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SPECIAL ISSUE 2023

## FRENZIED POLITICS HEIGHTENS RISKS

Political consultants face  
tough market amid divisions

PAGE 8

## CONSTRUCTION SAFETY EVOLVES

Technology tools abound,  
but uptake remains limited

PAGE 11

## CANNABIS MARKET ATTRACTS INSURERS

More underwriters offer  
capacity as rates rise

PAGE 12

## E-COMMERCE RISKS MULTIPLY

Potential liabilities stack up  
as retailers sell more products online,  
but legal landscape remains unclear

PAGE 4

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**Gavin Souter**  
EDITOR

# Technology transforms risks

Changes in the way business is conducted inevitably lead to developments in risk management and insurance. In the past few decades, the prime mover behind most of the changes has been technology, in particular the internet, and insurers and risk managers have had to respond to the evolving environment with new products and different approaches.

The retail sector has been disrupted as much as any traditional business by the introduction of online sales. Many stores and brands have had to adapt to e-commerce or face extinction, while new entrants — large and small — take an increasing share of existing markets and develop new ones.

But as we report on page 4, in the story leading this annual issue of *Business Insurance* looking at specialty and emerg-

ing risks, the product liability landscape for e-commerce is complex. With so many organizations from around the world involved in delivering goods to customers' doors, companies throughout the supply chain could potentially be on the hook for claims, and courts have yet to reach a consensus on who's to blame when things go wrong.

Technology is also changing the workplace. Even jobs that still rely heavily on physical exertion, such as many in the construction industry, are being overhauled as a result of technological developments, including new tools aimed at improving safety. Their introduction, though, is sometimes hitting hurdles as buyers look for proof that the sometimes substantial costs are justified.

But it's not just high tech that is leading to changes in the way risks are viewed and handled; politics also plays a role. Whether it's the increased risks of navigating such a highly charged political environment or contradictory laws leaving questions over how to conduct business in sectors such as cannabis, managing such volatile risks remains a challenge.

INSIDE

## E-COMMERCE

As online sales continue to rise, product liability risks are expected to increase. **PAGE 4**

## CAMPAIGN COVERAGE

The increasing polarization of politics in the United States means greater liability risks for consultants. **PAGE 8**

## CONSTRUCTION

Safety-monitoring devices hold much promise, but many contractors are wary of the costs. **PAGE 11**

## CANNABIS COVERAGE

Commercial insurance for cannabis operators is finally becoming easier to access. **PAGE 12**

## AUCTION LIABILITY

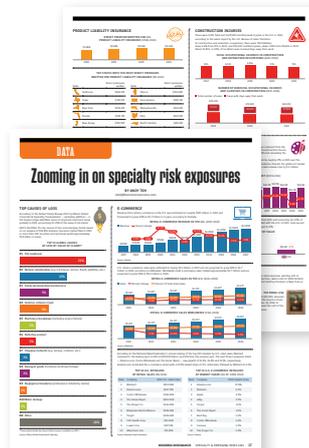
Art auction houses have avoided the hardening of rates that other businesses have seen in recent years. **PAGE 15**

## NEWS ANALYSIS

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COVERAGE, VISIT  
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## DATA SPREAD

A roundup of specialty risks data, including the largest product liability insurers ranked by direct premiums written and the top identified causes of corporate insurance losses globally. **PAGES 17-18**



# E-COMMERCE



# Surge in online sales presents cart full of liability questions

BY JUDY GREENWALD

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**A**s e-commerce sales continue to soar, questions are arising as to whether the manufacturer, seller or online platform — or some combination of the three — is responsible when a product sold causes harm or damage.

The answers may hinge on numerous factors, experts say.

These include the particular product being sold, the manufacturer's size and location, its associated risks, the state where litigation is filed and — not least — the most easily accessible deepest pocket.

Product liability risks are expected to increase in light of e-commerce's flourishing growth, according to experts, who say coverage is available in both the admitted and excess surplus lines markets.

Meanwhile, court rulings so far have been a mixed bag (see related story).

Retail e-commerce's estimated percentage of total retail sales increased incrementally from 5.6% in the first quarter of 2013 to 14.8% in 2022's third quarter, when they totaled \$265.9 billion, adjusted for seasonal variation, according to U.S. Census Bureau data.

Justin Cardullo, Atlanta-based vice president and general liability head for Hiscox USA, said, "The downturn in shopping malls and kind of that rush to online shopping had a tailwind through the pandemic, where some people that may have been more reluctant to do their shopping online before the pandemic" became more comfortable doing it "really out of necessity."

Hiscox focuses its e-commerce business on retailers that have between \$1,000 and \$5 million in gross sales, with many in the \$10,000 to \$100,000 range of annual sales, he said.

Most e-commerce websites contractually require sellers to provide additional insureds/hold harmless provisions and "have some form of checking to make sure people's policies are in place," said Steven Bartell, Chicago-based senior broker, casualty, with Burns & Wilcox Ltd.

For example, Amazon.com requires sellers with a "Pro Merchant" account and gross sales of at least \$10,000 a month for three consecutive months to obtain \$1 million in liability coverage per occurrence and in the aggregate, according to Next Insurance Inc., a Palo Alto, California-based insurtech.

The policy must include coverage for products liability, products/complete operations, bodily injury, personal injury, broad form property damage and broad form contractual coverage, and name Amazon and its assignees as additional insureds. On-line platforms including Amazon had no comment or did not respond to requests for comment for this story.

E-commerce-related claims fall into broad categories of property damage from defective products that cause water or fire damage, and injuries to either people or

pets, said Chris Rhodes, chief information officer for Next Insurance, which focuses on small businesses.

As online sales rise, more e-commerce-related lawsuits are being filed, experts say. Yet there is no consensus so far as to who is ultimately responsible for product liability.

"There's potential liability for all parties involved in the chain of commerce, and there's a sort of split of authority among the various jurisdictions" as to whether companies such as Amazon or eBay can be held liable, said Jaime L. Regan, a member of Harris Beach LLP in New York.

*"Online parties are going to be the easiest target, and courts must sort out if the platform is fairly responsible in this situation."*

Jared R. Friedmann, a partner with Weil Gotshal & Manges LLP

One issue may be the entity's association with the product. If the warehouse from which the product is sold is just acting as a sales venue for the manufacturer, plaintiffs will "just go up the line to the last persons who touched it," said Chris Pennock, Windsor, California-based senior vice president and owner of broker Calender Robinson Co.

Another factor is where the seller is

See **E-COMMERCE** next page

## RETAIL E-COMMERCE SALES

ESTIMATED QUARTERLY U.S. RETAIL E-COMMERCE SALES AS A PERCENT OF TOTAL QUARTERLY RETAIL SALES Q1 2013 - Q3 2022



Source: U.S. Department of Commerce

# E-COMMERCE

Continued from previous page

located, say experts, who often point to the challenge of tracking down Chinese companies.

This reflects the global market's nature, with buyers forced to go overseas to obtain products from companies that may not have significant assets or a U.S. presence, said Sam Terzich, executive vice president of Rolling Meadows, Illinois-based Gallagher Basset Specialty.

It can also be a challenge to access detailed information about the products' manufacture and the supplier's safety standards, Mr. Rhodes said.

Mr. Bartell said of U.S. companies that import from China, "ultimately, insurance carriers view you as the actual manufacturer because there's going to be very limited recourse to go back and subrogate against a Chinese company."

There have been cases where plaintiffs have won rulings against foreign entities but nobody can find them "so they're basically just holding a vacant judgment," Ms. Regan said.

