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Surge in artificial intelligence use prompts debate over potential rise in claims, policy adjustments

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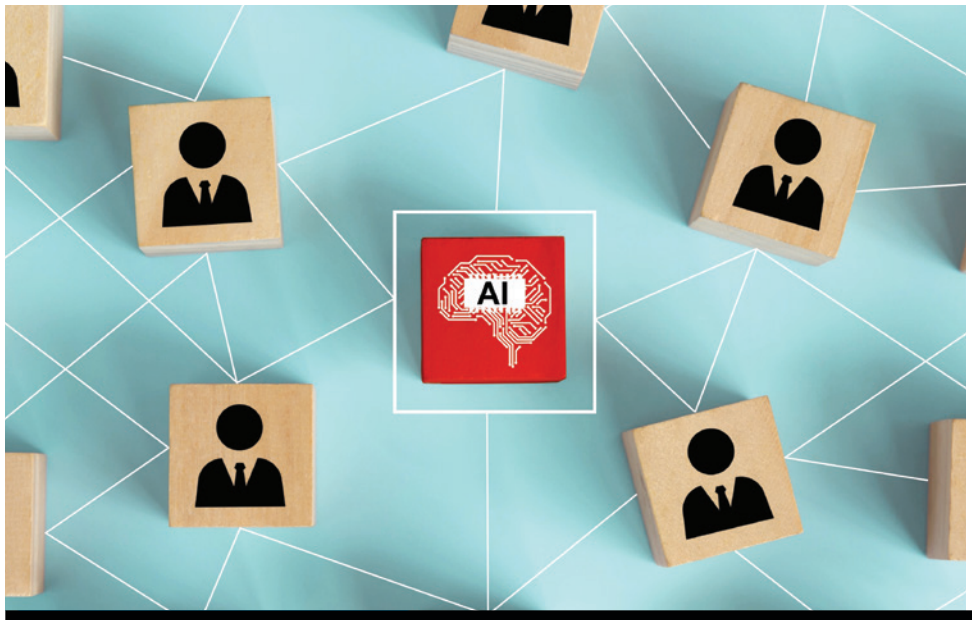

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MICHELLE SARTAIN
Michelle Sartain is president of Marsh U.S. and Canada, overseeing brokerage and risk advisory services. She is also much involved in Marsh's diversity, equity and inclusion efforts. Ms. Sartain, one of the 2022 *Business Insurance* Women to Watch, discusses diversity efforts in the insurance sector and what companies need to do to develop and retain diverse talent. **PAGE 16**

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CORRECTION

Due to a formula error, the captive totals stated in the April 2024 edition of *Business Insurance* were incorrect. The total number of captives worldwide in 2022 and 2023 were 6,093 and 6,181, respectively. An updated version of the charts can be found at **BusinessInsurance.com/CaptiveRankings2024**.

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Rising fire risks drive parking garage scrutiny

BY CLAIRE WILKINSON
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Parking garages — long considered benign risks by property insurers — are facing more scrutiny from underwriters and potential rate hikes as fire hazards increase with the growing use of electric cars and other modern vehicles.

Recent incidents, such as a fire in a parking garage at London Luton Airport last year that destroyed more than 1,400 cars, have drawn attention to the rising exposures insurers face when fires spread rapidly among multiple vehicles.

Despite safety advances in the operation of vehicles, modern cars contain more combustible materials such as plastics. Efforts to control fires in garages that contain charging stations and electric vehicles powered by lithium-ion batteries can also be more complex, experts say.

The combustible loading of vehicles has changed dramatically in recent years, said Christopher Wieczorek, senior vice president, senior engineering technical specialist, at FM Global in Johnston, Rhode Island.

NTB Scanpix/Carina Johansen via Reuters

A collapsed parking garage after a fire at Stavanger Airport in Sola, Norway, Jan. 7, 2020.

LARGE PARKING GARAGE FIRES

Oct. 10, 2023, London Luton Airport: A fire destroyed more than 1,400 vehicles in a terminal car park. According to a fire and police services report, the most probable cause was an electrical fault or component failure in a moving diesel vehicle.

Jan. 7, 2020, Stavanger Airport, Sola, Norway: A large fire in the airport's parking garage destroyed hundreds of vehicles, grounding air traffic and prompting evacuation of facilities. The fire started in a diesel-powered car, according to news reports.

Oct. 14, 2019, Münster Osnabrück airport, Germany: A fire affected two floors of a parking structure close to the airport terminal; 65 cars were reported damaged.

Dec. 31, 2017, Liverpool, England: Some 1,400 vehicles were destroyed in a massive fire in a multistory parking garage next to a multipurpose arena, resulting in an estimated insured loss of £20 million ($25.1 million). The fire started in a Land Rover and was thought to be accidental, according to investigators.

Source: News reports

"There's a lot more plastic used in vehicles, and it's that higher plastic content that is driving this risk," Mr. Wieczorek said.

Large-scale fires are affecting entire garage structures, even open field parking, and byproducts of fires such as smoke can migrate to adjacent buildings, said Bill Ingram, Dallas-based vice president of technical operations for Zurich North America's resilience solutions division.

Historically, property insurers asked few questions when underwriting parking structures, said Mike Prindle, Atlanta-based senior vice president and head of complex property at CAC Specialty. "Now they're asking questions," he said.

If a commercial office building with an attached parking structure has charging stations, insurers will be concerned that there is a greater risk that a fire in the parking garage could spread to the building, Mr. Prindle said.

"If there is that exposure, they do rate for it. It's a higher rate than it generally would have been," he said.

Insurers might also reduce capacity.

"It could affect their line size if it's a shared and layered program. If it's a single-carrier program, it might affect the amount of capacity that they can put out," Mr. Prindle said.

The nature of parking garage fires has changed, said Kevin Madden, New York-based managing director, real estate practice leader, at Aon PLC.

In property inspections, underwriters look to see if garages have charging stations and where they are located, he said. Insurers are "only beginning to underwrite that exposure," he said.

Subterranean or street-level parking where multifamily or commercial buildings are elevated above parking garages is being examined more closely by underwriters, particularly if there are charging stations, said Mike Bugielski, Los Angeles-based senior risk control consultant and area vice president at Arthur J. Gallagher & Co.

Some organizations limit electric vehicle parking either to ground-level floors, or in some instances to the exterior of properties, said Michael Rouse, New York-based U.S. property practice leader at Marsh LLC.

New residential developments sometimes "specifically put parking for electric vehicles, inclusive of charging stations, in the open air and not in a parking garage," he said.

Lack of advanced safety equipment is also a concern, and some insurers have declined to write parking garages because they didn't have sprinklers, said Tom Lentz, Chicago-based chief technical officer and senior fire protection consultant at Aon.

EV fires can last for hours and require more water to extinguish, Mr. Lentz said. "The amount of heat EVs generate when they go into thermal runaway is incredible," he said.

The 2023 edition of the National Fire Protection Association 88A Standard for Parking Structures requires sprinklers in all parking structures, including open parking garages. As of January 2021, FM Global upgraded its hazard rating for parking structures from a category 2 to 3 because of the higher fuel load content in vehicles, Mr. Wieczorek said.

Stephen Penwright, San Francisco-based large property technical director for Zurich North America, said the insurer has started to track parking garage fire losses globally.

Lack of sprinklers in parking garages and the spread of fire from vehicle to vehicle are key factors in the severity of these losses, Mr. Penwright said. Many of these issues arise where parking garages are attached to casinos and hospitals, he said.

Historically, those risks were considered soft occupancies, because they were permanently occupied, he said. Now, underwriters are more wary of fires potentially spreading to the building, which accounts for most of the value of the location, driving underwriters to take less participation in the risk, he said.

If garages don't have sprinklers and the risk quality deteriorates, "rates would go up," but policyholders can adjust deductibles or sub-limit locations to try and mitigate the potential rate increase, he said.

Risks should be tested, said Kevin Bates, group head of risk and insurance for Australian construction company Lendlease Corp. in Sydney (see related story).

Parking structures that contain EVs and charging stations may increase fire hazards in tightly packed spaces that lack ventilation, and introduce new risks, he said.

"It's a very different risk to a concrete area where people come in and park," Mr. Bates said.

SPRINKLERS, INSPECTIONS HELP MITIGATE HAZARDS

Parking garage operators and owners should take proactive measures to reduce fire risks including pre-planning and walk-throughs with local fire departments, deploying early detection devices and upgrading sprinkler systems.

Charging stations should be located by garage entrances or where they can be easily accessed by fire departments, said Kevin Madden, New York-based managing director, real estate practice leader, at Aon PLC.

"If they're outside, put them at the other end of the parking lot. Don't put them right next to the front doors" of office or residential buildings, he said.

Ensuring that upgraded sprinkler systems are installed in parking structures is critical, said Jeffrey John, San Diego-based account engineer, property & casualty, at Woodruff Sawyer & Co.

"Upgraded sprinkler systems won't (necessarily) put out the fire, but they'll cool down the adjacent vehicles, preventing the fire from spreading," he said.

Thermal sensors and other devices are available that can detect abnormal temperature readings, and these can be installed near charging stations and where vehicles are parked, he said.

EVs and charging stations should be separated from other areas and equipment regularly inspected, tested and maintained, said Bill Ingram, Dallas-based vice president of technical operations for Zurich Resilience Solutions, a unit of Zurich North America.

If third-party companies install charging stations, contracts should be reviewed to check repair and maintenance schedules and location details, said Mike Bugielski, Los Angeles-based senior risk control consultant and area vice president at Arthur J. Gallagher & Co.

Claire Wilkinson

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Safety inspection rule change raises concerns

BY LOUISE ESOLA
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Employer representatives say the Occupational Safety and Health Administration's recently finalized walkaround rule that allows workers to designate someone from outside a company to participate in safety inspections could open the door for unscrupulous participants.

Proponents, though, say the change — in the works for several years — will better protect workers when it goes into effect later this month.

The U.S. Department of Labor in March announced that its final rule clarifying the rights of employees to authorize a representative or representatives to accompany an OSHA compliance officer during an inspection of their workplace was ready to be published in the Federal Register, the final step before implementation.

