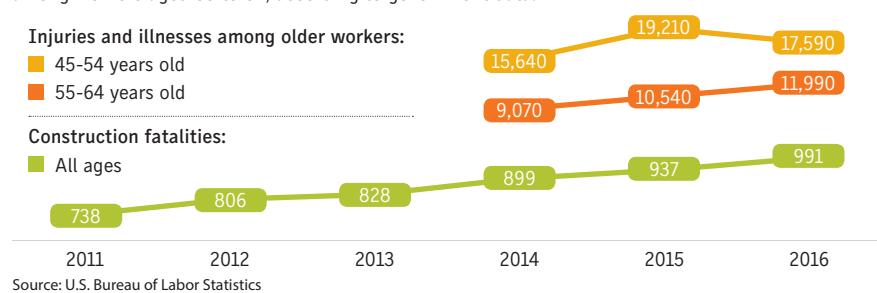
"We're better able to disseminate information," he said. "A lot of times paperwork in construction is a difficult thing to keep track of. One more piece of paper is sometimes a hurdle, and technology has done a good job of bridging that gap."

Apps, smartphones and tablets have helped safety professionals and construction be more effective and productive, Mr. Mills said via email. There are phone apps that allow operators to approximate the noise levels on site, determine the heat index and potential heat stress on the job, he said.

"Prior to phone apps, your only option to measure noise and heat was the use of special instruments to measure these stressors or exposures," he said. "Because of the advent of tablets and smartphones, safety professionals have a lot more access to data that can help them pinpoint problem areas or contractors that need help more quickly than they ever did before."

RISING FATALITIES

The overall number of construction deaths has risen in the past six years while injuries increased among workers aged 55 to 64, according to government data.



BUILDING INFORMATION MODELING ENHANCES DESIGN AND SAFETY

Many companies are looking to protect workers in the design phase of a building construction through Building Information Modeling, or BIM, a 3D model-based process that allows architects and engineers to plan and manage buildings and infrastructure, experts say.

The process "is absolutely helping reduce the risk contractors have constructing the building," said Mike Fredebeil, Atlanta-based senior vice president, leader for North America construction safety and risk control for Willis Towers Watson P.L.C.

Contractors are reporting positive benefits of BIM technology, with 69% of users in 2017 reporting that it has a positive impact on safety compared with 42% in 2012, likely due to greater experience with BIM and the development of better tools such as photogrammetry that can be employed within the model to impact safety, according to a study by CPWR-The Center for Construction Research and Training in Silver Spring, Maryland, and New York-based Dodge Data & Analytics released in 2017.

Respondents who used BIM said it has

the ability to identify potential site hazards before construction begins.

"BIM users also report increased levels of nearly all benefits reported from safety investments, including reduced reportable injury rates, improved project quality, improved schedule, increased ability to contract new work, and increased ability to attract and retain staff," the report said.

BIM "is a great tool for eliminating equipment clashes in construction," said Michael Mills, technical director for construction and energy for Liberty Mutual

Insurance Co. in Louisville, Kentucky.

"If you're installing an HVAC unit, you don't want a pipe running through the ductwork," Mr. Mills said. "Some of the more proactive contractors are also using BIM to improve safety on a project. For example, it can be used to identify appropriate anchorage points for fall protection and risks that a contractor may not have anticipated during their preplanning process. BIM can have a big impact on safety as well as the quality of construction."

Rob Lenihan

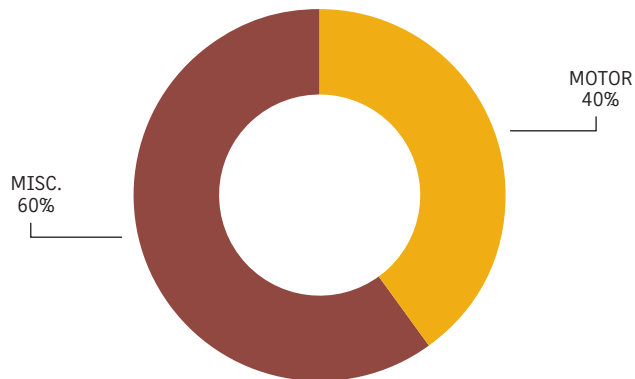
PROFILE: MAURITANIA

163

GLOBAL
P/C MARKET
RANKING

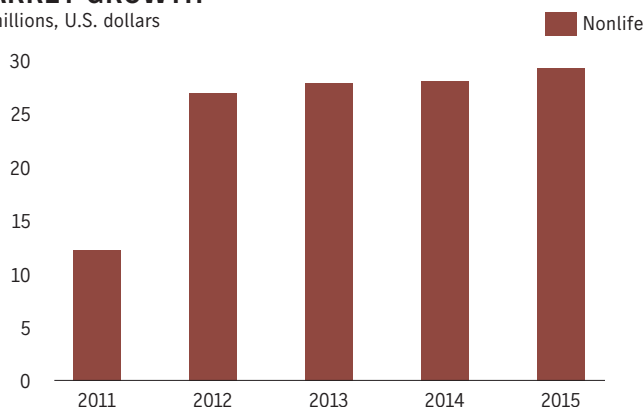
Mauritania has an economy primarily based on mineral extraction, especially iron ores and hydrocarbons. The return to constitutional rule has improved relations with the World Bank and International Monetary Fund. The country is well behind its neighbors in terms of insurance penetration, reflecting levels of poverty, and faces structural challenges. According to market sources, 15 insurers were active in the market in 2018, led by privatized former state insurer Nationale d'Assurance et de Reassurance and DAMANE Assurances, which was established at the end of 2010. The market is understood to employ about 600 people overall. For the insurance sector to develop, public awareness and confidence of insurance in general needs to improve.

MARKET SHARE



MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability, including garage proprietors
- Imported merchandise
- Construction insurance
- Workers compensation (state program)
- Shipowners liability against marine oil pollution

NONADMITTED

Nonadmitted insurance is not permitted because the law provides that insurance must be purchased from locally authorized insurers with some exceptions. The law does allow temporary exemptions for certain risks or groups of risks, which must be granted by the minister of commerce.

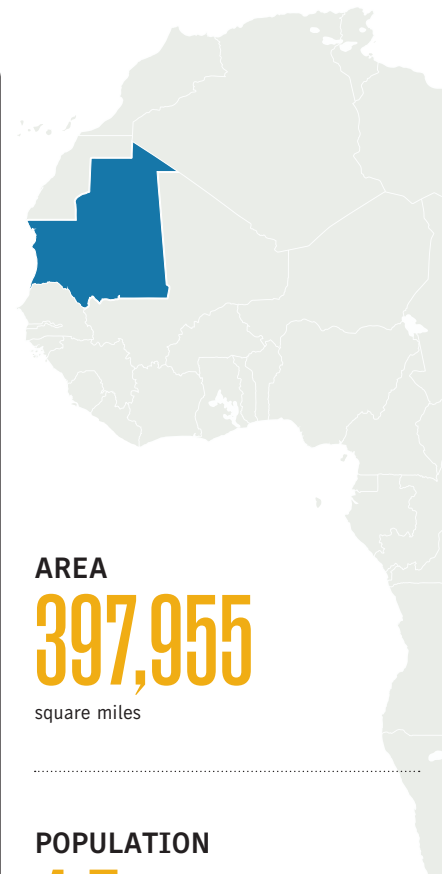
INTERMEDIARIES

Intermediaries must be authorized to do insurance business. They are not allowed to place business with nonadmitted insurers except for marine cargo exports.

MARKET DEVELOPMENTS

Updated May 2018

- Property/casualty insurance penetration and public perception of the sector remains low; the market continues to be held back by structural problems, which include a lack of effective supervisory control, coinsurance capacity and a national reinsurer.
- According to local press reports, in April 2017 various insurers presented proposals to the Ministry of the Interior on how to improve the insurance sector, including applying regulation more forcefully.
- Market sources indicate that the government is considering an insurance supervisory role for the Central Bank of Mauritania or even the establishment of a separate insurance market regulatory authority. This is in reaction to a perceived inadequate regulatory framework by market participants.
- A new decree was approved by the Council of Ministers on July 6, 2017, which requires any new insurer wishing to operate in the local market to deposit MRO 300 million (\$793,325) at the national treasury, thereby creating the guarantee fund that was always envisaged under Law No. 93-040 dated July 20, 1993.



AREA

397,955

square miles

POPULATION

4.5

million

MARKET CONCENTRATION

In 2013 DAMANE had a

27.5%

market share

2018 GDP CHANGE (PROJECTED)

3.1%

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

Willis Towers Watson merger suit dismissed

■ U.S. District Judge Anthony J. Trenga in Alexandria, Virginia, dismissed an investor class action lawsuit against Willis Towers Watson P.L.C., its CEO and others that challenged the broker's 2016 merger deal, declaring the plaintiffs waited too long to file their complaint.

Judge Trenga ruled in *In Re Willis Towers Watson P.L.C. Proxy Litigation* that "because the claims are barred by the applicable one-year statute of limitations, the Motions will be granted and this action dismissed."

The case was filed Nov. 21 by Cambridge Retirement System, a Massachusetts city pension, naming John Haley, the current CEO of Willis Towers Watson; Dominic Casserley, who was CEO of Willis Group Holdings P.L.C. from 2013 until his resignation in 2016; and Jeffrey W. Ubben, CEO of San Francisco-based investment company ValueAct Capital Management, Willis' largest shareholder at the time of the \$18 billion deal.

On Feb. 20, the court appointed the Oakland-based University of California Board of Regents, another shareholder, as the lead plaintiff, which filed an amended complaint March 9.

"Regents alleges that Defendants negligently failed to disclose the details of discussions that had taken place in September 2015 between Haley and Defendant Jeffrey Ubben ... concerning a \$165 million compensation package that Haley would receive as the CEO of the merged entity, as well as Haley's failure to press for a higher special dividend to Towers shareholders as part of the merger," court records said.

Judge Trenga wrote in his ruling that "there was publicly available information more than one year before the filing of this action that was sufficient to put the reasonable investor on inquiry notice of Plaintiff's claims arising out of these alleged non-disclosures."

In addition, Judge Trenga said, "the alleged non-disclosures are not material in light of the disclosure of Haley's selection as the CEO of the merged entity."

Chubb must cover spoof email loss

■ The 2nd U.S. Circuit Court of Appeals in New York upheld a lower court ruling that held a Chubb Ltd. unit is obligated to provide coverage to a cloud-based services firm that lost \$4.8 million because of spoof emails.

The case, *Medidata Solutions Inc. v. Federal Insurance Co.*, involved an email sent to New York-based Medidata, which provides cloud-based services to scientists conducting research in clinical trials. In

June 2014, a Medidata accounts payable employee received the email, purportedly from the company's president, instructing her to devote her full attention to the demands of "attorney" Michael Meyer, according to court papers.

That email led to the company eventually wiring — and losing — \$4.8 million to a bank account provided by "Mr. Meyer." A second attempted wire transfer was stopped after a Medidata official became suspicious, sparking an investigation. Medidata sought coverage for the loss under its executive protection policy with Chubb unit Federal Insurance Co., which provided up to \$5 million in coverage, according to the ruling.



Chubb denied coverage, and Medidata filed suit in U.S. District Court in New York.

The District Court granted Medidata's motion for summary judgment in the case, which was unanimously affirmed by a three-judge appeals court panel.

"We agree with the district court that the plain and unambiguous language of the policy covers the losses incurred by Medidata here," said the ruling.

"While Medidata concedes that no hacking occurred, the fraudsters nonetheless crafted a computer-based attack that manipulated Medidata's email system, which the parties do not dispute constitutes a 'computer system' within the meaning of the policy ... Accordingly, Medidata's losses were covered by the terms of the computer fraud provision."

CNA policyholder wins Sandy dispute

■ The windstorm exclusion in an equipment breakdown policy issued by a CNA Financial Corp. unit is ambiguous and a Brooklyn shopping center may have coverage for damage sustained during

Superstorm Sandy, the 2nd U.S. Circuit Court of Appeals ruled in *7001 East 71st Street L.L.C. v. Continental Casualty Co.*

The case stems from damage to the building's electrical equipment, located in the basement, that was sustained when water infiltrated through a tear in the roof caused by the October 2012 storm.