Experts say this means the easily-identified and located online platforms are often considered the deep pocket.

"Online parties are going to be the easiest target, and courts must sort out if the platform is fairly responsible in this situation," said Jared R. Friedmann, a partner with Weil Gotshal & Manges LLP in New York. This means determining if the platform played an active role in the product's design, manufacture or distribution or

is only providing a service to a third party, he said.

"The litigation battle has been over the question of whether platforms are, in fact, sellers," said Eric Goldman, a professor at Santa Clara University School of Law in Santa Clara, California.

Most states operate under some kind of strict product liability regime for personal injury claims where "everyone in the chain of distribution is equally responsible" for the injured party, said Thomas P. Kurland, a partner with Paterson, Belknap Webb & Tyler LLP in New York.

*"My guess would be that we're going to see courts looking to protect the public and in doing so holding online retailers to a higher standard in the future."*

Patrick Carroll,  
Aon PLC

"The idea behind that is, the injured purchaser doesn't have to figure out who to see or worry about jurisdictions or any of these sorts of legal technicalities," Mr. Kurland said. Instead, it is left to the parties to allocate the issue of liability among themselves, he said.

Resolution depends on an analysis of each state's particular consumer protection laws, Mr. Friedmann said.

Before 2019, courts consistently held that online retailers were not strictly

liable, but case law in California, New Jersey, New York and Pennsylvania suggests there has been a "sea change, so to speak, in how certain venues treat these online retailers," said Patrick Carroll, Kings Park, New York-based director, U.S. casualty claims consulting, for Aon PLC. "I still think it depends on the venue," he said.

"My guess would be that we're going to see courts looking to protect the public and in doing so holding online retailers to a higher standard in the future," he said.

Jeremy K. Robinson, a partner with plaintiffs law firm Casey Gerry Schenk Francavilla Blatt & Penfield LLP in San Diego, noted, "There are still several states where Amazon can't be held strictly liable because of statutes enacted long before the online marketplaces existed. ... I see that changing."

Experts say e-commerce risks are insured by a wide variety of admitted and surplus lines insurers.

"There's no shortage of insurers" but which is used depends on factors including the product and the seller's size, said Gary Grindle, Farmington, Connecticut-based executive vice president with Amwins Insurance Brokerage LLC.

Rates, terms and conditions, and capacity varies, according to Mr. Cardullo of Hiscox, with the market slightly tougher for manufacturers and online platforms because of their complexity.

Hiscox is among the participants in Amazon Insurance Accelerator, a digital insurance network in which Marsh LLC is collaborating, through which small businesses can obtain product liability coverage.



## COURTS SPLIT ON RETAILER LIABILITY

Courts disagree whether e-commerce websites may be held liable in product liability cases, many of which have involved Amazon.com.

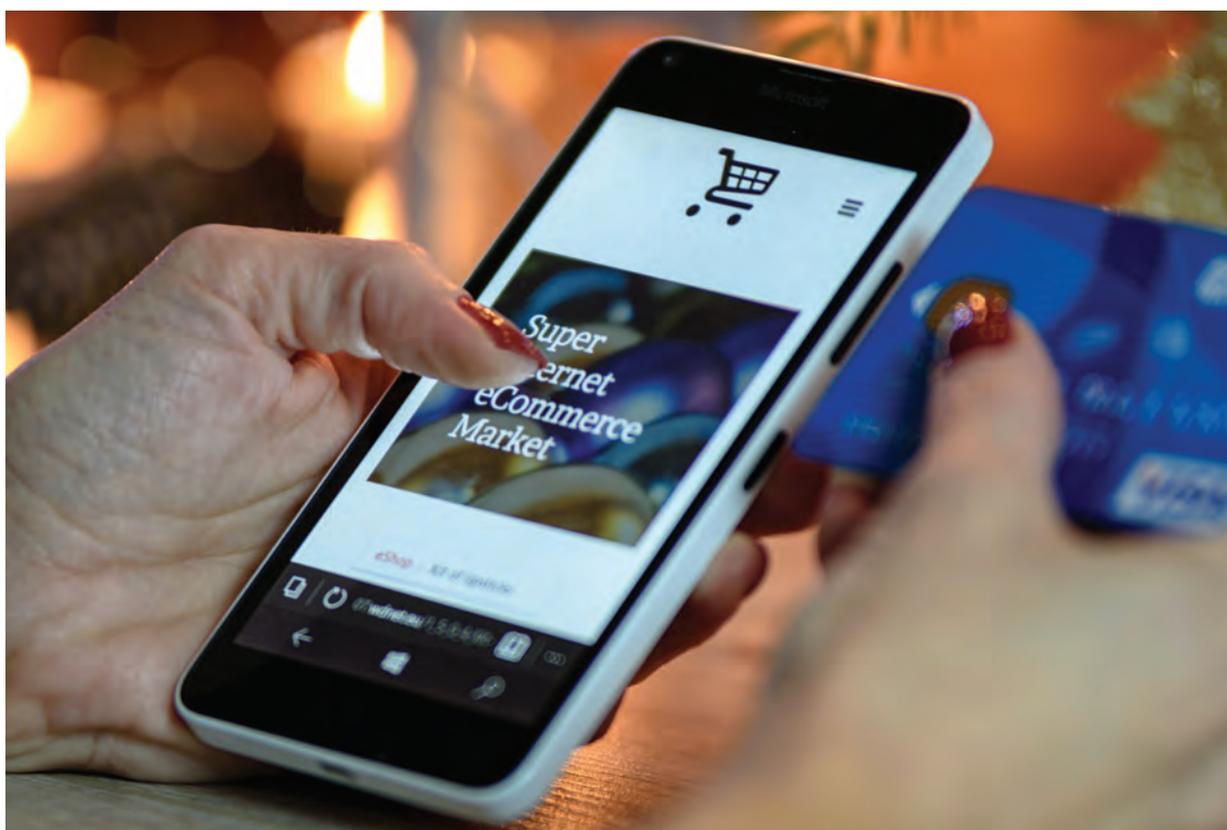
Cases in which the decisions have gone against online platforms include:

- *Kisha Loomis v. Amazon.com LLC*, April 26, 2021, in which a California state appeals court overturned a lower court and held that the state's strict products liability law applied to Amazon in a case in which a hoverboard purchased through Amazon caught fire while it was being recharged and injured the plaintiff.
- *State Farm Fire & Casualty Co. v. Amazon.com Services Inc.*, Dec. 8, 2020, in which the New York Supreme Court in Syracuse, a trial court, held, in a case where a Chinese-made wireless thermostat controller caused a fire, that under New York law Amazon exercised sufficient control over the product to be considered among "retailers and distributors" and denied its motion for summary judgment.
- *Oberdorf v. Amazon Inc.*, July 3, 2019, in which the 3rd U.S. Circuit Court of Appeals in Philadelphia held that Amazon was a seller under Pennsylvania's strict products liability law, allowing litigation to proceed in a case involving a defective retractable dog leash that recoiled, resulting in the plaintiff's permanent blindness in one eye.

Cases with rulings in favor of online retailers include:

- *Berkley Regional Insurance Co. v. John Doe Battery Manufacturer et al.*, Jan. 24, 2023, in which the U.S. District Court in St. Paul ruled that under Minnesota law Amazon was not liable for more than \$3 million in fire damage allegedly caused by a cellphone battery it sold on behalf of a Chinese company.
- *Great Northern Insurance Co. v. Amazon.com Inc.*, March 9, 2021, in which the U.S. District Court in Chicago, in a hoverboard fire-related case filed by a homeowner's insurer, agreed with Amazon that it could not be considered a seller under Illinois law.
- *State Farm Fire & Casualty Co. v. Amazon.com*, Nov. 17, 2019, another case involving a hoverboard that ignited, in which the 9th U.S. Circuit Court of Appeals in San Francisco upheld a lower-court decision against the homeowner's insurer and ruled Amazon could not be held liable under Arizona's strict liability laws.

