

CYBER WARNING: SEC sets scene for crackdown on lax corporate security – PAGE 4

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CYBER
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PAGE 22

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Growth of telemedicine
widens access to care,
creates more liability risks

PAGE 18

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PAGE 30



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COVER STORY

Telemedicine is growing as the U.S. faces a physician shortage and consumers become more comfortable using technology to receive treatment. But as the use of technology spreads, so do questions about how to regulate the new health care delivery systems and how related professional liability risks will evolve. **PAGE 18**

INSIDE



BUSINESS INSURANCE INNOVATION AWARDS



PERSPECTIVES

Concurrent causation comes to the fore after Hurricane Michael, two Hunton Andrews Kurth attorneys write. **PAGE 41**

LEGAL BRIEFS
Recent court decisions **PAGE 14**

OPINIONS
Cooler heads needed for progress to be made in Washington **PAGE 40**

MARKET PULSE
Products, deals and more **PAGE 38**

PEOPLE
Insurance industry moves **PAGE 47**

SPECIAL REPORT: CYBER LIABILITY

Medical devices open the door to cyber exposures; biohacking emerges as an evolving risk; companies should pay attention to cyber risks stemming from third-party vendors; using blockchain for cyber underwriting; research and data on cyber insurers. **PAGE 22**

2018 INNOVATION WINNERS

Business Insurance profiles the winners of its 2018 Innovation Awards, recognizing the best of the ever-evolving developments in technology. Winners include a wide variety of insurers, brokers, technology firms and others. **PAGE 30**

NEWS ANALYSIS

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RISK MANAGEMENT

The SEC has fired a warning shot across the bow of public companies regarding their cyber security efforts. **PAGE 4**

WORKERS COMP

Pizza parties and other safety incentives may return to the workplace as OSHA refines anti-retaliation rules. **PAGE 10**

INTERNATIONAL

Cameroon has a broad economic base and a highly competitive insurance sector. **PAGE 13**



VIEW FROM THE TOP

J. POWELL BROWN

Brown & Brown CEO J. Powell Brown discusses the insurance industry's resilience in the wake of natural catastrophes, as well as the influence and survival of insurtech companies, the company's mergers and acquisition philosophy and the perils and impact of distracted driving on the auto insurance sector. **PAGE 16**



OFF BEAT

Firefighters' tradition comes to an end as workers comp costs extinguish the fun. **PAGE 48**



SEC signals tougher stance on cyber security

BY JUDY GREENWALD

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A U.S. Securities and Exchange Commission report detailing cases of cyber-related fraud that stemmed from lax internal accounting controls is a warning to firms that the agency will levy fines in the future, experts say.

Some observers believe this likelihood is further enhanced by the agency's announcement in September of a \$1 million settlement in connection with an investment firm's handling of a cyber breach.

In its latest report, the agency focused on nine unidentified public companies that had become victims of cyber fraud.

However, there are steps firms can take to avoid becoming a target of an SEC action.

The report was issued under Section 21(a) of the Securities and Exchange Act of 1934, which authorizes the commission to investigate violations of the federal securities laws.

"It is a tool the SEC does not use often, 'but it means to put the markets on notice about enforcement concerns,'" said Jacob S. Frenkel, a member of Dickinson Wright PLLC in Washington and chair of its government investigations and securities enforcement, as well as a former senior counsel in the SEC's enforcement division.

"Usually after the filing of a 21(a) report, we begin to see enforcement action," he said. The agency is making clear with the report that "it expects companies to treat cyber issues and risks as a priority," he said. It "should be required reading" for public company boards.

"It's actually a very smart and helpful thing that the SEC has done," said Marc A. Leaf, a partner with Drinker Biddle & Reath LLP in New York, who has served on the SEC's executive staff. "I actually would like to see them do more of that, rather than hitting people with a fine or an enforcement action that carries serious penalties."

He added the SEC is not issuing new rules here. The rules referred to in the



CYBER SECURITY CHECKLIST

Steps firms should take in response to the SEC report warning of how lax procedures lead to cyber fraud include:

- ✓ Review internal policies and procedures and update them if necessary
- ✓ Implement multifactor authentication on remote access to email systems
- ✓ Involve top executives in addressing the issue
- ✓ Introduce ongoing employee training
- ✓ Establish an environment where workers are aware they must follow the rules
- ✓ Make sure personnel are up to speed on the latest scams
- ✓ Investigate insurance coverage

Source: Cyber experts

report "have been on the books since 1977," he said.

"The SEC's been warning about this since 2011," when it issued cyber security guidance on disclosure obligations relating to cyber security risks and cyber incidents, "so everyone who advises public companies has been waiting for some-

thing like this," said David M. Lisi, a partner with Pillsbury Winthrop Shaw Pittman LLP in Palo Alto, California.

In the intervening years "we've seen a couple of huge data breaches," some of which, in hindsight, "could have been minimized had boards of directors and management been focused on cyber," Mr. Lisi said.

The SEC is "putting the word out that this is something companies need to be tightening up on. They probably won't be so kind next time," said Mark J. Fagel, a partner with Gibson, Dunn & Crutcher LLP in San Francisco.

Some experts believe the SEC's message is further strengthened by its \$1 million settlement with Des Moines, Idaho-based broker-dealer and investment adviser Voya Financial Advisors Inc.

Joseph P. Facciponti, a partner with Murphy & McGonigle P.C. in New York and a former federal prosecutor, said the Voya fine and the latest report show the SEC "is examining the cyber threat from a wide range of perspectives, and will seek to use enforcement and investigative tools at its disposal to ensure companies take the right steps" in response to cyber threats.

Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC's FINEX North America practice, said he believes the SEC's Voya action is the more significant of its two actions. "I'm a lot less worried" about fraudsters putting out "fake president scams," he said.

The SEC had also issued guidance in February as to when and how publicly held companies should disclose guidance on cyber security risks and procedures.

Whether there is coverage for SEC fines will depend upon the cyber policy, experts say.

"With the proper cyber policy, the cost for responding to the investigation, as well as the fines and penalties — that may be covered by insurance," said Tim Monahan, Washington-based vice president in Lockton Cos. LLC's claims consulting group. "I would say there is coverage available in the cyber marketplace, but it's not in every policy."

"Most insurers are offering this as one of the coverage parts in a cyber policy," he said. The questions are whether companies are buying the coverage and whether "it is being offered in adequate amounts."

He added that there may also be coverage under firms' crime policies for fraudulent payments paid in connection with cyber scams.

Meanwhile, to avoid SEC scrutiny, firms should review their cyber security practices and procedures, update them if necessary and train employees, experts say.

Thomas O. Gorman, a partner at Dorsley & Whitney LLP in Washington, said the report's implication is that it is not enough to have a "nice set of policies and procedures. You've got to really train your people and create an environment where they're actively monitoring these things all the time and updating them all the time."

Your employees should "understand that if they follow the rules and use the controls as they were intended, they're not going to get into trouble," said Alan Brill, senior managing director at Kroll Associates Inc. in Secaucus, New Jersey.

NINE COMPANIES LOST \$1 MILLION OR MORE APIECE TO CYBER FRAUD

The U.S. Securities and Exchange Commission report issued last month investigated whether public issuers who were cyber fraud victims violated federal securities laws because of inadequate internal accounting controls.

The nine unidentified firms discussed in the report, who have not been charged by the SEC, lost at least \$1 million each. They included one that made 14 wire payments requested by a fake executive that resulted

in more than \$45 million in losses before the fraud was uncovered by a foreign bank.

Another company paid eight invoices totaling \$1.5 million over several months because of manipulated email, and only discovered the theft when the real vendor complained about past-due invoices.

The frauds, which cut across all industry sectors, are of two types. The first are emails from fake executives that directed companies' finance personnel to work

with a purported outside attorney who then had them wire large amounts to foreign bank accounts controlled by the perpetrators. "These were not sophisticated frauds in general design or the use of technology," said the report.

The second, more sophisticated, technique required intrusion into foreign vendors' email accounts. After hacking into these accounts, the criminals inserted illegitimate requests for payments into what were

otherwise legitimate transaction requests.

All the firms had procedures requiring authorizations for payment requests, but these were interpreted by personnel to mean electronic communications were sufficient for them to proceed with the criminals' directions.

The firms later bolstered their payment authorization procedures and verification requirements, according to the report.

Judy Greenwald

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Digital revolution needs digital natives

BY MATTHEW LERNER

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The human and personnel challenges of the technology revolution sweeping through the insurance industry may be as daunting or more so than the software and hardware, according to industry observers.

Insurers, brokers and others, however, may be encouraged by the fact that younger professionals, the millennials or “digital natives,” should help usher in the revolution, as will lessons from personal lines and other industries and business.

“In our discussions with insurance executives, we realized that the human dimension of the digital transformation is becoming equally important if not more important than the technological one,” said Henrik Naujoks, a partner in management consulting firm Bain & Co.’s Zurich office.

The challenge on the human resources side is substantial and was initially underestimated two to four years ago when digital transformation was primarily seen as a technological hurdle, Mr. Naujoks said.

“It’s not just technology that has to change, it’s a true process transformation within insurance organizations,” said Christopher G. McDaniel, president of The Institutes RiskBlock Alliance, based in Malvern, Pennsylvania.

“One of the things we’ve been looking at is that the workforce is going to change in the insurance industry,” said Patrick Schmid, vice president of RiskBlock.

A changing work force may help propel the insurance industry forward technologically as more tech-savvy employees enter the workforce with their own norms and expectations, according to Mr. Naujoks.

“Obviously the young people help, and a younger workforce will definitely help to foster the digital transformation,” Mr. Naujoks said. “Often the more junior, younger employees don’t need to be convinced. They bring it with them, and they’re definitely accelerators.”

Insurers must think not only of retaining end customers using technology, they



must also consider their partners in the insurance buying process, said Darcy Dague, managing director in Accenture PLC’s insurance practice in Chicago.

“The new generation of brokers and agents are starting to demand new and simple ways to write business,” she said. “Even for the areas which are highly customized and still require a lot of hand holding, you need technology solutions at par with the demographic you are serving,” which in this case is the brokers and not the end consumer, Ms. Dague said.

Agents and brokers influence insurers and the way they think about technology, Ms. Dague said.

“We’re starting to see a larger drive with the digital natives as they become the core sellers from an agent and broker perspective, and I think that is a much bigger driver for some of the larger carriers.”

If insurers want to keep business with the agents and brokers, they must get their technology up to par, Ms. Dague said.

The workforce revolution will help enable this, sources said.

“There is no need to convince the digital natives about the need to digitize,” Mr. Naujoks said. “They have grown up using technology, and it is often intuitive to them.”

The technological progress insurers’ have

made with personal lines businesses and their customers familiarity with technology might help with commercial lines technology adoption.

“We have several commercial lines applications that we are working on for next year that are extensions of what we originally did in personal lines,” Mr. McDaniel said.

For example, the Institutes is working with a large logistics company on insurance verification for trucking loads, which is a time-consuming manual process, Mr. McDaniel said. “We created a proof of insurance already in personal lines which we are porting over to commercial to be used with a mobile device.”

Indeed, personal lines clients may also be small business owners.

For “the vast market of small business owners, what they see in their personal life experience really bleeds over into how they want to buy insurance for their small business,” Ms. Dague said. “I think there’s a big correlation between that personal lines experience and that small business owner.”

Insurers will, however, retain their core functions even as they adopt new ways of executing.

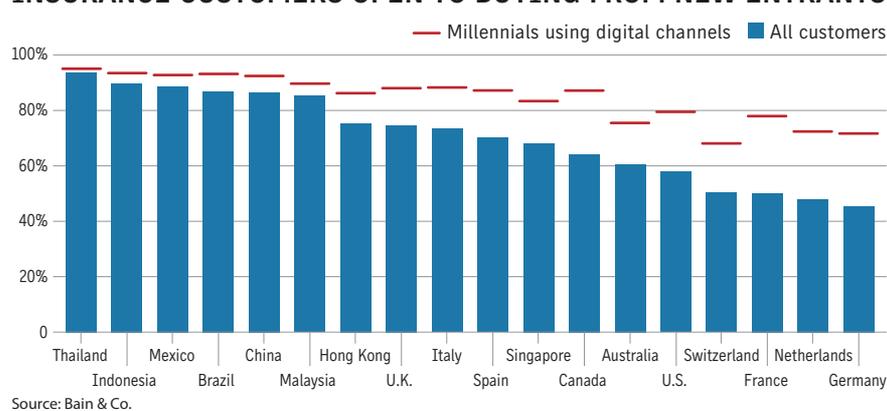
“The fundamental definition of understanding risk and assessing risk, of managing capital and deploying capital, I do not think that changes,” said Andrew Breen, senior vice president of digital for Argo Group International Holdings Ltd. in New York. “I think the tools we employ to do those two things will change.”

“The concept of insurance is not much different today than it was 100 years ago and likely will be not be much different 100 years from today,” said Tony Kuczinski, president and CEO of Munich Reinsurance America Inc. in Princeton, New Jersey. “But how we deliver that is clearly something that will change with the times.”

Insurers will still take on risks and provide services and advice, but they will require better data and technology to perform those functions, Mr. Kuczinski said.

“I think roles evolve,” Mr. Kuczinski said. “Our job is to adapt to the new roles needed.”

INSURANCE CUSTOMERS OPEN TO BUYING FROM NEW ENTRANTS



INSURANCE REGULATION STRUCTURE CAN CAUSE ROADBLOCKS FOR TECH CHANGES

Regulation can be another challenge to overcome whenever an industry seeks to effect significant change, but making regulators part of the process can help move things forward, industry sources said.

“I think regulators are becoming more and more engaged and supportive and willing to help companies navigate the changes,” said Tony Kuczinski, president and CEO of Munich Reinsurance America Inc. in

Princeton, New Jersey. “I think regulation in all industries is always a factor. It’s how you as a company or as an industry bring that regulator along with you.”

There are both progressive and more traditional, conservative regulators, said Christopher G. McDaniel, president of The Institutes RiskBlock Alliance, based in Malvern, Pennsylvania.

“We sought out six progressive regulators

— call them forward-thinking states — and they are being very progressive trying to move insurance forward” with technology adoption in those states, Mr. McDaniel said.

Demonstrating the potential upside of change can be a powerful incentive for cooperation.

“We’re trying to build use cases which make their lives as regulators easier. That’s very attractive to them,” Mr. McDaniel said.

Still, the fragmented nature of insurance regulation presents a challenge beyond that for other industries, like banking.

“Banks have just one regulator,” said Andrew Breen, senior vice president of digital for Argo Group International Holdings Ltd. in New York. “Here, just in the U.S., we have 51 regulators. That makes it a really challenging environment.”

Matthew Lerner

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Overtime ruling's scope questioned

BY JUDY GREENWALD

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A narrow U.S. Supreme Court ruling this year that says car dealership service advisers are exempt from being paid overtime is influencing lower courts to rule other occupations exempt from overtime as well.

But observers also point out that the Supreme Court's April ruling in *Encino Motorcars LLC v. Navarro et al.* is based on the federal Fair Labor Standards Act, and states that provide better employee benefits under its provisions can — and in practice do — override it.

This means that in at least in some jurisdictions, including California, employers may still be obligated to pay overtime despite the *Encino* ruling.

The case, which has a long litigation history, was initially filed in 2012 by current and former service advisers for Encino, California-based Encino Motorcars, a Mercedes-Benz dealership, who were seeking back pay (see related story).

Observers say the ruling is significant in holding the FLSA's overtime exemption should be more broadly interpreted.

The ruling is "enormously far-reaching" because in his majority opinion, Justice Clarence Thomas was not talking just about service advisers, said Ellen C. Kearns, a partner with Constangy Brooks, Smith & Prophete LLP in Boston. "He was talking about interpreting any exemption case," whether white-collar, motor carriers, or seasonal employees. "It cuts across all industries," she said.

Katherine P. Sandberg, an associate with Fisher & Phillips LLP in Sacramento, California, said, "The court upended a long-held rule of statutory construction that the U.S. Department of Labor has abided by for quite a long time" — a position plaintiffs attorneys have taken as well — that FLSA overtime exemptions should be narrowly construed. "(The ruling) tips the scale against employees" in wage and hour litigation that involves the FLSA, she said.

Wage and hour insurance coverage can be combined with employment practices insurance to cover FLSA claims, although coverage may be restricted to defense costs.

Before this ruling, "employers were never getting the benefit of the doubt," said Jonathan T. Hyman, a partner with Meyers, Roman, Friedberg & Lewis in Cleveland.

"Now, the court says, 'We're taking a much more kind of a realistic view of this,'" which is going to be not a narrow but "a fair interpretation of how the exemptions work in a particular workplace," Mr. Hyman said.

The Supreme Court ruling is "going to make it easier in the courts for employers to get to summary judgment," said Lisa A. Schreter, a shareholder and co-chair of the



ENCINO'S IMPACT

Lower court rulings citing the U.S. Supreme Court's ruling in *Encino Motorcars LLC v. Navarro et al.*, which says workers are exempt from being paid overtime, have affected the following occupations:



- Bookstore cafe managers
- Lead underwriters
- Information security specialists
- Cementers
- Network engineers
- Limousine drivers
- Door-to-door salespeople

Source: Court rulings

wage and hour practice with Littler Mendelson P.C. in Atlanta.

"I also think that it will constrain some judges from essentially taking a path of deciding at the summary judgment level of deferring that to a jury, and that will be big news, and frankly I think that has been a long time coming," Ms. Schreter said.

Paul DeCamp, a member of Epstein Becker Green P.C. in Washington, said, "It's fair to say that in some cases *Encino Motor Cars* will be a game-changer. There's no doubt about that, but the impact of the decision will have in any particular case depends on the facts and law in that case."

The high court's ruling has been widely cited by other courts. In Sept. 19 rulings, for instance, in *Munoz-Gonzales v. D.C. Limousine Service Inc.* and *Flood v. Just Energy Marketing Inc.*, which dealt with limousine drivers and door-to-door salesmen, respectively, the 2nd U.S. Circuit Court of Appeals in New York upheld lower court rulings in the employers' favor that they were not obligated to pay overtime.

"The key here for those employers who are

worried about defending these claims" is the Supreme Court's ruling is "trickling down to the appellate courts," said Howard M. Wexler, a partner with Seyfarth Shaw LLP in New York.

Employers must consider their local state laws to determine how to proceed, say observers.

"The impact is not going to be sweeping vis-à-vis this particular law because there's so much concurrent legislation on the state level and even in some cities," said Donna Ferrara, Chicago-based senior vice president and managing director at Arthur J. Gallagher & Co.

How employers now proceed "depends on how aggressive you want to be," said Mr. Hyman. "If you have employees where it was close" as to whether the exemption applies, *Encino* "gives you the justification" to revisit the issue "and maybe reclassify some folks," Mr. Hyman said.

For those who are more risk-averse, "It may prove judicious to take a wait-and-see attitude here to see how the courts look at the exemptions for a specific job title and specific industries to see how this shakes out moving forward," Mr. Hyman said.

"Employers should remember that they still bear the burden of proof on any exemption defense, and that if the facts aren't there to support an exemption defense, it doesn't matter whether the statute is given a fair reading or is narrowly constructed," said Matthew C. Helland, managing partner of Nichols Kaster PLLP's San Francisco office.

"The decision is definitely a good decision for employers, but it's important not to overread the decision or to start haphazardly classifying people as exempt based on the new standard," Mr. DeCamp said. "It's still important to adhere closely to the law and be very mindful of litigation risks."

ENCINO CASE HAS LONG HISTORY

The *Encino Motorcars LLC v. Navarro et al.* Fair Labor Standards Act case has accumulated a lot of mileage.

Current and former service advisers for Encino, California-based Encino Motorcars, a Mercedes-Benz dealership, first filed suit in 2012, contending Encino Motorcars had violated the FLSA in failing to pay them overtime, according to the April 2 U.S. Supreme Court ruling in the case.

In 2015, the 9th U.S. Circuit Court of Appeals in San Francisco reversed a lower court ruling and held the advisers were not exempt from being paid overtime.

In its first ruling in the case in 2016, the U.S. Supreme Court vacated the 9th Circuit ruling, explaining the appeals court had relied on a "procedurally ineffective" 2011 Department of Labor rule. The high court, though, did not decide the issue of whether the exemption covered service advisers.

The case was then remanded back to the 9th Circuit, which in 2017 once again held the overtime exemption does not include service advisers.

In overturning that ruling in a 5-4 decision, Justice Clarence Thomas, writing for the high court's majority, said the FLSA exempts salesmen from its overtime-pay requirement.

"A service advisor is obviously a 'salesman,'" Justice Thomas wrote. "The ordinary meaning of 'salesman' is someone who sells goods or services ... Service advisors do precisely that," wrote Justice Thomas, in holding car service advisers are exempt from being paid overtime.

In her dissenting opinion, Justice Ruth Bader Ginsburg said Congress "explicitly exempted from the Fair Labor Standards Act hours requirement only three occupations: salesmen, partsmen and mechanics. The Court today approves the exemption of a fourth occupation, automobile service advisers."

Judy Greenwald

D&O suits, auto claims drive concerns

BY GLORIA GONZALEZ

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COLORADO SPRINGS, Colo. — Insurers and brokers are closely monitoring developments in key lines of business, particularly directors and officers liability, as merger objection lawsuits start to trigger rate increases.

Meanwhile, the automobile insurance sector continues to see increases driven by loss history, with casualty lines potentially seeing some rate hikes, although ample capacity in the market could put a damper on any upward momentum, they say.

“I wouldn’t call it hard, but I would say some firming — flat to upward trends in some of our products,” Mike Rice, Denver-based executive chairman of JLT Specialty USA, a unit of Jardine Lloyd Thompson Group PLC, told *Business Insurance* last month on the sidelines of the Insurance Leadership Forum sponsored by the Council of Insurance Agents & Brokers in Colorado Springs, Colorado. “What clients are beginning to see is there’s more underwriting going on right now, which I would tell you is always a good thing. I just think you have to keep your clients educated as to what to expect.”