The DOL contends the controversial change is "consistent" with federal law and that the Occupational Safety and Health Act gives the employer and employees the right to authorize a "representative," or nonemployee, to accompany OSHA officials during a workplace inspection.

For a nonemployee representative to accompany the OSHA compliance officer, they must be "reasonably necessary" to conduct an effective and thorough inspection, according to a statement issued by OSHA.

The agency's inspectors "have the expertise and judgment necessary to maintain fair and orderly inspections and to determine, on an inspection-by-inspection basis, whether a third party will aid OSHA's inspection," an agency spokeswoman said in an email.

OSHA inspections typically follow a safety-related incident — the agency inspects all incidents involving death — or a whistleblower report of unsafe conditions. Attorneys representing employers say the new rule could be problematic for businesses trying to keep inspections free of disruptions.

The move is considered pro-union and pro-labor, in line with the current presidential administration, said John Ho, New York-based co-chair of the OSHA Workplace Safety Practice at Cozen O'Connor P.C.

"Unions use different tactics to try to convince employees they need to protect their rights, and one of them is often safety concerns," he said.

"If an inspection comes along, you'll get a union rep that's not associated with the employer as this non-party or third-party representative during the walkaround, essentially gathering information to be used against the employer in a union campaign."

The American Federation of Government Employees said in a statement that the access will allow the union to participate in safety inspections and represents a "victory for workers."

"A national rep who works for AFGE can now be the representative and go on OSHA walkaround inspections. Before it could only be the health and safety officer or rep for the local union," AFGE health and safety specialist Milly Rodriguez said in a statement.

"It also means we can go on an inspection of a workplace where we do not yet represent the employees if they select an AFGE representative in an organizing campaign when we are working to represent the workers, for example," she said.

But unions aren't the only parties interested in getting involved in OSHA inspections, according to legal experts (see related story).

"A lot more third parties have an interest in getting into workplaces during OSHA inspections," said Eric Conn, Washington-based founding partner of Conn Maciel Carey LLP.

"Plaintiffs attorneys, plaintiffs attorneys' expert witnesses, disgruntled former employees, family members of an injured employee — all of those folks have tried over the years to get a wedge into the workplace," he said. "This rule really blows the door open for them to get that kind of access."

OSHA, though, in a statement announcing that the change would go into effect May 31, said it is "consistent with OSHA's historic practice, the rule clarifies that a nonemployee representative may be reasonably necessary based upon skills, knowledge or experience."

Such expertise may include knowledge or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills to ensure an effective and thorough inspection, the agency said.

The agency spokeswoman further wrote that OSHA gives its inspectors "authority to resolve all disputes about the representative authorized by the employer and employees."

Language barriers and employee intimidation during inspections are two factors that will be affected by the change, said Jessica Martinez, Los Angeles-based co-executive director of the National Council for Occupational Safety and Health, which supports the change.

"The purpose is to improve the OSHA inspection process; gathering information from workers directly so that hazards can be identified and eliminated," she said. "That should be the focus of this discussion, not what supposed liability employers might or might not face in the … inspection process."

Adding a "trusted representative" will help inspectors get better, more accurate information about unsafe working conditions, she said.

Employers with cause for concern have an avenue to dispute the presence of a third party during an OSHA inspection, said Andrew C. Brought, a Kansas City, Missouri-based partner with Spencer Fane LLP.

"If I'm an employer and there's a request for a third party to accompany the compliance officer, and I don't believe that there's a legitimate basis for that, I'm going to be more inclined to challenge that showing and then make them go through the process of getting an administrative warrant" to participate, he said.

OSHA'S WALKAROUND RULE REVISION

BEFORE: "The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection."

AFTER: "The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by employees is not an employee of the employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills)."

ATTORNEY INVOLVEMENT MAY LEAD TO MORE SUITS

Employers may be more likely to face litigation and a difficult discovery process after an accident when the Occupational Safety and Health Administration's revised walkaround rule comes into force this month, legal experts say.

As lawsuits often follow a workplace incident, especially when a worker is killed, plaintiffs attorney participation in an OSHA inspection could create problems for employers, they say.

"Plaintiffs attorneys and their experts want to get involved and gain access shortly after an accident to start to develop their personal injury and wrongful death action against the employer," said Eric Conn, Washington-based founding partner of Conn Maciel Carey LLP.

The change makes it easier for them "to get that access that they would never have under the existing rules of civil procedure," he said.

Andrew C. Brought, a Kansas City, Missouri-based partner with Spencer Fane LLP, said that risk is real and that employers will need to be better equipped to manage inspections.

"Companies and employers are going to need to carefully evaluate that there is a legitimate good-faith basis for why this third party has been requested to participate in an inspection," he said.

The concern caught the attention of lawmakers in South Carolina, who are considering a bill that would "condemn and oppose" the change to federal workplace safety rules. H.R. 5361, introduced April 9, claims that the change infringes on private property rights of employers and violates the U.S. Constitution.

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Increase in earbud use creates safety hurdles

BY JON CAMPISI
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The death of a woman who was fatally injured while trying to retrieve a lost earbud from a conveyor belt while working at a golf cart manufacturing plant has raised concerns about increased workplace distractions.

The woman died March 9 after she was trapped in machinery at the Club Car LLC facility in Evans, Georgia. The incident is being investigated by the U.S. Occupational Safety and Health Administration.

Safety experts say the incident highlights the need for employers to introduce additional rules and training to address the increased use of earbuds and other technology that can impair hearing at work.

Industries affected include construction, food production, manufacturing, transportation, delivery, utility work or any other job where awareness of surroundings or the ability to quickly communicate, is important, experts say.

"You're not going to have situational awareness when you've got music playing into your ears or if you're talking on the phone with somebody," said Don Enke, St. Louis-based vice president of risk services for Safety National Casualty Corp.

OSHA offers advice on earbud use in construction (see box) but does not have a specific earbuds regulation. Most citations for safety violations related to the use of distracting technologies would be under its general duty clause, Mr. Enke said.

CONSTRUCTION SAFETY ADVICE

The U.S. Occupational Safety and Health Administration says headphones can be permitted on construction sites unless they:

- Lead to struck-by incidents.
- Mask important environmental sounds.
- Drown out the approach of moving equipment and heavy machinery.

Edwin Palmer, an attorney with Pittsburgh-based Burns White LLC, who represents employers in OSHA matters, said he is aware of more cases in which workers were injured due to their use of earbuds or other personal items that distracted them from job tasks requiring focus.

Companies should ensure workers are not placed in a "potentially dangerous or hazardous situation" by engaging in distractions at work sites that "have a lot of activity," Mr. Palmer said.

While employees may be at fault for engaging in distracting activity including earbud use, injuries arising out of such situations will likely be compensable (see related story).

The Georgia incident also highlights the issue of lockout/tagout procedures in industries such as manufacturing.

"You shouldn't be interfacing with moving equipment, conveyors, without shutting it down and isolating energy sources," Mr. Palmer said.

A Risk & Insurance Management Society Inc. spokesman said that in food production and manufacturing it's "common practice for organizations to have policies in place that prohibit workers … from using earphones and cellphones."

Prevention is key when trying to cut down on incidents involving distractions, such as workers using earbuds, because enforcement of safety policies can be more difficult, said John Geaney, co-chair of the workers compensation practice at Mt. Laurel, New Jersey-based law firm Capehart Scatchard PA.

"You've got to have a safety program. You have to pursue it aggressively," he said.

John Lastella, Hauppauge, New York-based vice president of claims for third-party administrator Broadspire, a subsidiary of Crawford & Co., said many of his clients are updating employee manuals to prohibit distractions such as earbud use and offering training on the inherent dangers of these types of distractions.

For example, the U.S. Postal Service has a policy permitting workers to use earbuds, but only in certain situations, a spokesman said.

Letter carriers, who cross streets and may deal with pets, aren't permitted to use headphones while driving or on foot, and their use is prohibited near moving machinery, during oral business communications or while in contact with the public, he said.

> "You're not going to have situational awareness when you've got music playing into your ears or if you're talking on the phone with somebody."
>
> Don Enke, Safety National

Earbuds are permitted for USPS employees whose duties are performed while seated or stationary but only when it doesn't interfere with work or create a safety hazard, the spokesman said.

Managers tasked with enforcement are required to perform "work practice observations on every employee," he said, and USPS provides ongoing safety talks highlighting the importance of employee compliance.

Enforcement of certain employer policies can be difficult, and in some cases distracted employees who violate policies would likely be compensated in the event of an injury claim, experts say.

Organizations should emphasize that workplace safety policies are for the benefit of workers and should not be viewed as a means of control, said Jeff Adelson, a partner with Irvine, California-based Bober, Peterson & Koby LLP, who represents employers in workers compensation cases.

"It's the right thing to do," Mr. Adelson said. "You have a duty to keep your employees safe in the workplace."

CLAIM VALIDITY DEPENDS ON MISCONDUCT

A workplace death arising from an employee's contributory negligence is still likely to be considered a compensable injury in workers compensation, experts say.

In a Georgia case involving the death of a worker who became caught in a conveyor while trying to locate a dropped earbud, the employee broke company policy prohibiting personal earbuds at work, according to several media reports, but this type of violation is unlikely to prevent a workers comp claim, said John Geaney, co-chair of the workers compensation practice at Mt. Laurel, New Jersey-based law firm Capehart Scatchard PA.

The employer — Club Car LLC — did not respond to requests for comment.

"There's no deliberate misconduct there, and it's not reckless disregard either," he said. "That was a freak accident."

One way a claim may be found noncompensable in some states is if an employee engages in "deliberate misconduct" that leads to an injury, Mr. Geaney said.

An example of deliberate misconduct would be if a worker who is angry with his or her boss punched a wall and broke a hand. In such a case, the claim could be denied because the employee's own deliberate action led to the injury.

In California, employers could challenge a comp claim if an employee engages in "serious and willful misconduct," said Jeff Adelson, a partner with Irvine-based Bober, Peterson & Koby LLP.

In such cases, claims can be reduced by one-half of the total workers comp benefits, Mr. Adelson said. This wouldn't apply, however, in cases where the injury creates disability of 70% or more, he said.

"The employer has to have a clearly stated prohibition," Mr. Adelson said of these cases. "The employer has to take some action to stop it if they see it."