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## Political fervor heightens risks for consultants

BY CLAIRE WILKINSON

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Political consultants and organizations involved with campaigns and voting are facing rising liability risks as elections become more contentious in an increasingly polarized political landscape.

The more litigious environment has been spurred in part by the rise in organizations advocating for political causes and by the spread of false information on social media, experts say.

Campaigns or committees are proliferating, with organizations seeming to exist for a huge number of political sectors and topics, said Lisa Rodriguez, Seattle-based senior vice president, executive liability broker, at Brown & Riding Insurance Services Inc.

“There are so many things going on right now in the world. There are advocacy groups that are for just about everything,” Ms. Rodriguez said.

Underwriters tend to treat political organizations as higher risk than other nonprofits such as a Rotary Club or foundation because the losses and payouts can be higher due to the sensitive nature of the risk, she said. “It’s always been a tougher class,” she said.

*“I remember the first few political action committees I worked on being placed with a nonprofit D&O market for \$2,500. Those days are long gone.”*

Holden McKinney, Amwins Group Inc.

The market has evolved, said Holden McKinney, Fort Washington, Pennsylvania-based assistant vice president, professional lines, at Amwins Group Inc.

“I remember the first few political action committees I worked on being placed with a nonprofit D&O market for \$2,500. Those days are long gone,” Mr. McKinney said.

Typically, premiums even for local political action committees are well over \$25,000 for a \$1 million limit, he said.

Misinformation around elections can threaten the electoral process and make it harder for people to exercise their right to vote, which can give rise to legal and reputational risks for political consultants, said Joshua Tucker, New York-based senior adviser and fellow at Kroll Institute, a think tank. Mr. Tucker is also professor of politics and co-director of the Center for Social Media and Politics at New York University.

“There’s a legal risk if your campaign



activity crosses the line into illegal attempts to suppress people’s right to vote,” Mr. Tucker said.

Consultants face a difficult trade-off, because on the one hand they are paid to get their candidates to win, but on the other hand surveys suggest that a broad percentage of Americans support democracy and electoral integrity, he said.

“There is a danger of being associated with candidates who themselves are associated with casting aspersions on the way in which democracy works in the U.S.,” he said.

Defamation lawsuits associated with elections are growing even though for public figures it is much harder to prove that a statement about them is defamatory, said Caleb P. Burns, a partner at law at Wiley Rein LLP in Washington.

Litigation involving alleged defamation of public figures has largely been unsuccessful until the past few years because the threshold for a claim is higher and there has to be some allowance for public discussion, he said.

“The litigious nature of former President Donald Trump as well as a number of other political figures has something to do with this. Courts have become more sympathetic to these claims, and the environment has gotten more friendly for these types of lawsuits,” Mr. Burns said.

Last year, Mr. Trump filed a \$475 million defamation suit against CNN.

Political campaigns and committees should consider a range of coverages such as directors and officers liability, employment practices liability, errors and omissions, cyber and crime insurance, sources say.

Media liability and personal injury risk in general are important considerations for political organizations, Mr. McKinney said.

“Politicians and political action committees obviously say a lot of things, run a lot of ads, make a lot of statements. And then

the political research organizations also put out studies and data to support what they’re advocating for,” he said.

Cyber risks are also growing. Cyberattacks on the Democratic National Committee in 2015 and 2016 led to a breach that cybersecurity experts and the U.S. government later traced to Russia.

“Anyone running a high-profile campaign will be a target. You have donor information that might be shared with you,” including a large amount of personally identifiable information that could present an opportunity to a bad actor, Mr. McKinney said.

Professional liability risks can arise if the service or advice given to others leads to a financial loss for the organization or client, Ms. Rodriguez said.

Many political organizations also raise funds for a particular campaign or cause and if an issue arises with how those finances are handled it can lead to a D&O claim for alleged mismanagement of those funds or for not following the entity’s bylaws or mission, she said.

*“There’s a legal risk if your campaign activity crosses the line into illegal attempts to suppress people’s right to vote.”*

Joshua Tucker, Kroll LLC

A donor may assume their donation will be put toward a particular cause, but if the donation is put toward something else, they could sue for mismanagement, she said.

For businesses that handle funds, crime insurance provides coverage for losses due to embezzlement and fraud, she said.

### CAMPAIGN GROUPS NEED FIRM CONTROLS

Organizations involved in political campaigns should ensure they have sound financial controls in place and take steps to minimize reputational harm to demonstrate they are a better insurance risk, experts say.

Political campaigns are akin to startup companies because they grow quickly over a short period of time, said Caleb P. Burns, a partner at Wiley Rein LLP in Washington.

While some of the risks they face — auto liability, for example — are similar to any business, other risks, such as defamation, tend to be much higher because of their association with political candidates, Mr. Burns said.

“Having proper controls and steps in place to review high-risk activities and to ensure that funds or assets are not misappropriated can help mitigate possible claims,” he said.

Because political candidates tend to make off-the-cuff remarks, it’s important that they work with their public relations staff to plan public comments and speeches ahead of time, said Holden McKinney, Fort Washington, Pennsylvania-based assistant vice president, professional lines, at Amwins Group Inc.

“People want to appear genuine but trying to read from a prompter may be a better way to go about things,” Mr. McKinney said.

On the directors and officers liability insurance side, it’s important for organizations to have sound accounting principles in place and that they maintain good financial statements, he said.

“These organizations are heavy on donations of funds, so understanding their financial position, that they’ve got checks and balances in place and that they’re following their mission” is important, said Lisa Rodriguez, Seattle-based senior vice president, executive liability broker, at Brown & Riding Insurance Services Inc.

Claire Wilkinson





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### WOMEN TO WATCH AWARDS & CONFERENCE (EMEA)

NOVEMBER 2023 | LONDON

### WOMEN TO WATCH AWARDS & CONFERENCE (US)

DECEMBER 2023 | NEW YORK

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## Safety technology uptake slow in construction

BY JON CAMPISI

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Technology is increasingly being used to improve safety and efficiency on construction sites, but moves to introduce connected equipment and other resources often face barriers.

Lack of data proving the benefits of technology, costs, privacy concerns and difficulties in changing entrenched practices have limited uptake of the devices, experts say.

But given the risk of grave injuries and death among construction workers, the number of technology-based safety applications is multiplying, they say.

“Technology has taken shape,” but such applications are in their “infancy,” said Tom Grandmaison, Boston-based executive vice president and manager of construction at Willis Towers Watson PLC.

One of the biggest challenges to adopting newer technologies is explaining the benefits to construction companies, which are often budget conscious and reluctant to change established practices. In addition, lack of data showing the benefits of the new products may stymie efforts to obtain management and insurer support.

“We don’t have dozens and dozens of years of credible before-and-after-utilization-of-technology data,” Mr. Grandmaison said.

Construction technology is designed to improve everything from operational efficiency to subcontractor risk management. Among the most well-known types of technology-based equipment are wearables. (See related story). Smartphone applications are another popular technology being used to improve safety.

“Today, there are a plethora of useful apps that are on the market and available to users,” said Dwayne Hartman, construction loss control lead for Kansas City, Missouri-based brokerage Lockton Cos. LLC.