Dissatisfied shareholders of soon-to-be or recently acquired companies have increasingly filed merger objection lawsuits, which is having an impact on the D&O market, experts say.

“In an economy that’s characterized by high activity and growth and acquisition ... the D&O space and merger objection claims are an increasing dynamic that’s having a negative impact on public companies and public D&O cover,” said Matthew Dolan, president of North American specialty for Liberty Mutual Insurance Co. based in Simsbury, Connecticut. “We’re watching that pretty closely.”

With D&O coverage, “I think you’re seeing a tale of two cities,” said Paul Horgan, Zurich Insurance Group Ltd.’s head of North America commercial insurance in New York. “The large-accounts space continues to be one that’s challenged on



profitability. I think you’ll see underwriters pushing for rate or terms on that. In the middle market, there still tends to be a lot of competitors out there. While the profitability has become a bit more challenging in that space, there is still a lot of capacity, a lot of people trying to diversify into the middle market. I think you’ll see continued pressure on the larger side and probably more stability on the middle market (side).”

But the D&O market remains “very competitive,” said Tom Fitzgerald, CEO of Aon PLC’s global broking division in Chicago.

“There are certain industries inside the financial lines world that are experiencing worse claims results that then translate into worse underwriting results, and that’s pushing for greater rate,” he said. “You can’t just broad-brush D&O, because D&O remains very

RATES ON THE RISE

The 2017 natural catastrophes had a limited overall impact on property/casualty markets, but storm losses in the Gulf of Mexico contributed to some rate hikes in the energy sector, while political instability in South America and the Middle East and the “unofficial” trade war with China has led to some upward pressure compared with last year.

ENERGY

UP 1%
TO 10%

CREDIT AND POLITICAL RISK

UP 1%
TO 10%

Source: JLT Specialty USA

competitive with the notion that a lot of people want to write it. (Financial institutions is) a difficult industry, fraught with regulation. It can be an easy target.”

Driving change

Meanwhile, the challenges in the automobile market will continue to persist, insurers and brokers say.

“Auto has had multiple quarters of double-digit rate,” Mr. Horgan said. “The rate has not caught up with the existing loss patterns. I know it’s disappointing for our customers, but we expect the rate to continue to challenge the auto market.”

Transportation is the only relatively hard market right now, said Daniel Kaufman, senior vice president of H.W. Kaufman Financial Group Inc. in Farmington Hills, Michigan.

“It’s all relative these days,” he said. “There still are very

limited markets in there, but the markets that are in there have changed appetite, they’ve changed underwriting and obviously they’ve raised rates. With all of that combined, I assume they will perform better, and perhaps we’ll see some new entrants into the market. You’re also seeing a lot more trucks on the road because the economy is so good.”

The distracted driving phenomenon is contributing to the challenges in the transportation line, Mr. Kaufman said.

“It’s also driving new technology, so over time that could decrease accidents, but for now technology is causing accidents,” he said.

Joe Peiser, New York-based executive vice president and head of broking for Willis Towers Watson PLC, said he “wouldn’t be surprised if the umbrella business starts to follow the auto line,” but with single-digit rate increases.

“We are seeing some major casualty insurers, particularly on umbrella business, significantly cut back,” he said. But “there’s still ample capacity. I don’t expect anything dramatic because I think the days of dramatic turns are over, but it wouldn’t surprise me that in a year or two we start to see a steady increase in pricing in casualty.”

Cyber still a hot topic

Cyber also continues to dominate market conversations as both the risk and product solutions expand, insurers and brokers say.

“In cyber, there’s continuing increases in capacity,” Mr. Peiser said. “Most companies are seeing slight increases in price on the order of 1% to 5%. You’ll get the occasional risk that will still see a slight decrease. The pricing environment isn’t bad and the capacity is good.”

A key unresolved question is whether cyber should be solely a stand-alone product or continue to be intertwined with other coverages. In particular, which policies should respond to business interruption claims following a cyber event has yet to be determined, experts say.

“The market doesn’t seem to have settled on where that belongs,” Mr. Peiser said.

RESILIENT PROPERTY MARKET TAKES 2017 NATURAL DISASTERS IN STRIDE

Predictions of a widespread increase in property rates following last year’s natural catastrophes have not materialized, with insurers and brokers reporting rate hikes that are generally confined to areas with vulnerability or losses related to wind and flood.

“Property insurance is moderating since a year ago, but there’s no expectation that there will be a freefall in rates,” said Joe Peiser, New York-based executive vice president and head of broking for Willis Towers Watson PLC. “That’s different. That’s the final wake-up call that we as

an industry need more pricing discipline.”

The markets have been surprisingly resilient, in large part due to an abundance of capacity in the marketplace, and the devastation wreaked by Hurricane Florence in September has not changed that, experts say.

“You saw some losses, but it didn’t really tremendously impact the capital,” said Mike Rice, Denver-based executive chairman of JLT Specialty USA, a unit of Jardine Lloyd Thompson Group PLC. “I think a series of unrelated catastrophic events will push the amount

of surplus and capital that’s in the marketplace to a point where ... you could see more dramatic hardening,” but a single catastrophe is unlikely to disrupt the market, he said.

“Insurance rates are still at historically low rates, and there’s plenty of capital in the standard insurance marketplace, and everybody seems to be able to raise more money if they need to raise more money,” he said.

Aon PLC’s portfolio data shows property rates overall are up about 7.5% in the past quarter, but “that mass generalization

doesn’t really tell you anything,” said Tom Fitzgerald, CEO of Aon’s global broking division in Chicago. “Those accounts that actually have losses emanating from 2017 and a loss ratio in excess of 100% are seeing closer to a 30% rate increase. It’s important to understand that there is some rate in the property market, but it’s pretty isolated to those that have taken dollars out of the insurer community. There’s no such thing as a hard market today. There’s microsegments of the market that are more difficult.”

Gloria Gonzalez

Safety incentives, drug testing stance eased

BY GLORIA GONZALEZ AND LOUISE ESOLA

Employer-sponsored pizza parties for employees who perform work safely may soon be in vogue again, per a memorandum issued by the U.S. Occupational Safety and Health Administration.

The Oct. 11 memo sought to clarify the agency's enforcement stance on the anti-retaliation provisions of its electronic record-keeping rule, which discouraged employers from any activities that could deter employee reporting of injuries and illnesses. This included incentive programs offering prizes such as pizza parties for a certain period of time without a workplace injury or illness.

OSHA's Improve Tracking of Workplace Injuries and Illnesses regulation, otherwise known as the electronic record-keeping rule, was a source of consternation for employers and their representatives in large part because of the anti-retaliation provisions featured in the rule's preamble. The regulation did not ban drug testing of employees, but it prohibited employers from using drug testing or the threat of it as a form of adverse action against employees who report injuries or illnesses, according to the final rule published in 2016.

OSHA's recent memo clarified that the regulation does not prohibit employers from establishing workplace safety incentive programs or post-incident drug testing.

Action taken under a safety incentive



program or post-incident drug testing policy would only violate the anti-retaliation provisions of the rule "if the employer took the action to penalize an employee for reporting a work-related injury or illness rather than for the legitimate purpose of promoting workplace safety and health," OSHA officials said in the memorandum sent to the agency's regional administrators.

Safety professionals were concerned about whether they could implement and enforce post-accident drug testing and employee incentive programs, said James D. Smith, regional leader of national risk control services for Arthur J. Gallagher & Co. in West Palm Beach, Florida, and former president of Park Ridge, Illinois-based American Society of Safety Professionals.

"There was so much misunderstanding of the application of the rule," he said. "It's a bad rule when it's too confusing for the professionals to come to some conclusion. If you're going to write a rule like that, it should be very well understood."

Those who collect and decipher injury data often worry that changes to OSHA's electronic record-keeping rule further confuse safety professionals trying to better understand all aspects of injuries, including contributing causes, said Kenneth Kolosh, Itasca, Illinois-based manager of the statistics department for the National Safety Council. "OSHA record-keeping standards are really confusing," he said. "Every time there's a change in OSHA reporting, there's a breakdown" in data collection.

Experts who viewed the memo as a positive development for employers highlighted its clarification that rate-based incentive programs focusing on reducing the number of reported injuries and illnesses and typically rewarding employees with a prize or bonus at the end of an injury-free month are permissible as long as they are not implemented in a manner that discourages reporting. If an employer takes a negative action against an employee under a rate-based incentive program, such as withhold-

ing a prize or bonus because of a reported injury, OSHA would not cite the employer under the regulation as long as the employer has implemented adequate precautions to ensure that employees feel free to report an injury or illness, according to the memo.

"The OSHA memo clarifies that employers need not worry about the common incentives of a pizza dinner, T-shirts, etc.," Howard Mavity, Atlanta-based partner in the workplace safety and catastrophe management practice of Fisher & Phillips LLP, said via email. "Common sense tells you when the magnitude of the incentive would in fact discourage reporting."

Similarly, employers who test all employees involved in a workplace incident rather than just the injured or reporting employee should be comfortable that they won't be cited for such testing, experts say.

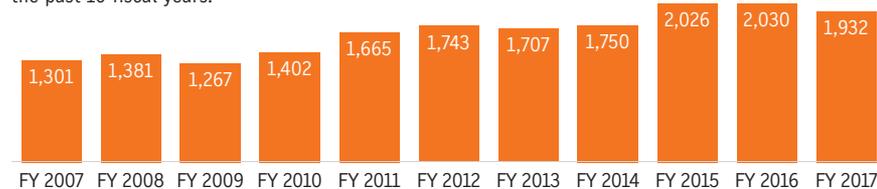
"It's a little bit of a cautious optimism for at least the next two years that your post-accident drug testing and alcohol testing is safe provided you're drug-testing everybody," said Taylor White, Dallas-based senior counsel who represents employers in safety and other matters for Foley & Lardner LLP. "Their memo, to me, is helpful to employers to give them some level of comfort that they can have incentive programs, even rate-based incentive programs, provided they're not just punishing the reporting of an injury or accidents. I think employers' pizza parties for a good safety culture are safe."

But employers should continue to be wary about the agency's stance because changes implemented by guidance, directive or enforcement memo could easily be rescinded if a new administration comes in and takes a different position.

"That's not the way rule-making is supposed to be done," said Eric Conn, founding partner of Conn Maciel Carey LLP in Washington and chair of the firm's national OSHA workplace safety practice. "That's not the way regulatory requirements are supposed to be established and enforced."

MAKING A COMPLAINT

The number of retaliation complaints the U.S. Occupational Safety and Health Administration has received for alleged violations under the Occupational Safety and Health Act has grown by 48.5% in the past 10 fiscal years.



Source: OSHA

TARGETED INSPECTIONS STRESS IMPORTANCE OF RECORD-KEEPING COMPLIANCE

Employers should pay more attention to complying with electronic record-keeping requirements now that the U.S. Occupational Safety and Health Administration is launching a site-specific inspection program targeting employers the agency believes should have, but did not, electronically submit certain injury and illness data for calendar year 2016, experts say.

The program will target high-injury-rate establishments in both the manufacturing and nonmanufacturing sectors for

inspection, the agency said Oct. 17.

Under this program, the agency will perform inspections of employers the agency believes should have provided Form 300A data but did not for the calendar year 2016 injury and illness data collection, which OSHA required employers to electronically submit by Dec. 15, 2017. The calendar year 2017 deadline was July 1, 2018, but employers can still provide information to the database.

"OSHA hopes the move will boost electronic record-keeping compliance as

barely half of employers who are required to submit OSHA Form 300A have actually done so," Courtney Malveaux, a principal in the Richmond, Virginia office of Jackson Lewis P.C., said in a blog post Oct. 23.

Going forward, organizations with 250 or more employees currently required to keep OSHA injury and illness records and organizations with 20 to 249 employees classified in specific industries with historically high rates of occupational injuries and illnesses will be required to provide this

information each year by March 2.

"Manufacturers, energy and utility companies, trucking and transportation companies and other employers engaged in nonconstruction activities should make sure they are getting those 300A Forms filed by the deadline each year," Mr. Malveaux said.

In July, OSHA proposed amending the rule to rescind the requirement for employers to electronically submit data from OSHA forms 300 and 301 but still require Form 300A data submissions.

Gloria Gonzalez

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Safety strides bringing rates down

BY LOUISE ESOLA

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Greater strides in workplace safety and regulatory reforms have led to positive developments in workers compensation claims frequency and severity, which has in turn driven significant pressure on premium rates to the benefit of employers, experts say.

“Injury rates are declining, and as injury rates decline, costs go down,” said Marjorie Baldwin, a Phoenix-based professor at the W.P. Carey School of Business at Arizona State University and chair of the National Academy of Social Insurance’s Study Panel on Workers’ Compensation Data.

“It’s a mixed story across the states — a number of states have made changes to their workers compensation systems to make them more efficient and less contentious,” she said.

In the midst of a wave of 2019 rate reduction announcements in September and October, many in the double digits, the Washington-based NASI on Oct. 11 released a study that found that employer costs as a share of payroll in 2016 declined over a five-year study period.

When overall comp costs are standardized to control for changes in employment and payrolls, the NASI results showed that employer costs decreased by 4 cents per \$100 of covered payroll between 2012 and 2016, with some states faring better than others, according to the report.

Specifically, the NASI study shows costs per \$100 of covered payroll decreased in 39 states. Of the states that saw rate hikes, the increases varied between 5 cents and 22 cents per every \$100 spent on workers compensation, according to the study.

GOING DOWN

The following states have announced sizable and sometimes significant reductions in workers compensation rates.



	North Carolina	17.2%
	Tennessee	14%
	West Virginia	13%
	Michigan	8.3%
	Indiana	7.6%
	Delaware	7.3%*
	Kansas	6.4%
	Washington	5%
	Idaho	4.2%

*For the residual market, 10% reduction for the voluntary market
Source: Individual state announcements



Meanwhile, the National Council on Compensation Insurance in October provided to *Business Insurance* workers compensation rate proposals for 2019 that show individual state decreases falling between 3.5% and 19.1%.

“I think the reforms in a lot of states have had a lot to do with it,” said Bill Zachry, a San Carlos, California-based senior fellow with the Sedgwick Institute. “If you look at the overall trends in the U.S., there has been an increase in evidence-based treatment guidelines, which has resulted in better outcomes for the injured workers... and that will help bring down the cost of claims.”

That’s the case in North Carolina, whose Industrial Commission in October announced a 17.2% decrease in average comp rates for 2019 — a reduction that the commission says had much to do with adjustments to state fee schedules that included 5% less in payments for nonhospital providers, a 24% reduction in outpatient treatment costs, and an 11% reduction for inpatient treatment, according to a statement issued Oct. 8.

Yet guidelines that dictate how injuries are treated and what is and isn’t necessary for recovery are just one piece of the puzzle, experts say.

Officials in several states, while approving rates cuts for 2019, have said employers are reporting fewer and less severe claims, which is the result of better risk management when it comes to preventing injuries.

For example, Idaho Department of Insurance Director Dean Cameron said in a statement last month that a 4.2% reduction for 2019 rates “reflects an improvement in our state rating factors, including a slight decline in both the frequency of claims for lost work time, and the average cost of those claims.”

West Virginia Gov. Jim Justice issued a

statement on Sept. 13 announcing a 13% rate reduction, thanking businesses for being proactive: “I believe safety measures instituted by a number of our employers in the state with assistance from carriers has helped us get these results.”

NCCI on Sept. 25 released a report detailing a five-year cumulative decrease of 19% in comp claim frequency overall.

“The big theme is workplaces continue to be safer,” said Jeff Eddinger, Boca Raton, Florida-based senior division executive for NCCI. “There are two major components that underline this: (lower) claims frequency and claims severity.”

The insurance industry — touting comp as the most profitable sector in property/casualty — is also pinning the decreases on safety measures.

An analysis by insurance exchange Ivans Insurance Solutions released on Oct. 11 listed workers compensation as the only line seeing a decrease in rates in the third quarter: down 2.8% compared with a drop of 2.5% in the second quarter.

Fitch Ratings Inc. has also named comp the most profitable line in 2017, which has spurred lower rates, according to Jim Auden, Chicago-based managing director in the insurance group for the rating agency.

“Employers are working effectively with insurers in order to make the workplace safer, and we believe loss costs have declined as a result, said Trey Gillespie, Austin, Texas-based assistant vice president of workers compensation with the Property Casualty Insurers Association of America, in an emailed statement. “Most states have experienced an ongoing decline in claims frequency while indemnity, severity, and medical severity have been relatively stable.”

NEW YORK TOPS COSTS RANKING

New York has surpassed California as having the highest workers compensation costs in the country, according to a nationwide report by Oregon regulators, but officials in both New York and California questioned the results.

The biennial study by the Oregon Department of Consumer and Business Services, released Oct. 10, ranks all 50 states and the District of Columbia based on premium rates in effect Jan. 1, 2018. Researchers also compared each state’s rates with the national median rate of \$1.70 per \$100 of payroll.

New York now ranks No. 1, with costs at 181% of the median costs nationwide, up from 154% in 2016, according to the report. The state spends \$3.08 of \$100 of payroll in workers comp costs.

“The Oregon study is misleading and does not take into account the recent transformation of workers compensation in New York. Insurance rates were cut 11.7% this year and 4.5% in 2017, immediately benefiting employers,” a spokeswoman for the New York State Workers’ Compensation Board wrote in an email.

California’s costs are 169% of the median, down from 176% two years ago. It now spends \$2.87 for every \$100 of payroll.

“Oregon’s study is based on the industrial mix in their state and does not reflect actual costs in California’s workers compensation system,” a spokesman in the California Division of Workers’ Compensation wrote in an email. “That said, the study accurately notes that since the 2012 workers’ compensation reforms were enacted, California has seen a reduction in costs to employers while increasing injured workers’ benefits and improving access and quality of evidence-based care.”

Costs for New Jersey, consistently No. 3 in the annual rankings, increased to 167% of the median, up from 158% in 2016. It spends \$2.84 for every \$100 of payroll.

Louise Esola

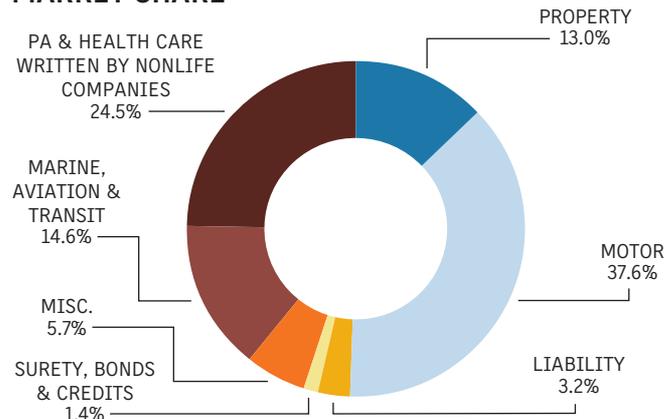
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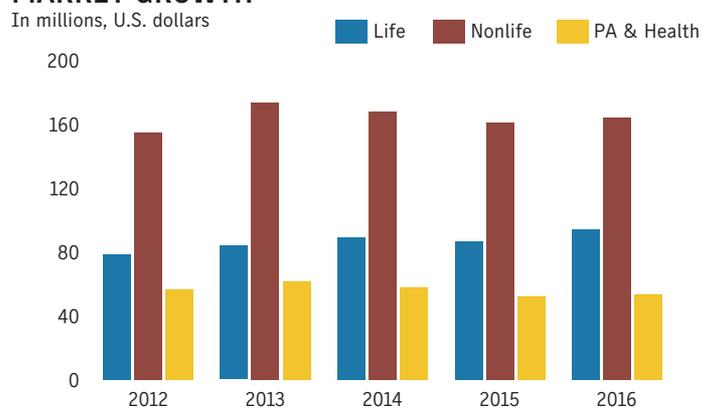
GLOBAL
P/C MARKET
RANKING

Cameroon, classified by the World Bank as a middle-income African country, is the largest economy in the Economic and Monetary Community of Central Africa, or CEMAC. It has a broad economic base, though activity has slowed in recent years on contracting oil revenue and domestic challenges, including unrest in the English-speaking Southwest and Northwest regions. Displacement of over 180,000 people by violence between separatist groups and security forces contributed to a drop in exports, and international investment was on hold pending the outcome of the October presidential elections, which saw the incumbent win his seventh term. Competition is likely to remain fierce across many lines of business, fueled by the country's tendering process and by a relatively high number of insurers that show no signs of planning to merge in the face of increased minimum capital requirements.

MARKET SHARE



MARKET GROWTH



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

COMPULSORY INSURANCE

- Auto third-party liability
- Cargo imports exceeding 500,000 Central African francs (\$904.22) in value
- Construction projects exceeding 100 million Central African francs (\$180,845) in value
- Workers compensation (part of state-run social security)
- Shipowners liability against marine oil pollution
- Professional indemnity insurance for insurance brokers and garage owners

NONADMITTED

Nonadmitted insurance is not permitted in Cameroon because the law provides that insurance must be purchased from local authorized insurers with the exception of companies that provide specialized insurance services to one or more member states of the Inter-African Conference on Insurance Markets, or CIMA, although this is subject to supervisory approval.

INTERMEDIARIES

Intermediaries must be authorized to do insurance business. Intermediaries are not allowed to place insurance coverage with nonadmitted insurers.

MARKET PRACTICE

The authorities allow fronting in cases where local insurers lack the capacity to carry a risk. The main area in which fronting is needed is the petroleum sector, but regulators would accept fronting, or something close to it, for any risk that stretched the capacity of local insurers. The authorities encourage coinsurance, but little is undertaken currently.