A federal court ruled in the case last year that the policy, which offered \$5 million in limits, excluded damage to equipment caused by a windstorm.

The 2nd Circuit disagreed, noting that the various exclusions in the policy had different wordings.

Read in the context of the whole policy, the windstorm exclusion states, "We will not pay for loss or damage caused directly or indirectly by a breakdown ... that is caused by windstorm," the ruling says.

This contrasts with the policy's earth movement exclusion, which states "we will not pay for loss or damage caused directly or indirectly by earth movement," the ruling states, and the explosion exclusion, which states "we will not pay for loss or damage caused directly or indirectly by an explosion."

The windstorm exclusion can be read as an "inartful" way of saying that CNA unit Continental won't pay for losses caused directly or indirectly by a storm, but it could also be read as applying "only when a windstorm directly caused damage to covered equipment," the ruling says.

Dismissal of bias suit upheld on appeal

■ The 11th U.S. Circuit Court of Appeals in Atlanta upheld the dismissal of a border agent's lawsuit that he was discriminated against upon returning to work after a back injury when he was briefly assigned a lower-paying position under the Department of Homeland Security.

Charles Center, who began working as an inspector with the Immigration and Naturalization Service in 1999 and later as an officer with the Customs and Border Protection Agency, suffered a back injury in "2004 or 2005," according to documents in *Charles Edward Center Jr. v. Secretary, Department of Homeland Security, Customs and Border Protection Agency*. He returned to work in 2006 but took leave again for the same injury and returned in 2009, according to documents filed in the Atlanta-based federal appeals court.

On his return, the agency "erroneously offered him a position that paid less than his former position. Although the agency quickly corrected its mistake, Center sued the agency for retaliation and disability discrimination," documents state.

A U.S. District Court dismissed the complaint for lack of jurisdiction because of the Federal Employees' Compensation Act, which provides comprehensive remedies for injured federal workers.

DOCKET



VEGAS HOTEL DENIES SHOOTING LIABILITY

The owner of the Las Vegas hotel where gunman Stephen Paddock opened fire last year on a concert crowd, killing 58 and wounding hundreds, has gone to court seeking a declaration that it is not liable for damages. In a pre-emptive lawsuit filed in U.S. District Court in Los Angeles against hundreds of victims of the attack, MGM Resorts International, which owns the Mandalay Bay resort, and its affiliates claim that liability for the attack is limited by the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002. The federal law, passed in the aftermath of 9/11, limits liability for terrorist attacks when qualified anti-terrorism technologies have been deployed.

IHOP SETTLES SEXUAL HARASSMENT SUIT

Two International House of Pancakes L.L.C. franchisees will pay \$975,000 to settle a systemic sexual harassment lawsuit filed by the U.S. Equal Employment Opportunity Commission in which they were charged with harassing female employees, including teenagers, and a male employee. The 16 victims at the Glen Carbon and Alton, Illinois, restaurants were routinely sexually harassed by co-workers and managers, including offensive sexual comments, groping and physical threats, the EEOC said in a statement. Under the consent decree, the restaurants will enforce tougher policies prohibiting sexual harassment.

ABBVIE MUST PAY BACK DRUG OVERCHARGES

A U.S. District judge in Philadelphia ruled that pharmaceutical firm AbbVie Inc. must pay \$448 million in monetary relief to consumers who were allegedly overcharged for a testosterone replacement drug in a case filed by the Federal Trade Commission. The FTC said in a statement that North Chicago, Illinois-based AbbVie had used sham litigation to illegally maintain its monopoly over AndroGel and that the court order represents the largest-ever monetary award in a litigated FTC antitrust case.



Mark Watson has been CEO of Argo Group International Holdings Ltd. since 2007. The Hamilton, Bermuda-based specialty insurer and reinsurer just relocated its New York offices to the city's downtown tech hub. Mr. Watson recently spoke with *Business Insurance* Reporter Matthew Lerner about technology in insurance, recruiting, market changes and other topics. Edited excerpts follow.

Mark Watson

ARGO GROUP

Q How is technology affecting the insurance space?

A For almost two decades, I've been talking about how I thought technology would fundamentally change our industry. And I think what we're seeing today — and I'll define today as the last two years — is that it's finally happened.

I use the words fundamentally change for a reason. I think it's unlikely that any one company comes in and disrupts our industry in the way that other industries have been disrupted. I think that things will fundamentally change through people's use of technology.

We've been investing in technology for the better part of a decade now, quite a bit in the last six to eight years, and those investments are just now paying off. We've invested in data analytics. We've built a pretty large data warehouse. We've begun using machine learning and other robotic processes to help us select risk by having access to more data.

We've also invested in technology to make it easier and faster for us to adjudicate claims, keeping in mind that most of our claims are large, complex corporate risks. It is prevalent in every part of our company. We'll do more in the next three to five years than we did in the last 15.

Q How does Argo attract new talent and approach recruiting?

A It's not accidental that we've moved offices from SoHo to the Meatpacking District (of New York City), and it's not coincidental that we've got 40 software engineers sitting here in the building, across the street from Google, and there are a lot of other tech companies here as well. That's the fastest growing part of our workforce in New York City.

Moving our office from one part of New York City to another was a conscious decision to help facilitate the recruitment of our digital team, which has now been going for three or four years, but really got launched to a new level a year and a half ago when Andy Breen joined our company from American Express (where he was

vice president of product in American Express' Enterprise Digital business unit).

So a lot of times, the reason why we have an office in a place is because that's where really good people are. And I appreciate that a lot of people are retiring, but there are a lot of people entering our industry workforce, and a lot of them are coming from other industries.



No one in our digital team worked in the insurance industry before joining our company. Most of the corporate finance team came from investment banking. Most of the legal team came from private practice. We have a number of underwriters that came out of whatever industry they're now underwriting risk in. Equally important, maybe even a little more important in the long run, we've had a graduate recruitment program here in the U.S. and in London for almost a decade.

Q Will technology supplant jobs?

A If you look at our workforce today, we have more employees today than we did before. Our workforce has a different complexion today. We have replaced processing roles with data analytic roles or actuarial roles. We have five times as many actuaries today as we did 10 years ago. We've replaced some underwriting processing roles with software engineers to do the data analytics. It's much more of a professional

organization today than it was even five years ago, and that evolution is going to continue to change as we become more and more of a data-driven company.

When we think about how we use technology for underwriting, it's applicable to every part of the market. It's most useful in the short run for the small-account business where we can automate more things. But there's another end of the market, too, and that's the large-account business, and that will — at least, as long as I'm still in the industry — still be very relationship-driven. And as long as you're trying to cobble together hundreds of millions of dollars of capacity — or in some cases a billion — that's still going to be very manually intensive. So it really just depends on which part of the risk spectrum you're talking about as to what technology will do.

Q Did extensive losses from 2017 catastrophes change or turn the market?

A It comes back to supply and demand. There isn't much more demand for reinsurance or retro today than there was a year ago, and there's more supply today than there was a year ago, mainly coming in from the capital markets. I'm a little surprised we didn't keep some rate increase over the course of the year — or, I should say, a little more than we did achieve — but I'm not terribly surprised knowing how much more capacity is there.

Q Is "alternative capital" really alternative anymore or has it become mainstream?

A That's an excellent question, and I'll answer it by saying that we think of reinsurance in all shapes, forms and sizes, including (insurance-linked securities) as a form of capital, not an alternative form of capital. And it is a substantial feature in our capital structure particularly for property cat reinsurance, but also other risks.

If you look at how people support risk, how companies support risk on their balance sheets today, I think it is so prevalent as to be a form of capital, not an alternative form of capital.

"For almost two decades, I've been talking about how I thought technology would fundamentally change our industry. And I think what we're seeing today — and I'll define today as the last two years — is that it's finally happened."

LUBA (loo•bah)

IT'S HOW YOU PRONOUNCE LOWER RATES

LUBA Workers' Comp offers coverage to businesses in Louisiana, Mississippi, Texas, and Arkansas. LUBA provides lower rates to policyholders.

Visit our website to learn more or call your insurance agent today.

LUBAwc.com • 888.884.5822

Rated A- Excellent by



LUBA 
WORKERS' COMP
A CASUALTY INSURANCE COMPANY

Genuine Dependability™

INSURANCE SECTOR RATES SUCCESS OF DIVERSITY EFFORTS

In annual *BI* survey, employees working in risk management and insurance report on inclusion in their work environments

BY LOUISE ESOLA

lesola@businessinsurance.com

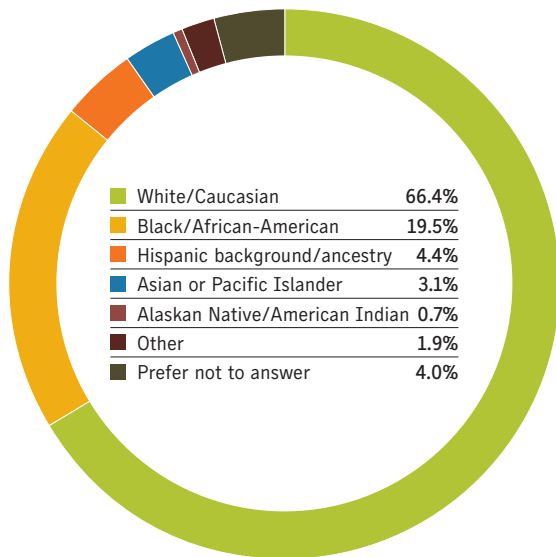
While 60.6% of insurance professionals surveyed on diversity in the workplace think their company's diversity programs are effective in achieving the desired outcomes, minority groups are less enthusiastic than their white male counterparts.

Signet Research Inc. on behalf of *Business Insurance* surveyed 823 U.S.-based insurance and risk professionals in June and July to gain insights on industry practices in recruiting and retaining a diverse workforce as part of an annual effort to draw attention to concerns of minorities working as insurers, agents and brokers, risk managers/corporate insurance buyers/users, third-party administrators, health and benefits consultants, or insurance services/legal/consultants.

Through members of the *Business Insurance* Diversity and Inclusion Institute, in partnership with associations such as the National African American Insurance Association and the Gamma Iota Sigma collegiate risk management and insurance fraternity, 296 of those returns were received through email and social media.

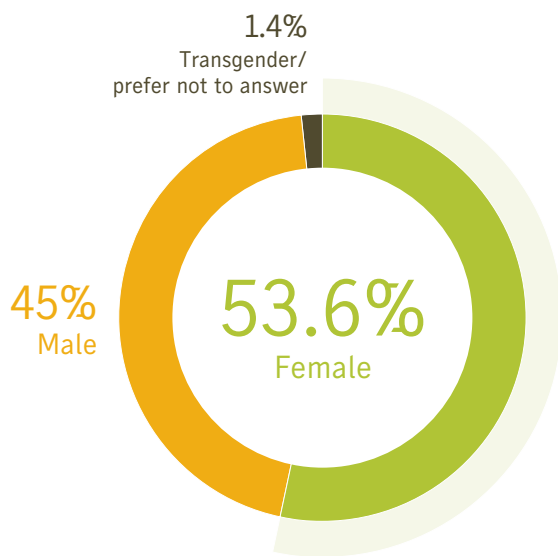
With this additional outreach effort, this year's survey collected more responses from minority groups, especially among African-Americans — 19.5% of participants compared with 66.4% of white participants. Hispanics made up the next-largest group of minority respondents at 4.4%.