Jon Campisi

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Fights over ESG goals may lead to D&O claims

BY SHANE DILWORTH
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Recent court rulings and legal challenges highlight how companies pursuing environmental, social and governance initiatives may be open to accusations that they put the ESG goals ahead of their duty to investors.

In other cases, companies have been accused of "greenwashing" by overstating their ESG commitments.

The lawsuits could lead to claims on directors and officers liability policies and other coverages, experts say.

While ESG programs have become increasingly popular among corporations over the past decade, a backlash from some investors and state officials has raised concerns.

Several Republican state attorneys general, for example, have challenged a U.S. Department of Labor rule that allows ESG factors to be considered when choosing retirement plan investments.

In addition, they have sought to block the implementation of a U.S. Securities and Exchange Commission rule that would impose stricter guidelines for reporting carbon emissions.

On March 6, the SEC announced that it adopted new rules requiring companies to disclose climate-related risks that may affect their operations as well as any strategies they have undertaken to mitigate or adapt to a climate risk. The agency said April 4, however, that it was suspending implementation of the rules until lawsuits over their adoption are resolved.

Meanwhile, in February, a federal judge in Texas refused to dismiss *Brian P. Spence v. American Airlines Inc. et al.*, a proposed class action brought by an American Airlines pilot claiming the company and its benefits committee violated the Employee Retirement Income and Savings Act by investing with managers and funds that are strongly devoted to ESG initiatives. The judge concluded that the plaintiff sufficiently stated a claim for breach of prudence.

Whether such suits over DEI initiatives would trigger a D&O policy will depend on the allegations, said Lisa Campisi, a partner at Blank Rome LLP in Philadelphia, who represents policyholders.

For example, a suit alleging only civil rights violations may not trigger coverage, whereas one alleging that DEI initiatives constituted a breach of fiduciary duty and/or securities law violation could trigger a D&O claim.

Investigations, enforcement actions and litigation by the SEC for alleged violations of its new rule, if it goes into effect, could have significant implications for D&O coverage, said Geoffrey B. Fehling, a Boston-based insurance recovery partner at Hunton Andrews Kurth LLP.

"Most public company D&O policies will only include investigation coverage for individual directors and officers, although private companies may be afforded broader coverage for subpoenas, civil investigative demands and similar voluntarily and involuntarily requests by the government," he said.

Areas of disagreement for investigation claims include the breadth of the definition of "claim," whether investigative documents are for "wrongful acts," and whether the relief sought falls within the policy's definition of "loss," Mr. Fehling said.

The implementation of the SEC's rule could result in an increase in enforcement actions that will trigger D&O policies, said Raymond A. Mascia Jr., a New York-based insurance recovery attorney and shareholder at Anderson Kill P.C.

Potential disputes will likely center on whether a subpoena or a civil investigation demand constitutes a claim that is covered by a policy, he said.

The American Airlines ERISA suit would likely initially trigger coverage under the company's fiduciary liability policy, rather than D&O, said Ronald P. Schiller, a Philadelphia-based insurer attorney and shareholder at Hangley Aronchick Segal Pudlin & Schiller.

But shareholder suits accusing a company and its directors of making ESG-related decisions that could have negative effects on its stock price would likely bring challenges under the business judgment rule and, therefore, potentially trigger D&O coverage.

When companies make statements about ESG policies they should be sure to follow through on the message, said Mr. Mascia.

"If a company is going to implement a policy or an initiative, it should carry through with it, because we've seen lawsuits where plaintiffs have used the company's own statements against them," he said.

While the push for companies to implement ESG initiatives has the potential for making waves in the courtroom, it has not had a significant impact on the D&O market, experts say.

"We're still at a very early point, meaning that the underwriters on the D&O side are still sort of getting their sea legs on this and what impact it's going to have," Mr. Schiller said.

Underwriters and policyholders first encountered potential issues with ESG disclosures about three years ago when allegations of greenwashing first emerged, said Manny Padilla, vice president of risk management and insurance at MacAndrews & Forbes Inc., a holding company with diverse investments, and a board member of the Risk & Insurance Management Society Inc.

Underwriters are asking more direct questions to assess whether customers are aware of the various components required to comply with ESG guidelines.

"Underwriters are not necessarily qualifying a customer's platform and, in particular, governance activities unless they're blatantly failing to address the ESG topic at all," he said.

Governance is a core aspect of D&O risk, said Timothy Fletcher, CEO of Aon PLC's financial services group.

"Lack of governance leads to issues, and whether that was 20 years ago or a year ago, it's clear how important governance is to D&O," he said.

Companies can temper backlash against ESG by engaging in a balanced approach to implementing initiatives, Mr. Fletcher said.

DISCLOSURES MIGHT HELP COMPANIES

The U.S. Securities and Exchange Commission's proposed disclosure requirements mandating companies submit information about climate-related risks may lead to more regulatory scrutiny but they may also benefit companies, said the co-author of a recent report from Moody's Investors Service Inc.

The proposed requirements on environmental, social and governance disclosure, which have long been anticipated by companies, follow other climate-related disclosure rules implemented in the United Kingdom and European Union.

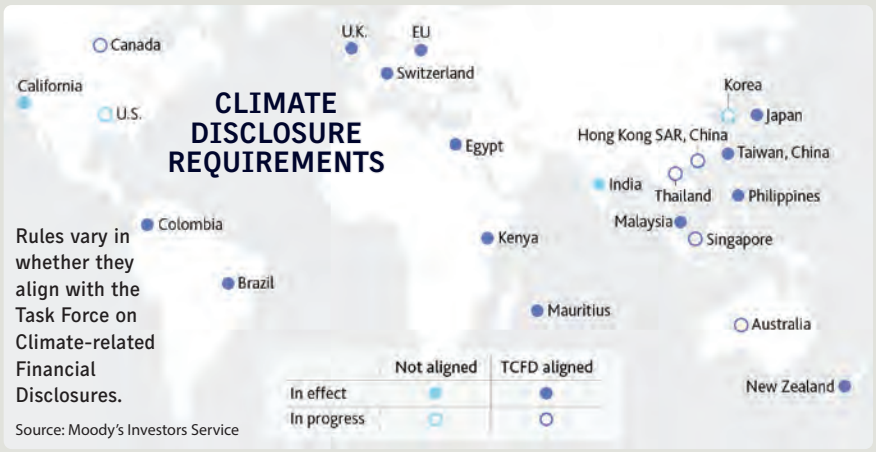
While the SEC's final rule, which has yet to go into effect due to pending litigation, is not as stringent as some of those outside the U.S., it is intended to serve as a baseline for climate-related disclosure and will likely evolve, said Brendan Sheehan, vice president and senior credit officer of ESG at Moody's in New York.

"One of the takeaways is that information related to climate risk is clearly considered meaningful or useful by a significant number of market participants," he said.

Enhanced disclosure rules can aid in credit analysis because they can make the data more consistent and comparable, which in turn can aid in the understanding of an applicable exposure to a particular risk.

"Having greater visibility into the risks and opportunities faced by issuers and being able to more efficiently compare and contrast those data, can help us understand specific credit conditions faced by issuers," he said.

Companies may also benefit from gathering information about climate-related risks because it can help them develop a deeper understanding of such risks in their own operations, as well as risks posed by their supply chain, Mr. Sheehan said.



The report indicates, though, that complying with disclosure requirements can adversely affect small and mid-size companies, as many of these companies will likely be gathering this information for the first time. Such companies can learn from looking at how larger companies respond to the rule, Mr. Sheehan said.

Shane Dilworth

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Drinking water rule sparks litigation fears

BY SHANE DILWORTH
sdilworth@businessinsurance.com

The U.S. Environmental Protection Agency's recent establishment of safe levels of so-called forever chemicals in drinking water will likely lead to litigation between organizations and their insurers to potentially recover costs for updating municipal water supplies, experts say.

Lawsuits alleging personal injury and property damage caused by PFAS are also likely to increase, they say.

PFAS, an abbreviation for perfluoroalkyl and polyfluoroalkyl substances, are potentially harmful substances that have been found in numerous commercial and household products ranging from firefighting foam to nonstick cookware. They have also been found in drinking water and soil.

Under the EPA's drinking water regulation, finalized last month, the agency restricted PFAS to four parts per trillion in drinking water — "the lowest levels that are feasible for effective implementation," according to the agency.

> "Our greatest concern for many of our clients is the litigation risk, and, while they may have limited or little exposure, the costs of defense could be very material."
>
> Glynis Priester, USI

While municipal utilities will be most affected by the regulation, it will have a "trickle-down" effect that reaches wastewater treatment facilities and companies that are permitted to discharge wastewater containing forever chemicals, said Susanne Deegan, vice president of environmental services at Marsh McLennan Agency, a unit of Marsh LLC.

Reuters

Samples of treated Lake Michigan water are collected. Federal rules on the levels of PFAS in drinking water could lead to more litigation and insurance claims, experts say.

Although the federal Bipartisan Infrastructure Law, passed in 2021, made $9 billion available to help communities affected by forever chemicals in drinking water and $12 billion available for general drinking water improvements, the costs some municipalities face to remediate water systems could be three to four times more than what they can access through the law, she said.

"What's going to happen is these utilities are going to look for responsible parties to help share the cost to remediate their systems and correct the infrastructure. They're going to start looking for those polluters who introduced PFAS into the drinking water supply," she said.

Although the EPA's regulation ostensibly only applies to public drinking water suppliers, it will also affect agricultural companies, farmers, airports, private waste companies and any entity that is either actively putting PFAS in the water or has disposed of PFAS historically, said Lydia Zaharia, an environmental marketing director at Marsh McLennan Agency.

Companies could face risks of reputational harm as well as potential liability for contamination, she said.

The regulation had been anticipated for some time, but the four-parts-per-trillion safety level is "momentous" and will have an "enormous" financial impact for insurers, said Washington-based Glynis Priester, national environmental practice leader at USI Insurance Services LLC. The regulation "will create a major uptick in litigation," she said.

"Our greatest concern for many of our clients is the litigation risk, and, while they may have limited or little exposure, the costs of defense could be very material. The defense risk is a real financial consequence of this EPA regulation for many firms in the chain," Ms. Priester said.