MARKET DEVELOPMENTS

Updated September 2018

- Ongoing unrest in the anglophone regions is disrupting economic activity and undermining investment confidence. This has had a negative impact on the insurance sector as construction plans are delayed and coffee, cocoa and palm oil production has been hit. The country is also dealing with a drop in the oil price and the destabilizing impact of Boko Haram terrorist activity.
- In December 2017, the government announced plans for a system of universal health coverage, which will be implemented gradually in phases over the coming years.
- Under Regulation No. 004/CIMA/PCMA/CE/SG/2017, any shareholdings reaching 10% of the share capital of an insurer should be reported to the minister in charge of insurance in the member state concerned and the Regional Control Commission for Insurance within two months.
- Regulation No. 01/R/CIMA/SG/IN/LBB/2017 of Dec. 18, 2017, provided more detail about the application of Regulation No. 005/CIMA/PCMA/CE/2016 of April 8, 2016, underlining the requirement for insurers, reinsurers and brokers to submit quarterly returns, detailing all reinsurance business placed, with special emphasis on facultative arrangements, including facultative cessions between reinsurers.
- It has been suggested that insurance broker commissions should be amended to help support the development of property/casualty business, raising some and lowering others. The brokers association is said to be lobbying against the proposal.

AREA

182,514

square miles

POPULATION

24.9

million

MARKET CONCENTRATION

62.5%

market share of top five insurers

2018 GDP CHANGE (PROJECTED)

4.5%

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



Zurich wins dispute with former broker

■ A federal appeals court upheld a default judgment in Zurich American Insurance Co.'s favor against one of its former brokers, in which the broker is charged with failing to remit more than \$430,000 in insurance premiums.

Rosemead, California-based Sealink Insurance Services Corp. and individuals associated with it had entered into an agreement to become an independent insurance broker for Schaumburg, Illinois-based Zurich American in April 2008, according to the 2016 complaint filed in U.S. District Court in Los Angeles in *Zurich American Insurance Co. v. Sealink Insurance Services Corp.; Phann Gelinda Keo*.

The complaint charges that within the previous two years, the defendants collected \$420,261.21 in premiums from insureds that had not been remitted to Zurich.

The District Court entered a default judgment in Zurich's favor in the case, which was unanimously upheld by a three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco.

"Defendants have no meritorious defense to Zurich American Insurance Company's breach of contract claim," said the ruling. "They point to the lack of a written agreement and argue that the 'contract at issue does not exist.'"

"However, they do not dispute that Sealink sold insurance policies issued by Zurich in exchange for Sealink's remittance of premiums and there is ample evidence of an agreement governing that arrangement," said the ruling, in upholding the lower court's decision.

Pass-scanning injury not compensable

■ The Appellate Division of the Supreme Court of New York in Albany said in a divided decision that a woman's injury sustained while stopping to scan her employer parking pass while driving into her employer's building is not compensable.

A workers compensation law Judge

found Shelley Grover sustained a work-related injury to her left shoulder while extending her arm to scan her pass at the kiosk at the gated entrance to the parking garage, according to *Shelley A. Grover v. State Insurance Fund, Workers' Compensation Board*. However, the board ruled the incident did not arise out of and in the course of her employment.

The latest ruling was split 3-2, with the majority affirming the board ruling, saying "in concluding that claimant's injury was not compensable, the Board found that the parking garage was utilized by members of the public, as well as other businesses located within the same building as the employer."



The dissenting judges wrote: "Although some portions of the garage were open to the public, claimant used a section available exclusively to employees located in the building by use of a parking pass. Significantly, the employer assigned claimant to a parking space in the garage and provided a parking pass to her at no charge, thus affirmatively encouraging claimant to park there."

Insurers must cover sex abuse case

■ Liberty Mutual Insurance Co. units are obligated to provide coverage to a construction firm in a case filed by a middle school student allegedly sexually abused by one of its employees, the 9th U.S. Circuit Court of Appeals in San Francisco ruled in *Liberty Surplus Insurance Corp. et al. v. Ledesma & Meyer Construction Co.*, overturning a lower court ruling.

The 9th Circuit decision is in response to a June ruling by the California Supreme Court, which had considered the case at its request.

The case involves a 13-year old student's alleged abuse by an assistant superintendent for Cucamonga, California-based L&M, which had contracted with California's San Bernardino Unified School District to manage a construction project at a middle school. The student sued L&M in U.S. District Court in Los Angeles, charging it with negligent hiring, retention and supervision of the employee.

L&M's insurers, Liberty Mutual units

Liberty Surplus Insurance Corp. and Liberty Insurance Underwriters Inc., defended L&M under a reservation of rights but sought declaratory relief in federal court, contending they had no obligation to defend or indemnify L&M. The District Court ruled in their favor, holding L&M's negligent hiring, retention and supervision of the assistant supervisor was "too attenuated" from the injury-causing conduct he committed to constitute an "occurrence" under the general policy.

When the ruling was appealed, the 9th Circuit asked the California Supreme Court to consider whether an occurrence under the policy had occurred. The Supreme Court ruled it had, and a three-judge panel of the 9th Circuit reversed the District Court ruling, holding L&M was entitled to coverage. "As explained by the California Supreme Court," when the student was molested, "from L&M's point of view the event could have been an 'unexpected, unforeseen, or undesigned happening or consequence of its hiring, retention or supervision'" of the assistant superintendent.

Travelers fighting Weinstein obligation

■ Travelers Casualty and Surety Co. is seeking a New York court's ruling that it is not obligated to indemnify former film executive Harvey Weinstein in connection with the numerous sexual assault and harassment charges filed against him.

Hartford, Connecticut-based Travelers Casualty filed suit in New York Supreme Court in New York seeking a declaratory judgment it is not obligated to provide Mr. Weinstein with coverage for 22 liability claims and lawsuits filed against him, according to *Travelers Casualty and Surety Co., formerly known as the Aetna Casualty and Surety Co., v. Harvey Weinstein*.

The filing says Mr. Weinstein has notified Travelers through his attorneys on various dates of the underlying claims and requested the insurer defend and indemnify it.

Travelers said it is basing its denial on exclusions in the primary, excess and umbrella policies Aetna Casualty had issued to The Walt Disney Co. for policy periods extending from June 1993 to June 1998. The filing also says Mr. Weinstein's actions were not conducted in connection with his employment.

It said exclusions that preclude coverage include those in its primary policies for abuse or molestation, and bodily and personal injury exclusions for coercion-related actions under the policies' employment-related practices exclusions.

"The alleged acts were not performed in the course and scope of Weinstein's employment or in performance of any of Weinstein's duties as an employee, officer or director" of Disney, the document said.

DOCKET



JANITORS' FLSA SUIT REVIVED ON APPEAL

The 10th U.S. Circuit Court of Appeals in Denver reinstated a Fair Labor Standards Act case against a janitorial firm that required its workers to form corporate entities and become franchisees. The U.S. District Court in Oklahoma City dismissed the case, but the 10th Circuit ruling in *Secretary of Labor v. Jani-King of Oklahoma Inc.* said evidence shows the workers can be considered employees under the FLSA. "(W)e make no determination as to the merits of the Secretary's case — we only hold that it survives," the court said.

CHICKEN PROCESSOR CITATION VACATED

An administrative law judge of the Occupational Safety and Health Review Commission vacated a citation given to a Claxton, Georgia, chicken processor after a worker's arm was caught under a conveyor belt and broken during cleanup. The ruling in *Secretary of Labor v. Norman W. Fries Inc. d/b/a Claxton Poultry Farms* said the burden of proof that Claxton failed to ensure safety wasn't met: "As seen in the photographic evidence, the conveyor is surrounded by a metal frame. Claxton Poultry posits the frame would prevent the employee from reaching the underside of the conveyor under the circumstances described by" the inspector.

EMPLOYERS MUST SPLIT COMP COSTS 50-50

The appellate division of the Supreme Court of New York in Albany upheld a workers compensation law judge's ruling that a distributor and a trucking service must share the costs for a truck driver injured working for both firms. Per the ruling in *James Mitchell v. Eaton's Trucking Service Inc. and Quality Carriers Inc.*, *Workers Compensation Board*, the law judge determined Mr. Mitchell developed carpal tunnel syndrome, that Eaton was his general employer and Quality his special employer, and that each was liable for 50% of his award.

The expertise you need will
come from many sources.
When you have the power to
put it together in the perfect
combination, anything is
possible. & that's where
we can help.



**Burns &
Wilcox**

Wholesale Specialty Insurance



Ahead of the devastation caused by hurricanes Florence and Michael, Brown & Brown CEO J. Powell Brown discussed the insurance industry's resilience in the wake of last year's natural catastrophes, as well as the influence and survival of insurtech companies, the company's mergers and acquisition philosophy and the perils and impact of distracted driving with *Business Insurance* Deputy Editor Gloria Gonzalez. Edited excerpts follow.

J. Powell Brown

BROWN & BROWN

Q As you watch the approaching hurricane (Florence), what impact could this have, particularly in the context of last year's natural catastrophes?

A From an insurance perspective, we had a lot of storms last year, and post those storms the alternative capital market pretty much filled that right back in and kept going. There are lots of people who have speculated if in fact there was another large event or events this year that it might change that. From my perspective, I just think that there's seemingly so much capital out there in the world chasing opportunities for investment.

Q Given that influx of alternative capital, what impact did you see from a pricing or capacity perspective from last year's natural catastrophes?

A Prices were going down in catastrophic property in Florida and other coastal communities for the last several years prior to last year. It slowed or it flattened out for a while, and now there continues to be a slow erosion of rate, but it's not enormous like it was.

Q Have you noticed any trends with regard to particular lines of business?

A I think the biggest challenge out there for the industry seems to be automobile right now, both personal lines and commercial lines. I attribute that to a lot of distracted drivers. I'm not saying that's all of it, but I think that's a really big deal, and I don't see that changing in the near to intermediate term.

It's also interesting to see that workers compensation rates in certain states continue to be under pressure. Just as an example, Florida had a rate rollback a year ago of about 9 points, and there's a projected rate rollback of 13 points approximately for next year. That does not mean that the cost of adjusting work comp claims has changed dramatically. That puts an enormous amount of pressure on the risk bearers that write a lot of workers compensation.

Q Is there anything that is being done or could be done on the auto front?

A Well, if you want a somewhat draconian response, you could actually shut off cellphones once you get in a car that's moving. I notice more and more people on the highway texting every day, and it's just so incredibly dangerous. In my mind, part of it is a technology solution. It can be illegal to text, but the answer is people still do it.

Q Tell me where you see technology being helpful.

A Insurtech is the hottest word in the industry. I think it can be overused, but it also is a very important part of what we're doing going forward both with our insurance company partners and more specifically enhancing our teammate experience and our customer experience. How does that technology help improve that for our teammates and our customers? And the answer is



there's somewhere between 1,200 and 1,400 insurtech companies out there today. We actually work through proof of concepts with some of them to see how we could integrate their capabilities into our company. At a high level, I think that insurtech and the funding will drive a very productive change. I do think that maybe 80+% of the insurtech companies out there will not make it ultimately. Not because of not wanting to or not working hard. It's just maybe they don't get traction. But for the 20% that do, we're looking to try to align ourselves with technology that will continue to differentiate us and to provide better solutions to our customers.

Q Does that include acquiring insurtech?

A I don't like to say the term never or always. Our core business is in the insurance business. Our intent is to partner with the firms providing those technology solutions going forward, because as the rate of change and technology accelerates, we want to continue to be able to adopt the best technology.

Q Why did Brown & Brown choose to acquire Hays and how does it fit in with your acquisition strategy and culture? (Emailed response to this question after the interview.)

A Brown & Brown believes the combined benefits we can deliver to our customers, teammates, carrier partners and shareholders as a result of the acquisition will be a win-win. Hays (Group Inc.) has a really strong footprint in the Midwest and so this was a natural complement to our presence in the region, giving us greater scale and capabilities.

Q What factors, not necessarily particular to your company, play into decisions when you're looking at whether or not to acquire a company?

A Private equity is a large participant in the insurance brokerage space today. The last time I checked, there were 29 firms that were actively involved in some way, shape or form in the space. It's saturated relative to participants from the PE world. With a finite number of agencies or firms out there, that continues to put pressure on the price. Now many of them have used leverage very successfully in the past and borrowing, putting lots of debt on the balance sheet. The use of debt and interest rate risk, if interest rates were to go up, that would put a slight slowing, I think, on some of that. A private equity firm typically has an investment time horizon of three to seven years, and so they're not focused on the long term. That's the exact opposite of us. We're thinking about how we take our company from over 9,000 teammates to 20,000 teammates, as opposed to in PE, they run it up and flip it. They're very active, but they also don't control their ultimate destiny.

Insurtech is the hottest word in the industry. I think it can be overused, but it also is a very important part of what we're doing going forward.



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TELEMEDICINE EXPANDS CARE, ADDS EXPOSURES

Medical malpractice risks grow as health care providers go online to offer patients virtual treatment

BY GLORIA GONZALEZ

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Telemedicine is growing as the U.S. physician population ages, health care organizations seek new ways to provide care and consumers become as comfortable using technology to receive treatment for conditions ranging from sore throats to drug addiction as they are ordering other products and services off the internet.

The rise of telemedicine, however, brings new medical malpractice risks and challenges such as potential regulatory and legal exposures when health care providers are licensed in a state other than the one where their patients live and when telemedicine care is delivered by advance practice clinicians — nurse

practitioners or physician assistants — who are not doctors.

In addition, its use raises cyber risk concerns (see related story, page 19).

“Telemedicine/telehealth has dramatically impacted the way care is being delivered or diagnoses are being made,” said Brian Atchinson, president and

Digital platforms heighten cyber exposures

Health care providers treating patients remotely need to be aware of the potential cyber risks embedded in telemedicine models and the liability that could be created for them when sharing and receiving personal health information, experts say.

The 1996 Health Insurance Portability and Accountability Act, enacted to protect individuals' personal health information, adds another layer of complication when it comes to telemedicine interactions, and health care providers should ensure they are following best practices for encryption of the information, experts say.

"Notes need to be taken on the patient just like you're sitting across the table from them or in an exam room," said Bridget Zaremba, Chicago-based health care claims practice leader for QBE North America, a unit of Sydney-based insurer QBE Insurance Group Ltd. "Are those notes encrypted? Could someone get into someone's WiFi signal and eavesdrop on the entire conversation? Solid encryption and cyber risk is a big deal when it comes to telemedicine because



there is a HIPAA component."

Recently, a few insurers have indicated they do not want to cover risks unrelated to bodily injury under their hospital or health care professional liability policies, said Martha Jacobs, national health care industry practice leader at Aon PLC in Pittsburgh.

"In other words, they don't want to cover liability that emanates from a cyber breach,"

Ms. Jacobs said.

"That approach, as much as on the surface we would agree that we could get behind it — that nonbodily injury belongs over in a cyber policy and the bodily injury liability belongs in the health care professional liability policy — I don't think any of us have certainty that we've thought through all the different scenarios," she said.

"I still believe there is a strong potential for finger-pointing between coverages," she continued. It "depends on what occurs and the actual fact pattern."

For physicians, "it then really reinforces the need to have adequate cyber coverage, because if you're interacting with your patients in this fashion at a higher degree or more frequently, arguably you're going to be exchanging information that is private, that is protected, and therefore the need to have cyber breach coverage is all the more important beyond even just the medical care and the adequacy of your medical professional coverage," Ms. Jacobs said.

Gloria Gonzalez

CEO of the Medical Professional Liability Association, the trade group representing medical professional liability insurers, risk retention groups, captives, trusts and other insurance entities, in Rockville, Maryland. "Part of the challenge is that technology has outpaced laws and regulations. We have enormous areas of uncertainty and enormous areas of inconsistency."

Telemedicine or telehealth refers to health care services provided through telecommunications technology by a health care professional who is at a location other than the patient's. Communications can take place through video calls via computers or smartphone applications.

"Telemedicine is a technology whose time has come," said Jeffrey Levy, Houston-based vice president of the national health care practice for USI Insurance Services LLC. "We're a mobile society. We are a consumer-driven society. We have to get our health care when it's convenient for us, not when it's convenient for the health care provider."

In 2012, 14% of large employers offered telehealth as an alternative way to access health care for select services. In 2018, 95% offer telehealth for minor, nonurgent services, making telehealth available to employees in states where it is allowed, according to a survey by the Washington-based National Business Group on Health.

The use of telemedicine has spread in large part due to a shortage of health care providers, experts say. The United States faces a shortfall of between 29,500 and 37,800 physicians in 2018 and a projected shortfall of between 42,600 and 121,300 physicians by the end of 2030, according to a report by the Washington-based Association of American Medical Colleges published in April.

Telemedicine has been around for a while but is becoming increasingly popular "now that access to primary doctors is getting tougher and tougher and people have busy lives," said Tracy Hassett, president and CEO of university group captive edHealth in Providence, Rhode Island.

But a concern for employers providing tele-

medicine services is what happens after a patient receives telemedicine services, including whether any necessary follow-up tests are ordered or follow-up visits with primary care physicians arranged, she said.

"There's no consistency on that," she said. "I don't think we have answers yet, but I do think that telemedicine is certainly going to be one of the relievers in the health care and access to health care professionals problem."

Telemedicine's "time has come. We're a mobile society. We are a consumer-driven society. We have to get our health care when it's convenient for us, not when it's convenient for the health care provider."

Jeffrey Levy,
USI Insurance Services LLC

This shortage is particularly acute for specialties such as psychiatry and radiology, experts say.

Telemedicine "has really proven to be advantageous, especially for people who are living in rural areas," said Njoki Wamiti, Boston-based vice president with IronHealth, a unit of Ironshore Insurance Services LLC. "It could be that the closest psychiatrist or psychologist is four or five counties away or even across state lines. It's also beneficial in terms of not just having access to the provider, but for comfort. Some people have a difficult time walking into a hospital or sitting in a psychiatrist's office. They're on edge. To have a consultation in the comfort of your own home is a lot easier and a lot better for them."

Telemedicine services have expanded to provide health care to the Medicare-eligible population, which may have age or mobility issues that pre-

vent them from visiting a doctor, said Martha Jacobs, national health care industry practice leader at Aon PLC in Pittsburgh.

"That is a natural trend that we would see and expect," she said. "But the other one is the millennials and/or the next generation behind them. They don't see a lot of value in being able to go to the same doctor over the course of their lifetime. They want access and they want immediate access, and I think telemedicine ... is right along that path. It's interesting and ironic that it's on both sides of the age spectrum."

License to care

The major risk — and in some cases the unresolved question — is the jurisdiction exposure: Will states allow physicians or advanced practice clinicians who are not licensed in their states to care for their residents?

"The challenge with telemedicine is the geography," said Susan Boisvert, senior risk specialist at Boston-based medical professional liability insurer Coverys. "The provider needs to be licensed in the state they're practicing in, and they also need to be licensed in the state where the patient is. That has been one of the significant barriers to most forms of telemedicine."

That risk becomes even more complicated with advanced practice clinicians, even though they must also be licensed to provide care. The use of these clinicians has been growing due to factors such as the aging of the physician population and the higher expense associated with visiting a physician versus a clinician. Depending on the state, nurse practitioners may have more freedom to care for patients, while physicians must always supervise physician assistants.

"All of that goes into the liability picture for telemedicine, which is an up-and-coming — and in my opinion, a very necessary — treatment modality in this day and age where people

See **TELEMEDICINE** next page



CROSSING STATE LINES

49

state boards plus the medical boards of the District of Columbia, Puerto Rico and the Virgin Islands require that physicians engaged in telemedicine be licensed in the state where the patient is located

14

state boards issue a special purpose license, telemedicine license or certificate or license to practice medicine across state lines to allow for the practice of telemedicine

4

state boards require physicians to register if they wish to practice across state lines

28

states plus the District of Columbia require both private health insurers and Medicaid to cover telemedicine services to the same extent as face-to-face consultations

18

states require only Medicaid to cover telemedicine services

1

state requires only private health insurers to reimburse for services provided through telemedicine

Source: Federation of State Medical Boards

TELEMEDICINE

Continued from previous page

can't afford to go to the doctor, because (telemedicine is) a lot less expensive, people don't have access to cars or don't have access to physicians in some states," said Bridget Zaremba, Chicago-based health care claims practice leader for QBE North America, a unit of Australian insurer QBE Insurance Group Ltd. Telemedicine "is gaining in momentum, but I think everyone needs to be vigilant about the regulations surrounding it and the risks that it poses to the patient and the practitioners."

Telemedicine also gives rise to unresolved jurisdictional questions when it comes to medical malpractice claims, experts say.

"There is no clarity as to the laws that would be applied: Is it the state of the patient or the state of the providers of care?" Mr. Atchinson said.

Insurers covering clinicians or health-care facilities in particular states "have a very good understanding" of state laws, which allows them to appropriately establish premium levels to maintain adequate reserves to satisfy regulatory requirements, he said.

But patients may be treated by clinicians and facilities in states with very different liability laws or caps on damages, which creates issues "for an insurance industry that prides itself on being number-dependent and responsibly reserving and assessing their financial risks," Mr. Atchinson said.

This is particularly noteworthy with regard to certain specialty practices such

as radiology — now involved in 15% of diagnosis-related medical malpractice claims, second only to those of general medicine health care providers, according to a recent analysis of closed claims published by Coverys.

"If you're mixing both telemedicine/telehealth with possible concerns about diagnosis errors, are the coverage limits appropriate?" Mr. Atchinson said.

"If the physician assistant diagnoses the wrong disease in a patient and something happens, that supervising physician may never have seen the patient but is responsible."

Bridget Zaremba,
QBE North America

In those instances, insurers will look for potential red flags, such as whether or not an imaging exam is receiving a second read and, if so, if the second read is being done at a location other than the one where the exam was conducted, Ms. Wamiti said.

Doing your homework

Despite these potential red flags, insurers say they are comfortable covering telemedicine exposures as long as appropriate risk management steps are taken.

"Before it's actually implemented, (providers) have done a lot of work on it," Ms. Wamiti said. "They don't wake up and say one day, 'OK, we're going to start

providing telemedicine."

In 2017, a Medical Professional Liability Association survey found that only 4% of responding members excluded telemedicine, while 70% said telemedicine coverage is not differentiated in their policies from in-person visits, and 26% reported provision of coverage specific to telemedicine.