BREAKDOWN BY RACE AND ETHNICITY



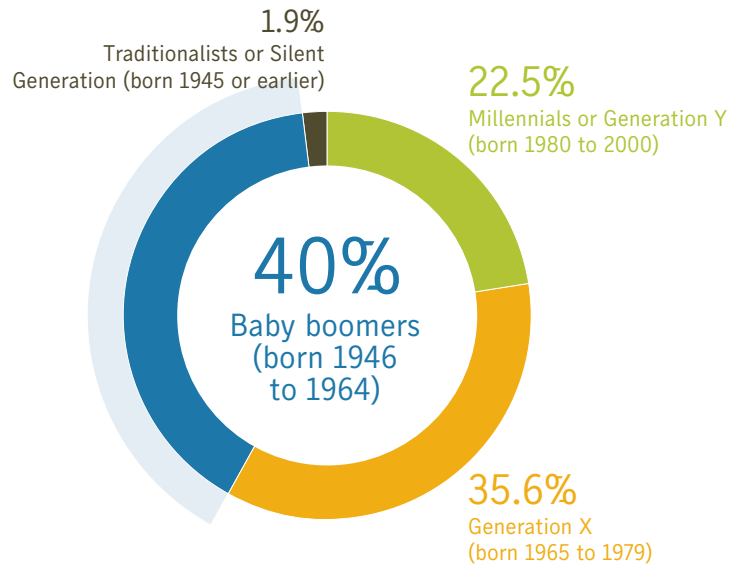
Due in part to the assistance of the Women's Insurance Networking Group, women participants in the research effort also surpassed that of men for the first time. A small group of respondents identified as transgender or did not want to disclose their gender.

PROFILE OF RESPONDENTS



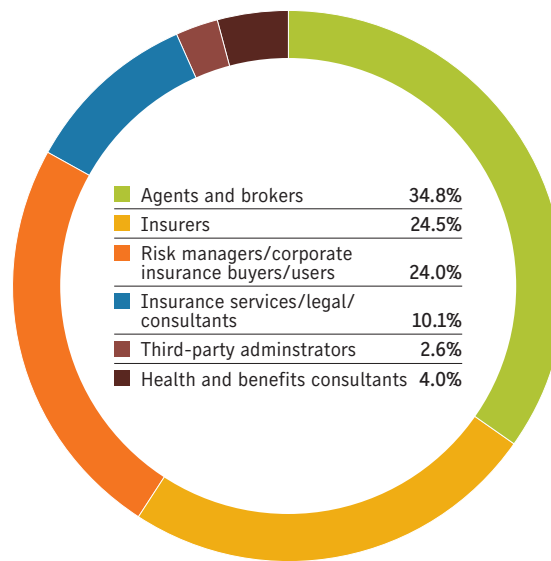
The average age of respondents in this year's survey is 49.5 years old, and they have worked in the industry for an average of 20.1 years. Baby boomers made up 40% of respondents, with Generation X coming second at 35.6%. Millennials or Generation Y made up 22.5% of participants.

BREAKDOWN BY GENERATION



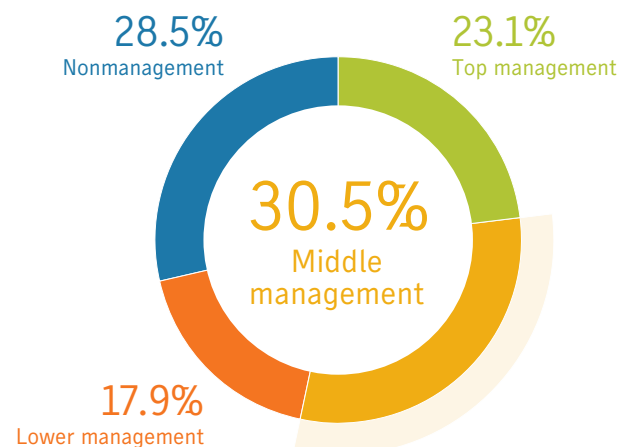
Of respondents' job classifications, about 60% were either insurers or agents/brokers. Risk managers and corporate insurance buyers made up about one quarter of the respondents. The remaining respondents were from service providers, such as consultants, lawyers, third-party administrators and health and benefits consultants.

BREAKDOWN BY CATEGORY



In terms of the level of job responsibilities, the respondents were roughly split between middle managers/senior managers and lower managers/nonmanagerial staff. Staff from large companies made up the largest proportion of respondents.

MANAGEMENT LEVEL

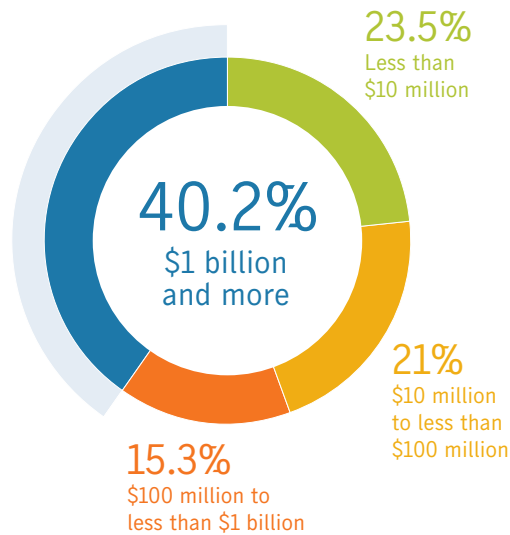


Due in part to the assistance of the Women's Insurance Networking Group, women participants also surpassed that of men for the first time: 53.6% female vs. 45% male respondents.

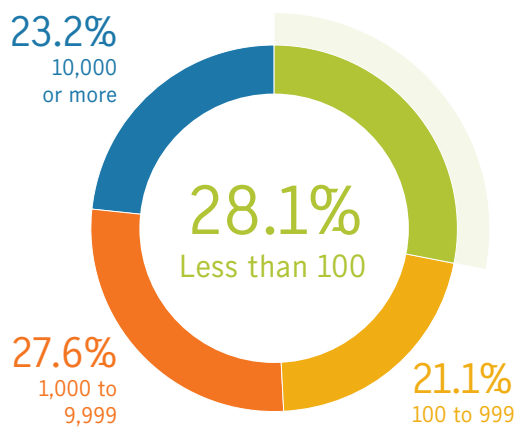
This year's survey collected more responses from minority groups, especially among African-Americans — 19.5% of participants compared with 66.4% of white participants. Hispanics made up the next-largest group of minority respondents at 4.4%.

The top challenges to diversity included the lack of diverse job candidates, lack of consistent leadership on the issue and lack of understanding of what diversity can do for the industry. Over half said successful diversity programs are up to the chief executive officers.

COMPANY SIZE BY ANNUAL REVENUE

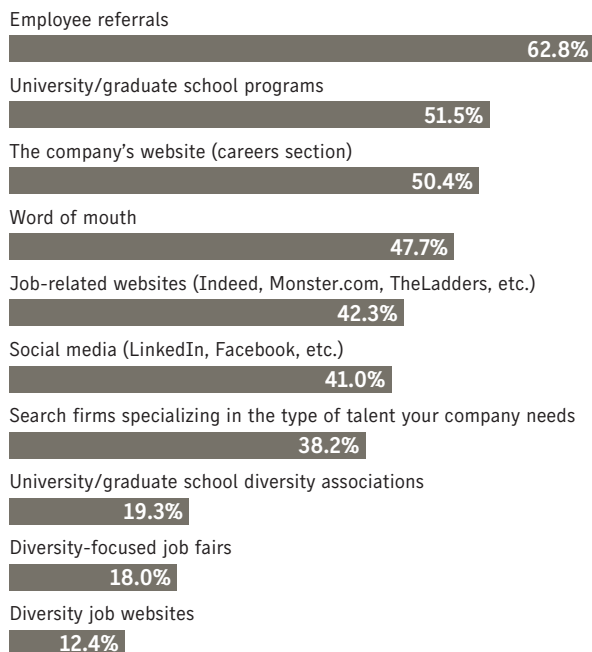


COMPANY SIZE BY FULL-TIME EMPLOYEES



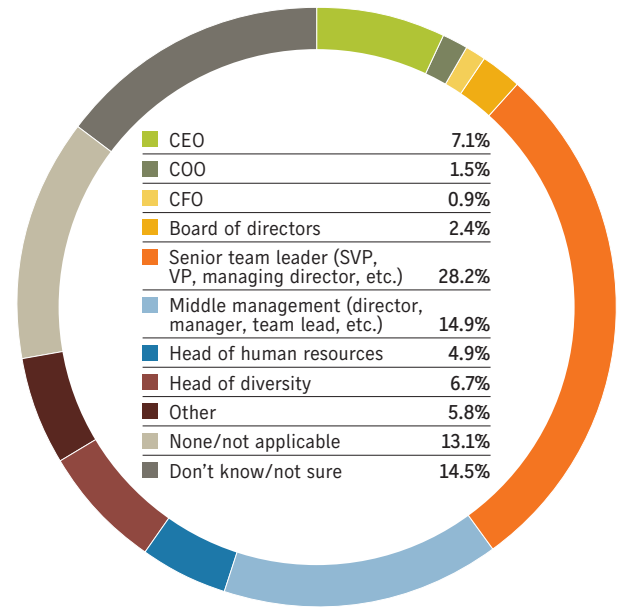
When it comes to recruiting diverse candidates, companies appeared to use traditional recruiting methods. Few respondents said their companies used recruitment aids specifically targeting diverse candidates.

TOP DIVERSITY RECRUITMENT METHODS



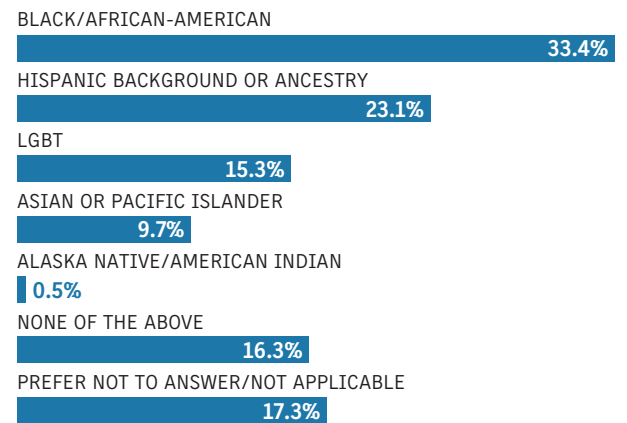
Less than 10% of respondents said that minorities held C-suite positions at their organizations, with nearly 30% saying senior team leaders were the highest ranking minorities.

HIGHEST RANKING POSITIONS BY MINORITIES



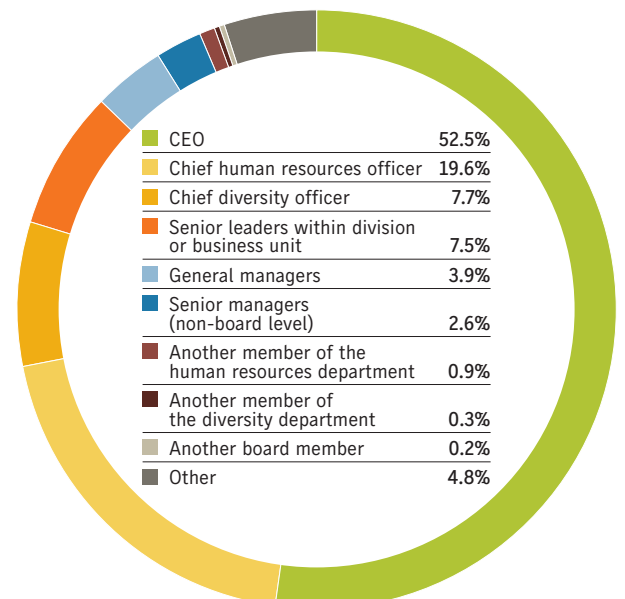
African-Americans made up the highest percentage of minorities in management positions. More than 15% of the most senior minorities were LGBT.

MINORITIES IN MANAGEMENT POSITIONS



The top challenges to diversity included the lack of diverse job candidates, lack of consistent leadership on the issue and lack of understanding of what diversity can do for the industry. Over half said that CEOs should be accountable for the success of diversity programs.