The costs of settling lawsuits for PFAS-related liabilities can reach billions of dollars. On April 1, St. Paul, Minnesota-based 3M Co. announced the final approval of its $10.3 billion settlement with U.S. public water suppliers by a federal judge in South Carolina. Johnson Controls International PLC also recently disclosed a $750 million settlement between its subsidiary Tyco Fire Products and some U.S. public water organizations over PFAS. The settlement is expected to get preliminary approval in May.

The EPA's announcement may later affect potential liability for companies because it increases awareness to the public and plaintiff's bar of PFAS-related risks, said Michael Hamilton, Philadelphia-based insurance coverage attorney and a partner at Goldberg Segalla LLP.

Although commercial general liability policies routinely exclude pollution claims, some jurisdictions restrict the application of pollution exclusions to traditional environmental pollution, said John Ewell, a New York-based insurance coverage counsel at Cozen O'Connor P.C.

"Whether there has been a 'discharge, dispersal, release or escape' of PFAS will be litigated. This question in particular will be germane in suits against manufacturers using PFAS in their products," he said.

Mr. Ewell also said a threshold question will arise on what level of exposure to PFAS will result in a "bodily injury" triggering coverage.

"While the EPA regulation addresses unsafe PFAS levels in drinking water, it does not expressly set a safe threshold or even address what blood levels are considered unsafe. We will need to hear from the medical community as to when exposure actually caused 'bodily injury,'" he said.

Ms. Zaharia said some insurers had created manuscript exclusions to carve out coverage for PFAS, and, in May 2023, the Insurance Services Office officially introduced forms and endorsements carving out coverage for forever chemicals in commercial general liability, umbrella liability and business owners policies and policies for auto dealers.

HISTORIC POLICY LANGUAGE KEY IN COVERING 'FOREVER CHEMICALS' LIABILITIES

Wordings in historic and current liability insurance policies will likely determine where companies seek coverage for property damage and injury claims related to exposure to "forever chemicals," experts say.

Companies will look to their insurers for coverage as suits related to perfluoroalkyl and polyfluoroalkyl substances, known as PFAS, reach the courthouse, said John Ewell, an insurance coverage attorney at Cozen O'Connor in New York.

Commercial general liability policies are most likely to respond to lawsuits alleging bodily injuries and property damage were caused by PFAS, said insurance recovery attorney Marc Ladd, a partner at New York-based Cohen Ziffer Frenchman & McKenna.

"They are occurrence-based policies that respond to long-tail, progressive injury claims covering multiple years, and they cover allegations of bodily injury caused by an insured's products, and property damage that may require costs and expenses to remediate and remove such chemicals," he said.

Pollution exclusions promulgated in 1986 may not bar all PFAS-related injury claims if they resulted from an individual's direct exposure to the chemicals as opposed to exposure to traditional environmental pollution, which is what the pollution exclusion is intended to exclude, Mr. Ladd said.

Although some general liability and excess insurers have already carved out coverage for forever chemicals, companies can look to environmental markets for policies that cover the risk, said Fargo, North Dakota-based Lydia Zaharia, an environmental marketing director at Marsh McLennan Agency, a unit of Marsh LLC.

"Following the recent EPA national drinking water standards for PFAS, we believe many carriers will work to establish their position on PFAS coverage quickly if not done already," she said.

Shane Dilworth

PROFILE: PARAGUAY

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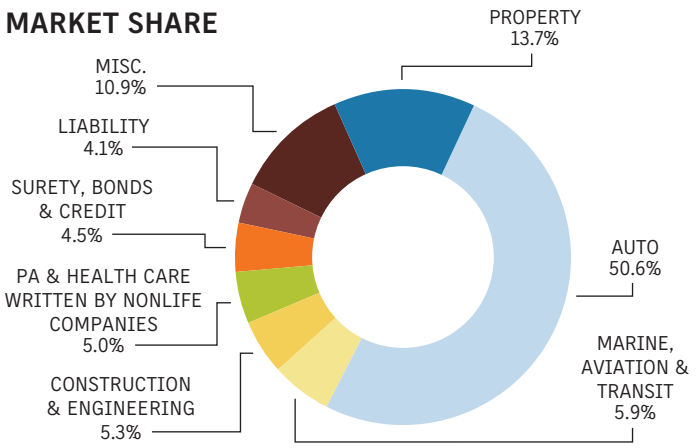
GLOBAL P/C MARKET RANKING

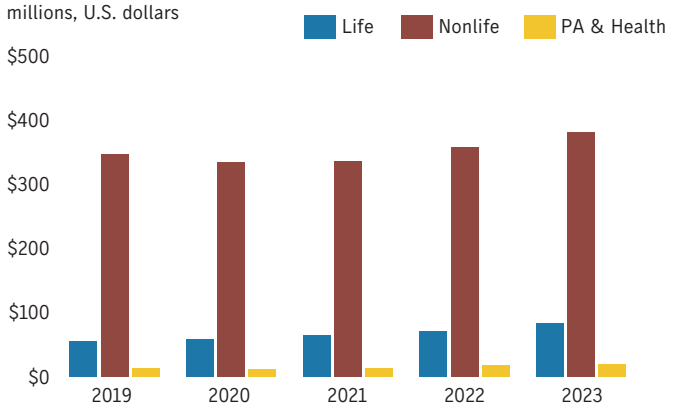
The Paraguayan insurance market is small and has not undergone any significant changes in recent years. Penetration of insurance products is low, partly due to the lack of an insurance culture among individuals and the wider commercial sector. The market consists of 34 registered insurance companies, all of which are authorized to write nonlife classes. A small number of insurers dominate the sector, with the top five holding over 47% of nonlife premium income. More than half of the participating insurers have a market share below 2%. A number of the smaller insurers do not actively seek new business and operate purely to service their existing portfolios. While many of them have a professional approach to business, some do not and operate as little more than agents, transferring almost all the risk to their reinsurers.

MARKET SHARE

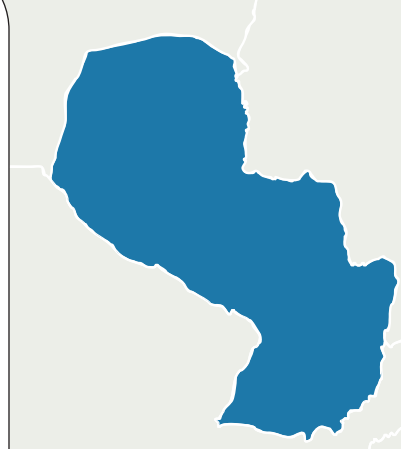


MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



AREA
157,048
square miles

POPULATION
7.44
million

MARKET CONCENTRATION
47.6%
market share of top five insurers

2024 GDP CHANGE (PROJECTED)
3.8%

MARKET DEVELOPMENTS

Updated April 2024

- Competition continues to be very strong across most classes of business, and sustainable growth remains challenging. Consolidation may occur among the 34 insurance companies in operation, but numbers are unlikely to reduce significantly.
- The Central Bank of Paraguay in January 2022 approved a new regulation to establish minimum standards for good corporate governance. The standards will apply to the insurance and banking sectors and are expected to be adopted this year.
- The government remains committed to introducing obligatory third-party auto insurance. The latest draft regulations have been under consideration by the National Congress since April 2022. The project continues to face strong opposition from those that consider the cost of cover would place an unfair financial burden on motorists in the current economic climate.
- Insurtech continues to develop in Paraguay, driven forward by digital technology and smartphone penetration. The Paraguayan Chamber of Insurtech was founded in April 2023.
- In August 2022, Financiera Ueno SAECA, a subsidiary of Grupo Vazquez SE, and the holding company of ueno Seguros SA, became the majority shareholder of local insurer Alfa SA de Seguros y Reaseguros SA. In July 2023, Alfa announced its rebranding as ueno Seguros SA.

COMPULSORY INSURANCE

- Guarantee bond or professional indemnity cover for reinsurance brokers, insurance brokers and agents
- Workers compensation (state scheme)
- Liability insurance for air carriers for injury to passengers and damage to baggage or goods during international journeys
- Guarantee for customs clearing agents
- Professional indemnity cover for external auditing companies
- Third-party liability insurance for owners or operators of drones

NONADMITTED

By law, insurers must be locally authorized to carry on insurance business in Paraguay. At the same time there is nothing in the law to indicate that insurance must be purchased from locally authorized insurers. This is generally interpreted to mean that insurers can issue policies from abroad without exceptions if approached by a buyer.

INTERMEDIARIES

Brokers and agents are required to be authorized to do insurance business. They are not permitted to place business with nonadmitted insurers except when permitted by an international treaty or agreement.

MARKET PRACTICE

In general, the provisions of the law are said to be followed, but some cases of business being placed overseas by brokers are said to occur, involving mainly those classes that are not offered in the local market. Multinational business is fronted out with a minimum local retention or none at all.

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LEGAL BRIEFS

NFP unit sues Alliant over 'raid'

■ An NFP Corp. unit sued Alliant Insurance Services Inc., alleging the rival brokerage poached 19 employees, including real estate practice leader Gary Pestana.

NFP Property & Casualty Services Inc. said in the complaint, filed in federal court in Los Angeles that it has already lost five clients since the mass resignation of employees to Alliant and suffered damages exceeding $2 million.

NFP said in the complaint that Alliant followed a pattern in its hiring practices: "It orchestrates a raid of a competitor's workforce that includes directing employees to resign without notice at the same time, inducing the departing employees to breach their contractual and fiduciary obligations to the competitor, and immediately attempting to steal the competitor's clients and business."

Charlotte, North Carolina-based Mr. Pestana, who was involved in another poaching suit when he and his team left Marsh LLC for NFP in 2019, abruptly left NFP in March and orchestrated the resignation of other NFP employees, including Ramy Morcos, a senior vice president, the suit states.

When Mr. Pestana joined NFP in March 2019, he signed an agreement that required him to provide 60-days' notice. He also signed agreements to protect NFP's confidential and proprietary information, court records show.

NFP asserts claims for tortious interference with contract, tortious interference with prospective economic advantage, aiding and abetting breach of fiduciary duty, and unfair business practices.