For insurers, the challenge isn't so much the coverage for the exposure but how to charge for it, USI's Mr. Levy said.

"The issue is rating for that exposure — calculating the number of patient encounters and understanding what the exposure is so that the insurance carrier can price for it appropriately," he said.

Insurers say they have yet to see "pure" telemedicine claims emerge, although it often takes years for claims to wind their ways through the system. But Ms. Boisvert noted that they have seen claims related to treating patients over the telephone, which leads Coverys to believe they will eventually see telemedicine claims.

Such claims could revolve around the fact that the advanced practice clinicians are providing the care, experts say.

"Truth is, (doctors) would be more vulnerable to claims," Ms. Zaremba said. "If the telemedicine is rendered by the physician, it's a little bit of a different animal, but most of the time we're seeing telemedicine rendered by nurse practitioners and physician assistants. If the physician assistant diagnoses the wrong disease in a patient and something happens, that supervising physician may never have seen the patient but is responsible for the actions of that physician assistant, so it opens up liability not only for the physician assistant, but for the physician."

Telemedicine prescribing under scrutiny

Medical professional liability insurers are monitoring prescribing protocols in telemedicine operations, an issue of particular concern in the context of the opioids epidemic.

For example, insurers watch for compliance with regulations governing prescribing, including whether the health care provider needs to be in the same room to prescribe certain medications, said Njoki Wamiti, Boston-based vice president with IronHealth, a unit of Ironshore Insurance Services LLC.

"They're not going to prescribe opioids if you haven't come into their office," she said.

But many experts believe telemedicine can make a major difference in

addressing the opioids crisis.

"You can get an opioid from just about any licensed provider, but there are nowhere near as many providers



who can treat you for opioids dependency," said Susan Boisvert, senior

risk specialist at Boston-based medical professional liability insurer Coverys.

Talk therapy or the use of controlled substances such as methadone are used

in medication-assisted treatments, so telemedicine is not a first-visit option; but it could be utilized for follow-up visits, particularly for a patient population that often has trouble

remaining compliant with treatment protocols, she said.

"But a telemedicine visit you can do in your house is just much better, and it's potentially a great alternative for a huge health care problem in the United States," Ms. Boisvert said.

In terms of helping to address the opioid crisis, "I truly believe this is where telemedicine will have the biggest impact," said Tracy Hassett, president and CEO of university group captive edHealth in Providence, Rhode Island.

Gloria Gonzalez

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CYBER LIABILITY

Medical devices open door to cyber risks

BY GLORIA GONZALEZ

ggonzalez@businessinsurance.com

INSIDE

▶ THIRD-PARTY EXPOSURES

Companies protect their own cyber boundaries, but they must worry about their vendors, too. **PAGE 26**

▶ PERSPECTIVES: BLOCKCHAIN

Shalom Bublil of KOVRR writes about underwriting cyber risk with distributed ledger technology. **PAGE 27**

▶ DATA & RESEARCH

Statistics and information on the largest cyber insurers, stand-alone policies and more. **PAGE 28**

Advancements in technology have propelled development of medical devices being utilized for life-saving treatments, but the ability of hackers to access such devices in a connected world is raising the bar on the need to identify and prevent cyber attacks that can compromise patient safety, experts say.

However, soft pricing in the cyber insurance market could give risk managers unexpected sources of coverage if the manufacture or use of devices such as insulin pumps and heart monitors leads to claims, including traditional policies such as medical malpractice.

“Medical devices are something that drive me crazy,” Dr. Lewis Kohl, chief medical information officer and senior medical director at CareMount Medical in Carmel, New York, said at the Amer-

ican Society for Health Care Risk Management’s annual conference in Nashville, Tennessee, last month. “They are a big risk to you, and you don’t even know they’re there.”

Embedded medical devices are an emerging concern in the health care sector, but a bigger existing threat is the network-attached medical devices in health care provider settings such as diagnostic imaging systems, treatment devices and surgical machinery, said Josh Ladeau,

executive vice president and global head of cyber for Aspen Insurance Holdings Ltd. based in Rocky Hill, Connecticut.

“Every device that you have can be connected to the ‘net and if it can be connected to the ‘net, I can hack into it,” said Bill Hardin, a Chicago-based vice president with Charles River Associates Inc. who conducts forensic assessments on data breach and cyber incident response, including hacking into hospital systems to test them. “It’s only a matter of time because the software code that’s associated with it will eventually outdate itself.”

“Every device that you have can be connected to the ‘net and if it can be connected to the ‘net, I can hack into it. It’s only a matter of time because the software code that’s associated with it will eventually outdate itself.”

Bill Hardin, Charles River Associates Inc.

There have been several cyber security incidents or concerns in relation to medical devices in the past three years, including an August 2017 recall by the U.S. Food and Drug Administration in relation to potential exploitation of cyber security vulnerabilities for certain Abbott — formerly St. Jude Medical — pacemakers. These and other medical devices, the FDA noted, contain configurable embedded computer systems that can be vulnerable to cyber security intrusions and exploits. As medical devices become increasingly interconnected via the internet, hospital networks, other medical devices and smartphones, there is an increased risk of exploitation of cyber security vulnerabilities, some of which could affect how a medical device operates, according to the recall notice.

In October, medical device maker Medtronic PLC disabled internet updates for some 34,000 CareLink programming devices that health care providers around the world use to access implanted pacemakers, saying the system was vulnerable to cyber attacks. The company said it knew of no cases where hackers exploited the vulnerability, but that it “could result in harm to a patient depending on the extent and intent of a malicious cyber attack and the patient’s underlying condition,” according to a letter seen by Reuters.

“Be very afraid of the ‘internet of things,” Dr. Kohl said. “It’s really the hacker’s paradise.”

The heightened exposure environment has led to a shift in the underwriting criteria for health care organizations, with insurers asking a number of questions related to the safety of these devices, Mr. Ladeau said.

“Asset management — do you know what you have? — that’s a start,” he said.

Future risk: Evolution of biohacking exposures has already begun

Biohackers, or grinders, are willingly inserting magnets or other devices into their bodies in what they view as a form of self-improvement, but the trend is raising concerns about the potential for such devices to be hacked by malicious actors and the product liability risks that may be associated with that.

“People are trying to turn themselves into cyborgs,” Bill Hardin, a Chicago-based vice president with Charles River Associates Inc. who conducts forensic assessments on data breach and cyber incident response, said at the American Society for Health Care Risk Management’s annual conference in Nashville, Tennessee, last month. “Hollywood’s influencing it. Social media is influencing it. And it’s just a matter of time.”

Biohacking refers to the application of information technology hacks to biological systems, namely the human body, by people referred to as grinders in an effort to improve their own bodies with do-it-yourself cybernetic devices or introducing chemicals into the body to enhance or change the functioning of their bodies.

“(Biohacking) might not be here in five years, but potentially it’s going to be here in 10,” Mr. Hardin said. “With that, how do we adapt from a risk management perspective, because now you’re actually dealing with a human body?”

If there is a virus that is infecting a computer, it can be rebooted and restarted, he noted.

“The human body doesn’t work like that,” he said. “Inserting foreign



devices into our bodies — the question is now how does that interact with us, what can I do with it and, from a hacker perspective, how far does it transmit out and what type of data does it contain within it?”

“From a risk management perspective ... we have to be prepared for that because what if it’s one of our devices that they’re actually going to hack into,” Mr. Hardin said. “What’s the product liability associated with that?”

Gloria Gonzalez

“Are you limiting the amount of communication they can have within the network? Can they only speak to the other devices that are absolutely necessary? In other words, you don’t want your devices having open communication to the internet.”

“Patch management is really critical,” he continued, noting that the Wanna-Cry ransomware attack was an example of “unpatched systems being taken advantage of. That’s something that’s easily preventable or at least easily addressed. What we’re looking for is a robust patch management process. Are you addressing it down to the device level in the organization?”

Risk managers should also understand where their different policies dovetail when it comes to coverage for incidents involving medical devices, Mr. Ladeau said.

“Most medical malpractice policies don’t have an exclusion for cyber,” he said.

“In other words, if there is some failure to care (or) an injury to a patient based off of one of these hacks, there’s ostensibly liability coverage in that, and I don’t think most people are thinking about it from that perspective.”

“I do believe the bodily injuries are coming,” Mr. Ladeau said. “That is an unfortunate reality that I think we’re going to see in just the next few years. When that comes, you’re going to have medical malpractice losses being implicated.”

“The bodily injury piece specifically is more often covered under your traditional medical malpractice policy,” Ben Maidment, leader of Brit Ltd.’s cyber underwriting division in London, said of bodily injury resulting from cyber incidents. “That said, there is a movement to position all the cyber exposure” in one place.

Risk managers can utilize the soft

“Most medical malpractice policies don’t have an exclusion for cyber. In other words, if there is some failure to care (or) an injury to a patient based off of one of these hacks, there’s ostensibly liability coverage in that.”

Josh Ladeau, Aspen Insurance Holdings Ltd.



VALUABLE TARGETS

Health care providers and related organizations have become a prime target for hackers due to the value of health care information.

ORGANIZATION	TYPE OF BREACH	INDIVIDUALS AFFECTED
California Department of Developmental Services	Theft of 12 computers	582,174
LifeBridge Health	Malware attack on server hosting electronic medical records for a physician practice	538,127
Oklahoma State University Center for Health Sciences	Network server hack	279,865
Med Associates Inc.	Unauthorized individual accessed an employee’s workstation	276,057
St. Peter’s Ambulatory Surgery Center	Network server hack	134,512

Source: Daniel Groszkruger & Paul English Smith presentation, American Society for Health Care Risk Management 2018 annual conference

market to their advantage right now by building cyber programs with high excess limits and coverage across multiple policies so that if there are major incidents that lead to mass patient casualties and the pricing environment shifts, they will be in a better position to sustain their coverage, Mr. Ladeau said.

“Be very thoughtful in the way you look at your programs right now,” he said. “Cyber is illogically priced, particularly in the excess. You have an opportunity to achieve high excess.”

And testing their risk management programs as much as possible is critical, experts say.

“From a risk management perspective, understand your threat landscape,” Mr. Hardin said. “This world is interconnected to where anyone in the world can hack into anything at any time if it’s online. Test your vulnerabilities ahead of time, and you’ll make yourself stronger and smarter.”

R!SK

PERSPECTIVES



In healthcare, managing risk is a journey

Changing marketplace calls for strategic approach

By **Leo Carroll** | Senior Vice President, Healthcare Professional Liability

When a patient is injured or ill, the road to complete recovery may be lengthy. It often requires multiple steps and can take weeks, months and occasionally even longer. Similarly, in medical professional liability, managing risk is an ongoing journey — rather than a destination.

Hospitals, physician groups and senior living facilities face a changing and challenging marketplace. On top of evolving regulations and an increasingly aggressive litigation environment, loss severity is rising for many healthcare entities.

Claims severity increasing

Some trends contributing to this rise in loss severity include:

Advancements in care. Technological innovations are making a major impact in healthcare. Advancements enable medical professionals to sustain patients' lives, but can also prove to be a double-edged sword. Sometimes life-saving treatments are accompanied by reductions in the quality of life.

An example is post-operative sepsis. Not long ago, sepsis was a significant cause of patient mortality. Today, healthcare providers are better able to treat it promptly and help patients recover. In some circumstances, however, sepsis treatment may require amputation or other surgeries that can alter a patient's lifestyle dramatically.

Charges of reduced quality of life are becoming more common in litigation, pressuring healthcare organizations to second-guess their delivery of care. Aggressive plaintiffs' attor-

neys also inflate the costs of life care plans, which can sway juries toward awarding larger verdicts. Reasonable, quality care often can be provided at less cost than many plaintiffs suggest, but medical cost inflation is one factor in claims severity.

Divide and conquer in the courtroom. A continuing and long-existing trend that can drive severity in medical professional liability claims is when attorneys seek to divide the interests of the healthcare team by encouraging physicians and nurses to point fingers at each other regardless of fault. This tactic (often seen with hospitals that employ physicians who previously were in group practices — often insured under a single set of limits) can further impact a claim especially when a physician witness no longer is employed by the hospital and therefore may be less cooperative throughout the litigation or even a disgruntled former employee. While hardly a new approach, it's one that we see more frequently in healthcare litigation.

To mitigate against the divide and conquer risk, healthcare organizations should also consider their medical record/documentation policies, which can aid in illustrating the degree of care provided at the relevant time. Where time passes between an alleged event and a claim, poor or limited record keeping may lead to further dispute over the degree of care provided, thereby increasing the impact of a former employees' testimony against the healthcare provider. This may ultimately drive up the value of the claim.

Uncertainty over the Affordable Care Act. Attempts in Congress to

roll back elements of the Affordable Care Act have failed, but efforts to repeal the ACA continue to contribute to uncertainty over the affordability and availability of healthcare. That uncertainty inevitably puts medical malpractice cases in a bad light. For example, if a patient paying thousands of dollars out of pocket has a bad treatment experience, that patient is more likely to want to punish the healthcare providers — another factor driving claims severity.

Other healthcare challenges

The above trends aside, transformation in the healthcare reimbursement system continues to create operational and financial challenges for hospitals, physicians and senior living facilities. A study by the Federation of American Hospitals and the American Hospital Association estimates that, between 2010 and 2028, hospitals will face a cumulative \$218.2 billion in payment cuts¹ from the Centers for Medicare and Medicaid Services.

One effect of payment reductions: consolidation.² This remains a constant in the healthcare marketplace as hospital systems seek to capture patients and deliver higher-value care. Additionally, large managed care organizations continue to acquire physician groups. Competition in the face of consolidation remains a theme of the overall healthcare market.

From funded litigation against health systems, to shrinking reimbursements, healthcare organizations have a lot on their plates. Rising liability exposures put addition-

al stress on their balance sheets. Likewise, the insurance industry is struggling to respond to the uptick in claim severity and frequency of severity. The importance of a healthy marketplace cannot be underestimated as we move toward necessary rate strengthening in order to provide stability over the long term.

Despite these conditions, it's not all doom and gloom. Healthcare providers have many reasons to remain optimistic that better days are ahead. A crucial step in that journey is managing risk carefully, in a strategic way.

Having an experienced partner that is committed to risk management and the resilience of the healthcare sector can make that journey smoother. At Berkshire Hathaway Specialty Insurance, a core value of our company is to provide solutions rooted in simplicity. Our collaborative approach guides our underwriting and claims service, which is one of the reasons more customers are choosing to partner with Berkshire Hathaway Specialty Insurance. Our goal is to provide our unparalleled financial strength, expert knowledge and service empowering our customers to improve their businesses and achieve better outcomes.

Leo Carroll is SVP, Head of U.S. Healthcare Professional Liability, at Berkshire Hathaway Specialty Insurance. He is responsible for the strategic growth and production of the group's Healthcare Professional products.

¹ www.aha.org/news/headline/2018-06-14-study-federal-cuts-hospitals-will-total-218-billion-2028

² www.healthaffairs.org/doi/10.1377/hblog20180126.137502/full



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Closing the gaps on third-party cyber liability

BY JUDY GREENWALD

judygreenwald@businessinsurance.com

Third-party vendors' cyber security is becoming an increasing concern for companies as the popularity of outsourcing data processes and other functions that are not within their basic areas of expertise grows.

It is a difficult task because of challenges companies face ascertaining who their vendors are, determining the extent to which they may be putting their own cyber safety at risk, and then addressing the issue.

"It's actually quite a large problem, and one that our insureds and the industry in general is struggling with, and I don't think there's been a perfect solution to date with this," said Yosha DeLong, technical director for Schaumburg, Illinois-based Zurich North America.

"Third-party vendors accounted for more than a quarter of all the claims that we saw" in Willis Towers Watson PLC's proprietary claims data, said Jason Krauss, New York-based cyber/errors and omissions thought and product leader for the brokerage's FINEX North America business.

However, there are steps firms can take to get handle on this task (see list at right).

"Any kind of connection to an outside party" brings with it a certain amount of risk, said Bob Wice, Farmington, Connecticut-based head of the U.S. cyber underwriting team for Beazley PLC.

One reason for firms' greater vulnerability is many have embraced the cloud for a wide variety of functions, including payroll, data processing and staffing, experts say.

But companies' success in grappling with this issue has been a mixed bag. "I think it's fair to say it's something that most companies understand as a risk, but they have a hard time knowing what to do about it, and smaller companies have a much more difficult time managing vendor risk because they simply lack the resources," said William Boeck, senior vice president and insurance and claims counsel at Lockton Cos. LLC in Kansas City, Missouri.



VETTING THE VENDORS

To help ensure third-party vendor cyber security:

- Compile a list of vendors used, then rank them in terms of importance
- Limit the data vendors can access
- Encrypt the data vendors handle
- Specify information governance and cyber security measures in vendors' contracts
- Shift risk to the vendor
- Focus on vendor employees' cyber training
- Determine vendors' resilience in the event of an attack
- Consider using cyber assessment firms
- Require vendors to obtain cyber insurance
- Be sure firms' own cyber coverage is broad

Source: BI interviews

In response, "Many organizations are building a robust set of expectations that are conditions of doing business" with vendors, said Kevin Richards, Chicago-based global head of cyber risk consulting for Marsh Risk Consulting.

"The regulators are forcing this conversation, even more so than the businesses themselves," said Adam Cottini, managing director of insurance and risk management

in North America at Arthur J. Gallagher & Co. in New York.

He pointed to the European Union's General Data Protection Regulation, the California equivalent scheduled to take effect in 2020 and the New York State Department of Financial Services Cybersecurity Regulations, with other states considering introducing comparable regulation.

"A lot of people are looking toward regulatory schemes like GDPR or various data protection statutes to provide some guidance and answers" to address the issue, said Tom Sheffield, New York-based head of specialty claims at QBE North America, a unit of Sydney-based QBE Insurance Group Ltd.

Stephanie Snyder, Chicago-based senior vice president and national sales leader for cyber insurance with Aon PLC, said that with other states likely to follow California and the potential for federal regulation around privacy as well, "organizations are much more mindful not only about the data they have, but what they're sharing," and want to protect themselves, both through their contracts and insurance.

Mr. Richards said firms can exercise significant control over third-party vendors in regulated industries, including health

care, financial services and utilities, but in other sectors "it gets a little bit harder."

Richard May, Seattle-based managing principal for Integro Ltd., said financial institutions, for instance, "are commonly requiring law firms who for various reasons touch their data to perform very detailed self-audits." They may also require a physical on-site audit process, "with questionnaires that are thousands and thousands of pages long around security."

Part of the problem is getting a handle on the multiple vendors being used, say experts. In some cases, an outsourcing vendor may be being paid for by "some manager's credit card," said Alan Brill, senior managing director at Kroll Associates Inc. in Secaucus, New Jersey.

"The first thing you have to do is figure out what vendors you need to worry about," said Mr. Boeck. Vendors can range from cloud vendors who hold important data and whose compromise would cause the business to suffer, to those who pose relatively low risk and to whom "you're not going to apply the same level of rigor."

"You want to consider limiting the data to which a vendor has access to, if that is possible," said Mr. Krauss. "Another possibility is to encrypt data" to lessen the impact of a breach, he said.

"Fundamentally, companies need to be as specific as they can be in their contracts with vendors about what information governance and cyber security measures they have in place, so that there's a contractual commitment that is specific and that is measurable," Mr. Boeck said.

They should also be concerned with how well vendors' employees are trained, evaluated and supervised, Mr. Boeck said. "The human element is always, unfortunately, the weakest link," he said.

Resilience must be considered as well, said Mr. Boeck. If a vendor system is attacked, "how quickly can the vendor recover? If they can't recover quickly, that vendor represents a significantly higher risk to anybody doing business with them, so their resilience is critically important."

ORGANIZATIONS ADDRESS THIRD-PARTY RISKS BY REQUIRING CYBER COVERAGE

More companies are insisting their vendors have cyber insurance as the risks associated with these third-party firms rise, say experts

"I'm finding that companies are asking their vendors to carry more and more robust insurance in limits and scopes of coverage," said policyholder attorney Scott N. Godes, a partner with Barnes & Thornburg LLP in Washington.

Stephanie Reilly, vice president at

Walnut Creek, California-based Relation Insurance Services Inc., formerly Ascension Insurance Inc., said, however, that while some companies are asking their vendors to present some type of proof of cyber liability insurance, there is no certificate that shows all the needed coverages have been acquired.

"Cyber policies vary so much in the various types of insurance coverages they provide ... so it becomes kind of a double-

edged sword. But does the customer or the company really know what they have? That becomes one issue," she said.

Some experts also recommend that organizations ask their vendors to obtain a certification such as the ISO 27001 information security standard. The standard helps firms manage the security of their assets by providing requirements for their information security management systems.

But even if a vendor has its own cyber insurance coverage, the contracting organization is still going to need to make sure its own policy "is broad enough to take into account even a vendor's computer systems," said Jason Krauss, New York-based cyber/errors and omissions thought and product leader for Willis Towers Watson PLC's FINEX North America business.

Judy Greenwald

Blockchain creates challenges in underwriting cyber risk

The hardship in assessing the challenges blockchain entails in underwriting cyber risk stem from the uniqueness and novelty of both the cyber insurance and blockchain worlds. Therefore, many of the assumptions we need to make around the effects of blockchain on cyber risk are based on more mature insurance products.

Since Satoshi Nakamoto's publication of "Bitcoin: A Peer-to-Peer Electronic Cash System," many words have been written about possible implications of cryptocurrencies and blockchain technology, for the current financial system, potential insurance applications and their implications on the industry.

The past nine years have proved a solid and reliable use case for blockchain in bitcoin, as an alternative store of value — a sound money alternative to gold.

Even while taking into account the fluctuation and other maturity challenges the bitcoin ecosystem has suffered, its success can be attributed to the fact that no vulnerabilities were found at the protocol. Another clear indication of its success has been the massive adoption bitcoin has enjoyed. Even with the resistance of regulators and the financial industry, bitcoin adoption has demonstrated that useful technology innovations cannot be outlawed, or oppressed, if serving a viable need and providing value.