ACCOUNTABILITY IN DIVERSITY





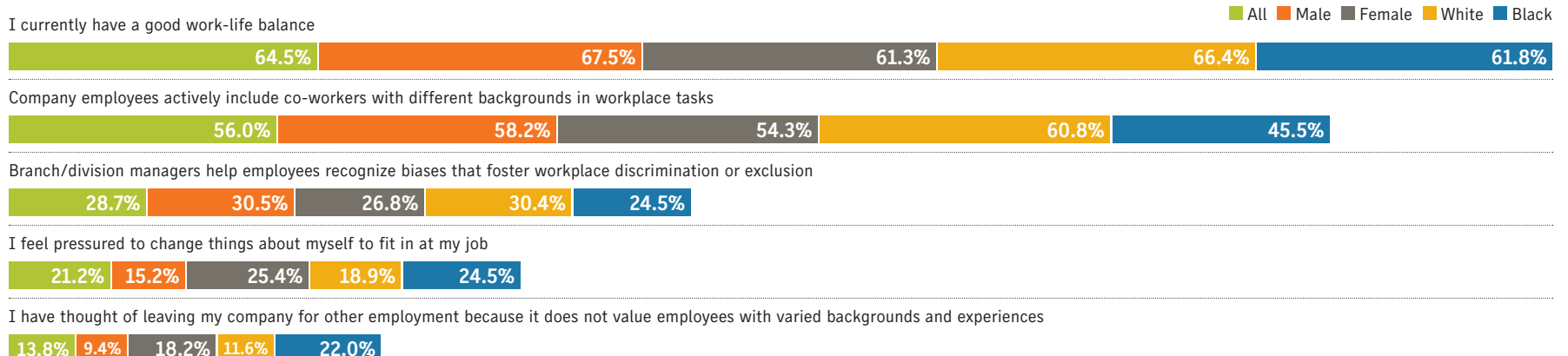
Just over one-fourth of respondents said branch/division managers helped employees recognize biases that foster workplace discrimination or exclusion; 26.8% of those in agreement were female, while 24.5% were African-American.

CHALLENGES CREATING DIVERSITY



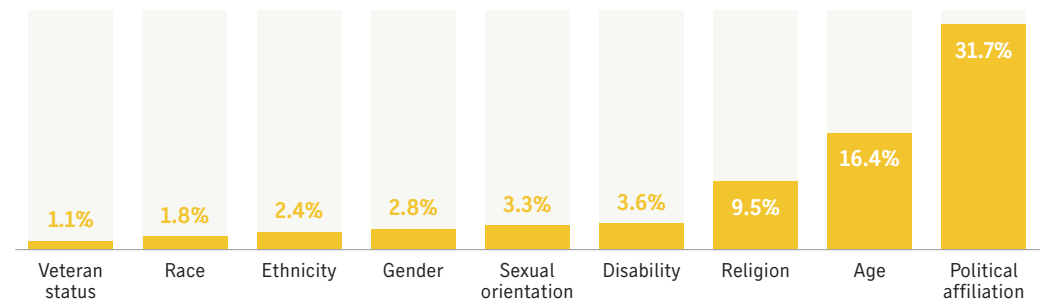
Just over one-fourth — 28.7% — of respondents said branch/division managers helped employees recognize biases that foster workplace discrimination or exclusion; 26.8% of those in agreement were female, while 24.5% were African-American.

AGREEMENT/FEELINGS



Different groups tend to “hide” certain things more than others. For example, females are more likely to hide their political affiliation and age compared with their male counterparts. Likewise, minorities tend to hide their political affiliation compared with their white colleagues, and whites are more likely to hide their religion compared with minority groups. Not surprisingly, baby boomers are more likely to hide their age than Gen Xers and millennials.

THINGS EMPLOYEES HIDE ABOUT THEMSELVES AT WORK



POLITICAL AFFILIATION — BY GENDER



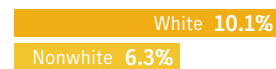
AGE — BY GENDER



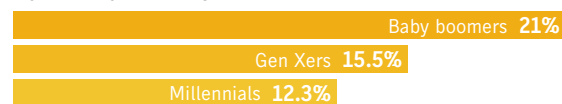
POLITICAL AFFILIATION — BY RACE



RELIGION — BY RACE



AGE — BY GENERATION



COVER STORY

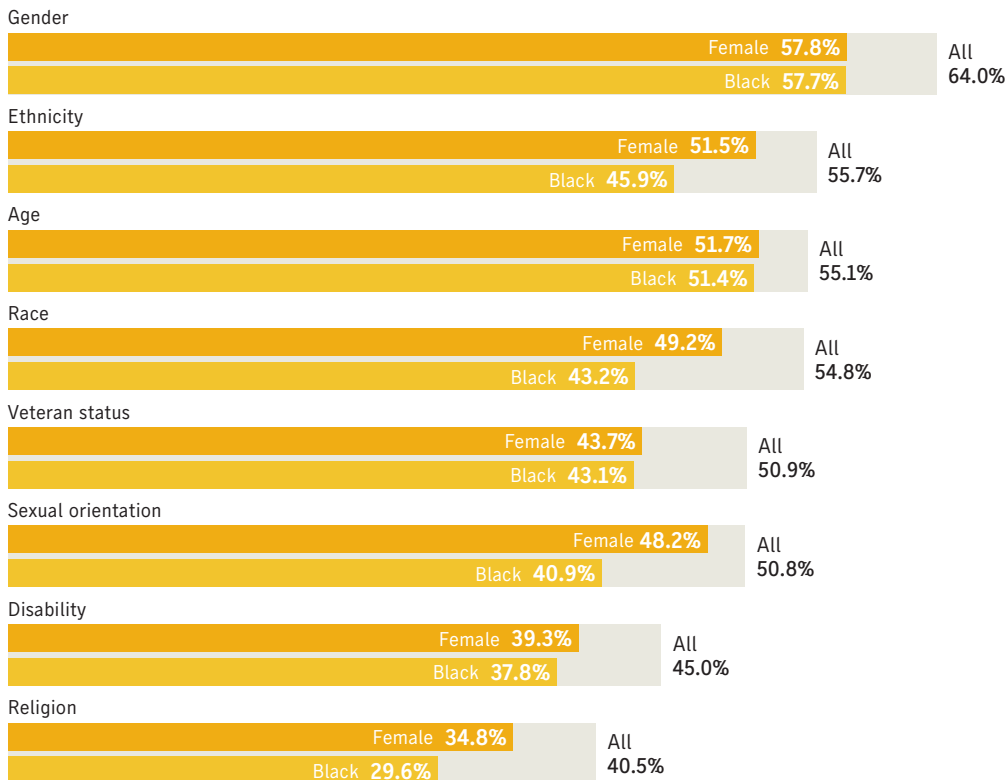
Over 60% of the total respondents think their companies' diversity programs are either very or somewhat effective in achieving the desired outcomes.

DIVERSITY PROGRAM EFFECTIVENESS

	% of all respondents	% of male respondents	% of female respondents	% of white respondents	% of black respondents
Very effective	20.7%	20.2%	19.3%	22.0%	17.9%
Somewhat effective	39.9%	44.8%	38.2%	40.4%	40.2%
Not very effective	18.9%	16.7%	20.9%	18.4%	20.5%
Not at all effective	6.7%	5.1%	9.2%	6.3%	11.6%
Not sure/don't know/not applicable	13.8%	13.2%	12.4%	12.9%	9.8%

However, male respondents — 65.0% — are more likely to think that their company's diversity programs are effective compared with their female colleagues at 57.5%. Likewise, white respondents, at 62.4%, are more likely than their black/African-Americans counterparts, at 58.1%, to think that the programs are effective. Female and black/African-American respondents are less likely to rate positively on company's diversity and inclusion efforts compared with the overall group. Specifically, less than half of the respondents rate their company's effort in accommodating religion, at 40.5%, and disability, at 45.0%, as "very good" or "good."

RATING DIVERSITY PROGRAM EFFORTS GOOD OR VERY GOOD



Respondents named fairness in performance and compensation decisions, retention and development of diverse talents, and ensuring diversity at all levels of management among the top priorities.

While a sizable majority of respondents feel that their organization considers diversity and/or inclusion as business priorities, respondents from the largest companies with 10,000 or more full-time employees are more likely to agree.

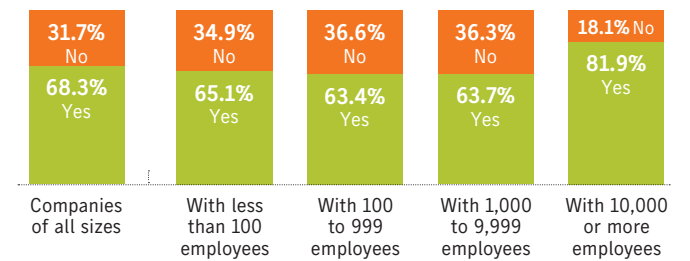
Despite the recognition by companies that diversity should be a business priority, only about a third of respondents feel that there is sufficient diversity in the insurance/risk management/health and benefits workforce.

Female respondents are significantly more likely than male respondents to feel that there is insufficient diversity.

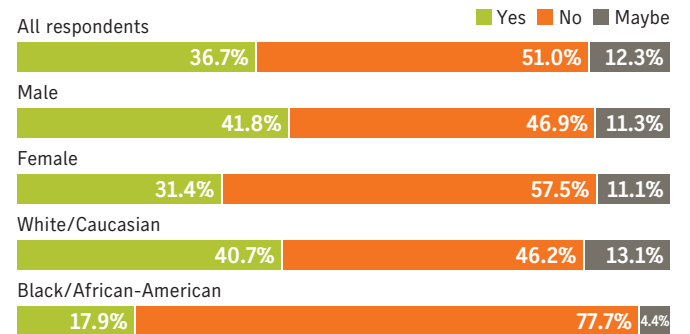
Likewise, black/African-American respondents, at 77.7%, are more likely than their white/Caucasian co-workers, at 46.2%, to feel there is insufficient diversity in the insurance workforce.

When asked about what the top three priorities for diversity/inclusion efforts in the industry should be, respondents named fairness in performance and compensation decisions, retention and development of diverse talents, and ensuring diversity at all levels of management among the top priorities.

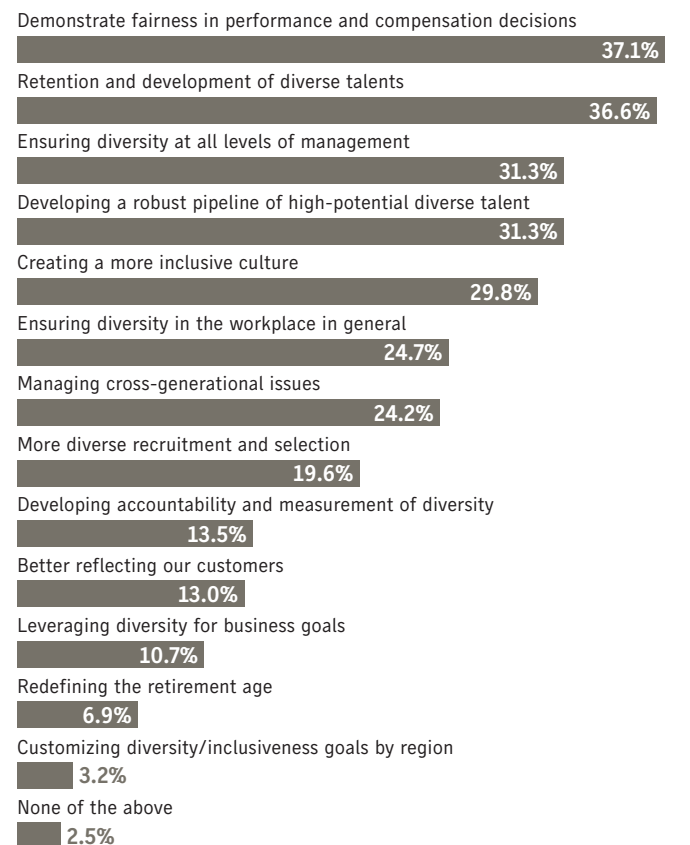
DIVERSITY PRIORITY



SUFFICIENT DIVERSITY



TOP PRIORITIES SHOULD BE



Diversity and inclusion in recruiting: Consider a multigenerational approach

The industry has been talking about it for more than a decade, and the time has come. A retirement wave is washing over the insurance industry as more and more baby boomers call it a day. With this sea change now upon us, many thought leaders and human resources experts continue to wonder what the future of insurance will look like with so much institutional knowledge heading for the exits.