Mr. Hartman said some companies use these apps, and corresponding handheld devices, to do such things as monitor the air temperature to help stave off



heat-related illnesses or to warn workers about getting too close to a hazardous area at a job site.

But there are privacy concerns with certain devices that collect data related to workers.

Companies must proactively train workforces on how to use the devices and be transparent with the workers to help allay privacy concerns, Mr. Hartman said.

Wearables are used by companies in workers comp cases to show whether an employee was following proper policies and protocol at the time of a job site injury, said Kevin O’Sadnick, senior risk control manager with St. Louis-based insurance provider Safety National Corp.

It is important for companies to promote the technology in such a way that it is a benefit to workers, he said.

“It does become very important when it comes to the rollout or the way these things are described or pitched to employees,” Mr. O’Sadnick said.

For example, companies would benefit from promoting camera technology as a coaching and training tool rather than “fault-finding devices,” he said.

Despite the difficulties in introducing the products, they will likely improve safety over time, Mr. Hartman said.

“We are supportive of all of this tech-



Event or Exposure	Percentage
Falls, slips, trips (3,897)	36.6%
Transportation incidents (2,844)	26.7%
Contact with objects and equipment (1,623)	15.3%
Exposure to harmful substances or environments (1,605)	15.1%
Violence and other injuries by persons or animals (513)	4.8%
Fires and explosions (125)*	1.2%

\*2021 data unavailable.

Source: U.S. Bureau of Labor Statistics

nology,” Mr. Hartman said. “We think over time it’s going to be more beneficial than it even is today.”

Adding to the difficulty in adoption, some technologies have raised concerns with labor unions over worker privacy.

Collective bargaining agreements can stand in the way of technology adoption, said Rob McDonough, U.S. construction practice leader for New York-based broker Marsh LLC.

Richard Kennedy, U.S. workforce

strategies leader for Morristown, New Jersey-based Marsh Specialty, said companies introducing new technologies need to promote the worker benefits of the devices.

“Getting the workers to understand the value of such devices to them ... and that it’s not Big Brother watching over them” is important, Mr. Kennedy said. “We’re careful to hear their concerns and to listen to their concerns and to alleviate their concerns.”

Other benefits of introducing new safety technologies include associated improvements in wellness and occupational work habits, said Greg Perruzzi, New Jersey-based senior vice president-construction vertical leader for Gallagher Bassett Services Inc.

Mr. Perruzzi, who worked in the construction industry for two decades as a risk manager for some of the largest developers in the U.S., said informing the operational workforce on the benefits of technology is a key step toward adoption.

In terms of return on investment, Mr. McDonough said some companies adopting the technologies can get preferential insurance rates, although he also noted that in many cases employers are not yet seeing the “actual tangible return on invested capital.”

It is difficult to estimate when the technologies might lead to a significant reduction in comp claims, said Mr. O’Sadnick of Safety National.

“If you can show any value, you might be able to get enough legroom to roll out a pilot program ... just to run it on a trial basis,” he said.

The cost of adopting a technology doesn’t simply relate to purchasing or licensing the product. Training, updating company documentation and attorney work to ensure legal compliance are other factors to consider.

And such costs of both adopting the technology and managing the change can make it difficult to justify.

“The employers have to be able to see the value in the devices,” Mr. Hartman said. “It’s safe to say it’s more cost prohibitive for smaller contractors.”

## CONTRACTORS TURN TO WEARABLE DEVICES TO MONITOR SAFETY AT WORKSITES

Among the various technologies used by the construction industry to help improve worker safety, so-called wearables have attracted significant interest. “We’ve got a lot of clients and prospects who are trying to experiment with some of these things,” said Boston-based Tom Grandmaison, executive vice president and manager of construction at Willis Towers

Watson PLC.

Examples of wearables include cameras mounted to uniforms and hardhats that are designed to warn workers about job site dangers and to help keep track of employee movement.

Another example are devices called “exoskeletons,” which are used by workers to aid physical strength and support.

Some of the newer products in the wearables sphere include safety devices sewn directly into reflective vests and hardhats to warn of different job site dangers such as heavy equipment moving around the workplace.

“They’re getting pretty sophisticated,” said Dwayne Hartman, construction loss control lead for Kansas City, Missouri-

based brokerage Lockton Cos. LLC.

The construction industry has seen an increase in the use of wearables in the past few years, Mr. Grandmaison said, as more insurers and contractors look to the devices to “give them a leg up on monitoring what’s going on in their projects.”

Jon Campisi

## Commercial marijuana insurance market grows as premiums rise, more states legalize pot use

BY MATTHEW LERNER

mlerner@businessinsurance.com

As the legal use of cannabis for both medicinal and recreational purposes spreads to more states with each election cycle, commercial insurance for cannabis operators is finally becoming easier to obtain and afford, as more insurers move into the sector.

Line sizes for property coverage have increased, and professional coverages, such as directors and officers liability insurance, have fallen in price, experts say. Still, contract language continues to be an issue in a sector dominated by manuscript policies and specific lines can see challenges, such as crime policies.

The wider availability of coverage and lower pricing are a relief for buyers in a sector that chafed under high rates and constrained supply as recently as two years ago.

*“Our capacity for any product line usually doubles on a year-over-year basis to keep up with demand.”*

Charles Pyfrom,  
CannGen Insurance Services LLC

Since 1996, when California became the first state to permit medical marijuana, the medical use of cannabis has been legalized in 39 states and the District of Columbia. The recreational or adult-use of cannabis has been approved in 21 states and D.C.

Cannabis remained fully illegal in just four states — Idaho, Kansas, South Carolina and Wyoming — as of January, according to third-party administrator DISA Global Solutions.

“Our capacity for any product line usually doubles on a year-over-year basis to keep up with demand,” said Charles Pyfrom, Livermore, California-based chief marketing officer for managing general underwriter CannGen Insurance Services LLC.

Line sizes are increasing as well, he said. CannGen previously offered property limits up to \$30 million, but in the past year has offered limits on some risks for close to \$100 million per location, he said.

“It’s growing,” Mr. Pyfrom said, adding that buyers have become more sophisti-



The cannabis market is expanding geographically, and the industry is diversifying with some companies focusing on organic products to differentiate themselves from competitors. Industry companies, which previously had few choices when it came to buying insurance, are seeing an increase in the number of underwriters willing to provide coverage.

cated and risk focused.

The supply of insurance to the cannabis sector grows between 80% and 100% a year and the added capacity has increased competition and helped soften pricing, said Michael Hall, vice president of Golden Bear Insurance Co. in Stockton, California.

Rates for property and liability coverage have fallen as much as 50% from two years ago, when tight availability led to high pricing, he said.

The high pricing, in turn, attracted more insurers to the sector, leading to greater supply and ultimately lower prices and profit margins for insurers.

Product availability has also widened. Golden Bear launched its D&O program in January 2022.

“Two years ago, there were two markets writing directors and officers coverage for cannabis companies,” Mr. Hall said, adding that the number of D&O insurers in the cannabis sector has more than doubled.

CannGen in August 2021 launched its CannGenPro division, which offers management and professional liability insurance to the cannabis sector.

Embroker Inc. added cannabis insurance to its offerings because it is a “dynamic, entrepreneurial space” similar to the tech startups forming the core of its business, said Ben Jennings, chief revenue officer of the San Francisco-based online commercial broker.