A blockchain is a cryptography-based, tamper-resistant distributed ledger that stores data in a consensus-driven, peer-to-peer network. By transferring value between parties without having to rely on a third party or middleman, a blockchain provides an important trust layer for business transactions.

In other words, blockchains are a non-centralized, tamper proof database to store transactions.

If the peers of a network hold the same validated copy of a ledger, it is easy for each peer to look up and verify the blockchain information. This provides blockchains the power of offering an agreed-upon "single source of truth" in a zero-trust environment. So far so good. So why didn't blockchains become a viable means of exchanging trustable data and transactions in the insurance industry?

The technology provides three main general values to all industries:

1. Decentralization: The biggest value that decentralization provides, i.e. censorship resistance, while valuable in other industries, has limited value in the world of insurance. This is due to the fact that market demand dictates that product offering and regulation

rarely stand in line with satisfying market demands. Of course, there are small exceptions, such as on-demand products and microinsurance transactions.

2. Transparency:

a. Fraud detection and risk prevention: By moving insurance claims to an immutable ledger, blockchain can help eliminate common sources of fraud in the insurance industry. For example, Germany-based company Etherisc GmbH has introduced a flight-delay insurance product with automatic payout of claims based on selected sources of truth automatically validating delayed and canceled flights.

b. Faster visibility to claims: Many insurers struggle with having visibility to their current liabilities and often suffer from months of lag between claims filed and the claim's implication on the balance sheet. This challenge is referred to as incurred but not reported, or IBNR. This is not merely an audit issue but an underwriting strategy, where early detection is key to diagnosing reasons that have led to higher severity claims than expected. In emerging products, like cyber insurance, where most insurers are making their first steps, immediate visibility to liabilities is the insight needed to build out a successful product line while introducing required guidance to the underwriting process.

Blockchain is a cryptography-based, tamper-resistant distributed ledger that stores data in a consensus-driven, peer-to-peer network ... (and) provides an important trust layer for business transactions.

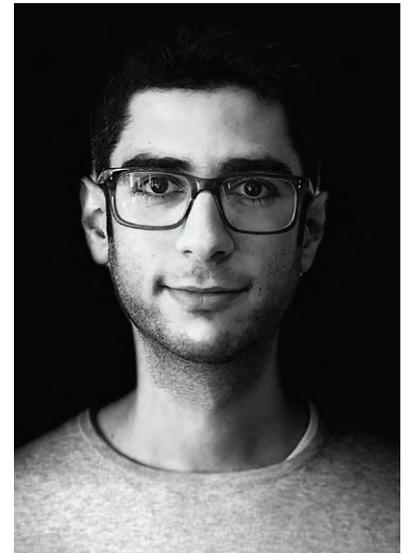
3. Anonymity: This can serve as an important value to big businesses shopping around for better quotes that are reluctant to share sensitive business data with additional third parties. For example, private companies who wish to not disclose asset growth have the option to anonymously provide data without the risk of their data being shared, leaked or exploited in the future and harm competitive advantages.

With all the potential value, blockchain still has substantial downside in the insurance industry such as:

- 1. Scalability and performance:** To validate a claim, an insurer needs to look up the client data, validate that indeed payments for the policy were paid and, if justified, pay the claim. This process can be completed by storing the data at a commercially available database. Due to the fact that the transactions are validated in a centralized, cost-effective manner, the additional costs for the insurer are minimal. Without a centralized source of truth in charge of the transaction, however, to complete such a claim in a distributed fashion each transaction will require validation by the rest of the blockchain network. This would need to be done by a mining process that, if successful, will then add a new block to the network. The process costs exponentially more than a simple validation via a centralized source.
- 2. Transparency:** There are more than 80 different cyber insurance products offered in the market, with different coverages, exclusions and price points. It's an advantage to the insurer that cyber products are harder to understand and therefore harder to benchmark value for coverage. Smart contracts are open-source and are written in a structure that can be verified by anyone, exposing potential pricing advantages insurers might own by the product coverage structure.
- 3. Decentralization:** If there is no need for a trusted third-party player to conduct a transaction — in other words, if the insurance company is not required — it might lead to a change in the industry. This could potentially reduce market share for transactions going through existing insurance insurers. In the case of cyber, one might imagine ecosystems where cyber insurance will be a supplement to other services provided in alternative marketplaces.

As the cyber insurance industry grows, the effects of blockchain are yet to be seen. Still, we can assume that the challenges faced by other property/casualty lines in regard to blockchain will be similarly mirrored for cyber insurance.

Cyber insurance risk is a growing product that can certainly benefit from blockchain's values. However, the trade-offs will need substantial mediation for blockchain to be a running solution for underwriting cyber risk.



Shalom Bublil is the chief risk officer at KOVRR, a cyber insurance startup based in Tel Aviv, Israel. He can be reached at 0-800-046-5509 and shalom@kovrr.com.

SPECIAL REPORT

LARGEST CYBER INSURERS (STAND-ALONE POLICIES)*

The top 10 insurers wrote 79.9% of the total U.S. market. Direct earned premiums is \$877 million. Having less earned premiums than written premiums is indicative of a growing market.

Rank	Company	2017 direct written premium	Market share
1	American International Group Inc.	\$227,632,241	22.9%
2	XL America Group	\$177,878,889	17.9%
3	Travelers Cos. Inc.	\$89,111,803	9.0%
4	Beazley Insurance Co. Inc.	\$85,575,186	8.6%
5	Axis Capital Holdings Ltd.	\$45,056,949	4.5%
6	Zurich Insurance Group Ltd.	\$40,904,912	4.1%
7	BCS Insurance Co.	\$40,334,609	4.1%
8	Liberty Mutual Holding Co. Inc.	\$32,791,462	3.3%
9	Fairfax Financial Holdings Ltd.	\$30,999,402	3.1%
10	CNA Financial Corp.	\$23,851,641	2.4%

*Not including surplus lines
Source: National Association of Insurance Commissioners

LARGEST CYBER INSURERS (PACKAGE POLICIES)*

The top 10 insurers of package policies wrote 67.2% of direct written premiums in 2017.

Rank	Company	2017 direct written premium	Market share
1	Chubb Ltd.	\$299,694,835	34.6%
2	Axis Capital Holdings Ltd.	\$56,452,097	6.5%
3	CNA Financial Corp.	\$49,275,179	5.7%
4	Hartford Fire & Casualty Group	\$32,192,193	3.7%
5	Travelers Cos. Inc.	\$30,021,408	3.5%
6	BCS Insurance Co.	\$29,564,832	3.4%
7	Liberty Mutual Holding Co. Inc.	\$27,221,196	3.2%
8	Sompo Holdings Inc.	\$27,122,621	3.1%
9	Tokio Marine Holdings Inc.	\$25,593,652	3.0%
10	Allianz SE	\$25,123,512	2.9%

*Not including surplus lines
Source: National Association of Insurance Commissioners

LARGEST INSURERS FOR IDENTITY THEFT (PACKAGE POLICIES)*

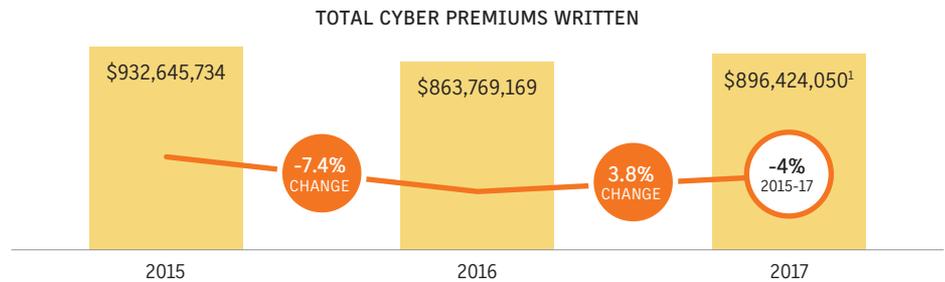
The most common product related to cyber insurance is identity theft coverage, with 19.7 million policies including identity theft coverage as part of a package policy.

Rank	Company	2017 direct written premium	Market share
1	Nationwide Mutual Insurance Co.	\$34,328,552	16.1%
2	State Farm	\$29,086,341	13.6%
3	Travelers Cos. Inc.	\$24,750,046	11.6%
4	Liberty Mutual Holding Co. Inc.	\$11,325,621	5.3%
5	The Hanover Insurance Group Inc.	\$11,315,597	5.3%
6	Allstate Corp.	\$11,166,501	5.2%
7	Erie Insurance Inc.	\$8,513,223	4.0%
8	Farmers Insurance Group of Companies	\$8,274,909	3.9%
9	American Family Insurance	\$7,903,607	3.7%
10	Mercury General Corp.	\$4,830,079	2.3%

*Not including surplus lines
Source: National Association of Insurance Commissioners

PACKAGE CYBER INSURANCE MARKET

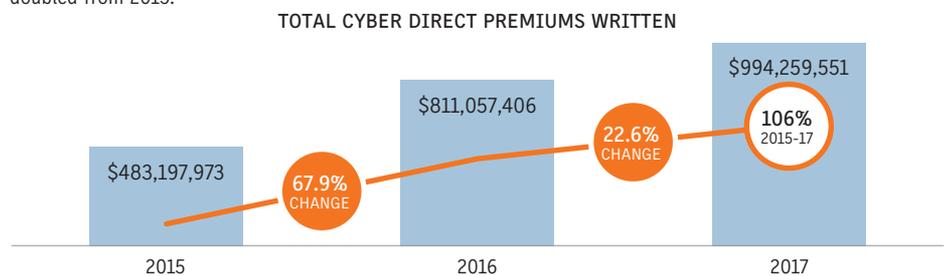
Cyber package policies increased 3.8% from 2016 to \$896 million in 2017 but decreased 4% from 2015.



¹To arrive at figure representing a complete market, it was assumed that 16 of the 462 insurers reporting no premiums would have reported in the same ratio as those insurers reporting premiums, representing 3.46% of direct written premiums for package policies.
Source: National Association of Insurance Commissioners

STAND-ALONE CYBER INSURANCE MARKET

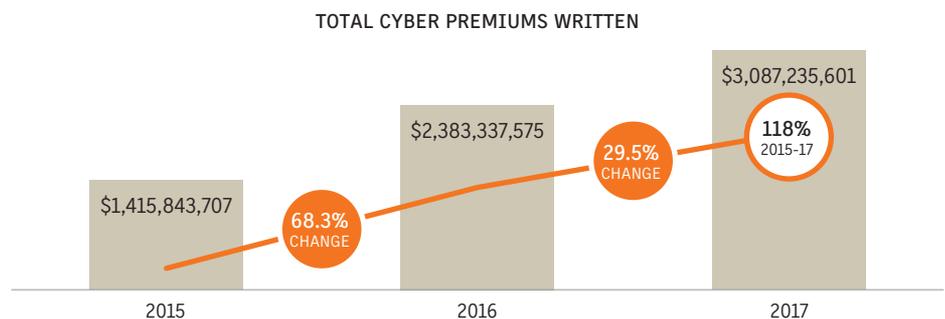
Stand-alone cyber coverage increased 22.6% from 2016 to \$994 million in 2017 but more than doubled from 2015.



Source: National Association of Insurance Commissioners

CYBER INSURANCE MARKET

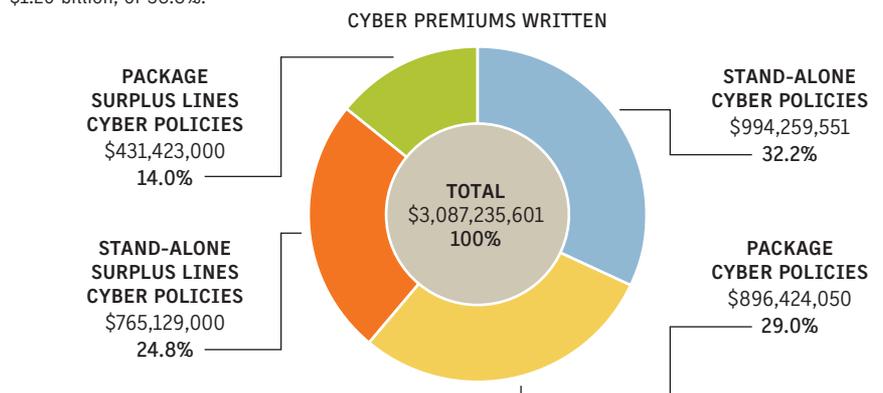
Total U.S. market for cyber insurance increased 29.5% to \$3.1 billion in total premiums written in 2017.



Source: National Association of Insurance Commissioners

ADMITTED VS. NONADMITTED CYBER INSURANCE MARKET

The total admitted market for cyber insurance is \$1.89 billion, or 61.2%, and the nonadmitted market is \$1.20 billion, or 38.8%.



Source: National Association of Insurance Commissioners

STAND-ALONE IDENTITY THEFT POLICIES

232,893

stand-alone identity theft policies sold in 2017 with total premiums of \$19 million or \$81.60 per policy

PACKAGE IDENTITY THEFT POLICIES

19,456,226

package identity theft policies sold in 2017 with total premiums of \$213.5 million or \$11 per policy

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BUSINESS INSURANCE

INNOVATION AWARDS



The insurance and risk management sector is embracing developments in technology to produce innovative products and services that are transforming everything from risk assessment to staff training.

Utilizing technologies such as blockchain, artificial intelligence and advanced data analytics capabilities, forward-looking organizations are creating efficiencies along all stages of the risk management process: identifying exposures, enhancing management of information, developing new coverages and generally creating opportunities for buyers to bring more value to their companies.

Now in its ninth year, the *Business Insurance* Innovation Awards program recognizes the best of these developments as assessed by their end users — professional risk managers.

This year we received one of the highest number of nominations in the history of the program, with nearly 70 entries submitted by 45 different organizations.

All the nominations were assessed by an independent panel of judges composed of risk managers from a variety of backgrounds and industries.

The 2018 Innovation Award judges were: Julie Bean, director of risk management at The Chamberlain Group Inc.; Delany Haj, senior manager-global risk assessments and insurance at Accenture PLC; Jason Mezyk, vice president of risk management at GLP US Management LLC; Jennifer E. Reno, global risk manager at QVC Inc.; and Carlos Sintes, claims manager at Fortune Brands Home & Security Inc.

The winners will be recognized at the U.S. Insurance Awards in New York on March 21, 2019.

For more information about the Innovation Awards and other awards programs sponsored by *Business Insurance*, visit businessinsurance.com or email Editor Gavin Souter at gsouter@businessinsurance.com.

Gavin Souter, editor



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BUSINESS INSURANCE
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2018 

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AIG MULTINATIONAL SUITE OF RISK MANAGEMENT TOOLS



American International Group Inc. is using technology to help multinational policyholders track and meet their insurance needs.

“When you look at the world around us, economic boundaries are shrinking, and so more and more clients are being compelled to go multinational,” said Carol Barton, president of multinational insurance at AIG in New York.

As a result, the face of the multinational policyholder is changing, and the client base is growing.

“Multinational clients operate in more than one country — historically, these have been your large companies. However, the number of small companies that are expanding beyond their borders has grown exponentially,” Ms. Barton said, adding that they can be “any type of business you could imagine.”

Such widespread operations can pose heightened and unique insurance challenges.

“When you are dealing with business in multiple countries, there are different types of regulatory requirements which must be met in order to issue compliant policies and manage a client’s risk,” Ms. Barton said. “How do you keep track of all of those when you are in 25 countries, for example?”

AIG turned to technology for help, creating a multinational suite of risk management tools that is a 2018 *Business Insurance* Innovation Awards winner.

“We developed a way to simplify that by putting it into one report for a client that shows their specific requirements,” Ms. Barton said.

Regulatory needs are categorized by requirement and territory, Ms. Barton

said, noting that most countries have requirements around “know your customer” and/or anti-money laundering that can be arduous.

AIG also provides clients with a “heat map” showing specific requirements in countries of operation, Ms. Barton said. The myAIG Client Portal provides online access for clients to track policies as they progress through issuance to invoice, as well as claims information by country and line of business, Ms. Barton said.

The system was designed and built by AIG’s information technology department and the company’s business operations organization, Ms. Barton said.

Next steps could include expanding into new countries or territories, Ms. Barton said, as well as looking for ways to make it simpler for clients.

Extensive product and country information anchors the service.

“A key area of focus is maintaining market-leading product and country/territory knowledge,” Ms. Barton said. “Our MN Technology suite starts with a comprehensive repository of all product and regulatory information for the 215 countries/territories in which AIG writes business.”



Carol Barton

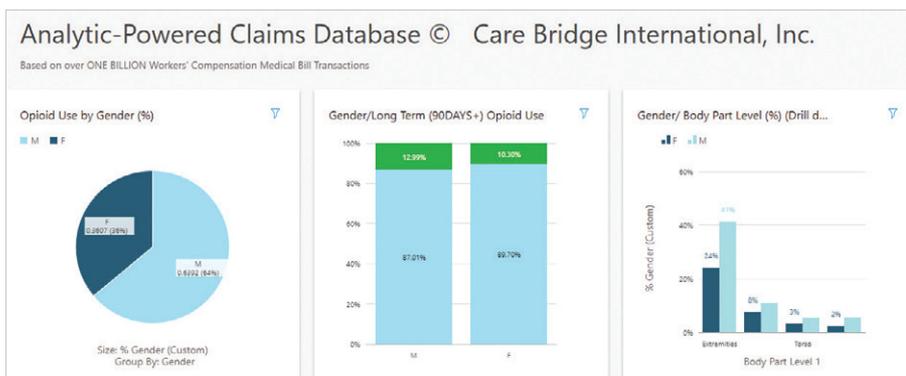
“Regulatory changes are happening frequently, and we are committed to keeping our knowledge database current. We have a governance process to help us accomplish this,” Ms. Barton said.

AIG is using web scraping technology to provide alerts for changes in regulatory websites in what Ms. Barton called an “interesting use of technology.”

Matthew Lerner

Care Bridge International Inc.

ANALYTIC-POWERED MEDICARE SET ASIDE AND ANALYTIC-POWERED MEDICAL RESERVE



Calculating Medicare set-asides and medical reserves is an important part of the workers compensation claims process, but it has historically been a complex and time-consuming task, according to Deborah Watkins, CEO of Care Bridge International Inc. in Sarasota, Florida.

The process is used to calculate funds needed to pay future medical services related to a workers comp injury, which have to be exhausted before Medicare pays for treatment. The arrangements cap a payer’s future liabilities but can involve forecasts covering years of treatment costs.

Traditionally, claims professionals submit a proposed arrangement to the Centers for Medicare & Medicaid Services for review and approval.

“The problem was that we were providing this forecast using a methodology that has never been proven,” said Ms. Watkins, a former clinical nurse who has been involved in medical claims her entire career.

Companies that submit the arrangements rarely follow up with research to determine whether the amount agreed upon was an accurate number, she said. In addition, the process takes weeks

to complete.

By adopting a big-data approach to assessing future medical costs, Care Bridge can quickly produce costs assessments that are lower and more accurate than traditional methodologies, Ms. Watkins said.

The software solutions — Analytic-Powered Medicare Set Aside and Analytic-Powered Medical Reserve — won a 2018 *Business Insurance* Innovation Award.

Using a data warehouse of more than 12 million claims, “a third-party administrator, carrier, self-insured or even a law firm can actually perform a data integration request using a dropdown menu to answer questions, and the variable is sent to the data warehouse where we find similar claims, and we are able to use predictive models to provide a reasonable and probable future care analysis,” she said.

The analysis is returned immediately at half the cost of the traditional reports, and claims can be settled months faster, Ms. Watkins said.

In addition, the data can be used to create an analytics dashboard to moni-



Deborah Watkins

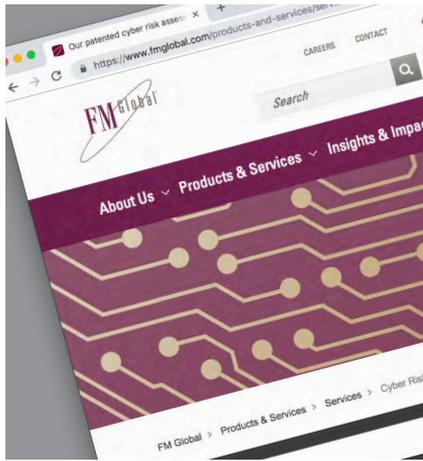
tor compliance and measure and monitor reserves in real time, enabling users to establish benchmarks and identify problems, she said.

Because of the speed of the response, users can obtain the valuations while they are mediating claims. In addition, the product can be used to validate existing reports, Ms. Watkins said.

Gavin Souter

FM Global

CYBER RISK ASSESSMENT PROGRAM



FM Global's Cyber Risk Assessment Program will not only help risk managers better assess their cyber risk, it will encourage cooperation with their

information technology departments, said Jeffrey Tilley, vice president and manager of cyber hazards at FM Global.

Use of FM Global's patented tool, which is a 2018 *Business Insurance* Innovation Awards winner and free to FM Global policyholders, involves answering 70 multiple-choice questions.

When the questionnaire — which is not used for underwriting purposes — has been completed, policyholders immediately receive an overall cyber risk score as well as scores for their governance, insider threat management, IT security and response and recovery.

This is followed by a more in-depth report. FM Global then reviews the policyholders' results and develops recommendations and priorities that "align with their business priorities," Mr. Tilley said.

"Over the years, cyber's developed as a

top-tier concern for business executives, and it's been recognized that it has to be managed as an enterprise risk," Mr. Tilley said.

"However, cyber security hasn't historically been integrated into risk management," he said, noting FM Global's clients asked for this tool. "It aligns with how we support our clients."

"One of the cornerstones is that the majority of all losses are preventable, and that applies to cyber, too — if you understand the risk — so we developed the cyber risk assessment ... to do just that, help our clients understand and manage their cyber risks."