But the truth is, insurance, like other industries, always will be multigenerational. Think about it — Gen Xers are around the age of 45; many have about two decades left before reaching typical retirement age.

As I think about the workforce of the future, I don't envision a simple transfer of knowledge from one generation to the next. Gen Xers, who learned from the boomers, will work with millennials for the next 20-plus years by welcoming them into their networks and giving them the support and advice they need to live grounded and balanced lives at work and at home.

Tactically, the most successful companies will find a way to combine the skills of the younger workers, who've grown up with technology as an ever-present part of their lives, with industry experience from older workers. That combination is the best path forward.

But don't assume this melding will happen without a stiff set of challenges. There's been so much focus on the impact millennials are having in corporate America that many executives haven't turned their attention to the generation right behind them. And that generation — which is the most diverse ever — is about to take the workforce by storm.

The oldest members of Generation Z, the largest generation ever, are now graduating from college, and they're the new recruitment targets. And, wouldn't you know it, while they share many similarities with their millennial counterparts, they're a heck of a lot different, too, which will affect recruitment strategies to attract a diversity of talent that is a hallmark of Gen Z.

This past June, I had a chance to reflect on this subject when I attended the Northeast Regional Forum of the Insurance Industry Charitable Foundation's Women in Insurance Conference Series. The event gathered insurance professionals from across the Northeast for a series of forums to discuss the challenges facing the insurance industry, including diversity of talent and inclusion — and the role it will play as we bring the next generation into the industry. I was impressed by the focus on the importance of blending the unique skillsets and talents of the "old"

with those of the "new" to create the workforce of the future.

One of the key takeaways from this conference on the topic of diversity of talent and inclusion was the general agreement that the language used in recruitment tools should be vetted for unconscious bias. In addition, employers spoke of recognizing the need to adopt policies that accommodate more flexible working styles for Gen Z as they enter the workforce, as well as educating managers on the best way to communicate effectively with this new generation of workers.

Who is Gen Z?

A lot is being written about Gen Z, whose oldest members are in their early 20s.

Deloitte Consulting L.L.P. reports that Gen Z is anticipated to bring an unprecedented level of technology skills to the workforce. This group, brought up in a digital world, is far more sophisticated than the millennials when it comes to technology — Gen Zers have no idea what it's like to endure a dial-up internet connection or live without social media. These young workers will leverage the technologies they've taken for granted since birth to build and advance their careers. Simply, these workers will approach their careers from this tech perspective, and it's a perspective the aging insurance industry desperately needs.

Recruiting Gen Z will also require best practices in diversity and inclusion. Not only will companies need to enshrine policies and procedures that support age, race, gender, sexual orientation and other aspects of diversity represented by employees into their day-to-day operations, but they'll also need to track their progress. It's no longer enough to say your company supports those in the above categories. As we work to recruit tomorrow's insurance leaders, we need to implement metrics that will track a company's success in achieving their diversity and inclusion objectives. This means securing sincere commitment from senior leadership as well as providing training for managers and those involved in the company's recruitment and retention efforts.

These young professionals will be the most diverse generation to enter the global workforce. In the U.S., Census Bureau estimates show that nonwhites will be the majority of the nation's children by 2020. These young professionals will want to know whether your company cares about the diverse groups they represent. "The most important attribute to gaining their trust is how inclusive you are as a company. Companies that make this a priority will win the future," Diversity Best Prac-

tices magazine reports.

Gen Z workers also are expected to be fiercely private and independent, and will choose to learn by themselves. These young workers may eschew the collaborative, open work spaces that have become ubiquitous in modern office culture. Deloitte reports members of this generation are apprehensive about their interpersonal communication skills, which will change the ways teams choose to collaborate. The good news is there's plenty of research showing Gen Zers prefer face-to-face communication over tools like instant messaging and video conferencing. Collaboration may come in the form of one-on-one mentoring rather than big group meetings.

Gen Z will present another challenge for companies whose recruitment models haven't evolved. Many of these younger workers won't have the traditional educational backgrounds common among Gen Xers and millennials. Forbes recently reported that "more of them are skipping higher education than their millennial counterparts and moving straight into the workforce. They'd rather avoid the years of debt and try one of the newer, more affordable options. Don't disregard a potentially great employee just because they don't have the credentials you usually look for — they might have all of the skills you need, just from a different source."

Recruiting Gen Z also will involve showcasing a company's commitment to a diverse set of social causes. This generation is expected to be socially active on a number of fronts. Expect them to be passionate about issues like the environment, gun control, equal rights and education. Gen Z believes companies have a responsibility to help solve social problems and will want to know the commitments they have in place to do just that.

A survey by professional staffing company Robert Half International Inc. shows that Gen Z wants flexible, individualized career paths because a one-size-fits-all track doesn't appeal to them. Some may even want to create their own job descriptions. Incorporating this kind of flexibility into the recruiting process will become the norm.

Blending the old with the new

Every day at Hamilton Insurance Group, I see collaboration all around me, with workers from all ages and backgrounds coming together to form strong teams. By fostering a team-based work environment, Hamilton is bringing this multi-generational workforce together. Our most junior employees have ready access to senior leadership. Our millennial and Gen Z workers



Pina Albo joined Hamilton Insurance Group Ltd. as CEO in January 2018. She can be reached at pina.albo@hamiltongroup.com or 441-405-5200.

collaborate with Gen X and boomer managers to fulfill — and to challenge when necessary — our policies and procedures designed to recognize and properly support this multigenerational workforce.

Watching the innovation sparked by this team-based culture, I know that this is how the industry will stay relevant in the years ahead — blending the curiosity of the younger generations to learn how the business works with the willingness of more experienced employees to be teachers and mentors.

At Hamilton, our focus on data and analytics demands that our employees know how to build proprietary software, analyze massive amounts of data and create tech-based platforms that enable faster, smarter and better underwriting decisions. As a result, we cast a wide net when we recruit — far beyond the traditional talent stomping grounds. We're still hiring actuaries and underwriters, but they're now joined by computer scientists and software developers. I enjoy watching these tech-savvy Gen Zers challenge some of the sacred cows of our hidebound industry and seeing the creative ideas that flow as a result.

If we want to attract Gen Z to the insurance industry, we need to be truly inclusive as we recruit for the future. We'll have to recruit and collaborate differently, showing a willingness to prioritize the diversity, inclusion and social causes that this generation values.

Gen Z has arrived. Let's welcome them with open arms.



LIABILITY REPORT:
ALTERNATIVE RISK
TRANSFER

Captives gain traction as cyber cover option

BY MATTHEW LERNER

mlerner@businessinsurance.com

INSIDE

▶ MED MAL CAPTIVES TESTED

Health care captives covering med mal risks faced a determined push for higher reinsurance rates. **PAGE 24**

▶ CYBER, OPIOIDS TOP CONCERNS

Medical malpractice insurers face up to emerging liability exposures. **PAGE 24**

The growing use of captive insurers to cover cyber risks is providing policyholders with a mechanism to modify insurance coverage to fit their needs, according to industry experts.

In addition, by using captives to cover primary risks, captive owners can directly access reinsurance and excess insurers and help develop cyber coverage in the wider market, they say.

“The whole insurance market for cyber is growing significantly, and within that the captive element is growing as well,” said Anup Seth, managing director for captive and insurance management for Aon Insurance Managers (Bermuda) Ltd. “I would say it’s such a growing market that more and more companies are utilizing their captives.”

“I am seeing more interest today in cyber in captives than I have at any other point in time,” said Jim Swanke, director of risk consulting with Willis Towers Watson P.L.C. in Minneapolis.

“We’re having more and more conversations involving cyber risks in captives,” said Michael Serricchio, a managing director with Marsh Captive Solutions based in Norwalk, Connecticut. “In the past four years, we’ve had a 100% increase in the number of captives insuring some cyber exposure.”

Policyholders are placing a wide vari-



RULES EXPECTED FOR CYBER RISK IN CAPTIVES

As an evolving exposure, regulators are monitoring cyber risk and will likely introduce rules related to how captive insurers can cover the exposures, according to industry sources.

State regulators “like to keep up with the rest of the world,” and they risk eventual federal intervention if they are not proactive about cyber regulation, according to David Provost, Montpelier, Vermont-based deputy commissioner of captive insurance for the state.

“If we do nothing, we’re just leaving the door open for more federal intervention,” Mr. Provost said. “Every captive insurance jurisdiction is going to be looking at the likelihood of passing some form of regulation that is similar to the (National Association of Insurance Commissioners’ data security) model regulation.”

Additional regulation in the cyber arena is almost a given, said Jim Swanke, director of risk consulting with Willis Towers Watson P.L.C. in Minneapolis, citing the recent implementation of cyber security regulations on companies by the New York State Department of Financial Services and the higher duty of care being imposed upon boards concerning cyber security issues. “If you are on a board or in company management, you should get a head start on this, because the regulation is coming.”

The New York regulation, which began taking effect this year, requires insurance and financial services companies under jurisdiction of the department to follow specific protocols and file reports on cyber defenses and preparedness.

Matthew Lerner

ety of cyber exposures into their captives, sources said.

“Captive owners’ approach to using their captives to provide cover for cyber risks differ widely,” said St. Peter Port, Guernsey-based Peter Child, managing director for Artex Risk Solutions Inc., a unit of Arthur J. Gallagher & Co.

Risks covered via captives include: professional services error and omissions; multimedia liability; security and privacy liability; data recovery and loss of income; regulatory defense; post-event impact mitigation costs and data extortion, he said.

Putting cyber risks into a captive can provide an entry point for captive owners to access the commercial markets, captive managers say.

“Many clients are either buying a commercial policy or they’re taking the first step to a commercial policy by using their captive first and then going to the

TOP INDUSTRIES USING CAPTIVES FOR CYBER RISK



Communications, media and technology



Financial institutions



Health care



Retail, wholesale, food and beverage

commercial market sometime down the road,” said Mr. Serricchio. “We’re finding risk managers and treasurers and general counsels looking to their captive to be able to support, in some way, shape or form, cyber for the organization if it makes sense and is done in a conservatively prudent way.”

Captive owners are using their captives to cover first- and third-party cyber exposures in the primary layer, and then accessing the excess, surplus lines and reinsurance markets, said Mr. Swanke of Willis Towers Watson.

Captive owners can also use the vehicles to tweak and tailor coverage, said Mr. Seth of Aon. Whereas an insurer’s standard cyber insurance form might have certain sublimits for business interruption, for instance, a manufacturer might extend that coverage and even add contingent business interruption for key suppliers. “They start with the carrier language and bespoke it for their own needs. We’re seeing that a lot,” Mr. Seth said.

In some cases, captive owners may have a better understanding of the risks they face than the commercial insurance market, said Mr. Child of Artex. “In those cases, the captive can provide a greater breadth of cover to ensure that the combined policies of the market and the captive give the kind of protection that the captive owner needs.”

“Insurers are certainly aware of the evolving nature of cyber risks, and so commercial policies will have exclusions and gaps. A carefully drafted captive pol-

icy can fill in some of those gaps,” added Karl Huish, executive vice president for North America with Artex Risk Solutions in Mesa, Arizona.

By putting a primary layer into a captive, “clients are finding that they can develop their own manuscript policy form, their own policy language,” Mr. Swanke said.

This can also benefit a policyholder when entering the commercial market, he said.

“Then, when they go into the reinsurance market for more limit, they try to get the reinsurers to follow the form,” Mr. Swanke said. “They use the captive as a tool in that primary layer to try to dictate the cover up the tower, in both the reinsurance and retail areas as well.”

Mr. Seth added that with such an approach, insurers are sometimes more willing to provide excess layers of coverage. “They see the client with skin in the game by taking a meaningful primary retention. We’re seeing that approach help with the overall structure of the program,” he said.