SXSW wins appeal against Chubb unit

■ The 5th Circuit U.S. Court of Appeals reversed a Chubb Ltd. unit's win against SXSW LLC over the defense and coverage of a more than $1 million settlement to resolve a class action over the cancellation of the Austin, Texas-based music festival South by Southwest in 2020.

The three-judge appeals court panel, in *SXSW LLC v. Federal Insurance Co.*, disagreed with the trial judge's finding that a contract exclusion and a professional services exclusion in SXSW's policy from Federal barred coverage.

Two ticket holders sued the music festival host in April 2020 after it refused to refund their ticket costs after the event was canceled due to the COVID-19 pandemic. The lead plaintiffs asserted claims for breach of contract, unjust enrichment and conversion. The suit was settled in February 2022, court records show.

SXSW sued Federal in October 2021 after it refused to defend it against the suit. The parties each filed summary judgment motions, and the trial judge ruled that while the class action sought a covered loss, exclusions in the Chubb unit's policy barred coverage.

In reversing the trial judge's decision, the appeals court panel concluded that the contract exclusion did not apply because the class-action plaintiffs' claims were not limited to SXSW's purchase agreement. The panel also found that the professional services exclusion was inapplicable because the festival host's refunding of tickets is not a professional service.

AIG sues three former executives

■ American International Group Inc. and several of its subsidiaries sued three former executives who recently launched an excess and surplus lines holding company, saying they unlawfully used proprietary information to start the business.

AIG said in the suit filed in federal court in New Jersey that Michael Price, former CEO of North America General Insurance at AIG, and Kean Driscoll, former chief underwriting officer, violated terms in their employment agreements when forming Dellwood Insurance Group LLC.

Mr. Price and Mr. Driscoll are also accused of using AIG's proprietary information when recruiting Thomas Connolly, who was then chief financial officer of North American Insurance, to join them.

The three former AIG executives announced the launch of Dellwood on March 7 shortly after the expiration of Mr. Driscoll's noncompete agreement. Mr. Price's noncompete agreement expired in September 2023, but he was still prohibited from soliciting AIG's employees and customers, disclosing AIG's confidential information and disparaging the company, the lawsuit says.

The suit contends Mr. Price and Mr. Driscoll began planning the formation of Dellwood and secured $250 million from investors for its launch while still subject to agreements they had with their former employer.

AIG asserts claims for breach of contract, breach of fiduciary duty, unfair competition and violation of the Computer Fraud and Abuse Act.

Conductor's claim wrongly denied

■ A New York appeals court reversed an administrative decision that had disallowed a psychological injury claim filed by a New York City Transit Authority train conductor who said he developed anxiety due to COVID-19 exposure in the workplace.

The Appellate Division of the Supreme Court of New York said the Workers' Compensation Board erred in denying the conductor's mental injury claim and finding that the injury was noncompensable.

The worker had claimed he developed anxiety and experienced an exacerbation of preexisting psychiatric conditions because of his high-risk exposure to COVID-19 and "unsafe work environment in which he was not provided adequate personal protective equipment," the ruling states.

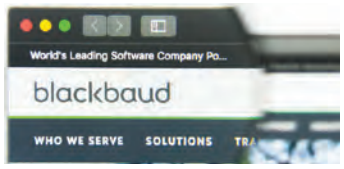
The transit authority challenged the claim, and a workers comp judge agreed with its contention that the stress the employee was under was the same as other workers faced during the pandemic.

The Workers' Compensation Board affirmed the judge's decision.

The appellate court said the board "improperly applies a disparate burden to claimants seeking benefits for contracting the virus as compared to those, like him, seeking benefits for psychological injuries stemming from exposure to COVID-19 in the workplace."

The court remanded the case to the board to reassess whether a causal connection existed between the psychological injury and the workplace.

DOCKET



TRIAL JUDGE TOSSES INSURERS' SUIT

A Delaware trial judge dismissed two suits brought by a combined seven insurers against a data-hosting application service to recover costs they paid to nonprofit organizations affected by a 2020 ransomware attack. The Delaware Superior Court judge ruled in *Travelers Casualty and Surety Co. of America v. Blackbaud Inc.* and *Philadelphia Indemnity Insurance Co. et al. v. Blackbaud Inc.* that the insurers failed to sufficiently state a claim for breach of contract against Charleston, South Carolina-based Blackbaud. The insurers provided policies to at least 104 nonprofit organizations that were affected by the ransomware attack on Blackbaud.

EEOC SUES RESTAURANT FOR FIRING EMPLOYEE

The U.S. Equal Employment Opportunity Commission sued an Atlanta restaurant for firing a Black sous chef in training for repeatedly reporting discriminatory behavior. The agency said in its suit against Iron Hill Brewery of Buckhead LLC and Iron Hill Brewery LLC that the male employee was fired after complaining that managers were mistreating minority employees and women, including by not providing a private space to express breast milk.

STATE PREVAILS IN KETAMINE SUIT

The Delaware Supreme Court found that the state properly paid for an injured employee's ketamine infusion treatments despite the worker's claim that the payments were insufficient under the state's workers compensation medical fee schedule. The employee was injured while working for the state in 2016 and subsequently received 23 state-compensated ketamine infusions for pain management. The court, in affirming a decision by the Industrial Accident Board and the Superior Court, said she failed to show that the billing codes used by the ketamine treatment provider were insufficient or inaccurate.

Michelle Sartain

MARSH

Michelle Sartain is president of Marsh U.S. and Canada, overseeing brokerage and risk advisory services. She is also involved in Marsh's diversity, equity and inclusion efforts and spoke at parent company Marsh & McLennan Cos. Inc.'s recent Equity=Possibility event in Atlanta, which gathered Black executives, C-suite leaders and insurance market practitioners from inside and outside of the company. Ms. Sartain, who was one of the 2022 *Business Insurance* Women to Watch, recently spoke with Editor Gavin Souter about diversity efforts in the insurance sector and what companies need to do to develop and retain diverse talent. Edited excerpts follow.

Q The insurance sector has been looking at ways to increase diversity for some time. Where do you think the industry stands in that process?

A I don't think we can claim success yet. When you look around at some of the senior positions within the industry, we've been more successful in seeing more diversity from a gender perspective, but when we think about our aspiration to bring in more diverse talent from other underrepresented communities, we still have a long way to go.

We're making progress as an industry and Marsh is very intentional about trying to think about how we recruit on college campuses. But important as it is to bring in people from diverse backgrounds, it's also vital that we then create a culture within the organization that makes it a company that they want to stay at and thrive and grow their careers. Some really good work has been done through our colleague resource groups.

Q What do you think is holding things up or do you think it's just inevitable that it's going to take time?

A When you look around, the people who would have exposure to this industry are people who have historically been in this industry, so they're predominantly white and male. Although we do have many more women who work in the industry, the rates of them coming into executive leadership positions are improved but still not great. Some of that I think is awareness, so it really does come down to where are we recruiting and how are we getting out to different minority communities.

Marsh has invested quite a bit of time and effort to try and recruit from historically black colleges and universities and we also sponsor a RISE program, which is an MBA fellowship program, which again is to try and increase the awareness of insurance in minority communities that might not otherwise look to insurance for their careers.

It is really important that we try to emphasize just what a great career insurance can be, and one of the biggest challenges that we have is that sometimes people in the industry are very deprecating about what it is we do. When you think about the fact that it touches every other industry and the biggest problems that we face in the world, it should be something that we talk about with a lot more excitement and enthusiasm. And we need people with diverse backgrounds and perspectives if we're going to continue to be able to innovate and solve the problems of the future.

Q What other things can companies do?

A We need to just be more intentional as a community. We need insurance carriers to be equally aligned with us. We need companies to be thinking about diversity when they think about who they're staffing their risk management departments with, and we really need to be thinking collectively about how we attract and retain the talent that we need not only to serve the business that we have today but the business that we hope to have in the future.

Q Is there a way of doing that other than just by discussion? For example, some public entities have policies in place about diversity of the service providers they use.

A Absolutely, and that was an element of the Equity=Possibility event. A lot of public entities do require that there are minority- or women-owned companies that provide some of the services as part of their contract, so we do see the opportunities for that to continue. One of the other elements that came out of that discussion was oftentimes those tend to be services that are more trades-like versus professional, and if we really want to talk about increasing the economic participation of those underrepresented communities, it really needs to be by making sure that we're bringing them in to provide and contribute some of those professional services that are required in those contracts.

Q You still hear people say, 'Anybody that works hard and is smart enough can succeed here.' Is there any validity in that?

A I read Ayn Rand, too. It works really, really well in the book, but I'm not sure that it works so well in practice, because you will always have people who have bias, you'll always have people who have a preference. Studies tell us people gravitate to people that are like them, so if we're not really forcing ourselves to think differently and change, we will end up with exactly the same result.

Q You've had a lot of success in your 27 years at Marsh. What attracted you to the business, and what keeps you interested?

A I didn't know anybody who worked in insurance, so what attracted me to the business at the time — so, this was 1996 — was an article I read about a digital trading platform that they were investing in. The irony is that it didn't work at the time. I don't think it was a lack of the creativity of the solution, but it was absolutely a lack of the ability of technology at the time. I think we're probably finally there 27 years later. But it was interesting to me, and then what kept me was really just this opportunity to continue to learn. My background was in management liability and I really enjoyed the opportunity to understand from business leaders, how they talked about their business, how they thought about their business, so that was inherently interesting. And then Marsh McLennan's been a great place to try new things, to be given opportunities to not only leverage the skills that I've cultivated but to learn new skills and to take chances and contribute. And the people are great, so that helps as well.

It is really important that we try to emphasize just what a great career insurance can be, and one of the biggest challenges that we have is that sometimes people in the industry are very deprecating about what it is we do.

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SAFETY GROUPS

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A Value-Based Solution to Disrupt a Fee-for-Service System

Musculoskeletal (MSK) injuries have become a major category for suboptimal outcomes and rising costs in workers' compensation. Too frequently, what should be a routine shoulder, knee, or back diagnosis develops into a large loss with delayed return to work. Of the $20 billion spent annually on work-related MSK claims,[1] these more volatile outlier cases represent a significant portion of medical, indemnity, and administrative costs.