Mr. Tilley said it is critical that cyber risk be managed as an enterprise risk, and the tool was built to encourage collaboration between the risk manager and IT department.

"The tool itself provides the ability to collaborate on the input to the assessment, which provides those qualitative cyber risk ratings, and that's a good starting point for a foundation to begin talking internally about the cyber risk, and how to improve their cyber resilience," he said.

Mr. Tilley said policyholders' reaction



Jeffrey Tilley

to their reports has ranged from those "who are a little surprised" to "some that say, 'That's exactly what I expected, and now let's get to work.'"

Mr. Tilley said he hopes the tool will be used across FM Global's entire client base. "I think it'll be a healthy percentage if the takeup rate thus far is an indication of the future," he said.

Judy Greenwald

"Over the years, cyber's developed as a top-tier concern for business executives, and it's been recognized that it has to be managed as an enterprise risk."

Jeffrey Tilley, FM Global

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Gallagher Bassett

SMART BENCHMARK



Increased complexity adds ~\$2.1M to annual incurred

CLAIMS COMPLEXITY
SMART helps policyholders understand the financial impact of changes in claim complexity, such as injury severity.

Benchmarking workers compensation claims is a complex business.

Not only do claims vary by industry, state and legal jurisdiction, they vary by company, said Joe Powell, vice president of analytics at Gallagher Bassett Services Inc. in Rolling Meadows, Illinois.

“Each insured is unique,” he said.

As a result, benchmarks that compare employers based on jurisdiction or industry have their shortcomings, Mr. Powell said.

To address the problem, Mr. Powell led a team of data scientists and analysts at Gallagher Bassett and analysts working on MCG Health’s Official Disability Guide-

lines to develop the severity mix adjusted rating technique benchmark.

Using Gallagher Bassett and ODG data, the SMART Benchmark, a 2018 *Business Insurance* Innovation Awards winner, provides employers with comparative data based on claims rather than job class or jurisdiction.

“What’s far more important than your industry when it comes to claim outcome is the severity of the claim, so that’s really what we focus on,” Mr. Powell said.

For example, “if you are a hotel worker and you fall off a four-story building, or you are a manufacturer and you fall off a

four-story building or you’re a construction worker and you fall off a four-story building, if you have the same diagnosis codes, the same state, you undergo the same procedures, you have the same comorbidities and you are the same age, it doesn’t really matter what industry you are in,” he said.

The benchmark uses a complexity rating algorithm that gauges expected claim severity. Factors used to develop the complexity score include benefit jurisdiction, job classification, litigation indicators, diagnosis codes, comorbidity indicators and narcotics usage.

The benchmark can be used to examine overall performance on key metrics — claims cost and duration — and then drill down deeper to identify areas where employers are substandard to benchmarks, Mr. Powell said.

“For example, if we find that your costs are high in a given state, we can take a look at network penetration in that state, compare it to the benchmark and see whether that’s where we can make an impact,” he said.

For example, the benchmark showed that one client had high medical costs in



Joe Powell

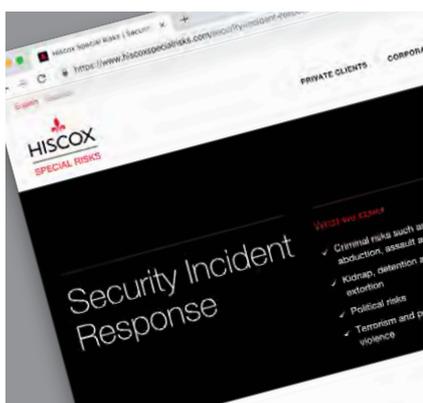
California. After studying the data, Gallagher Bassett discovered that the employer was not using its medical provider network in California, which can lower costs by 20% to 30%.

“It didn’t cost the client anything, but it allowed us to direct care towards the providers in the MPN and get better results,” he said.

Gavin Souter

Hiscox Ltd.

SECURITY INCIDENT RESPONSE PROGRAM



Hiscox Ltd.’s Security Incident Response Program provides risk managers with expertise on handling dozens of types of incident perils when there is still only a suspicion of a potential problem, said Gareth Bateman, its Lon-

don-based product director.

Working in conjunction with London-based consultant Control Risks Group Holding Ltd., with which the insurer has a history of more than 25 years, for a set premium, the program, which was first introduced last year, provides help for dealing with crises, he said.

It was developed in response to policyholders’ concerns, said Mr. Bateman.

“We were seeing changes in the insurance market, with clients asking about a much broader range of issues, and sometimes we were seeing those issues being interrelated,” such as cyber/extortion or terrorism-related criminality, as well as “lots of other just fast-moving events you see on the news quite frequently,” he said.

“We decided to respond to that by creating an insurance product that could help corporations deal with a wide range

of security incidents that might impact their people or their reputation,” said Mr. Bateman.

The program’s innovation is that in addition to responding once an event happens, it creates “two triggers to the insured that helps clients tackle developing issues before they become crisis events,” Mr. Bateman said.

The first one is that if there is suspicion an event has taken place “but at this stage you, as the client, don’t understand how big it is” or have a limited amount of evidence, just suspicion “is enough to trigger our policy to get expert support.”

In addition, when an event is imminent and “some piece of intelligence is telling you what’s going to happen, or some historical precedent tells you it always happens when ‘X’ event” happens, the program will also respond, said Mr. Bateman.

The program has a minimum annual premium of about \$30,000, but “our average premium is more likely to be \$100,000,” he said.

Mr. Bateman said 20% of Hiscox’s premiums is available to return to clients as a risk mitigation allowance “to encourage clients to invest in programs” such



Gareth Bateman

as training.

The program has signed up more than 70 corporate organizations since it was launched in early 2017, initially in the United Kingdom and Europe, then late last year in the United States, said Mr. Bateman.

About one-third of the clients are U.S.-based, he said.

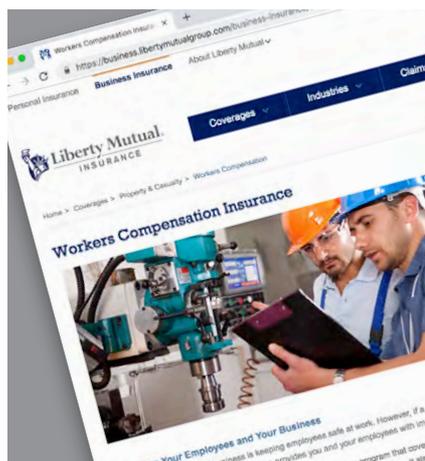
Judy Greenwald

“We were seeing changes in the insurance market, with clients asking about a much broader range of issues, and sometimes we were seeing those issues being interrelated,” such as cyber/extortion.

Gareth Bateman, Hiscox Ltd.

Liberty Mutual Insurance Co.

WORKERS COMPENSATION AUTOMATION



Automation is a popular buzzword these days, but Liberty Mutual Insurance Co. is applying the concept to the core of its operations, using robotic process automation to transform its back-end functions in an effort to help its workers compensation policyholders get a better handle on claims costs and speed up coordination with injured workers.

The insurer's transformation team was looking for ways to become more efficient and had no idea what robotics was

or whether it could be of value when it started exploring options, but was "pleasantly surprised" about the extent to which the technology could be used to optimize its workforce, particularly when it came to repetitive tasks, said Gary Hutchins, manager of strategic development for the insurer in Norton, Massachusetts.

"This technology is all about acceleration," he said. "We process a couple of hundred thousand workers compensation claims a year, and the goal of this project was to make sure that our adjusters could respond to those claims ... start investigating, reach out to the injured worker to make sure they understand what the process is, reach out to our customers to do their investigation, reach out to brokers and coordinate activities."

Using robotics process automation, the insurer was able to reduce the time devoted to processing and assigning new claims to adjusters from four hours to mere minutes, Mr. Hutchins said.

"Customers don't often appreciate the fact that you have to execute on an assignment or a process step," he said. "They'd much rather see our human capital engaging with them, engaging with

their injured workers, engaging with their medical providers."

Liberty Mutual successfully processed 14,300 claims over a three-month period with an accuracy of 99.9%, lowering total claims costs, according to the insurer, which was auditing all the work being performed by the bots to ensure they were achieving the expected outcomes.

"We work in a world that's heavily regulated, so accuracy is critical to us," Mr. Hutchins said. While people make mistakes — usually unintentionally — "bots don't. They're very predictable in the way they do their work, but it's about finding the right work for them. This is about process automation. When there's a decision to be made about a claim, we still have our adjusters doing that. We don't have bots doing that."

Gloria Gonzalez

"This technology is all about acceleration. We process a couple of hundred thousand workers compensation claims a year, and the goal of this project was to make sure that our adjusters could respond to those claims."

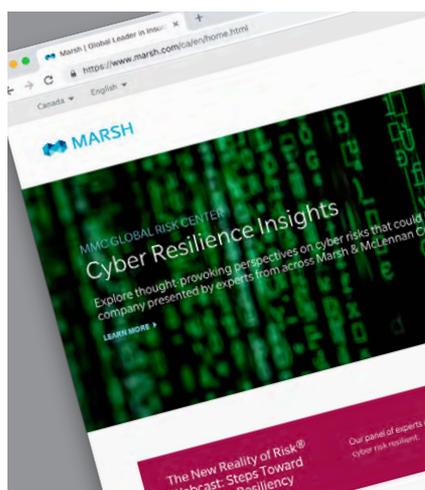
Gary Hutchins, Liberty Mutual Insurance Co.



Gary Hutchins

Marsh LLC

MARSH'S BLOCKCHAIN-BASED PROOF OF INSURANCE



Digital ledger technology, generically referred to as blockchain, is beginning to find a home in the insurance industry, as evidenced by Marsh LLC's use of the technology to solve the common and widespread challenge of proof of insurance.

"We wanted to make sure there was a level of cross-industry usage for this use case," said Sastry Durvasula, chief digital officer and chief data and analytics officer

for Marsh in Phoenix. "Proof of insurance is a common problem with all industries."

The project, which is a 2018 *Business Insurance* Innovation Awards winner, began in 2017.

"When we created Marsh Digital Labs last year, we started to work on a few use cases for blockchain, and this rose to the top," Mr. Durvasula said.

Development took roughly six to nine months, and the project was announced in April, Mr. Durvasula said.

The project was seeking "automation and the removal of friction points and operational inefficiencies," Mr. Durvasula said.

Digital ledger technology has been widely touted as a way to improve efficiency in the insurance industry and realize cost savings.

The project has grown since its introduction in April. In September, Marsh announced a partnership with Salesforce.com Inc. that would allow users of that company's software platform access to certificates of insurance via the blockchain solution.

"Leveraging the connection between the IBM hyperledger with Salesforce is a very

powerful extension that widens access of our proof of insurance capabilities to our clients," Mr. Durvasula said.

Most recently, at the beginning of October, Marsh announced a partnership with Evident ID Inc. to extend the proof of insurance blockchain capabilities for clients in the sharing and gig economy, he added.

Growth and expansion should continue, he said.

"I think the next logical extension would be to advance the platform with more features," Mr. Durvasula said. "We have a number of clients in various industries that are interested."

There also may be further progress with insurers and industry organizations, he said.

"We have done more on the client side to date but are exploring opportunities on the carrier side as well," Mr. Durvasula said.

"The other important thing is our partnership with ACORD and crystallizing the data standards around digital insurance certification," Mr. Durvasula said. "There will be more advancement on that front as the blockchain evolves."

Such collaboration will be vital to the



Sastry Durvasula

success of the emerging technology, he said.

"Interoperability, I think, will be probably the most crucial element of scalable and sustainable blockchains," Mr. Durvasula said.

"Interoperability will drive it to the next level, and I think that's really a priority from a platform perspective," he said.

Matthew Lerner

Marsh Ltd.

MARSH CRIMEBLOCK



Social engineering can lead good people to inadvertently do bad things. It's a type of fraud that is often left unaddressed by traditional crime insurance policies. As a result, Marsh Ltd. developed Marsh CrimeBlock, an

"If you had an event, you needed to fit it within one of the buckets. More often than not, social engineering events did not fit into one of those buckets of cover."

Eleni Petros, Marsh Ltd.

enhanced commercial crime offering that provides coverage for this increasingly costly form of fraud.

"Social engineering comes in a variety of guises," said Eleni Petros, London-based commercial crime practice leader at Marsh Ltd. and principal developer of Marsh CrimeBlock, a 2018 *Business Insurance* Innovation Awards winner.

Social engineering fraud can involve phishing schemes or fake emails or phone calls that result in "duping somebody into performing an action" that benefits the fraudster, she said.

"We felt that the commercial products didn't accurately respond to the real risk clients were facing in the current environment," as fraudsters rely on social engineering to infiltrate organizations, said Ms. Petros. She said traditional crime policies address specific categories of crime.

There are a lot of restrictions around them, covering very specific named perils such as counterfeit and fraudulent alteration that don't address social engineering risks in a way that reflects the true risks clients face, said Ms. Petros.

"If you had an event, you needed to fit it within one of the buckets," she said. "More often than not, social engineering events did not fit into one of those buckets of cover."

Rather than have a named peril, "we moved it to an all-risk" policy, she said.

That led to the creation of Marsh CrimeBlock. The cover triggers on direct financial loss suffered by a policyholder as a result of any fraudulent, criminal, dishonest or malicious act without making a distinction between fraud committed by an employee or a third party.

The result was a "much broader product than any traditional crime product for any commercial company," said Ms. Petros.

She said 20 to 30 U.S.-domiciled companies have moved to the London market to access the coverage. Ms. Petros said that the limits obtained typically run from \$20 million to \$50 million.

She cautioned, however, that "this



Eleni Petros

product is not for every client." Marsh CrimeBlock is aimed at clients with higher retention levels, such as \$200,000 to \$250,000, she said.

Ms. Petros said that Marsh CrimeBlock has proved to be "really worthwhile for our U.S. clients by providing them with cover that wasn't previously available to them."

Mark A. Hofmann

Marsh LLC, Metabiota Inc., Munich Re

PATHOGENRX



Fear of the unknown can be disastrous for a company's bottom line. That's particularly true for businesses such as hospitality and tourism that depend on a steady flow of customers. An outbreak of a disease such as Zika can dry up that flow, cutting into a company's profits.

But fear is a hard thing to measure. That uncertainty led Marsh LLC to partner with San Francisco-based epidemic risk modeling company Metabiota Inc. and Munich Reinsurance Co. to offer a remedy to pandemic-related revenue losses by creating PathogenRX, a 2018 *Business Insurance* Innovation Awards winner.

The product uses Metabiota's Pathogen Sentiment Index to estimate public fear and the way behavior could change in the face of major disease outbreaks. Businesses can model the loss arising from an outbreak and protect their balance sheets against the potential loss through an insurance policy underwritten by Munich Re.

The policy can be customized to meet the coverage needs of clients. Hospitality and gaming, travel and tourism, aviation, and sports and events are among the target industries for the policy.

"In the non-property damage (business interruption) world, pandemics have traditionally fallen out of the scope of what can be identified and measured for a policy," said Jen Bruursema, a vice president of marketing and sales at Metabiota who helped develop the product. "That's because pandemics are very difficult to predict in terms of where they're going to emerge and how long they're going to last."

"The Sentiment Index is very, very unique; that score can be impacted," said Christian Ryan, Marsh managing director and U.S. hospitality, sports and entertainment practice leader in Dallas. "Clients can see the index, and if something happens

anywhere around the world, the index is adjusted. It's very, very simple."

"The various pathogens have different profiles for how the public looks at infectious disease," said Ms. Bruursema. "Each pathogen gets its own unique scores based on how frightening those symptoms might be. If this threshold or score is reached, the likelihood is consumers aren't likely to go to various events or proceed with travel."

"Risk managers have been planning on operational things that they need to do to prepare for an epidemic or pandemic," such as crisis communication, said Ms. Bruursema. "But none of these risk managers have felt safe on the balance-sheet side of their operations. This new solution of PathogenRX for the first time gives them the same way to estimate what this event would cost their organizations."

Mark A. Hofmann



Jen Bruursema

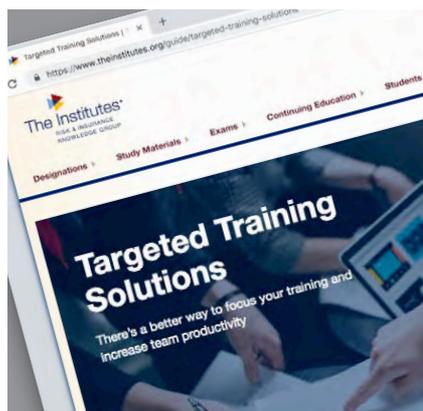
Christian Ryan

"Each pathogen gets its own unique scores based on how frightening those symptoms might be. If this threshold or score is reached, the likelihood is consumers aren't likely to go to various events or proceed with travel."

Jen Bruursema, Metabiota Inc.

The Institutes

TARGETED TRAINING SOLUTIONS



Time is money, and training takes time. For risk management departments and other insurance-related entities, a key question is how to make employee training as effective and efficient as possible.

The Institutes has provided an answer

“When you think of it from a risk management perspective, if your employees have knowledge gaps, it can create risks. If you are able to reduce those knowledge gaps, that reduces the potential exposure.”

Adam Carmichael, The Institutes

to that question with Targeted Training Solutions, a winner of the 2018 *Business Insurance* Innovation Awards.

“The No. 1 problem is reducing training time,” said Adam Carmichael, vice president of assessments at the Malvern, Pennsylvania-based Institutes and project lead for the program. By focusing on where a person has knowledge gaps, Targeted Training Solutions cuts the training time, he said.

The program is an “all-in-one online solution,” Mr. Carmichael said. It starts with a preassessment or test, typically a half hour, he said. That identifies at an individual level if there are any knowledge gaps on that subject. If gaps exist, focused content is delivered within the same online course.

“Essentially, by taking the preassessment first, you get a personalized course,”

he said. The final assessment verifies that the gaps have been filled.

“The alternative might be everybody takes an eight-hour course, and that’s everybody for a full day doing that,” he said. With Targeted Training Solutions, a company or department might need only 45 minutes, he said.

The program relies on some standard modules, as well as some that are specifically tailored for certain clients, he said. Mr. Carmichael said one of the advantages The Institutes has is that it can draw from existing content for such programs as the Associate in Risk Management designation. As a result, “we are able to have statistically validated questions, which helps us in building these courses,” he said.

“When you think of it from a risk management perspective, if your employees have knowledge gaps, it can create risks,” Mr. Carmichael said. “If you are able to reduce those knowledge gaps, that reduces the potential exposure.”

“This tool helps risk managers quantify the risk of potential knowledge gaps among their employees,” he said. “They might be looking at identifying loss exposures and other aspects of implementing



Adam Carmichael

risk management. Maybe staff can analyze loss exposures but perhaps need work on present value and discounting.”

“It’s been received very well,” Mr. Carmichael said. “Employers really like the combination of reducing the training time and quantifying these knowledge gaps. It allows them to focus their training and achieves better ROI from their training.”

Mark A. Hofmann



Leading the Way in Innovation

To keep pace with an ever-changing world and evolving risk landscapes, new perspectives are critical. That’s why Marsh is always looking ahead, providing insights and solutions to help clients thrive and survive.

Marsh is proud to be recognized as one of the most innovative firms in our industry as the recipient of three *Business Insurance* 2018 Innovation Awards.



Telematics platform launched for auto fleets

■ Telematics provider The Floop Ltd. has released FloopFleet, a telematics platform designed for commercial insurers serving fleets with 25 or fewer light-duty vehicles.

FloopFleet measures speed, braking, smooth driving, mobile use, fatigue and time of day, a spokesman for The Floop said in an email.

Fleet managers can view trip-level data through a dedicated portal that can be accessed via desktop, tablet or mobile device.

FloopFleet works with onboard devices or fitted devices and provides a platform to offer programs to improve driver behavior, such as coaching, the company said in a statement.

Patra offers certificate based on blockchain

■ Patra Corp. has launched a cloud-based insurance certificate delivery and storage system that uses blockchain technology to secure the documents.

CertVault, which is aimed at brokers but can be used by any company that needs to generate a certificate, uses blockchain to prevent certificates from being altered once they are entered into the system, the El Dorado Hills, California-based technology company said in a statement.

Once an insurance certificate is entered into the system, recognition technology will be used to identify key data. Parties designated to have access to the certificate will be notified and provided with a unique access code to download the document, Patra said in the statement.

CertVault will use a database of certificate holders and brokers, and the service is priced on a per-upload basis.

Willis Towers Watson forms resolutions team

■ Willis Towers Watson PLC introduced a resolutions team to act on behalf of clients before they turn to litigation to resolve disputed claims.

Led by Executive Vice President Rob Lane, who is based in Irvine, California, the team consists of five former practicing coverage attorneys with expertise in all major lines of business and insurance markets, the brokerage said in a statement.

A Willis Towers Watson spokeswoman said the program is for times when traditional claims advocacy does not resolve a claim. Once a claim becomes contested, organizations may go to a coverage attorney to reach a resolution through litigation, she said. This program provides “an extra layer on top” before that happens



Zurich enhances cyber policy form

■ Zurich Insurance Group Ltd. launched a cyber insurance policy form that includes network security monitoring and prebreach services and can respond to regulatory enforcement actions under the European Union’s General Data Protection Regulation.

The form replaces Zurich’s security and privacy policy and offers coverages previously available only through endorsements, the insurer said in a statement. These include affirmative coverage for regulatory proceedings, assessments, fines and penalties associated with enforcement of the GDPR, in addition to traditional coverages such as breach costs.

It also offers coverage for reputational damage from adverse media events resulting from a cyber breach and for funds lost to social engineering.

Coverage up to \$25 million is provided through the policy, which extends the definition of insured person to include temporary employees, volunteers or interns, and broadens the definition of computer system to include industrial control systems and bring-your-own-device programs, the statement said.

with in-house attorneys who do not offer legal advice but who “know how to negotiate with markets,” said the spokeswoman.