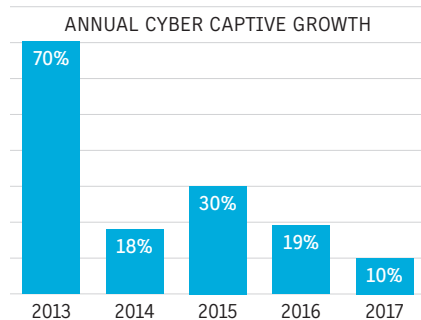
“Hopefully, the market will recognize that you are taking on a sufficient amount of retained risk in your captive so reinsurers are more inclined to go along with your coverage,” Mr. Swanke added.

This, in turn, helps inform reinsurers of policyholders’ requirements and contributes to the overall evolution of the cyber insurance marketplace.

“I believe that as reinsurers start to follow the manuscript forms, it informs the marketplace of what features clients are looking for,” Mr. Swanke said.

THE CAPTIVE LANDSCAPE — CYBER LIABILITY

- Tailored coverage for exposure versus market appetite
- Access to reinsurance for catastrophe limits
- Consolidation of cyber programs across operating companies
- Write coverage for emerging cyber risks: cyber terrorism under TRIPRA



Source: Marsh Captive Solutions



Harder market seen for med mal captives

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

Health care organizations covering their medical malpractice risks in captives experienced a bit of a surprise during midyear renewals: determined pushback from reinsurers tired of absorbing severe losses caused by negligent or rogue physician behavior.

Reinsurers have likely been offsetting losses in the medical professional liability insurance business for many years by using reserves or profits in other lines to support underwriting at a loss, but several factors contributed to a more determined effort by reinsurers to raise rates and retentions during recent renewals, experts say.

“While they have been asking for rate for more than a year, at this past July 1 and June 1 renewals, we’re seeing them actually successfully get those increases,” said Lisa Hamer, Chicago-based senior vice president with Marsh USA Inc. “A flat renewal for a client with no losses is considered a win, and I think we’re going to see that continue to be the case going forward, especially in jurisdictions where there have historically been more losses like Cook County (Illinois) and Philadelphia County.”

For large hospital systems and academic medical centers that self insure their medical malpractice risks through captives, “we are actually seeing a bit of an increase in frequency of severity for typical medical malpractice claims,” said Joanne Gundersen, vice president and medical malpractice leader with QBE North America in Simsbury, Connecticut. “In the eight-figure category of verdicts, we’re seeing a little bit of a bump up again. For the July 1 renewal season, we definitely saw some markets making some changes in either their pricing or their limits.”

Liability claims against physicians are not a rare event, with 34% of physicians having a claim filed against them and 16.8% sued two or more times, according to a series of



MED MAL PROFITS

The profitability of medical professional liability insurers is under significant pressure from factors such as ongoing changes in health care delivery, the migration of private practice physicians to large physician networks and hospitals, mergers and acquisition activity among physician groups and hospital systems, the opioid epidemic in the United States, uncertainty about health insurance reform and challenges to tort reform, according to a report published in May by Oldwick, New Jersey-based ratings firm A.M. Best Co. Inc.

- Combined ratios have generally trended up for the past decade, reaching a high of **102.9% in 2016** before retreating to **101.0% in 2017**.
- Direct premium written was down **1.9% in 2017**, to **\$6.8 billion**, after falling **1.8% in 2016** due to slumping demand and competitive pricing.

Source: Myriad Challenges Test the Mettle of Medical Professional Liability Writers, A.M. Best Co. Inc.

reports published by the American Medical Association in December and January. But premium increases have been relatively infrequent, with only 13.4% of 2017 premiums higher than 2016 premiums.

In 2015, the average indemnity payment — money paid to a claimant or plaintiff for adjudicated damages — was \$365,503, a 10.7% increase from 2006, but these payments were 5.9% lower in 2015 than in 2006 after accounting for inflation, according to AMA data. Average expenses such as for defense attorneys and expert witnesses, however, rose by 64.5%, or nearly 40% after accounting for inflation.

“Are the reinsurers getting a little bit nervous because of the severity of some of these and demanding higher retention at that primary level in the captive or risk

retention group?” said Anne Marie Towle, executive vice president and captive practice leader with JLT Insurance Management USA based in Indianapolis. “That’s going to become more of a trend.”

The most notable medical professional liability event in the Bermuda market was a \$190 million settlement reached between Baltimore-based hospital system Johns Hopkins Medicine and former patients of gynecologist Dr. Nikita Levy, experts say. In February 2013, Dr. Levy was discovered to be videotaping his patients, was terminated by the hospital system and shortly thereafter committed suicide.

Rising concern about so-called batch claims — catastrophic incidents that injure a number of patients — and settlements was a key factor during recent renewals.

“In all my discussions in London and Bermuda with reinsurance companies, they aren’t concerned about our individual risk management capabilities,” said Courtney Claflin, Oakland, California-based executive director of captive programs with the Office of Risk Services for the University of California, which has a single-parent captive called Fiat Lux Risk and Insurance Co. and a risk retention group called UC Health RRG that sells medical malpractice insurance to physicians and physician groups affiliated with the university’s medical centers. “They’re more concerned about the litigious nature of the business with batch claims. Batch claims were a big topic this year. They are concerned about litigation trend, and as a result they are looking for rate and higher retentions, and they stuck to it.”

The university employs 7,000 to 8,000 physicians insured by Fiat Lux, with about a \$90 million spend for reinsurance. “Fiat Lux took more participation in the quota share arrangements that I have with syndicates and reinsurers, so I became a bigger participant with higher retentions and quota shares,” he said. “Premiums were a little bit up even with the higher retentions, so I saw some hardening in the market.”

Litigation efforts have expanded into nontraditional jurisdictions in addition to the well-known “judicial hellholes.”

“We pay particular attention to venue deterioration,” said Susan Pateras, chief operating officer and health care practice leader for Ironshore Bermuda in Hamilton, Bermuda. “Health care is still regionally delivered, and across the different regions there are different levels of liability because some states may have tort reform, some tort reform is better than others, certain states are highly litigious. As we see the increase in severity, is that becoming a new trend? Are those one-off responses, or are those creating a shift in what was potentially a good venue into a venue that is now moderate or a venue that we need to pay particular attention to?”

OPIOIDS, CYBER TOP LIST OF HEALTH CARE INDUSTRY CONCERNS

The opioid epidemic and cyber exposures are at the top of the risk horizon for medical professional liability insurers, experts say.

Physicians can face liability for negligently prescribing opioids, including by prescribing to patients with a history of addiction or when safer alternatives are available or the drugs are no longer needed, according to a report published in May by Oldwick, New Jersey-based ratings firm A.M. Best Co. Inc.

“I don’t think we’ve seen the high point of the impact from opioids yet,” said David Blades, senior industry analyst for Best based in Oldwick.

Opioids represent the highest percentage of medication-related claims at 14%, according to an analysis of more than 10,000 closed claims at Boston-based medical professional liability insurer Coverys across the 2012-2016 period.

“We are concerned largely because we know that at any moment in time

those claims can really accelerate,” said Robert Hanscom, vice president, business analytics, Coverys.

Underwriters have more questions about the due diligence of health care clients and captives with regard to their policies and procedures around prescription drugs, said Lisa Hamer, Chicago-based senior vice president with Marsh USA Inc. “A couple of insurers have unsuccessfully so far tried to add opioid exclusions to their reinsurance or umbrella forms,” she said.

Medical professional liability insurers are also paying close attention to cyber risk due to rising attacks against health care organizations, with insurers adding language to clarify which exposures are covered and which are excluded under their policies, experts say.

“I think (cyber risk is) probably going to be a bigger issue than the opioid epidemic,” said Charlie Huber, a Best director based in Oldwick.

Gloria Gonzalez

Spencer 2018 Gala

Thursday, September 20, 2018

NEW YORK HILTON MIDTOWN

HONORING

David Eslick
Chairman and CEO
Marsh & McLennan Agency

Patrick J. Kinney
Executive Vice President,
Field Management
Travelers

GALA CHAIR

Marya J. Propis
SVP, Director of Distribution
and Broker Partnerships
All Risks, Ltd.



For additional information or to make a reservation,
contact galadinner@spencered.org or go online to www.spencered.org/2018-gala

Spencer Thanks its 2018 Gala Sponsors*



Advisen Ltd.
All Risks, Ltd.
AmWINS Group, Inc.
Argo Group
Aspen Insurance
Berkshire Hathaway
Specialty Insurance
Business Insurance
HUB International
and Specialty
Program Group
NFP
QBE Insurance
RIMS
Safety National
Starr Companies

*as of July 19

COMMENTARY

SCHILLERSTROM

Getting the point of acupuncture

The workers compensation sector continues to struggle with finding effective ways to manage patients' pain and get workers back on the job quickly.

Alternative therapies can draw skepticism — often rightly so — from health professionals, insurers and others, but action needs to be taken on both the medical and regulatory fronts to test out the effectiveness of the alternatives in the workplace.

One thing is certain, continued widespread use of opioids to manage pain is not an option. According to the U.S. Department of Health and Human Services, in 2016 there were 17,087 deaths attributed to overdosing on commonly prescribed opioids, 11.5 million people misused prescription opioids and 2.1 million had an opioid use disorder.



Gavin Souter
EDITOR

While those numbers reach far beyond the workers comp sector, the problem of managing long-term comp claims that begin with an opioid prescription is widely acknowledged.

As we report on page 10, an alternative treatment being used extensively in some states is acupuncture. An ancient therapy involving numerous jabs by small needles in the skin around pressure points and pain receptors, it is hailed by its adherents as an effective, relatively low-cost pain management tool.

Its detractors say any pain relief generated by the treatment is small and likely attributable to the placebo effect.

Clinical trials appear inconclusive, but several suggest there is evidence that expertly administered acupuncture can provide relief beyond levels that can be explained by the placebo effect.

Anecdotally, if you talk to people that have undergone acupuncture treatment, you will often hear stories of how it provided relief that could not be attained using conventional medicine — which would all seem to suggest that, whatever the science may be, the treatment seems to work for some people.

Unfortunately, state regulators and insurers are inconsistent in their approach to acupuncture. Some states have coherent rules in place governing acupuncture providers, others have confusing and sometimes contradictory rules, and others are silent on the issue. When it comes to insurers, some have processes in place to pay for the treatment, while others decline coverage if it is not included in medical treatment and fee schedules.

Given the limited downside to trying acupuncture as pain-relief treatment, regulators and lawmakers throughout the United States should give priority to establishing frameworks that allow workers comp professionals to use the treatment where appropriate and possibly find an alternative solution to what's been a stubborn problem.

BI ARCHIVES

Business Insurance has been covering the risk management and insurance sector for more than 50 years. All the editions of the magazine have now been digitized and are available to be searched and viewed online. Visit businessinsurance.com and click on the "Magazine Archives" tab to view more than half a century of news, views, rankings and other exclusive content.



VIEW FROM WASHINGTON

Diversity divisions

Diversity and inclusion is a major topic of conversation these days, even in Congress.

The House Financial Services Committee worked its way through a heavy legislative agenda in July ahead of the U.S. House of Representatives' August recess. During the week of July 9, the committee marked up — meaning it debated, amended and rewrote legislative proposals — and approved eight bipartisan bills on a range of regulatory, market and corporate transparency issues.

One that didn't make the cut: The Gender Diversity in Corporate Leadership Act of 2017, sponsored by Rep. Carolyn Maloney, D-N.Y. The legislation would establish a gender diversity advisory group at the U.S. Securities and Exchange Commission to study and report to the SEC and to Congress on strategies to increase gender diversity among the members of the board of directors of issuers. It would also direct the SEC to establish a rule to require each issuer to disclose the gender composition of the issuer's board of directors and board nominees in any proxy or consent solicitation material for an annual shareholders meeting.

The committee will hopefully take up this important legislation again soon. But perhaps it could be amended to move beyond gender to require companies to be transparent about the diversity of their boards in other aspects just as critical as gender.