In the current workers' compensation system, injured workers, providers, and payers navigate a fragmented, misaligned fee-for-service framework that can derail recovery. Primary and ancillary providers are incentivized to focus on providing more treatment interventions and spending an outsized amount of time on medical documentation to optimize reimbursement. This misalignment takes the focus away from high-value patient care.

"Overstrained providers are drowning in administrative burdens and under great pressure to treat higher volumes of care faster, while injured patients struggle through a siloed industry that prioritizes activity over outcomes," says Michael Choo, MD, Chief Medical Officer, Workers' Compensation, Paradigm. "For MSK injuries, we need value-based solutions that fundamentally address this disjointed *status quo*."

A Model for the Future of Work-Related Injury Care

Value-based models shift the incentive to outcomes for a single injury or event—instead of individual treatments. "Providers should be focused on overall health, quality care, and functional outcomes, and less on meeting volume demands and prior authorization requests," explains Jennifer Doyle-Fidler, MSN, RN, Director, Clinical Product Solutions, Paradigm. "Higher-risk MSK cases benefit from early identification, dynamic patient engagement strategies, and proactive assessments that move care upstream."

By identifying conditions and environmental factors that are common barriers to recovery, providers and care managers can work with injured patients to intervene sooner. For example, many psychosocial factors, from symptom magnification to perceived injustice, can be addressed subclinically with the right approach and resources. This strategy can shift attitudes and reduce the risk of a compensable behavioral health diagnosis.

Paradigm's HERO MSK℠ is the first true value-based solution for work-related musculoskeletal injuries. This holistic solution identifies key risk factors and delivers appropriate interventions for guaranteed functional outcomes. Injured workers receive access to a high-quality provider network developed through cost and outcomes scoring, matched with best-in-class credentialing. Combined with a dedication to patient engagement and psychosocial support earlier in the care journey, HERO MSK ensures injured workers receive the attention and resources necessary for a successful recovery.

"HERO MSK applies Paradigm's clinical expertise and proven care model to deliver a much-needed outcome-focused approach to this injury category."

Michael Choo, MD
Chief Medical Officer, Workers' Compensation, Paradigm

A proven approach to better outcomes for all

HERO MSK VALUE-BASED CARE

- Guaranteed maximum functional outcome and financial certainty
- Active, data-driven clinical and behavioral health management to manage risks
- Paying for value instead of activity creates aligned incentives
- Better patient engagement removes psychosocial barriers earlier
- Collaboration with providers and access to the best specialists

An Outcomes-Focused Approach in Action

As the industry leader in value-based catastrophic care management, Paradigm brings more than 30 years of proven expertise and successful outcome achievement to workplace-related injuries. "Paradigm's commitment to value-based, outcomes-focused care is a core reason I joined this organization more than a decade ago," says Dr. Choo. "HERO MSK applies Paradigm's clinical expertise and proven care model to deliver a much-needed outcome-focused approach to this injury category."

Using prescriptive analytics, higher-risk cases are identified early and undergo day-one evaluations from specially trained nurse care managers. Real-time patient engagement technology is then deployed for more accurate risk calculation and mitigation strategies. Care managers are supported by Paradigm's roster of top medical and behavioral health experts who have injury-specific experience to ensure appropriate conservative care and surgical intervention.

By guaranteeing functional outcomes and delivering a competitive fixed-price model, HERO MSK aligns care through collaborative partnerships, while increasing cost certainty for accurate reserves. Paradigm is accountable for medical costs until patients achieve final release to return to work (RRTW) or maximum functional recovery. The result is lower indemnity spending, reduced litigation, decreased disability rates due to increased functionality, and shorter claim durations.

A comprehensive solution supported by four key components

Engaged Injured Workers Achieve Better Outcomes

Patient engagement is an essential ingredient in any value-based care system. Injured workers who feel like active participants are not only more motivated in their recovery, but also more likely to communicate emerging physical and behavioral problems with care managers and providers. "Paradigm's patient engagement technology augments and supports our care management team; it does not replace them," adds Doyle-Fidler.

Key to the HERO MSK program are patient engagement tools carefully designed to support each recovery journey through real-time communication and data insights. Options are flexible and multimodal—including text, email, and a mobile app—to meet patients where they are and promote honest responses in a low-pressure environment. With accurate, real-time information, nurse care managers can develop and deliver risk assessments to claims teams for better insights on interdisciplinary care collaboration.

In one case, after discovering an injured worker was recovering from substance misuse, a Paradigm care manager became concerned about the prescription of opioids for a scheduled surgery. By working closely with the management team and treating providers, the injured patient was able to complete a recovery that included successful opioid weaning and return to full duty work. "In this situation, the care manager was only able to identify the past substance misuse because the patient had voluntarily reported taking the narcotic dependence treatment drug Suboxone non-industrially. This is a great example of technology and clinical experts working together to mitigate risks that would have been easily missed otherwise," Doyle-Fidler elaborates.

85%

injured worker engagement with Paradigm's digital application.[2]

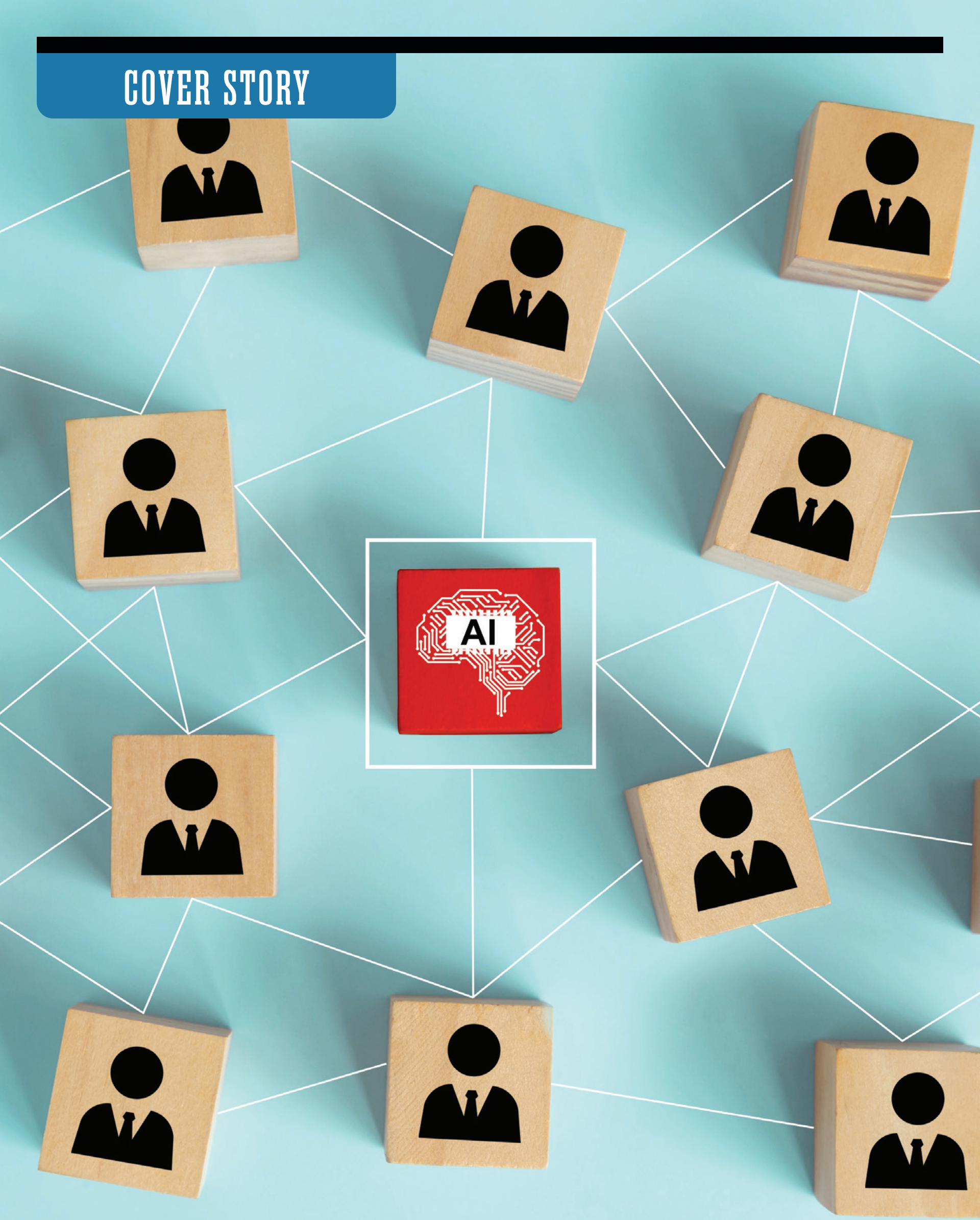
The Value-Based Difference

Along with the entire Paradigm organization, Dr. Choo believes a value-based, outcomes-focused methodology is essential to improving injury treatment in workers' compensation: "It's critical for us to work together to focus on meaningful and measurable outcomes, which are coupled with accountability for the cost of an episode of care." By leveraging a proven model, HERO MSK delivers on the promise of value-based care to better align incentives and teams around the health and successful recovery of injured workers.

Learn more about HERO MSK and value-based care for musculoskeletal injuries.

www.paradigmcorp.com/HEROMSK

Sources:
[1] OSHA
[2] Paradigm case data 2023-2024


AI

INSURERS SEEK TO KEEP PACE WITH EXPLOSIVE USE OF AI

As companies add generative artificial intelligence capabilities, the insurance sector weighs how the technology changes risks

BY MATTHEW LERNER
mlerner@businessinsurance.com

The meteoric rise of artificial intelligence across numerous industries has led insurers, brokers, lawyers and others to pause and consider what new risks and exposures the developing uses of the technology may create.

While generative AI and its use in "deepfakes" are grabbing attention, commercial insurance claims for losses related to the emerging technology have yet to reach the critical mass necessary to spur insurers to adjust policy language or issue widespread exclusions.

Change has nonetheless begun, as governments move to develop parameters for the new technology (see story page 22), and at least one company has introduced an affirmative AI coverage endorsement.

"It will take time for the market to mature on these points for the exposures to be identified," said Julian Miller, London-based partner at DAC Beachcroft LLP, who has worked on policy wordings for insurers. So far, he has been asked only once to add an AI exclusion to a policy wording.