Liberty Mutual creates global financial risks unit

■ Liberty Mutual Insurance Co.’s Global Risk Solutions unit has joined two operations that independently provided credit and political risk products into a single global product line called Financial Risk

Solutions.

Based in London, the unit is led by Peter Sprent, head of Financial Risk Solutions, Liberty Specialty Markets, Liberty Mutual said in a statement. The Liberty Specialty Markets credit and political risk claims team, led by Chief Claims Officer Mike Gillett, will oversee claims for the combined unit.

Munich Re offers capacity for US cyber reinsurance

■ Munich Reinsurance America Inc. will offer \$15 million in cyber reinsurance capacity for U.S. primary insurers covering small and midsize businesses.

The reinsurance will cover proprietary cyber insurance forms as well as ISO-based coverage, the Princeton, New Jersey-based unit of Munich Reinsurance Co. said in a statement.

The coverage includes access to Munich Re’s risk management portal and a post-breach services panel, the statement said. Coverage is available in all states.

Security firm introduces cyber policy for charities

■ Cyber security firm Coalition Inc. has introduced a cyber insurance program designed to help charitable and volunteer-based organizations address and mitigate cyber risks.

The program offers up to \$10 million of cyber insurance coverage designed to cover a broad array of exposures, including regulatory defense, breach costs, cyber extortion, business interruption, funds transfer fraud and computer replacement, as well as cyber security tools for small to midsize operations, the San Francisco-based managing general agent said in a statement.

Coalition is backed by Swiss Re Ltd. and Argo Group International Holdings Ltd.

QBE North America forms health care unit

■ QBE North America has launched QBE Integrated Advantage for Healthcare, a dedicated unit comprising health care underwriting, claims, risk services and product professionals.

The unit will serve hospitals, physician groups, medical facilities and managed care organizations, and provide a multi-line solution, including management liability and medical malpractice as well as property, auto and workers compensation coverage, the New York-based subsidiary of Australia’s QBE Insurance Group Ltd. said in a statement. It will be led by Cindy Oard, senior vice president and health care underwriting leader.

DEALS & MOVES

Brown & Brown to pay over \$700M for Hays

Brown & Brown Inc., Daytona Beach, Florida, will acquire Minneapolis-based Hays Group Inc., which does business as Hays Companies.

The purchase price of \$730 million comprises \$605 million in cash, \$100 million in stock and up to \$25 million in earn-out payments, Brown & Brown President and CEO J. Powell Brown said on a 2018 third-quarter earnings call in October.

Operating as a division within Brown & Brown’s retail segment, Hays will continue to be led by Jim Hays and Mike Egan, Mr. Powell said.

Willis Towers Watson buys French brokerage

Willis Towers Watson PLC has acquired Le Havre, France-based brokerage Dero Courtage. Terms of the deal were not disclosed.

Dero Courtage specializes in logistics, marine and port services, as well as asset management, according to an email from a Willis Towers Watson spokesman. The firm will operate under the brand of Willis Towers Watson’s French business, Gras Savoye Willis Towers Watson. Dero Courtage CEO Christophe Dero will be managing director of the new unit.

AssuredPartners buys aviation specialists

AssuredPartners Inc., Lake Mary, Florida, has acquired aviation specialists Regal Aviation Insurance in Hillsboro, Oregon, and Lundy & Clark Insurance Group in Fort Lauderdale, Florida.

Terms of the deals were not disclosed. The two agencies have combined revenue of \$2.2 million, AssuredPartners said in a statement.

Mutual marine insurers to merge operations

The Strike Club and the Standard Club have announced plans for the Strike Club to join the Standard Club group, the mutual marine insurers said. Both are managed by companies within London-based insurance services firm Charles Taylor PLC.

Strike will continue as a member-controlled dedicated mutual delay insurer, operating as a class of the Standard Club, according to a statement.

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BUSINESS INSURANCE

WOMEN TO WATCH

CELEBRATE OUTSTANDING WOMEN IN COMMERCIAL INSURANCE

2018 EMEA Honorees

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Sarah De Rocco, Marsh
Kirsten Early, Broadspire UK
Catherine French, Marsh
Debbie Hobbs, Emergin Risk
Gladys Karuri, Britam Holdings
Jane KIELTY, Aon
Jacqueline Legrand, Brokerslink
Ewa Machlarz, Travelers
Delphine Traore Maidou, Allianz Africa
Jennifer Martin, Pen Underwriting
Sima Ruparelia, AIG Europe
Leonora Siccardi, Aon
Kadidja Sinz, Liberty Special Markets
Hélène Stanway, Axa XL

2018 Americas, Asia, & other regional Honorees

Mahshameen Ahmad, Crum & Forster
Meg Allwein, Assurex Global
Allison Barrett, Willis Towers Watson
Kelley Bernal, SIU LLC, an Alliant Insurance Services Inc. company
Nancy Bewlay, Axa XL
Sandra Bigglestone, Vermont Department of Financial Regulation
Nina Boone, Aon
Crystal Brown, The Doctor's Co.
Andrea Buhl, Sedgwick
Rebecca Cady, Children's National Medical Center
Ellen Charnley, Marsh Captive Solutions
Laura Coppola, Allianz Global Corporate & Specialty
Nora Deveau, Arch Insurance Group
Lainie Dorneker, Ironshore
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Kathy Kranz, Pinnacol Assurance
Aquanda Lewis, One Call
Deirdre Martin, AIG
Carolyn Polikoff, Woodruff Sawyer & Co.
Risa Ryan, Munich Re America,
Rekha Schipper, Tangram Insurance Services
Sarah Sherman, JLT Specialty USA
Mary Beth Smykowski, Masco
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Jeanette Ward, Texas Mutual Insurance
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COMMENTARY

Insurance industry diving in with tech

Technology really is about to revolutionize the insurance business.

For years, critics and industry insiders alike have lamented the inefficiency of legacy systems, the lack of investment in systems and a general absence of enthusiasm for technology in the insurance industry.

While insurers and brokers have taken advantage of technological innovations to improve underwriting, risk placement and claims, most of the commercial insurance market has largely seen incremental improvements in the use of computing power, and the industry is widely seen as lagging behind other sectors of the economy when it comes to implementing new technology.

But things are changing a lot faster.

The money quote from the recent InsureTech Connect conference in Las Vegas was from the CEO of web-based renters' insurer Lemonade Insurance Co., who predicted that insurance leaders of the future would use bots not brokers and artificial intelligence not actuaries.



Gavin Souter
EDITOR

The assertion came under immediate fire from industry incumbents, and it's easy to see why — while selling and servicing relatively simple personal lines products may be easily automated, it's still hard to imagine complex commercial coverages being placed without human interaction. Negotiating a disputed long-tail casualty claim or building towers of coverage for a large property portfolio are tasks that will require the problem-solving skills

of brokers, insurers, risk managers, coverage lawyers and others for the foreseeable future. Brokers may use bots, and actuaries may take advantage of AI, but the technologies are not yet an existential threat to most functions in the large commercial sector.

But who knows what changes ultimately lie ahead?

There is no doubt that technological developments are already making commercial placements significantly more efficient. For example, blockchain proofs of concept — which could have huge implications for the future — are being successfully implemented; big data applications are being used to predict losses and underwrite new risks; and numerous gadgets, from drones to wearables, are helping reduce injuries or assess claims.

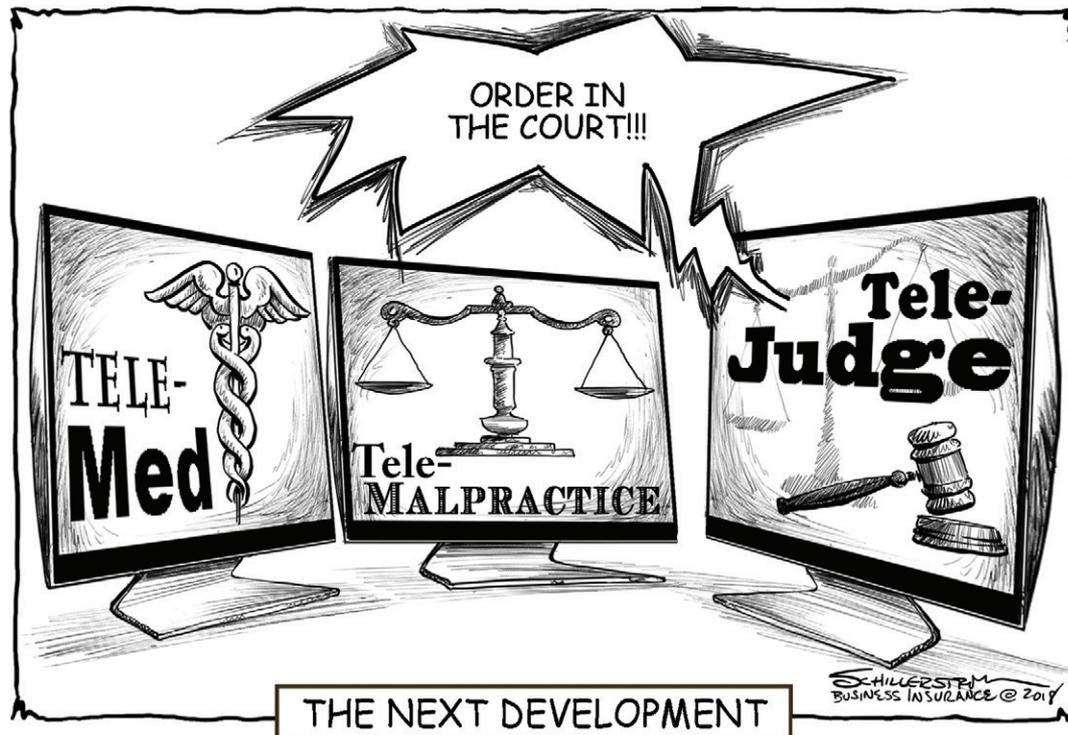
Even Lloyd's of London, the poster child for face-to-face, paper-based insurance negotiations, has digitized its placement process.

The various directions that increased use of technology could take the insurance sector can be seen through the lens of our Innovation Awards winners, which are profiled beginning on page 30. The program does not exclusively focus on technological innovations, but invariably most of the winning entries make use of technology to help create and deliver new solutions to risk managers.

Some of the products and services use technology to bring much-needed efficiencies and improvements to existing processes, and others apply data analytics to risk management processes in ways that have not been implemented before.

While not all the innovations currently taking place in insurance will drive lasting change, it's time to buckle up because — in comparative terms, at least — there's a wild ride ahead.

SCHILLERSTROM



VIEW FROM WASHINGTON

Words, acts leave wounds

The partisan rhetoric in Washington continues to get uglier and uglier, but now it's segued into dangerous territory.

In my September column, I said there would be a contentious fight over the confirmation of now-Supreme Court Associate Justice Brett Kavanaugh. But the nastiness of the rhetorical bombs tossed back and forth surprised even me. Confirmation fights are often described as bruising. This one left more than a bruise. It left deep wounds that are unlikely to heal, especially if the mid-term elections result in a divided government taking over in 2019.

And then they were the actual bombs. As of Oct. 26, 13 devices were intercepted before they could reach their intended targets, which included former presidents Bill Clinton and Barack Obama, as well as other political figures, and media outlet CNN. It can't be ignored that the common thread between the intended targets is that they were intensely critical of President Donald Trump.

It was probably inevitable that such a nasty partisan war of words would escalate into potential physical violence. But it's bad enough that risk managers and everyone else increasingly have to worry about active shooters entering their workplaces or their venues. Apparently now, we also have to worry about bombs being delivered to people's homes alongside their bills and coupons.

"This is utterly unacceptable," Attorney General Jeff Sessions said on Oct. 26 after announcing a suspect had been apprehended. "Political violence or the threat of violence is antithetical to our vigorous system of self government. It is a threat to that respect for law and process that allows our people to accept legislation, elections, court rulings with which they do not agree."

I'm heartened that Mr. Sessions pledged that the administration "would not tolerate such lawlessness, especially not political violence." But it's hard to see a path forward to compromise on anything political when bombs are being mailed all over the country.

I had hoped for compromise after Congress adopted and the president signed on Oct. 24 broad legislation to address the opioids epidemic in America. The legislation had such strong — typically unparalleled in this day and age — bipartisan support. But I think it's clear that bill was a reaction



Gloria Gonzalez
DEPUTY EDITOR

to the drastic impact of a crisis that is killing thousands of Americans every year and will likely be the legislative exception rather than the rule.

But compromise is what is desperately needed. Risk managers need their legislators to compromise, particularly on issues such as the future of the National Flood Insurance Program, which is scheduled to expire on Nov. 30. But here again, partisan disagreements over issues such as how to handle the program's massive debt and how to charge rates that more accurately reflect the actual risk of flooding in local communities continue to challenge the process. It now appears likely that the lame-duck Congress will pass another short-term extension and make the NFIP the next Congress' problem. I just hope future discussions on the issue don't devolve into name-calling and insults, too.

Wounds don't always heal.

Hurricane Michael re-emphasizes focus on concurrent causation in property policies



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Only weeks ago, Florida suffered the full fury of Hurricane Michael, with communities like Mexico Beach and others sustaining prolonged exposure to winds of 155-plus miles per hour and horrific storm surge. But which peril caused the actual destruction? Wind? Storm surge? Both? In many instances, property owners and insurers may never know. So will these losses be covered by “all risks” insurance policies?

Under an “all risks” property policy, all risks of direct physical loss are covered unless specifically excluded. Most standard property policies exclude damage caused by flood, often defined to include “waves” or “tidal water.” Damage resulting from wind, including wind-driven rain, however, typically is covered. Thus, the answer depends on the causation doctrine to be applied and whether the insurer and policyholder can meet their respective burdens of proving these causation issues.

Efficient proximate cause and concurrence cause explained

Under the efficient proximate cause doctrine, if a covered peril and an excluded peril combine to cause a loss, the policy typically only provides coverage if the covered peril was the predominant cause of the loss. Under this approach, the “efficient” or “proximate” cause is the one that sets the others in motion. For example, if a fire causes damage to a building and also causes an explosion that further damages the building, the fire is the efficient cause. If the policy covers fire losses but excludes coverage for damage resulting from an explosion, the policy would nevertheless apply to the loss under an efficient proximate cause approach, because a covered peril (fire) caused an excluded peril (an explosion). If the sequence is reversed, however, and an explosion (a noncovered peril) causes a fire (a covered peril), the policy does not provide coverage.

Where multiple causes contribute to the loss and it cannot be determined which cause is the “efficient proximate cause,” courts often apply the concurrent causation doctrine. Under this doctrine, an all-risks first-party policy will afford coverage when a covered cause of loss contributes in any way to cause property damage — even if an excluded peril is the predominant cause of the loss, and even if the covered peril is only a remote cause of the loss.

In Florida, the efficient proximate cause doctrine applies unless “there is no reasonable way to distinguish the proximate cause of ... property loss” between covered and uncovered perils, according to the ruling in *Sebo v. American Home Assur-*

ance Co. Inc. In other words, if there are two causes of a loss but one does not cause the other, Florida courts will then apply the concurrent causation doctrine in the absence of an anti-concurrent causation provision in the policy, as explained in further detail below. According to the *Sebo* ruling, “there is no reasonable way to distinguish the proximate cause of *Sebo*’s property loss — the rain and construction defects acted in concert to create the destruction of *Sebo*’s home. As such, it would not be feasible to apply the EPC doctrine because no efficient cause can be determined.”

The anti-concurrent cause provision

Most standard policies now include anti-concurrent causation provisions that remove coverage for “loss or damage caused directly or indirectly” by an excluded peril, regardless of whether “any other cause or event contributes concurrently or in any sequence to the loss,” according to ISO Form CP 10 30 10 12. Florida, a Gulf Coast state that frequently suffers losses due to wind, flood, storm surge, or a combination thereof from hurricanes, has upheld the use of ACC provisions.

How to prove the Hurricane Michael causation case

So how does a policyholder prove coverage where it is unclear whether storm surge or wind caused the loss? A Florida intermediate appellate court recently clarified the burdens on the insurer and policyholder in these situations in *Jones v. Federated National Insurance Co.*

First, a policyholder claiming a loss under an all-risks policy must show that the insured property suffered a loss while the policy was in effect. The burden then shifts to the insurer to prove that the damage or loss is excluded from coverage under the policy’s terms and conditions. Thus, the insurer must prove (a) that there was a sole cause of the loss; or (b) “in cases where there was more than one cause, there was an ‘efficient proximate cause’ of the loss,” according to *Jones*. If the insurer establishes (a) or (b), it must then prove that the sole or efficient proximate cause is one that is excluded under the terms of the policy — such as flood, according to the case. If the insurer does so, then there is no coverage for the loss. However, if the insurer establishes that there was a sole or efficient proximate cause, but the insurer fails to prove that this cause was excluded, then the policyholder is entitled to coverage.

Likewise, if the insurer fails to prove

that there was a single or efficient proximate cause, and the policy does not contain ACC language, then the concurrent cause doctrine applies, and the insurer must produce evidence that an excluded peril contributed to the damage. If it cannot do so, then the policyholder prevails, according to the precedent set in *Jones*.

If the insurer does produce such evidence, then the burden shifts back to the policyholder, who must present evidence that a covered risk, such as wind, was a concurrent cause of the loss. “If the insured produces evidence of a covered concurrent cause, the insurer bears the burden of proof to establish that the insured’s purported concurrent cause was either (a) not a concurrent cause (i.e., it had no (or a de minimis) causal role in the loss), or (b) excluded from coverage by the insurance policy,” according to the ruling in *Jones*. Where the insurer fails to demonstrate either, coverage must be provided.

Where multiple causes contribute to the loss and it cannot be determined which cause is the ‘efficient proximate cause,’ courts often apply the concurrent causation doctrine.

Of course, it is entirely likely that insurance companies will be prepared to offer expert opinion on causation. Policyholders should, therefore, be ready to return fire with causation experts of their own, underscoring the importance of assembling a qualified claim team, including knowledgeable coverage counsel, early in the claim process.

Even before the next storm strikes, however, the causation complexities discussed above are a reminder of the importance of reviewing insurance policies every year and understanding how your property insurance stacks up against the rules of causation. Where policies contain ACC provisions, or the applicable law favors the efficient proximate cause over concurrent cause, policyholders may look to negotiate coverage endorsements that narrow the effect of or altogether remove the policy’s ACC provision. Alternatively, policyholders in especially storm-prone areas like Florida may consider the purchase of stand-alone flood insurance. Either way, a little extra precaution before the next storm makes landfall can help mitigate the inevitable physical devastation.

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The *Business Insurance U.S. Insurance Awards* recognize excellence in the commercial insurance and risk management sector while also raising money to address the industry's talent crisis.

CELEBRATING TODAY — U.S. INSURANCE AWARDS

Launched last year, the awards program highlights exceptional work by insurance professionals working at companies across the commercial insurance industry — from retail brokers to TPAs, insurers, reinsurers and more. Recognizing that major achievements are seldom the work of individuals working in isolation, the awards honor teams of professionals working on specific projects.

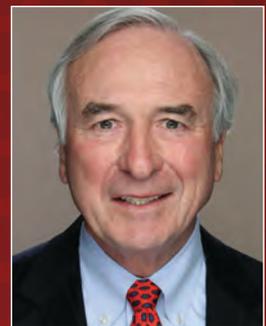
CREATING TOMORROW — BI SCHOLARSHIP ENDOWMENT

Up to 400,000 insurance jobs will be unfilled in the near future as the current workforce ages. The *U.S. Insurance Awards* were created to address the industry's talent crisis by funding the *BI* Scholarship Endowment. This Endowment will open new opportunities to provide scholarships, grants, and programming at universities without risk management degree programs, including HBCUs.

2019 *U.S. Insurance Awards* winners will be announced at the live awards event in New York on March 21. The 2019 Crain Lifetime Achievement Award will be presented and the 2018 Innovation Awards winners will also be recognized at the event.

U.S. INSURANCE AWARD CATEGORIES

- **Broker Team of the Year** (firms with more than \$500 million in U.S. revenue)
- **Broker Team of the Year** (firms with less than \$500 million in U.S. revenue)
- **Community Outreach Project of the Year** (Pro Bono)
- **Community Outreach Project of the Year** (Volunteers and Donations)
- **Diversity & Inclusion Initiative of the Year**
- **Insurance Consulting Team of the Year**
- **Insurance Underwriting Team of the Year** (all property/casualty)
- **Insurance Underwriting Team of the Year** (management liability/professional liability/cyber liability)
- **Insurtech Initiative of the Year**
- **Legal Team of the Year**
- **Managed Care Provider Team of the Year**
- **Reinsurance Team of the Year**
- **Risk Management Team of the Year**
- **TPA Team of the Year**
- **Wholesale Brokerage Team of the Year**



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BUSINESS INSURANCE®

BEST PLACES TO WORK 2018



Best Places program lists leading insurance industry firms

Best Places to Work in Insurance is an annual feature presented by *Business Insurance* and Best Companies Group that ranks the agents, brokers, insurers and other providers with the highest levels of employee engagement and satisfaction.

The 2018 report features 75 companies of various sizes, from 26 employees to more than 4,400. What these honorees have in common is a commitment to attracting, developing and retaining great talent through a combination of benefits and other programs that their employees value.

Harrisburg, Pennsylvania-based Best Companies Group identifies the leading

employers in the insurance industry by conducting a free two-part assessment of each company. Through an employer questionnaire on policies, practices and demographics and a confidential employee survey, Best Companies Group assembles the data points and analyzes them according to eight core focus areas:

- Leadership and planning
- Corporate culture and communications
- Role satisfaction
- Work environment
- Relationship with supervisor
- Training, development and resources
- Pay and benefits
- Overall engagement

The program divides employers into the categories of small, or those with 25-249 employees; medium, for organizations with 250-999 employees; and large, those with 1,000 or more employees.

The 2018 overall winners, by employer size, are:

Small: **SIG (Silberstein Insurance Group)**

Medium: **Assurance Agency Ltd.**

Large: **Lockton Companies**

The following special feature report highlights what makes these and other companies in the insurance industry among the best places to work.