Ideally, companies would take up this issue without being prompted by Congress. Some forward-thinking companies such as Bermuda-based Hamilton Insurance Group Ltd. have been embracing diversity for years. Pina Albo, Hamilton's CEO, writes on page 21 about the importance of taking a multigenerational approach to diversity and inclusion in recruiting before the retirement wave takes too much institutional industry knowledge with it. Attracting a diverse and inclusive workforce

requires a rethinking of and changes to traditional recruitment practices such as vetting language in recruitment tools for unconscious bias and accommodating more flexible working styles for younger employees entering the workforce, she said.

The business case for diversity and inclusion is clearer than ever, Jonathan Reiss, Hamilton's chief financial officer, noted at the 2018 Bermuda Captive Conference in Southampton, Bermuda, in June. Companies in the top quartile for gender diversity on executive teams were 21% more likely to outperform



Gloria Gonzalez
DEPUTY EDITOR

on profitability and 27% more likely to have superior value creation, while those in the top quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability, according to a report published by New York-based consultancy McKinsey & Co. in January. On the flip side, companies in the bottom

quartile for both gender and ethnic/cultural diversity were 29% less likely to achieve above-average profitability than were all other companies in the consultancy's data set, according to the report.

But *Business Insurance's* diversity study shows that the insurance industry still has a long way to go. According to the survey, 28.2% of respondents said minorities held senior team leadership positions at the highest rank of their companies. Only 9.5% reported that minorities had C-suite positions.

More companies, including those in the insurance industry, should take up the cause of diversity and inclusion before Congress forces them to do so.

Employment practices liability in the age of #MeToo



Maigh Wright is an associate actuary in the Burlington, Vermont, office of Milliman Inc. She can be reached at maigh.wright@milliman.com and 802-651-4144.

On May 24, 2018, the U.S. Senate passed a bipartisan bill to change the way Congress handles sexual harassment claims on Capitol Hill. The bill, which is still in reconciliation, would streamline the process for filing sexual harassment complaints against members of Congress and their offices and make lawmakers personally liable for settling claims. The legislation is just one example of a recent shift in the climate surrounding sexual harassment. Public attention from U.S. athletes and celebrities and movements like #MeToo and #TimesUp have drawn increased awareness of — and action around — sexual harassment.

As employers work to improve existing sexual harassment training and policies, they continue to find themselves dealing with the repercussions of past incidents, often through lawsuits or insurance claims that are typically covered under their employment practices liability policies.

EPL policies provide employers with liability insurance covering wrongful acts arising from the employment process, one of the most common of which is sexual harassment.

When pricing for an EPL policy, actuaries typically use historical claims experience to predict the emergence of claims in the future. Similarly, actuaries estimate incurred but not reported reserves on existing claims to account for growth in the claim value expected above that contemplated in the claims adjusters' case reserves. To the extent that trends in claim frequency and severity are changing, the historical claims experience may no longer be an accurate predictor of future claims experience. It is essential for companies writing these policies to consider this level of uncertainty in their estimates.

Changing legislation

Legislative changes also introduce a level of uncertainty to claims that may affect pricing and reserving moving forward. In Minnesota, for example, a proposed state constitutional amendment would redefine sexual harassment as creating an “intimidating, hostile, or offensive environment,” but would no longer require the conduct to be “severe or pervasive.” The proposed amendment may ease constraints on victims, but may also create ambiguity regarding the definition of sexual harassment.

Similarly in Michigan, a 2018 law, extends the statute of limitations on those who were sexually abused as children. The legislation has engendered opposition from governmental entities and businesses that are concerned by the effect that the extended statutes will have on claim volume.

In California, two bills in the state Senate would address the prevention of sexual harassment in the workplace and soften

restrictions on employees who have experienced sexual harassment. S.B. 820, which has passed the state Senate and has moved on to the state Assembly, puts restrictions on nondisclosure provisions in settlement agreements related to sexual assault or harassment. The change to nondisclosure agreements could significantly increase the reputational risk to employers. Meanwhile, S.B. 1300 would prohibit employers from denying employees the right to disclose information about unlawful acts in the workplace, including sexual harassment. S.B. 1300 also increases certain sexual harassment training requirements.

Coverage and prevention

Although EPL coverage can provide an effective way to mitigate this liability, it is also important for companies to establish preventive measures against sexual harassment in the workplace. For example, some companies have emphasized bystander training, which encourages bystanders to intervene or disrupt a potentially hostile situation, and promotes open dialogue between bystanders and targets of harassment.

Now more than ever, companies must find the right balance of coverage and retention limits as well as establish a plan and budget for prevention — including sexual harassment training, policy establishment and enforcement. Too much money spent on EPL coverage and not enough effort toward prevention can cause a variety of problems, the most obvious of which is the volume of claims that may arise if an employer appears to tolerate sexual harassment in the workplace. A lack of prevention efforts can also damage a company's reputation because it may appear that the employer is neglecting employees' well-being.

Conversely, insufficient spending on EPL coverage could have significant adverse effects on employers. Despite efforts to improve current workplace conditions and procedures, a company is still responsible for past incidents, many of which may take years to report. As companies work to improve training on sexual harassment, it will take time to determine the most effective programs and to see the long-term effect on EPL claims experience. Underestimating the amount of EPL coverage needed could inundate a midsize company, which may not have the capital to withstand a significant influx of EPL claims. For companies purchasing commercial insurance, adverse experience may cause their rates to jump or their insurer to deny coverage. For companies that self-insure this exposure, when actual experience exceeds funding contributions, a company will be left paying those excess costs out of its operating budget or capital.

Effective risk management is key in maintaining a successful insurance program. Insurers offering EPL coverage often establish incentives for employers to develop effective prevention methods through use of a deductible or self-insured retention. Careful consideration of coverage terms and retention limits is necessary in developing the appropriate insurance program for companies' EPL exposure.

Coverage considerations

With the evolving climate, it is essential for employers to closely monitor their EPL coverage. The recent societal and political conditions have led not only to an increase in frequency, but also to a shift in the severity of EPL claims.

Policyholders may begin to see shifts in premium rates resulting from this evolving legal environment. A thorough review of a company's elected coverage, including any exclusions in its policy, is helpful in establishing effective corporate sexual harassment policies. Companies that establish their own funding or reserves for EPL claims must carefully consider how to adjust their methodology to keep pace with the evolving nature of the coverage.

It is important for companies to consider the increased uncertainty when making decisions on funding and reserving levels — for example, funding or reserving to a higher probability level. By judgmentally selecting frequency and severity distributions and associated parameters, actuaries can generate countless simulations of aggregate claims experience to determine the likelihood of exceeding certain funding and reserving levels. For example, at the 65th percentile probability level, the actuary expects that the funding or reserve levels will be adequate for 65% of the simulated scenarios; at the 95th percentile probability level, the actuary expects that the funding or reserve levels will be adequate for 95% of the simulated scenarios. If a company wants increased confidence that the amounts it is funding or reserving will be adequate to cover any adverse experience, it may choose to book to a higher probability level.

When recent claims experience develops differently than historical experience would have indicated, it is vital for companies to consider the implications of this change on the current funding and reserve provisions for their EPL coverage. The most common actuarial methods are based on the general assumption that “history will repeat itself” or, specifically, that historical claims experience is indicative of future claims experience. In the case of sexual harassment, the efforts of many are aimed at organizational and legislative changes in hopes that, in this case, history will not continue to repeat itself.

Wage-and-hour risks consortium formed

■ Beazley P.L.C. has launched the Concorde Consortium at Lloyd's of London to provide added capacity for wage-and-hour risks.

Concorde will underwrite wage-and-hour risks on a surplus lines basis with limits up to \$25 million available, the London-based specialist insurer said in a statement, adding the consortium will underwrite on both a primary and excess basis.

Coverage is specifically for claims made under the Fair Labor Standards Act, which are excluded from most employment practices liability policies, the statement said, including violations such as nonpayment or under-payment of wages or the misclassification of a worker's employment status.

The coverage is intended to complement Beazley's existing workplace protect policy, which offers limits up to \$10 million. Companies will be able to select either stand-alone wage-and-hour cover or incorporate it into their EPL policies, according to the statement.

The consortium is led by Beazley, whose underwriters will quote and bind all risks, the statement said. Hiscox Ltd. is member of the consortium, and additional capacity is being provided by Beazley's special purpose syndicate 5623, the statement said.

Tokio Marine Kiln sets up IP facility

■ Tokio Marine Kiln Insurance Ltd. has established a \$100 million intellectual property facility with Aon P.L.C. and several other Lloyd's of London syndicates.

The facility will be led by Tokio Marine Kiln, the London-based specialist insurer said in a statement. The facility will offer coverage for businesses of all sizes and is designed to help protect against a range of infringement liability risks, initially in the U.S., the United Kingdom and Europe.

Sompo introduces weather-indexed cover

■ Sompo International Holdings Ltd. has introduced a series of coverages for the real estate and hospitality sectors indexed to weather events.

The coverage, which can be customized to specific exposures, provides deductible buy-down or business interruption coverage for loss of revenue in the event of a catastrophe, a Sompo statement said.

Coverage can be structured as a stand-alone policy or as part of an existing program, the statement said.

The coverage, which can cover single or



Drone insurance platform takes off

■ Acend Inc., doing business as REIN, has launched DroneInsurance.com, its first digital portal designed to allow commercial drone operators to buy insurance and self-manage coverage online.

Businesses can buy coverage for ground operations and operators can purchase flight liability coverage on-demand, for one day to a year, with a range of limits, Boston-based REIN said in a statement.

"From higher liability limits for episodic flight coverage to sensors and physical damage coverage options, our product aims to solve the unmet needs in the commercial drone insurance industry," Christopher Dean, CEO of REIN, said in the statement.

Underwritten through Liberty Specialty Markets, DroneInsurance.com is available in the United States, except in New York, New Jersey, Kentucky, Illinois, West Virginia and Minnesota, according to the statement.

multiple locations is indexed to site-specific weather variables such as temperature, rainfall, snowfall, and windstorms.

Travelers unit offers stand-alone cyber

■ Travelers Cos. Inc.'s European unit in London is introducing a stand-alone cyber insurance coverage for companies of all sizes in the United Kingdom and Ireland.

New York-based Travelers said the new product provides liability and first-party coverage for losses from cyber attacks as well as access to assistance including breach coaches, forensics investigators, public relations support and credit monitoring services.

The coverage, which includes £10 million (\$13.3 million) in limits across liability, breach response, cyber crime and business loss covers, can be purchased individually or as part of the Travelers management liability package, according to the statement.

AmWINS, QBE partner on architects E&O cover

■ AmWINS Program Underwriters, a managing general agent within Charlotte, North Carolina-based AmWINS Group Inc.'s underwriting division, has partnered with QBE North America to offer errors and omissions coverage for architects, engineers and design businesses.

AmWINS and New York-based QBE North America, a unit of Sydney, Australia-based QBE Insurance Group Ltd., are targeting firms with \$1 million to \$10 million in annual revenues, the firms said in a statement.

The policy's key coverage features include preclaims assistance, crisis management and technology, with no copyright/trademark exclusion. Limits of up to \$5 million are available.

Parametric hurricane policy for small business

■ Assured Risk Cover Inc. has launched a small business commercial version of its residential parametric hurricane insurance, StormPeace.

The commercial policy adds business interruption coverage with or without physical damage to the features of the StormPeace residential policy, the Pleasanton, California-based insurer said in a statement.

Coverage is based on two parameters: the strength of a named hurricane and the storm's distance from the policyholder's address. Limits up to \$60,000 or a policyholder's hurricane deductible, whichever is lower, are available with premiums based on coverage and the policyholder's address, the statement said.

Assured Risk said payments are made within 24 to 72 hours and can be applied to virtually any hurricane-related expense, including replacement of lost income with or without property damage, power restoration, data recovery and records restoration, transportation costs such as fuel and maintenance, paying employees and contractors, and the deductible on a property policy.