"From a technological perspective, I'm seeing new nuances to existing categories of risks. I'm not seeing any completely new categories of insurable risks that have surfaced because of generative AI as a technology, at least not so far," said Jaymin Kim, Toronto-based senior vice president, cyber risk practice, for Marsh LLC.

Ms. Kim leads emerging technologies work within the global cyber practice at Marsh in a role "to assess whether there's any net new categories and insurable risks that are surfacing with emerging technologies … not limited to artificial intelligence," she said.

Over the past 15 months or so, during which high-profile AI technologies have been introduced, "companies across virtually every industry have been reaching out to talk about AI," the vast majority of which has to do with generative AI, computational systems that run on deep learning techniques intended to create original content, she said.

AI has become a topic of discussion among brokers and policyholders.

"We make sure it is front and center in all of our conversations, particularly if there is a current cyber renewal," said Nadia Hoyte, New York-based national cyber practice leader for USI Insurance Services LLC.

Exposures

Organizations are evaluating how AI may affect coverages or trigger claims.

Bob Wice, West Hartford, Connecticut-based head of underwriting management, cyber and tech, at Beazley PLC, said his group writes standalone cyber insurance policies that cover privacy, liability, breach response costs, business interruption and security events, as well as technology errors and omissions policies and media liability policies.

"That mix … needs to be discussed in the context of what additional exposure should we be thinking about affirmatively covering. Should we be thinking about whether there's additional exposure that we're facing that we hadn't faced before, and how artificial intelligence and generative AI really plays into all of that?" he said.

"From a coverage point of view, at this point, when you think of generative AI, it's a tool, not a new form of entity or existence," said Elisabeth Case, Chicago-based global product manager, cyber, for Liberty Mutual Insurance Co.

AI-related claims may fall under property/casualty or specialty lines, sources said.

"The types of claims that are likely to come out of the use of AI tools are claims that are covered under existing policies," said Marshall Gilinsky, a shareholder in Boston and New York for policyholder law firm Anderson Kill P.C., who practices in the firm's insurance recovery and commercial litigation departments.

"It goes back to the exposures and the risks. They're already there; it's just a matter of whether the use of AI is going to make them more prevalent and more efficient, and more numerous," said insurer attorney Meghan Dalton, a Chicago-based partner at Clyde & Co.

"It is important to note that AI may not introduce new risks, but it changes the frequency and severity of risks that are already in place in ways that we don't yet understand," said Matt Harrison, London-based executive director, casualty, for Gallagher Re, the reinsurance unit of Arthur J. Gallagher & Co.

For example, a doctor using AI may be better at diagnosing 95% of diseases, but due to potential biases in training data may chronically under-diagnose or not recognize 5% of diseases. "Misdiagnosis was always a risk. AI just changed it," Mr. Harrison said.

Michelle Fesi, technical director of special lines at Schaumburg, Illinois-based Zurich North America, said AI training bias can lead to potential exposures.

"Bias is a concern. Language models trained on biased datasets can perpetuate prejudices related to gender, race, religion and other social factors. This can have significant impacts on decision-making processes and customer experiences, potentially leading to legal or reputational consequences," she said.

Seeking clarity

The industry appears to have started efforts to add contract clarity, according to sources.

"Policies do need to clearly articulate whether this type of risk is included or not," said Michelle Chia, New York-based chief underwriting officer, cyber, Americas, for Axa XL, a unit of Axa SA. Axa XL is reviewing its insurance policy

See **ARTIFICIAL** page 22

> "From a technological perspective, I'm seeing new nuances to existing categories of risks. I'm not seeing any completely new categories of insurable risks that have surfaced because of generative AI as a technology."
>
> Jaymin Kim, Marsh

29% of Americans think it is a good idea for P/C insurance companies to leverage AI.

42% are less likely to purchase a policy if a provider publicly states it uses AI.

63% of consumers expressed a positive experience after interacting with AI tools.

Source: Insurity LLC

ARTIFICIAL

Continued from page 21

language with an eye toward AI, she said.

One early mover is cyber managing general agent Coalition Inc., which in March introduced an artificial intelligence affirmative endorsement to clarify what is covered by its U.S. surplus lines and Canadian cyber insurance policies.

> "AI may not introduce new risks, but it changes the frequency and severity of risks that are already in place in ways that we don't yet understand."
>
> Matt Harrison, Gallagher Re

The endorsement has seen substantial uptake, said Tiago Henriques, Zurich-based vice president of research for Coalition, with one agency that places coverage with the MGA requesting it be added to all its Coalition policyholders' policies.

Coalition introduced the endorsement because it saw a rising influence of AI in some of its claims reviews of cyber incidents, Mr. Henriques said. "We were starting to see those phishing emails increase in quality, and we were starting to see even in some situations deepfakes being used as well," he said.

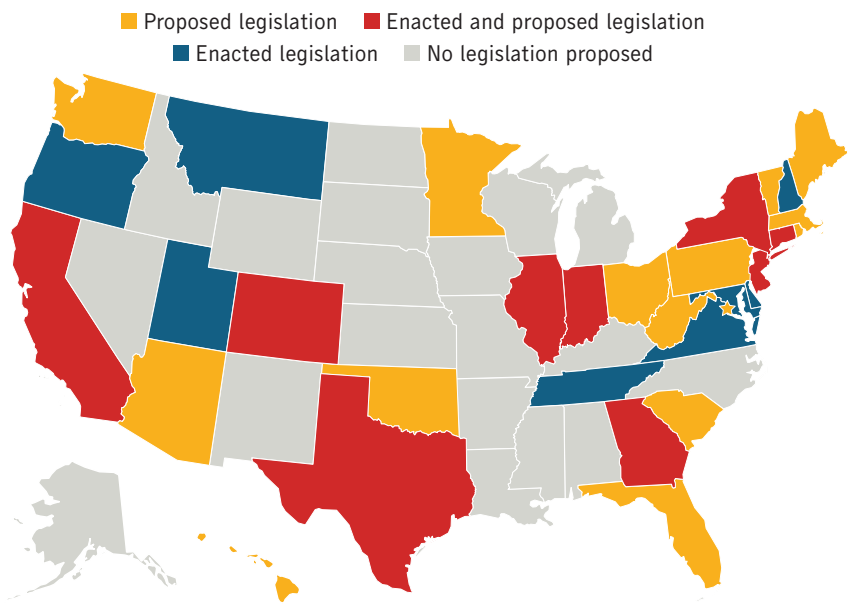
The endorsement was initially drafted in mid-2022 and Coalition then consulted with insurers, cybersecurity providers and others to hone the language, he said.

As the commercial insurance sector moves to accommodate artificial intelligence, the new technology appears to be growing in acceptance and penetration among the public.

A recent study by data analytics company Insurity LLC showed that 35% of consumers favor the use of AI in fraud detection in the commercial property/casualty insurance sector, with 32% in favor of AI use to support delivering personalized products and promotions, and 24% in favor of AI in customer service.

The report also showed some reluctance, however, as 50% of consumers said they were against the use of AI in claims management, and 45% opposed AI's use in underwriting policies.

U.S. STATE-BY-STATE AI LEGISLATION SNAPSHOT



Source: Bryan Cave Leighton Paisner LLP

As of 2/12/24

Companies face potentially tighter constraints on AI use as states, international regulators lead drive to assess risks

The regulatory and potentially statutory framework emerging to govern the development and use of artificial intelligence will likely create compliance requirements for organizations and possibly legal exposures as well.

"The regulations will give the legal framework and the guardrails within which companies need to operate," said Pamela Hans, managing shareholder of the Philadelphia office of Anderson Kill P.C.

The movement toward such a framework is just beginning, though several major companies have acted independently to restrict the use of generative AI by employees due to privacy and security concerns, according to news reports.

AI regulation is in the early stages of development, said Jaymin Kim, Toronto-based senior vice president, cyber risk practice, for Marsh LLC. The European Union is arguably the furthest ahead, she said.

While it is "likely we will see compliance requirements emerge, we've yet to see any completely wide-sweeping" requirements that could affect policy wordings, she said.

In April 2021, the European Commission proposed its Artificial Intelligence Act. The regulation would place AI applications in three categories: applications and systems that create an unacceptable risk; high-risk applications; and applications not explicitly banned or listed as high-risk, according to information on the EU's Artificial Intelligence Act website.

"To a certain extent outside of the U.S. or for multinational companies, this is a new exposure," said Meghan Dalton, Chicago-based partner at Clyde & Co. Organizations will have to ensure they are compliant with the European directive once it is finalized and implemented.

In the United States, individual states are leading the movement to regulation, much as they did with data privacy, experts say.

"You're starting to see states take the helm," in the absence of a federal law, said Nadia Hoyte, New York-based national cyber practice leader for USI Insurance Services LLC, noting New York state's recent Proposed Insurance Circular Letter.

Sent Jan. 17 by the New York State Department of Financial Services to New York-based insurers and others, the circular provides guidance on the "use of artificial intelligence systems and external consumer data and information sources in insurance underwriting and pricing." The Department asked for feedback on the proposed guidance by March 17.

Among other things, the circular addresses concerns over potential discrimination through the use of AI, transparency over the use of the technology, and data and privacy concerns.

According to The Council of State Governments, 17 states have enacted 29 bills focused on regulating the design, development and use of artificial intelligence, primarily addressing data privacy and accountability, since 2019.

The National Conference of State Legislatures says that in the 2023 legislative session, at least 25 states, the District of Columbia and Puerto Rico introduced artificial intelligence bills, and 18 states and Puerto Rico adopted resolutions or enacted legislation.

Federal regulatory activity, so far, has been in the form of Executive Order 13859, "Maintaining American Leadership in Artificial Intelligence," which requires the director of the Office of Management and Budget, in coordination with the directors of the Office of Science and Technology Policy, the Domestic Policy Council and the National Economic Council, to issue a memorandum that provides guidance to all federal agencies to inform the development of regulatory and nonregulatory approaches regarding technologies and industrial sectors that are empowered or enabled by artificial intelligence, according to the White House.

> "To a certain extent outside of the U.S. or for multinational companies, this is a new exposure."
>
> Meghan Dalton, Clyde & Co.