Lockton Companies



Assurance Agency Ltd.



SIG



LARGE EMPLOYER CATEGORY (1,000+ U.S. Employees)			
Rank	Company	U.S. Employees	
1	Lockton Companies	4429	
2	West Bend Mutual Insurance Company	1262	
3	AF Group	1229	
4	Philadelphia Insurance Companies	1966	
5	Shelter Insurance Companies	1911	
6	CBIZ Benefits & Insurance Services, Inc.	1498	
7	NFP Corp	3129	

MEDIUM EMPLOYER CATEGORY (250-999 U.S. Employees)			
Rank	Company	U.S. Employees	
1	Assurance	494	
2	Athens Administrators	299	
3	FCCI Insurance Group	820	
4	Brown & Riding	254	
5	Hylant	698	
6	Holmes Murphy	814	
7	Propel Insurance	343	
8	Discovery Benefits	795	
9	TMNA Services, LLC	412	
10	Amerisure	733	
11	The Navigators Group, Inc.	564	
12	Paychex Insurance Agency	921	
13	PayneWest Insurance	742	
14	Tokio Marine America	365	
15	Risk Strategies	973	
16	AMERISAFE	439	

SMALL EMPLOYER CATEGORY (25-249 U.S. Employees)					
Rank	Company	U.S. Employees	Rank	Company	U.S. Employees
1	SIG	56	27	The Nitsche Group	119
2	Origami Risk	188	28	Gunn-Mowery, LLC	67
3	Pritchard & Jerden, Inc.	97	29	MarketScout	59
4	Cavnigac & Associates Insurance Brokers	53	30	Odell Studner Group	55
5	Lovitt & Touché	186	31	Venture Pacific Insurance Services, Inc.	34
6	Employee Benefit Services of Maryland, Inc.	28	32	Fred C. Church Insurance	152
7	Burnham Benefits Insurance Services	81	33	LUBA Casualty Insurance Company	88
8	HNI Risk Services	140	34	QEO Insurance Group	75
9	Reliance Partners	88	35	Berkley Luxury Group	56
10	Captive Resources, LLC	194	36	Cambridge Consulting Group	61
11	Deeley Insurance Group	65	37	American Integrity Insurance	208
12	Virtus, LLC	26	38	Acclamation Insurance Management Services, Inc.	185
13	ECBM Insurance Brokers and Consultants	72	39	Avalon Risk Management Insurance Agency LLC	126
14	Baldwin Krystyn Sherman Partners	172	40	WH Greene & Associates	42
15	SET SEG	80	41	VGM Insurance Services	69
16	Rogers & Gray Insurance	153	42	AHT Insurance	208
17	Lipscomb & Pitts Insurance	124	43	Hoffman Brown Company	51
18	Apex Benefits	56	44	AssuredPartners Inc.	93
19	Ironwood Insurance Services and Employee Benefits Services	78	45	IPMG	119
20	The Ashley Group	28	46	Wallace Welch & Willingham Inc.	102
21	Alternative Service Concepts	127	47	World Insurance Associates LLC	163
22	White & Associates Insurance	86	48	TRICOR Insurance	210
23	Kapnick Insurance Group	154	49	McConkey Insurance & Benefits	91
24	The Insurance Exchange, Inc.	43	50	Associated Insurance Management, LLC	172
25	The Partners Group Ltd	152	51	TexCap Insurance	39
26	MGIS	62	52	Networked Insurance Agents, LLC	108

BEST PLACES TO WORK 2018



Large employer (1,000+ employees)

Lockton Companies

During every year of the past decade, Lockton Companies has been an honoree in Best Places to Work in Insurance. The Kansas City, Missouri-based international retail insurance brokerage, which has 4,429 U.S. associates and more than 6,500 globally, earns consistent praise from associates for its culture of supporting clients, associates and communities. Among the things that associates value

most about Lockton are: an entrepreneurial culture and organizational structure that enable associates to grow and focus on serving clients; Lockton Cares, a program that provides support to associates in times of need; and a focus on making associate lifecycle, known as LocktonLife, the best it can be.

West Bend Mutual Insurance Company earned second place in the large

employer category in the 2018 Best Places to Work in Insurance. The West Bend, Wisconsin-based property/casualty insurer has 1,262 employees and has ranked in the top three in the large-employer category for three straight years.

Lansing, Michigan-based **AF Group**, a repeat honoree, took third-place honors in the 2018 Best Places to Work in Insurance. Among

the things that AF Group's 1,229 employees like most are exceptional benefits for medical, dental and vision care and paid time off; a positive

workplace culture that fosters inclusion and innovation; and leadership that inspires collaboration and celebrates innovation.



Lockton Associates take a break from Lockton's 2018 Commercial Insurance Department Forum in Las Vegas to hike and network with carrier partners.

1

Lockton Companies

2

West Bend Mutual Insurance Company

3

AF Group

Medium employer (250-999 employees)

Assurance Agency Ltd.

For six straight years, Schaumburg, Illinois-based Assurance Agency Ltd. has earned top honors in the Best Places to Work in Insurance as a medium size employer. The retail broker provides a broad range of business and personal insurance products, employee and executive benefits, surety bond placement, safety consulting, claims advocacy and wellness programs. Assurance's 494 employees rate the firm highly for its branded perks program, commitment to improving the world through

one generous act at a time and its employee appreciation events. The Assurance culture is marked by flexible work and play. Its Shared Success program provides bonuses for achieving companywide financial and cultural goals.

Second place in the medium size employer category in the 2018 Best Places to Work in Insurance went to **Athens Administrators**, a Concord, California-based third-party administration firm. Athens' 299 employees especially like the TPA's family culture, professional development



Assurance teammate Maggie Kowal dominates the annual Assurance Olympics.



Assurance teammate Liz Smith and her daughter prepare for the firm's superhero 5K.

programs and flexible work environment.

Third in the medium size category was **FCCI Insurance Group**, a Sarasota, Florida-

based property/casualty insurance company that ranked as the top insurance company/provider (see profile, page 3).

1

Assurance Agency Ltd.

2

Athens Administrators

3

FCCI Insurance Group

Small employer (25-249 employees)

SIG (Silberstein Insurance Group) earned top honors in this category of Best Places to Work in Insurance (see profile, page 3). Runner-up in

the small-employer category was **Origami Risk**, a Chicago-based software provider for the risk and insurance industry with 188 employees.

In third place was **Pritchard & Jerden Inc.**, an Atlanta-based insurance and risk management brokerage with 97 employees.

1

SIG

2

Origami Risk

3

Pritchard & Jerden, Inc.



Employees at SIG take a break to make Shamrock Shake Smoothies.

BEST PLACES TO WORK 2018



Insurers/Providers

FCCI Insurance Group

Sarasota, Florida-based FCCI Insurance Group ranks as the No. 1 insurance company/provider in the 2018 Best Places to Work in Insurance. FCCI is a commercial property and casualty insurer that also offers risk control services. Founded in 1959, FCCI distributes its products exclusively through independent agents in 19 states and the District of Columbia. The company has more than 820 employees, which it calls teammates, serving agents and policyholders in business lines including property, general liability, inland marine, surety and workers compensation. Among the traits that FCCI's teammates value most are: shared profits, career development programs and paid time for volunteering.



FCCI's Atlanta team raised more than \$6,000 in the Cystic Fibrosis Foundation Walk.

BEST PLACES TO WORK IN INSURANCE 2018: INSURERS/PROVIDERS		
Rank	Company	U.S. Employees
1	FCCI Insurance Group	820
2	West Bend Mutual Insurance Company	1262
3	AF Group	1229
4	LUBA Casualty Insurance Company	88
5	Berkley Luxury Group	56
6	Amerisure	733
7	Philadelphia Insurance Companies	1966
8	The Navigators Group, Inc.	564
9	Shelter Insurance Companies	1911
10	American Integrity Insurance	208
11	Tokio Marine America	365
12	Associated Insurance Management, LLC	172
13	AMERISAFE	439

Agents/Brokers

BEST PLACES TO WORK IN INSURANCE 2018: AGENTS/BROKERS					
Rank	Company	U.S. Employees	Rank	Company	U.S. Employees
1	SIG	56	30	Gunn-Mowery, LLC	67
2	Pritchard & Jerden, Inc.	97	31	Hylant	698
3	Cavnignac & Associates Insurance Brokers	53	32	MarketScout	59
4	Lovitt & Touché	186	33	Odell Studner Group	55
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27	The Partners Group Ltd	152	56	McConkey Insurance & Benefits	91
28	MGIS	62	57	TexCap Insurance	39
29	The Nitsche Group	119	58	Networked Insurance Agents, LLC	108
			59	Risk Strategies	973

SIG (Silberstein Insurance Group)

For the fourth straight year, Silberstein Insurance Group has been honored among the Best Places to Work in Insurance. Baltimore, Maryland-based SIG has been ranked for three consecutive years as the top-ranked small employer overall as well as the top employer among agents and brokers in the Best Places to Work program. 2018 marks the ninth year that the employee benefits firm has made the

list. Founded in 1999, SIG embraces a Results-Only Work Environment, which features flexible scheduling. Among the things that its 56 U.S. employees value about SIG are: community service days, workout classes and social events, such as Orioles games and a crab feast. As one employee put it, "SIG isn't just a company, we're a tight-knit family. We all care about each other's successes, happiness, health, goals and values."



During SIG's Day of Service in 2017, employees volunteered at First Fruits Farm, a Maryland non-profit that provides food to the hungry in the Mid-Atlantic region.

BEST PLACES TO WORK 2018

How insurance firms attract talent

What does it take to join the list of the Best Places to Work in Insurance? A number of attributes set apart the companies on it this year.

Perks such as employee appreciation, onsite fitness facilities, social outings and other programs can contribute to team building. Longer-term, however, a larger impact comes from an employer's focus on building a culture around employee engagement and satisfaction.

As one 2018 honoree explains, it tries to stay true to "one simple philosophy: Happy Employees = Happy Clients. We know that if we put our employees first, they'll put our clients first."

Another honoree notes that the company isn't just in the insurance industry but "also is a talent organization that depends on the skills, enthusiasm, and creativity of the people who work here. We place a priority on finding people who can best serve customers and providing them with the culture, tools and support they need to be successful."

Best Companies Group analyzes the responses to confidential employee surveys in eight core areas. These areas show where significant differences exist between the

best employers and those that did not make the 2018 list:

Leadership and planning. This area includes understanding of the company's strategy, confidence in leadership, adequate planning and follow-through and care about employees' well-being. For all companies on the 2018 list, the number of positive responses in this area averaged 89%, vs. 75% for companies that failed to make the list.

Corporate culture and communications. Components of this area include clear and frequent communication, trust, a spirit of cooperation, a feeling that employees are valued and a culture of diversity. Positive responses averaged 88% for companies on the list, and 76% for other companies.

Role satisfaction. This area looks at how employees like the work they do, their ability to balance work and life, and whether they feel valued and part of a team. Positive responses averaged 91% for the top employers, vs. 86% for others.

Work environment. Positive responses about physical working conditions, comfort and safety averaged 91% for the top employers and 85% for others.



Origami Risk team members attend the company's 2018 Annual Colleague Conference in San Diego.

Relationship with supervisor. Fairness, respect, trust and feedback are elements of this area. For the Best Places to Work, positive responses averaged 91%, vs. 84% for other employers.

Training, development and resources. Initial and ongoing training, adequate and dependable equipment, room to advance and promotions for good work are among the components of this area. Positive responses for the top employers averaged 84%, vs. 72% for others.

Pay and benefits. Fair compensation and satisfaction

with benefits such as paid vacation, health care, dental and retirement plans are among the components of this area. For the Best Places to Work in Insurance, positive responses averaged 87%, and 75% for other employers.

Overall engagement. This area includes employees' overall satisfaction with the

employer, a sense of pride in working there, willingness to give extra effort, willingness to recommend the employer's products or services, and recommend working there to others. Positive responses here averaged 92% for the Best Places to Work in Insurance, and 82% for employers not on the list.

HOW TO GET IN

To participate in the Best Places to Work program, an organization must:

- Be a for-profit or non-profit business
- Be publicly or privately held
- Have a facility in the United States
- Employ at least 25 people in the United States
- Be in business for at least 1 year

Eligible insurance organizations are: retail agents/brokers, wholesale brokers/managing general agents, reinsurance intermediaries, claims services companies, benefit brokers and consultants, property/casualty insurers, group life/health insurers, and reinsurers. Non-profit insurance associations or service organizations aligned with the commercial insurance industry also are eligible.

For more information or to participate in the 2019 program, please visit www.bestplacestoworkins.com.



Top employers encourage fun. Origami Risk's "Pool Noodles" Team is just one example.



“Insurers need to drive greater claims efficiency and outcomes while at the same time creating the best customer and employee experience possible ... the insurer must improve customer engagement.”

UP CLOSE

Jamie Yoder

NEW JOB TITLE: Chicago-based president of Screenshot Inc.

PREVIOUS POSITION: Chicago-based insurance advisory leader for PricewaterhouseCoopers LLP

OUTLOOK FOR THE INDUSTRY: The insurance industry is facing a complex situation. There is intense pressure given excess capital and softening prices globally, combined with disruptive changes from social, technological, economic, environmental and political trends that affect not only insurers but all our customers’ industries. As such, the world isn’t getting less risky, but the opportunities to help our customers may be greater than ever.

GOALS FOR YOUR NEW POSITION: Screenshot is differentiated through the power of new technology married with a world-class services organization to prove what is possible and lead the way in creating this future, starting with the most critical moment for insurers and their customers — the claims process. So, my specific goals are to work with insurers to accelerate the change within their own organizations to make the insurance process simple for everyone.

CHALLENGES FACING THE INDUSTRY: One of the biggest challenges and opportunities facing the industry is the most critical moment — the claim. Insurers need to drive greater claims efficiency and outcomes while at the same time creating the best customer and employee experience possible. When you look closer at this moment, the insurer must improve customer engagement, better understand and anticipate the customers’ needs, and more effectively deliver solutions tailored to these needs — and do it all while aggressively reducing the expense structure.

FIRST EXPERIENCE: My first experience in the insurance industry was applying information and analytics to improve executive decision-making across all functions of insurance. Almost 30 years later, this area is still a big part of my work.

ADVICE FOR A NEWCOMER: Drop any preconceived notions of what insurance may be. Immerse yourself within all parts of the industry, learn about the full spectrum of risks we address and the changes in the customer industries that are generating these risks, learn about the decision-making process, from management to the edge of the organization, and how new sources of information and engagement are reshaping our understanding and responses, learn about both the underwriting and claims process.

DREAM JOB: I would make every day an adventure and launch my own experience travel company — always looking for the next place or a fresh experience in the same place.

LOOKING FORWARD TO IN YOUR NEW JOB: I’ve been consulting for years on how tech and data can change the insurance industry. Now, I am a part of the best claims insurtechs out there that is driving that change. Screenshot is a true innovator — they have reimaged and delivered a customer-first claims process, and I am proud to be a part of it.

COLLEGE MAJOR: Computer science, with minors in math and business

FAVORITE MEAL: Sushi

FAVORITE BOOK: “A Prayer for Owen Meany” by John Irving; “Blindness” by Jose Saramago

HOBBIES: Whatever my kids are doing

ON A SATURDAY AFTERNOON: Whatever sport my kids are into at the time: softball/baseball, basketball, sailing, skiing. Bike and read when on my own.



Marsh LLC named two executives to newly created positions within Marsh Captive Solutions. **Julie Boucher**, currently Americas practice leader for the unit, will lead Marsh’s Bermuda,

Cayman and Barbados captive offices as Islands practice leader, effective Jan. 1. She will be based in Bermuda. **Chris Varin**, currently Vermont office head for the unit, will become U.S. practice leader Jan. 1. He will remain in Burlington, Vermont.



Zurich North America named **Valerie Butt** head of casualty for its commercial insurance business. She succeeds Brandon Fick, who was named chief underwriting officer. Previously, she was global head of customer, distribution and market management for commercial insurance. She is based in Chicago.



Tony Goland, Aon PLC’s chief human resources officer, has been named to the newly created post of chief innovation officer and will be responsible for organizing the brokerage’s New Ventures Group. He is based in Chicago.



Willis Towers Watson PLC named **Kelly Kinzer** head of construction broking in its corporate risk and broking segment, replacing Karen Reutter, who was hired by Zurich North America. Ms. Kinzer

previously was construction specialties broking leader. She is based in Minneapolis.



AssuredPartners Inc. named **Jon Downey** president of its aviation unit, AssuredPartners Aerospace LLC. He most recently worked at AirSouth Insurance Inc. and previously headed

Allianz Global Corporate & Specialty SE’s U.S. aviation business. He is based in Denver.



Chubb Ltd. named **Judy Gonsalves** vice president of Chubb Group and division president of Bermuda, succeeding Joseph Clabby, who was named chairman of Chubb

Bermuda. Previously, she was executive vice president and chief underwriting officer of Chubb Bermuda. She is based in Bermuda.

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.



OK if insurers keep a close eye on you?

Making controversial news is John Hancock Insurance Co.'s proposal to lower life insurance rates for people who choose to wear a fitness tracker.

Meanwhile, 8% of Americans would be OK with their insurer installing video cameras in their homes, according to the results of an online survey conducted by the student-loan firm LendEDU from August 2017 to August 2018 that interviewed 1,000 people.

The survey results, released this fall, aimed to highlight a growing concern with insurers accessing private information and data on risk before issuing policies.

In total, 72% of respondents were against insurers accessing private data. But for a small group, if access comes with a cheaper premium, then so be it. In addition to 8% being OK with video recordings of daily life, 11% would allow a biometric device to be installed in their body, and 18% say they would permit access to DNA.

Part-time gigs go uncovered

Only 12% of Americans with side businesses have purchased insurance for their part-time enterprises, according to survey results released by Hartford Financial Services Group Inc.

The insurer surveyed 4,135 Americans in May, finding that 25% of them own small businesses outside of full-time employment or retirement. The reason: 88% of them feel insurance is optional.

Forty-four percent said they don't think they need it, according to the survey results.

Stephanie Bush, Hartford's head of small commercial and personal lines, said the "results highlight the need to ensure that small business owners have access

to resources to understand when insurance protection makes economic sense."



Comp costs snuff out drill team competition for village fire crew



Copenhagen, New York, is now the little village that couldn't keep its 80-year-old firefighting competition team after high workers compensation costs weighed the program down, according to a report earlier this fall by WWNJ-TV.

The Firefighting Drill Association of New York said fire competitions "are geared toward honing basic firefighting proficiencies, developing and fostering teamwork, character-building, commitment, discipline, physical fitness and conditioning."

Yet the Copenhagen's board of trustees classified them as too expensive.

"It's an unfortunate day; we knew it was coming at some point," Trustee Mark Souva said, according to the media report. "The burden on the taxpayers was getting too great."

In just the past year, two drill team members had gotten hurt, and the fire department has a total of three workers compensation claims, all stemming from drill team injuries, according to the report.

Hey, dude, put down your phone

Fifty-nine percent of Canadian millennials have asked a driver to stop using their mobile device while being a passenger in their car, according to survey results released by The Travelers Institute.

The Washington-based public policy division of Travelers Cos.

Inc. surveyed 948 Canadian drivers ages 18 and older and found that younger people are leading the charge against distracted driving, according to a statement.

The survey found 42% said they have asked a driver to stop using their mobile device. Millennials, ages 18 to 34, were the top protesters, scoring 18-plus percentage points ahead of other age groups; 41% of respondents between the ages of 35 and 44 and 45% of respondents ages 45 to 54 said they have protested.



Lost dogs claim top insurance prize

German Shepherds Ziva and Zeus went missing for 21 days and were found frolicking inside an abandoned missile silo, earning the pooches the 10th annual Hambone Award, which honors the most unusual pet insurance claim of the year.

Pet insurer Nationwide Insurance Co. last month announced its 12 nominees for 2018, the award itself named in honor of a Nationwide-insured dog who got stuck in a refrigerator and ate an entire Thanksgiving ham, according to a statement.

Other top contenders for the 2018 award included Blitzen, a dachshund who went on a "foodie" adventure, chewing a hole through the kitchen wall; Dottie, an Irish setter who had an electrifying fall into a heated pond that shocked both her and her owner; and Cheddar, a Labrador mix who ended up under a falling chandelier "when a birthday brunch got smoky," according to the list.



- Don't forget Puerto Rico -



It was love at first sight. Fourteen years ago, while on the beach in Aguadilla, Puerto Rico, there was Luna, a very special soul in the midst of hundreds of “discarded” dogs. I brought her home to NYC and Luna became an instant member of our family. After a long life providing immeasurable love, joy and happiness, Luna went peacefully on August 25, 2018.

After Hurricane Maria, the Puerto Rican stray dog population has increased to unprecedented levels. The Sato Project rescues and rehabilitates dogs, and places them with families on the U.S. mainland. They also address the underlying issues through community outreach and spay/neuter and vaccination programs.

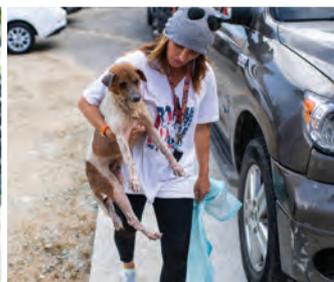


To honor Luna’s memory and to assist the tens of thousands of abandoned dogs in Puerto Rico, we have established the Luna Fund. Our goal is to raise \$100,000 to support the efforts of The Sato Project. To help achieve this goal, we are matching all donations up to \$50,000 received from our family, friends, colleagues and anyone that generously contributes to this significant effort.

— Adam Potter, CEO, *Business Insurance*

DONATE TO *Luna's Fund* | www.thesatoproject.org/luna

Help us help the abandoned dogs of Puerto Rico.



64,144 square-foot plot to dewater.

17 steel workers welding beams.

5 forklifts transporting materials.

1 future state-of-the-art office complex.



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