DEALS & MOVES

Riskconnect to buy Marsh ClearSight

Riskconnect Inc. has agreed to buy rival risk management information systems provider Marsh ClearSight L.L.C. for an undisclosed amount, Atlanta-based Riskconnect announced last month.

Marsh ClearSight, a unit of Marsh L.L.C., will bring more than 600 technology clients to Atlanta-based Riskconnect, a spokeswoman said in an email. Riskconnect will take on about 275 Marsh ClearSight staff.

Riskconnect will integrate Marsh ClearSight products into the Riskconnect platform and "for now, Marsh will maintain a strategic distribution and client relationship with ClearSight customers," the spokeswoman said.

AIG closes deal to buy Validus

American International Group Inc. completed its \$5.56 billion acquisition of reinsurer Validus Holdings Ltd.

In addition to a Bermuda-based reinsurance unit, the deal, which was first announced in January, will give AIG a Lloyd's of London presence with Talbot Underwriting Ltd. and asset management expertise via AlphaCat Managers Ltd.

Validus, which was launched in 2005 after Hurricane Katrina, reported gross premiums written of \$2.95 billion in 2017, up 11.4% from 2016.

Alliant Insurance Services acquires Texas broker

Alliant Insurance Services Inc. acquired CLS Partners L.L.C., an Austin, Texas-based employee benefits and risk management brokerage.

Terms of the deal were not disclosed.

CLS Partners has more than 50 employees, Newport Beach, California-based Alliant said in a statement. They will continue to operate from offices in Austin and Dallas.

Gallagher Bassett acquires environmental specialist

Arthur J. Gallagher & Co. subsidiary Gallagher Bassett Services Inc. has acquired WCD Group L.L.C.

Terms of the deal were not disclosed.

Pennington, New Jersey-based WCD is an environmental risk management and claims firm, Arthur J. Gallagher said in a statement. William "Chip" D'Angelo and his associates will continue to operate from their New York, New Jersey and North Carolina offices.



UP CLOSE

Kevin Richards

NEW JOB TITLE: Managing director, global head of cyber risk consulting at Marsh Risk Consulting in Chicago

PREVIOUS POSITION: Managing director, global lead of security strategy and risk practice, and North America security lead, at Accenture P.L.C. in Chicago

LOOKING FORWARD TO: Helping clients better understand, quantify, and manage cyber risk.

GOALS FOR NEW POSITION: My goals are to leverage the scale, reach and capabilities of all of the Marsh companies to deliver actionable cyber risk management guidance, continue to develop new, innovative cyber risk solutions, and enhance the global client experience with Marsh Risk Consulting's and Marsh's cyber risk solutions and capabilities.

CHALLENGES FACING INDUSTRY: The cyber risk market is very dynamic. As technologies continue to evolve and cyber adversaries become more effective, our understanding of and ability to manage cyber risks changes in nearly real-time. This applies pressure on traditional enterprise risk models to evolve at a faster pace as they attempt to keep up. As a result, many businesses struggle to articulate cyber risk in the same terminology or taxonomy as more traditional risk areas, resulting in misunderstood or underquantified cyber risk exposure.

CORPORATE IMPROVEMENT: There are a number of initiatives underway on this, but we need to continue driving diversity and inclusion in the workplace. There are a number of studies that show the benefits of highly diverse teams; unfortunately, the cyber security industry continues to struggle with this — especially with respect to gender diversity. We need to tap into wider workforce options to find great critical thinkers that we can teach and mentor to be effective cyber security professionals.

FAVORITE QUOTE: There is a wonderful Mark Twain quote: "The difference between the almost right word and the right word is really a large matter — 'tis the difference between the lightning bug and the lightning."

HOBBIES: When not working or spending time with my family, I'm a musician at heart. I've played guitar since I was 8 and piano shortly thereafter.

DON'T LEAVE THE HOUSE WITHOUT: I never leave without my Bose headphones, my iPad and a couple guitar picks — you never know when you'll have a chance to play.

ON MUSIC: The playlist on my phone right now is wonderfully diverse: Stevie Wonder, Dwight Yoakam, Nat King Cole, Bruce Springsteen, Lady Gaga, Pat Benatar, Tony Bennett, Vampire Weekend, The Strumbellas, Elle King, Ray Charles, John Lee Hooker, OneRepublic, Tim McGraw — just to name a few from the top. There is so much great music out there. One of my favorite activities was visiting Abbey Road Studios — I could have stayed there for days playing the instruments and immersing in the history of music.

BEST CITY: Rome is a "can't miss" for a vacation; Mackinaw Island, Michigan, is amazing for a trip back in time; you can never go wrong with Ka'anapali Beach on Maui.

"Many businesses struggle to articulate cyber risk in the same terminology or taxonomy as more traditional risk areas, resulting in misunderstood or underquantified cyber risk exposure."

ON THE MOVE



KPMG L.L.P. tapped former Willis Towers Watson P.L.C. executive **Mary O'Connor** for the newly created position of chief risk officer for its U.K. arm. Based in London, Ms. O'Connor will join the firm at the end of August.



Catastrophe modeling firm Risk Management Solutions Inc. named **Reed Birnbaum** chief financial officer. Based in Newark, California, Mr. Birnbaum was previously senior vice president of finance and analytics at RMS. He replaces Peter Eidelman, who became a partner at consulting firm FLG Partners in May.



Chubb Ltd. named **Megan Watt** executive vice president, head of North America claims. Based in Basking Ridge, New Jersey, she previously was head of claims for Everest National Insurance Co.



Willis Towers Watson P.L.C. appointed **Jeremy Wall** head of global FINEX. He replaces Alexis Faber, who was appointed chief operating officer of corporate risk and broking in March. Based in London, Mr. Wall has been a member of the broker's FINEX leadership team for several years.



Tokio Marine HCC, Houston, promoted **Susan Rivera**, its executive vice president and chief operating officer, to CEO as of Sept. 1. She will replace Christopher J.B. Williams, who will become managing executive officer and co-head of international business for Tokio Marine Holdings Inc.



Everest Re Group Ltd. named **Georgios (George) Toulkeridis** to the newly created position of global head of aerospace reinsurance, effective Oct. 1. He comes to Everest Re from Swiss Re Ltd., where he was managing director and head of aviation and space reinsurance. H will be based in Zurich.

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.



Weather woes hit wedding insurers

When your something blue becomes a bright map on the Weather Channel, with a little swirl indicating a tropical storm or hurricane also heading for your destination wedding, it might be too late to make sure you have wedding insurance.

Twenty-three percent of Travelers Cos. Inc. wedding insurance claims in 2017 were due to severe weather that forced the event to be canceled or postponed, the highest percentage of weather-related claims Travelers has seen since it began selling wedding insurance in 2007, the insurer said in June.

With average wedding costs in excess of \$20,000, the insurer is reminding lovebirds that wedding season coincides with hurricane season.

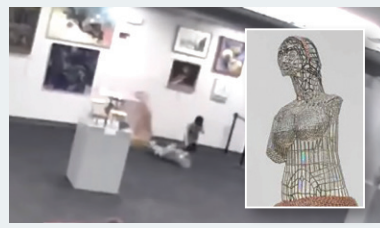
"The risk of extreme storms at this time of year is a real one," said Todd Shasha, managing director of personal insurance, product management at Travelers.

Insurer covers sculpture fiasco

It pays to control your children. If not, there's always your insurer.

Such is the case of with a child who knocked down a \$132,000 statue this summer at a community center in Overland Park, Kansas. The television news show "Inside Edition" reported that the parents' insurer paid the city \$107,000 — not the entire loss — for the mishap. The name of the insurer was not disclosed.

The cringe-worthy incident occurred while the family attended a wedding in June at the city's Tomahawk Ridge Community Center, according to the report. The mother sat in the foreground while her child raced around, knocking down the statue.



LET'S GET THOSE LAWSUITS ON THE TABLE



Arguably the songs are about two different kinds of lovin': Ed Sheeran's Grammy-winning ballad "Thinking Out Loud" is about the love that lasts well into old age, while Marvin Gaye's smooth-rocking "Let's Get it On" is about the sort of love that lasts, well, not as long.

But according to those who own part of the copyright to Mr. Gaye's 1970s hit, Mr. Sheeran's "song has the same melody, rhythms, harmonies, drums, bassline, backing chorus, tempo, syncopation and looping as 'Let's Get it On,'" according to a \$100,000 lawsuit filed in a Manhattan federal court in July, TMZ.com reported.

This is the latest suit against Mr. Sheeran. "Let's Get It On" was written by Edward Townsend and Mr. Gaye in 1973. The former died in 2003, and Structured Asset Sales, named as plaintiffs in the suit, bought one-third of the copyright. Mr. Townsend's family tried to sue in 2016, the same year "Thinking Out Loud" was nominated for a Grammy for Best Record, Best Performance and Song of the Year, taking home two awards. There's been no word on the previous suit, and Mr. Sheeran is not commenting on either one, according to press reports.

There is also no word on whether Mr. Gaye's family, who owns one-third of the copyright, will get it on with a third lawsuit, according to reports.



Lloyd's beats soccer pundits

Score one for the underwriters: Lloyd's of London outsmarted the bookies and the world's soccer ranking experts when it successfully predicted that France would win soccer's FIFA World Cup in Moscow in July.

The 4-2 victory over Croatia also kept in place Lloyd's unbeaten record in calling the outcome of the tournament.

Before the World Cup began earlier in the summer, Lloyd's and its research partner, the Centre for Economics and Business Research, ranked the 32 teams taking part based on the collective insurable value of their players.

With an insurable value of £1.4 billion (\$1.88 billion), France had the most valuable team, despite being placed seventh in FIFA's official ranking of teams prior to the tournament. FIFA's top-ranked team, Germany, crashed out in the group stage of the competition.

The bookies' favorite, Brazil, did better but didn't advance past the quarterfinals.



Fox knocked out in Muhammad Ali suit

Fox Broadcasting is perhaps bleeding on the floor — dollar amount undisclosed — after settling a \$30 million lawsuit filed by Muhammad Ali Enterprises in 2017 claiming the network used the famous boxer's likeness in a Super Bowl ad.

Fox argued the case was an attack on free speech, but a judge saw the possibility that a three-minute video about great athletes was commercial speech, Fox News reported.

The entity that owns rights to Mr. Ali's likeness argued that the three-minute video before the Super Bowl in 2017 violated publicity rights and represented a false endorsement, according to the report. The ad used archival footage of the boxer and, after referring to him as "the Greatest," showed various NFL legends as the narrator stated that "in the Super Bowl, many have marched towards this same confrontation with greatness," Fox News reported.



GAMMA IOTA SIGMA

The Insurance Industry's Premier Collegiate Talent Pipeline



How Robust is Your Talent Pipeline?

JOIN US!

47th Annual International Conference

October 4-6, 2018 ★ Navy Pier, Chicago

Career Fair and Sponsor Opportunities Available

gammaitasigma.org/events/international-conference

GIS is developing tomorrow's leaders today, and provides a single access point to a diverse and growing network of students pursuing careers across all segments and functional areas of the industry. We deliver innovative programming, from conferences and career fairs to webinars and professional development, and engage our industry partners in collaborative initiatives to maximize our students' exposure and experience even before they formally enter the workforce.

What role does your organization play in the future of the industry?

Thank You to Our 2018 Sustaining Partners, Who are committed to the growth and vitality of our great industry



#GammalS the Future of Insurance

www.GammalotaSigma.org

WORKERS COMPENSATION COSTS CAN BE A PAIN IN YOUR BOTTOM LINE.

Our 350 in-house nurses help ease that pain. Their involvement in the right cases means those claims close 12% faster and at 15% lower cost.* Their expertise and communication skills improve outcomes, helping injured employees get back to work sooner and nursing your bottom line back to health.

Visit helmsmantpa.com to learn more.

*Internal study based on claims results as of February 2014 on claims reported Jan. 1, 2011 through Dec. 31, 2012, which compared similar claims with and without a nurse assigned.

© 2018 Helmsman Management Services LLC.



Helmsman
Management Services LLC™