Embroker targets single state dispensaries with less than \$5 million in annual revenue for its digital offerings, which can be quoted and bound online, and serves

larger, multistate operators through its brokerage operation, Mr. Jennings said. Coverage includes property, general liability, D&O, workers compensation and employment practices liability insurance.

Reinsurance capacity for cannabis risks has also expanded, though hurdles remain.

Mr. Hall estimates there are eight or nine reinsurers in the market, up from just one or two a few years ago. Interest in the sector is most keen among smaller reinsurers and the reinsurance market overall is slightly harder than the primary market for cannabis operators, he said.

Reinsurance growth is also limited by

*“There is absolutely an increase in lawsuits that are premised on under- or over-reporting of cannabinoid content on labels and associated claims of consumer fraud and false advertising around labeling and testing.”*

Ian Stewart, Wilson Elser Moskowitz Edelman & Dicker LLP

the conflict between state and federal laws.

“The macro view of reinsurance capacity is that the predominance of reinsurers will remain on the sideline until the federal government reclassifies cannabis, removes it entirely from the Controlled Substance Act, or legislation is enacted to establish a federal safe harbor for the insurance and reinsurance industry,” said Matthew Stanwood, Boston-based senior client executive at Lockton Re, the reinsurance brokerage unit of Lockton Cos. LLC.

Mr. Stanwood added that new reinsurance capacity is limited and “generally focused on supporting specific lines of business.”

Risk management is becoming more widespread in the cannabis sector, said Stephanie Bozzuto, a partner with Acrisure LLC and co-founder of Cannabis Connect Insurance Services, a unit of the brokerage.

“It is very common in property lines,” she said, with mandated features such as a safe, a vault, or cages that meet U.S. Drug Enforcement Administration standards for controlled substances, known as “DEA cages.”

“Many industries require protective safeguards to extend coverage,” she said.

Ms. Bozzuto, who joined Acrisure when it acquired Cannabis Connect in 2018, said limited insurance capacity is no longer the acute issue it was a couple of years ago, although there remain constraints in

states such as Florida where catastrophe-exposed properties in all industries face hard market conditions.

Other sources noted the cannabis sector, like many other businesses, also faces restrictions and exclusions pertaining to wildfire in the Western United States.

Some areas specific to cannabis coverage remain difficult, said Jay Viridi, Toronto-based chief sales officer for specialty practices at Hub International Ltd., who is responsible for Hub’s cannabis specialty practice. For example, sublimits in crime policies for cannabis businesses can be as low as \$5,000. “These limits are very low,” he said, especially amid increased crime exposures.

Ian Stewart, chair of the national cannabis and hemp law practice at Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles, said crime coverage can present a challenge because almost all cannabis insurance is provided through bespoke policy forms, and the forms have different definitions of stocks and goods from a theft point of view.

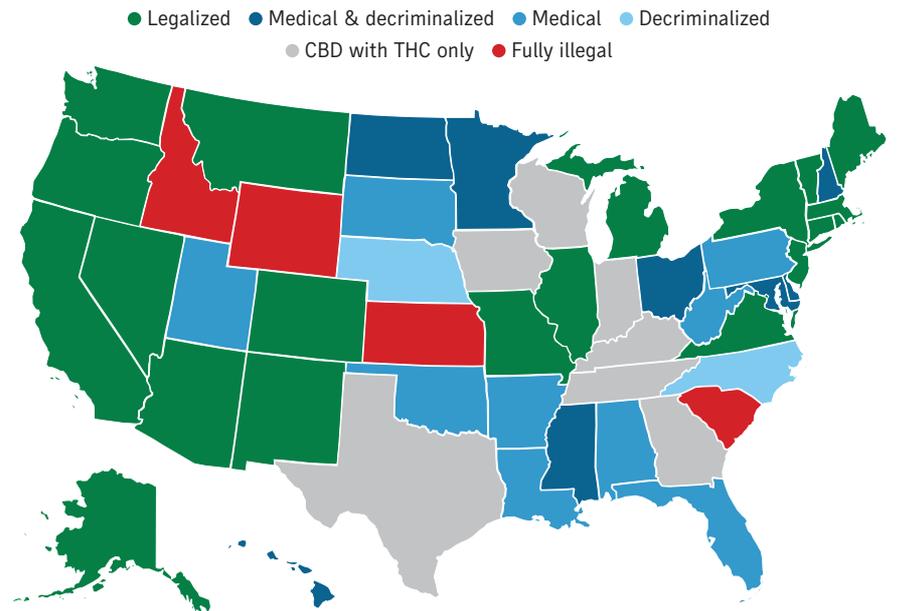
“The crop, the harvested plant material, finished goods ready for sale — each has a different storage requirement,” and there is little consistency in policy language and definitions for each item, he said.

One growing challenge for the cannabis sector may come from an increase in product liability suits, with many centering on labeling, sources said.

“There is absolutely an increase in

## LEGAL MARIJUANA

According to the National Association of Insurance Commissioners Center for Insurance Policy and Research, 38 states and the District of Columbia have legalized some form of medical marijuana. Recreational marijuana is legal in 19 states and D.C.



Source: DISA Global Solutions Inc.

lawsuits that are premised on under or over reporting of cannabinoid content on labels, and associated claims of consumer fraud and false advertising around labeling and testing,” Mr. Stewart said.

For example, a suit filed in the Superior Court of California in Los Angeles against Ironworks Collective Inc. and Stiiizy LLC alleges violations of various

consumer protection laws, misrepresentation and unjust enrichment.

While the number of lawsuits has been limited so far, cannabis operators should consider the product liability risk when evaluating their insurance needs, Mr. Pyfrom said. More widespread testing of products should become available as the industry grows, he added.

## Sharp fall in value of cannabis complicates claims, changes risk

**P**lunging wholesale cannabis prices have affected the insurance sector in various ways, including coverage and claims issues.

The cost of whole flower cannabis is estimated by several sources to have dropped sharply, from \$2,000 to \$3,000 per pound to about \$1,000.

Ian Stewart, chair of the national cannabis and hemp law practice at Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles, said there has been a general drop in wholesale flower prices but unevenly across different states, with California “particularly hard hit.”

Such large changes in price can affect insured values and make responding to and evaluating claims difficult.

“The fluctuation in prices can have a dramatic effect on the value of theft or fire loss and business income valuation,” Mr. Stewart said.

The decline in prices can also lead to operators spending less on insurance, he said.

The fall in the price of cannabis is leading to an industry consolidation, as larger operators absorb smaller, less profitable businesses, said Michael Hall, vice president of Golden Bear Insurance Co. in Stockton, California.

The consolidation has led to a decline in the number of accounts, even with the same number of dispensaries and other businesses operating, Mr. Hall said.

“You need real industrial farming. You’re not seeing as many single location operations anymore,” he said, adding that production costs are lower at greater scale as fixed costs such as compliance are distributed over a larger base.

The deterioration of prices in the wholesale market could discourage more insurers from deploying capital into the sector as it becomes less profitable, said Charles Pyfrom, chief marketing officer for managing general underwriter CannGen Insurance Services Inc. in Livermore, California.

Matthew Lerner



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## Auctioneer insurance market stable, distinctive

BY MARK HOLLMER

For auction house liability insurance, two words describe the current state of the market: stability and moderation.

While there have been price increases, the auction house insurance market has not seen the volatility that other sectors have experienced in recent years, despite the unique risk and liability challenges that auction house insurance buyers face, experts say.

"You always have some companies trying to beat each other out with rates and coverages, so it's a typical insurance marketplace," said William G. Fleischer, principal at Bernard Fleischer & Sons Inc., a New York-based brokerage with a focus on art insurance and a client base that includes auction houses, artists and collectors.

*"It's not like all of a sudden five years ago to now there's a 30% increase. It's always been staying competitive."*

William G. Fleischer,  
Bernard Fleischer & Sons Inc.

Rates for auction houses have not seen the sustained hardening of rates that other insurance lines have seen since 2018.

"It's not like all of a sudden five years ago to now there's a 30% increase," Mr. Fleischer said. "It's always been staying competitive. ... Some increases have been flat, and some have been small and in the single digits. It's pretty stable."

Robert Read, Hiscox's head of fine art and private client business in London, said the market is less volatile than some others.

"You're insuring generally wealthy people and their objects they buy for personal pleasure," he said. "It's less of a hostile market, than, say, if you're providing legal advice or you're an accountant providing advice ... where the effects of what might go wrong are so much greater."

But the professional liability provisions in the coverage are leading to some increases, following trends in the wider market, he said.

"It's fairly stable on all the elements apart from the professional liability side, which has been under the most focus lately and where rates have probably



The painting "Self-Portrait yellow-pink" by Max Beckmann achieved a German auction record of €20 million (\$21 million) in December 2022. Auction insurance covers specialty exposures, including theft, breakage, water damage, vandalism and malicious mischief.

risen more," Mr. Read said. "You're seeing a bit of a hard backside, but it's not as dramatic as in other areas."

Insurance pricing for auction houses varies depending on package specifics, such as details about insuring the risk of physical loss or damage for items in an auction house's custody or control. Buildings and business interruption coverage may have more stable prices, for example, but specific professional liability cover can be higher.

The global arts market hit \$65.1 billion in 2021, according to Art Market 2022, a report by Arts Economics founder Clare McAndrew and published by Art Basel/UBS.

Auction house liability cover may be a small market, but it carries with it unique issues.

Risk elements that are specific to auction liability include provenance and authenticity.

Provenance refers to proof of title to sell a given item, without any disruptions in the ownership chain. Authenticity refers to auction houses' descriptions of the items they sell.

"One of the exciting things about the art market is that people buy and sell on really minimal amounts of information. It's so heavily unregulated, plus you're dealing with mobile assets that can be stolen," Mr. Read said.

Auction houses carry unique coverage needs to address the risks they face, Mr. Fleischer said.

Coverage must address risks, including theft, breakage, water damage, vandalism and malicious mischief. Potential damage from fire or flood is also a necessary element, depending on where the art objects are warehoused before sale, he said.

"There were incidents where someone received a piece of jewelry wrapped in a wrapper, and one of the people in the office thought it was garbage and threw it in the garbage," Mr. Fleischer said.

Employee theft is often excluded from policies.

"That's a big problem when you think you're insuring your artwork and all of a sudden it mysteriously disappears," Fleischer said. "The auction house is going to have to come up and pay for that because it is not on their policies."

Online auction houses have other liability concerns, depending on the object up for sale and how the process is handled.

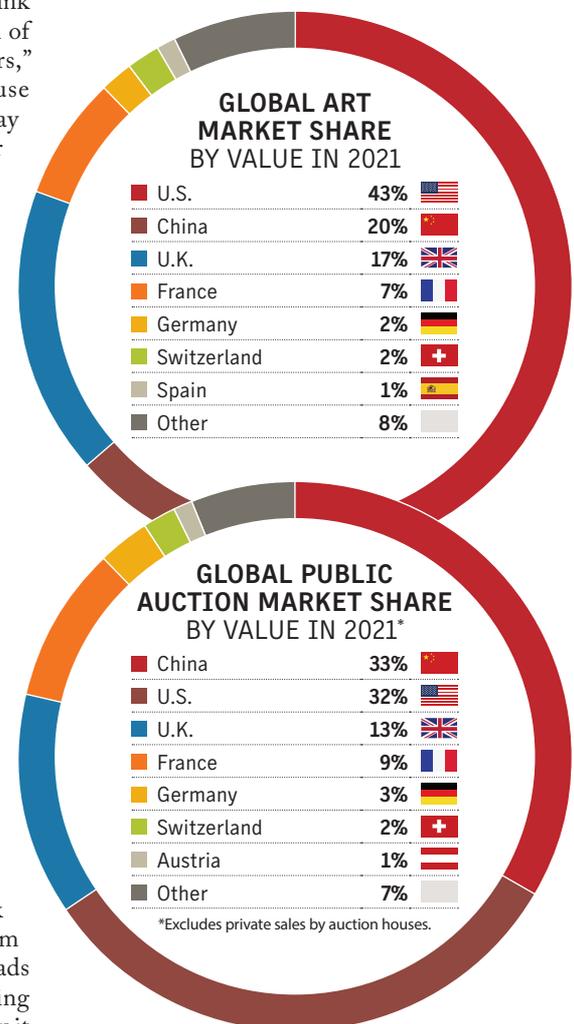
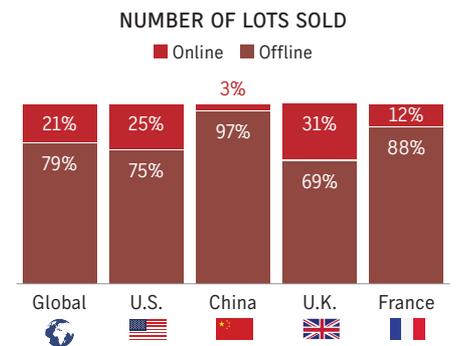
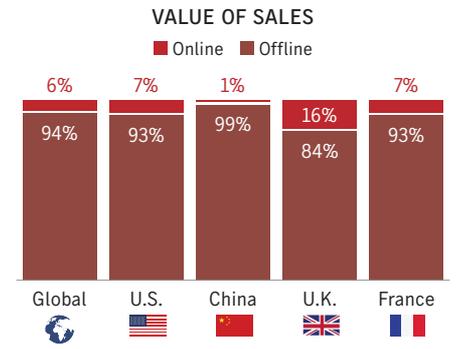
*"One of the exciting things about the art market is that people buy and sell on really minimal amounts of information. It's so heavily unregulated, plus you're dealing with mobile assets that can be stolen."*

Robert Read, Hiscox

"I get phone calls constantly regarding online auction (houses). Some of them actually have the work in their possession and some of them don't," Mr. Fleischer said, which leads to variable coverage needs depending on the location of the object and how it must be shipped.

### ONLINE FINE ART AUCTIONS

Share of online lots sold at fine art auctions in 2021



Source: The Art Market 2022, Art Basel and UBS

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# Zooming in on specialty risk exposures

BY ANDY TOH  
atoh@businessinsurance.com

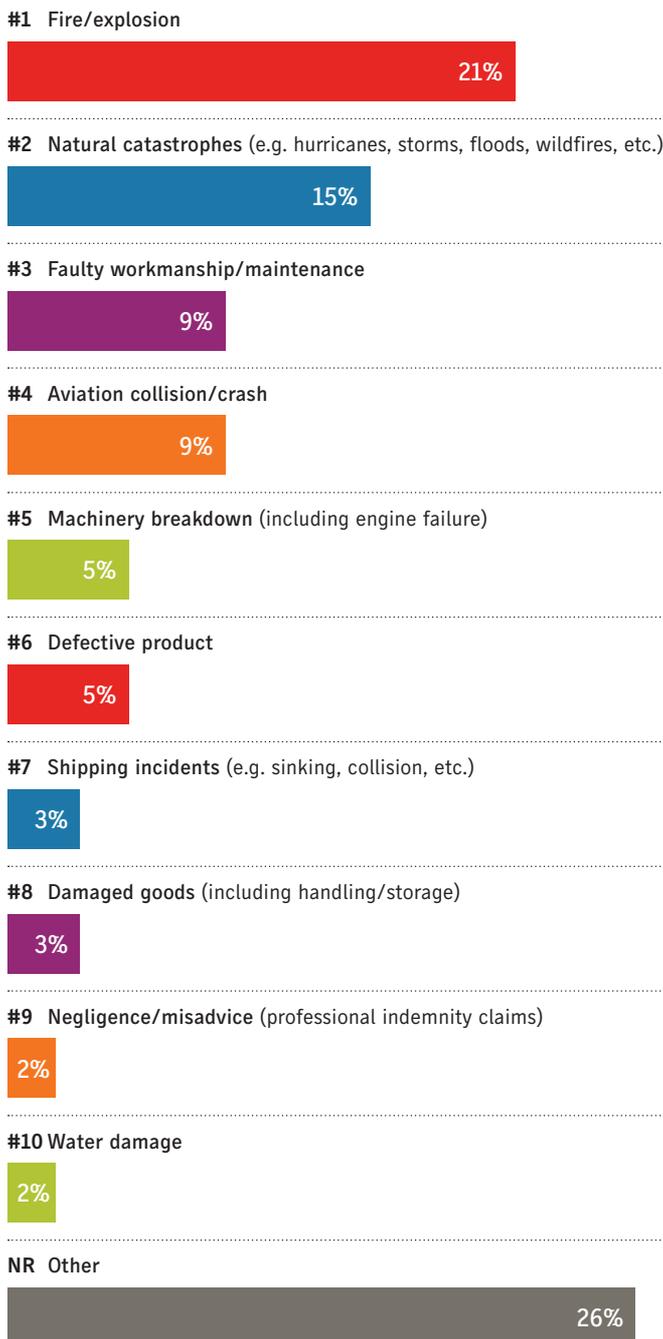
## TOP CAUSES OF LOSS

According to the Global Claims Review 2022 by Allianz Global Corporate & Specialty, fire/explosion — excluding wildfires — is the largest single identified cause of corporate insurance losses globally in 2021, accounting for 21% of the value of all claims.

AGCS identified the top causes of loss and emerging trends based on an analysis of 534,456 business insurance claims filed in 2021 in more than 200 countries and territories worth approximately \$94 billion in value.



### TOP 10 GLOBAL CAUSES OF LOSS BY VALUE OF CLAIMS\*



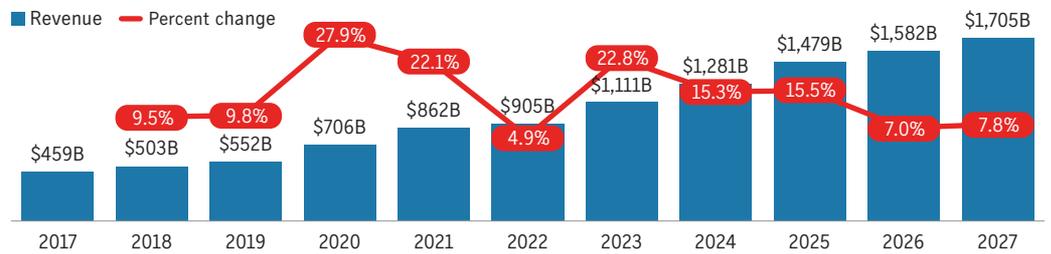
\*Claims total includes the share of other insurers in addition to AGCS.  
Source: Allianz Global Corporate & Specialty

## E-COMMERCE

Revenue from retail e-commerce in the U.S. was estimated at roughly \$905 billion in 2022 and forecasted to grow 88% to \$1.7 trillion in 5 years, according to Statista.



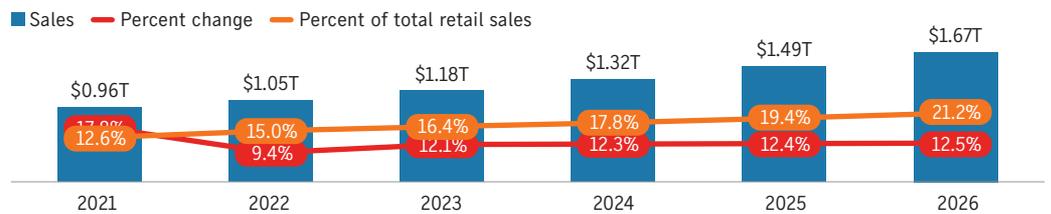
### RETAIL E-COMMERCE REVENUE IN THE U.S. (2017-2027)



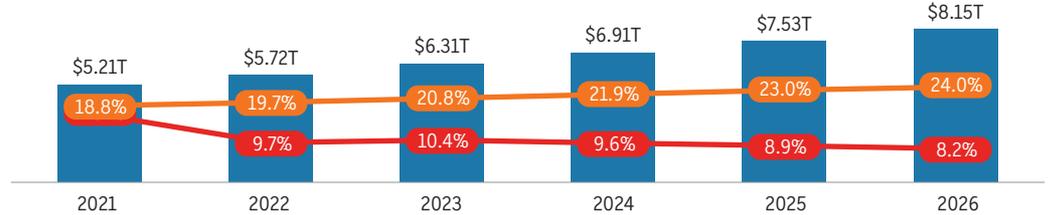
Source: Statista

U.S. retail e-commerce sales were estimated at nearly \$1.1 trillion in 2022 and are projected to grow 41% to \$1.7 trillion in 2026, according to eMarketer. Worldwide retail e-commerce sales totaled approximately \$5.7 trillion and are projected to grow 56% to \$8.1 trillion in 2026.

### RETAIL E-COMMERCE SALES IN THE U.S. (2021-2026)



### RETAIL E-COMMERCE SALES WORLDWIDE (2021-2026)



Source: eMarketer

According to the National Retail Federation's annual ranking of the top 100 retailers by U.S. retail sales, Walmart remained in the leading spot in 2021 at \$459.51 billion, up 6.6% from the previous year. The next three companies listed — Amazon.com, Costco Wholesale and The Home Depot — saw growth of 12.6%, 15.8% and 15.1%, respectively.

Amazon.com dominated the e-commerce sector with a 37.8% market share of U.S. retail sales, followed by Walmart at 6.3%.

### TOP 10 U.S. RETAILERS BY RETAIL SALES (IN 2021)

Rank	Company	2021 U.S. retail sales
1	Walmart	\$459.51B
2	Amazon.com	\$217.79B
3	Costco Wholesale	\$140.41B
4	The Home Depot	\$140.06B
5	The Kroger Co.	\$136.49B
6	Walgreens Boots Alliance	\$108.34B
7	Target	\$104.62B
8	CVS Health Corp.	\$93.36B
9	Lowe's Cos.	\$87.73B
10	Albertsons Cos.	\$71.87B

Source: National Retail Federation

### TOP 10 U.S. E-COMMERCE RETAILERS BY MARKET SHARE (AS OF JUNE 2022)

Rank	Company	2022 market share
1	Amazon.com	37.8%
2	Walmart	6.3%
3	Apple	3.9%
4	eBay	3.5%
5	Target	2.1%
6	The Home Depot	2.1%
7	Best Buy	1.6%
8	Costco Wholesale	1.6%
9	Carvana	1.5%
10	The Kroger Co.	1.4%

Source: Statista

## PRODUCT LIABILITY INSURANCE

DIRECT PREMIUM WRITTEN FOR U.S. PRODUCT LIABILITY INSURANCE (2018-2021)



TOP STATES WITH THE MOST DIRECT PREMIUMS WRITTEN FOR PRODUCT LIABILITY INSURANCE (IN 2021)

State	Direct premiums written	State	Direct premiums written
California	\$656.5M	Illinois	\$206.8M
Texas	\$361.5M	Pennsylvania	\$148.7M
New York	\$293.2M	Massachusetts	\$133.3M
Florida	\$278.7M	Ohio	\$129.3M
New Jersey	\$207.5M	North Carolina	\$115.3M

The top 10 product liability insurers wrote \$2.13 billion in direct premiums in 2021, accounting for 49.2% of the market share.

LARGEST PRODUCT LIABILITY INSURERS RANKED BY DIRECT PREMIUMS WRITTEN (IN 2021)

Rank	Company	2021 direct premium written	Market share
1	Chubb Ltd.	\$457.6M	10.6%
2	Allianz Group	\$247.7M	5.7%
3	American Financial Group Inc.	\$203.8M	4.7%
4	Kinsale Capital Group Inc.	\$190.3M	4.4%
5	W.R. Berkley Corp.	\$185.1M	4.3%
6	Selective Insurance Group Inc.	\$174.3M	4.0%
7	American International Group Inc.	\$170.3M	3.9%
8	Fairfax Financial Holdings Ltd.	\$167.0M	3.9%
9	Liberty Mutual Holding Co. Inc.	\$166.6M	3.9%
10	Travellers Cos. Inc.	\$162.4M	3.8%

Source: National Association of Insurance Commissioners

## CANNABIS REVENUE

Eleven states collected cannabis excise taxes in all 12 months of fiscal year 2022 (July 2021 to June 2022), with revenue ranging from \$28.9 million in Alaska to \$774.4 million in California. Those totals do not include local cannabis taxes (which are not uniformly reported) or collections from state and local general sales taxes (which are not always broken out of a government's total reported general sales tax revenue).



STATE TAX REVENUE FROM CANNABIS EXCISE TAXES (FY 2022)

State	Total tax revenue	Per capita	Share of state tax revenue
Alaska	\$28.9M	\$39	1.2%
Arizona	\$132.8M	\$18	0.6%
California	\$774.4M	\$20	0.3%
Colorado	\$353.7M	\$61	1.7%
Illinois	\$466.8M	\$37	0.8%
Maine	\$18.2M	\$13	0.3%
Massachusetts	\$156.7M	\$22	0.4%
Michigan	\$163.5M	\$16	0.4%
Nevada	\$152.3M	\$48	1.7%
Oregon	\$170.6M	\$40	1.0%
Washington	\$517.0M	\$67	1.5%

Notes: Totals do not include local excise tax revenue or revenue from general sales taxes. Michigan's 2022 fiscal year ran from October 2021 to September 2022; its revenue data from July 2021 to June 2022 was used for consistency.

Source: Urban Institute based on state tax websites or direct contact with the state tax department and U.S. Census Bureau.

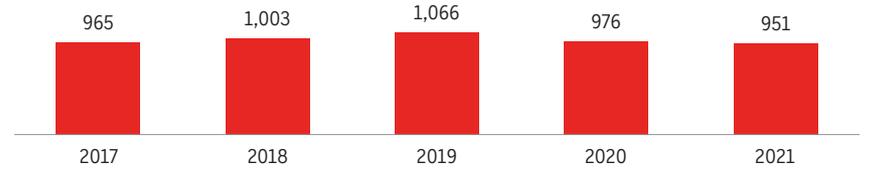
## CONSTRUCTION INJURIES

There were 5,190 fatal and 2,607,900 nonfatal work injuries in the U.S. in 2021, according to the latest report by the U.S. Bureau of Labor Statistics.

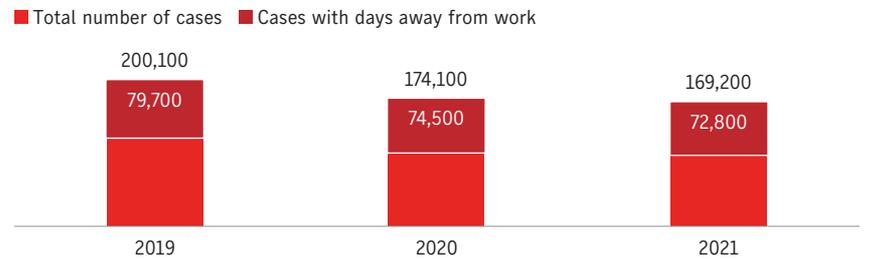
In construction and extraction occupations, there were 951 fatalities, down 2.6% from 976 in 2020, and 169,200 nonfatal injuries, down 2.8% from 174,100 in 2020. About 72,800, or 43%, of nonfatal cases involved days away from work.



FATAL OCCUPATIONAL INJURIES IN CONSTRUCTION AND EXTRACTION OCCUPATIONS (2017-2021)



NUMBER OF NONFATAL OCCUPATIONAL INJURIES AND ILLNESSES IN CONSTRUCTION (2017-2021)



Source: U.S. Bureau of Labor Statistics

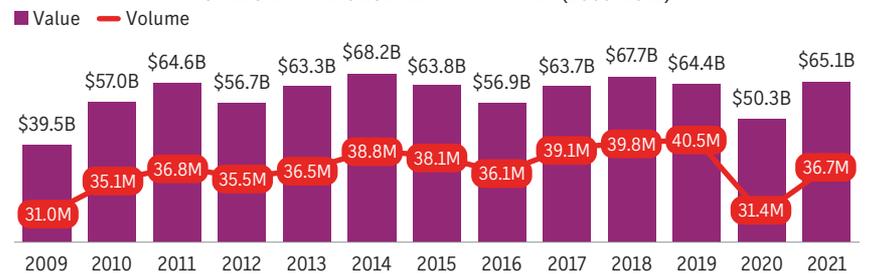
## GLOBAL ART MARKET

According to The Art Market 2022, the global art market saw a rebound from the COVID-19 pandemic, with sales of art and antiques by dealers and auction houses reaching an estimated \$65.1 billion in 2021, up 29% from 2020 and exceeding the pre-pandemic 2019 total.



The volume of transactions in the global art market increased by roughly 17% in 2021 over the previous year, after decreasing sharply in 2020 due to the pandemic. Overall, the global art market recorded around 36.7 million transactions in 2021. While the sales volume rose by 5.3 million compared with 2020, it stayed below the 2019 total.

SALES IN THE GLOBAL ART MARKET (2009-2021)



Meanwhile, the U.S. maintained its leading position, up 1% from 2021 and accounting for 43% of the global art market share by value. Greater China, which tied with the U.K. in 2021, took second place, maintaining its 20% share, while the U.K. share declined to 17%.

GLOBAL ART MARKET SHARE BY VALUE



Source: The Art Market 2022, Art Basel and UBS



### SALVATOR MUNDI

According to Guinness World Records, the most expensive painting sold at auction is "Salvator Mundi" by Leonardo da Vinci, which sold for \$450,312,500, including the buyer's premium, at an auction held by Christie's in New York on Nov. 15, 2017.

### THE MONA LISA

The highest known insurance valuation for a painting is \$100,000,000, assessed for the move of "The Mona Lisa" by Leonardo da Vinci from the Louvre in Paris to Washington and New York for a special exhibition from Dec. 14, 1962, to March 12, 1963. However, insurance was not concluded because the cost of the highest security precautions was less than that of the premiums.



Source: Guinness World Records

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