"Regulators want to protect against unfair uses of AI," said Marshall Gilinsky, a shareholder in Boston and New York for Anderson Kill P.C., who practices in the firm's insurance recovery and commercial litigation departments.

Matthew Lerner

Risk management key in overseeing implementation of innovative technology

Risk managers or their counterparts should be included in organizations' discussions and activities concerning the use and potential impacts of artificial intelligence, experts say.

"That's always a good practice, because risk managers have a good line of sight to broad exposures that somebody in an individual discipline within an organization may not have the opportunity to see otherwise," said Elisabeth Case, Chicago-based global product manager, cyber, for Liberty Mutual Insurance Co.

Risk management involvement helps make sure that "everybody is aligned on what the tools are being used for and how they're going to be deployed, and that it's being done in a thoughtful manner," she said.

Organizations should be proactive in identifying and addressing potential AI exposures, said Jaymin Kim, Toronto-based senior vice president, cyber risk practice, for Marsh LLC.

Managers responsible for AI should ask "what can I do from a risk management perspective in order to understand the specific exposure and transfer residual risks," she said.

"With respect to AI, organizations generally are on notice that risk management and legal and compliance regimes within organizations have to ensure there's adequate oversight," said Bob Wice, West Hartford, Connecticut-based head of underwriting management, cyber and tech, at Beazley PLC.

"You have to make sure that you're updating your privacy controls and security controls to ensure that you've got the right walls, practices, policies and procedures in place to ensure that your organization's employees aren't using generative AI in the wrong way to do their work. That's all got to be managed from the risk management practice at these organizations," Mr. Wice said.

John Farley, New York-based managing director of Arthur J. Gallagher & Co.'s cyber practice, said during a mid-April webinar that organizations should incorporate AI into their cyber incident response plans given its rising prominence in data breaches.

"In your incident response plan, you have to anticipate the potential for deepfake," Mr. Farley said, and have mechanisms in place to mitigate damages as with other cyber incidents.

Matthew Lerner

SPECIAL REPORT

CLAIMS MANAGEMENT

Aging workers pose comp claims challenges

INSIDE

BY JON CAMPISI
jcampisi@businessinsurance.com

The aging U.S. workforce is a rising concern for employers and workers compensation insurers as older worker injury claims are more likely to contain comorbidities.

Older workers usually have greater expertise than younger co-workers and are injured less frequently but they often have more preexisting health issues than younger workers, making comp claims more complex.

As life expectancy increases and people retire later, the average age of many workforces will likely continue to rise, making effective return-to-work programs and other strategies more important, experts say.

"We know that when you're older, you tend to have more chances of having a comorbidity, you tend to have more chances of having another medical condition," said Dennis Tierney, Norwalk, Connecticut-based national director of workers compensation claims for Marsh LLC.

Gallagher Bassett Services Inc. says its claim distribution by employee age closely mirrors the overall U.S. labor force and it projects that by 2032, workers aged 55 and over will likely generate around a

quarter of all claims.

Figures provided by the third-party administrator show that workers comp claimants aged 35 or older account for 61% of claim volume and 80% of all claim dollars.

And the age of claimants is tied to increased claim costs, more lost workdays and lower claim closure rates, according to Gallagher Bassett.

The U.S. Census Bureau projects that by 2030, one out of five U.S. residents will be older than 65, likely translating to more, and longer, participation in the labor force. And the Bureau of Labor Statistics has said it expects 96.5% growth in the labor market of workers 75 and older between 2020 and 2030.

When older workers are injured and undergo tests such as imaging scans, underlying degenerative conditions can be uncovered, which can further complicate treatment and lead to questions over whether any of the discovered issues are work related, according to experts.

"We have older workers with workers comp injuries that may have hearing difficulty, vision or ambulation issues, comorbidities such as diabetes or even lung issues."

Judiann Romeo, Sedgwick

Other age-related developments may also affect claims, said Judiann Romeo, Youngstown, Ohio-based assistant vice president of clinical operations for Sedgwick Claims Management Services Inc.

"We have older workers with workers comp injuries that may have hearing difficulty, vision or ambulation issues, comorbidities such as diabetes or even lung issues," she said.

Comorbidities can have a direct effect on a work injury or hinder the healing process, Ms. Romeo said. Prescription medications used by injured workers for unrelated conditions can also hamper recovery, she said.

In addition, older workers are more prone to injury from accidents such as falls, and bone fractures can take longer to heal, said Dr. Mary Capelli-Schellpfeffer, vice president and national medical director for Boston-based Liberty Mutual, Global Risk Solutions, Workers Compensation Claims.

Recovery is also likely to be affected by underlying medical conditions that aren't tied to employment, such as high blood pressure, diabetes and higher body mass index, she said.

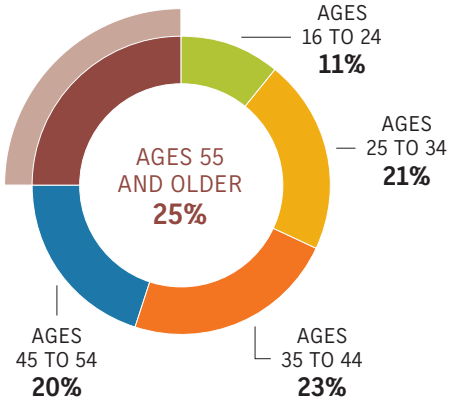
Older workers may also require more physical therapy sessions than younger workers, and they might have to be out on total temporary disability for longer, she said.

"The recovery period is going to be longer when it's an older person," said John Geaney, co-chair of the workers compensation practice at Mt. Laurel, New Jersey-based law firm Capehart Scatchard PA. "It's going to be more difficult to perhaps get them back to baseline."

Meanwhile, aging workers on the job site can pose a greater risk for employers, and it's not unusual for some of these types of workers comp cases to end up in litigation, Mr. Geaney said (see related story).

AGING WORKFORCE

By 2032, Gallagher Bassett Insurance Services Inc. expects workers aged 55 and older to generate a quarter of all workers compensation claims:



Managing claims

Some insurers say managing aging worker claims should involve a team approach, ensuring that injured workers maintain a relationship with a primary care physician and that they stay on top of their overall health to help facilitate faster healing if they do become injured on the job.

These types of claims might also require nurses and other specialists, as aging workers might need more, and enhanced, medical care, Dr. Capelli-Schellpfeffer said.

"The recovery period is going to be longer when it's an older person. It's going to be more difficult to perhaps get them back to baseline."

John Geaney, Capehart Scatchard

Managing claims for older workers often involves a whole-body approach, as opposed to focusing attention exclusively on the specific work injury, said Jennifer Cogbill, Frisco, Texas-based senior vice president of GB Care, a division of Gallagher Bassett.

"Properly supporting injured workers holistically (in) the aging workforce is certainly an area of focus," she said.

In managing these types of claims there is also an element of familiarity for older workers, as they may have had prior experience with workers compensation and understand the process better, said Matt Zender, Las Vegas-based senior vice president of workers compensation strategy at Amtrust Financial Services Inc.

Older workers know how to "work with doctors in a way that gets them back healthy," Mr. Zender said.

LITIGATION MORE LIKELY WITH OLDER CLAIMANTS

Aging worker claims often are more susceptible to litigation, as issues of causation and claim expansion come into question.

Older worker claims may be slightly more challenging to handle once in litigation because of issues such as Medicare Set-Asides and a potentially higher percentage of disability paid, according to John Geaney, co-chair of the workers compensation practice at Mt. Laurel, New Jersey-based law firm Capehart Scatchard PA.

Recovery can also be hampered, and litigated claims tend to cost more overall, he said.

"I'm telling the employer right from the beginning ... to reserve more money generally because the recoveries aren't as good," Mr. Geaney said.

The age of an injured worker can affect the resolution of a litigated claim, said Alan Gurvey, a claimants attorney with Sherman Oaks, California-based Rowen, Gurvey & Win.

The cost "of a claim may not be as high because life expectancy is a lot lower, yet the value of the claim often needs to take into consideration the fact that there are increased needs for an older person and that person may not go back to work because of age," Mr. Gurvey said.

"It's a balancing act," he said. "And those are decisions made by defendants in terms of putting reserves on a case."

Jon Campisi

SPECIAL REPORT

The winding road for mental injury claims

Court rulings and legislation, coupled with greater awareness of mental illness, are expected to lead to more mental injury claims in workers compensation. The claims are more subjective compared with physical claims, where an X-ray can often determine whether an injury is present.

Such claims require a different approach, experts say.

Nearly two dozen states have post-traumatic stress disorder presumptions for first responders, and two states over the past year added other workers facing PTSD diagnoses: nurses in Washington and any worker in Connecticut who experiences a traumatic event.

Given the push for mental injury acceptance, experts say claims organizations are making the issue a focus to ensure good outcomes.

Louise Esola

First stop: Is it compensable?

The compensability question, as with physical claims, is front and center.

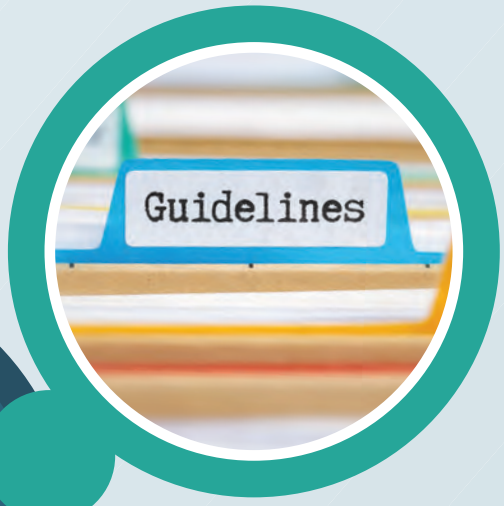
"When something like that comes across the desk, first of all it's going to vary based on jurisdiction and whether there is a specific event that could have a mental health component. Or is it an allegation of mental health impact due to sexual harassment or management abuse or a long-term stress? And that is going to vary quite a bit based on jurisdiction," said Jennifer Cogbill, Frisco, Texas-based senior vice president of GB Care with Gallagher Bassett Services Inc.

For PTSD claims, for example, most laws require that the sufferer experiences a qualifying incident, such as witnessing death or being a victim of crime. Some states require that a physical injury occur for a mental one to be deemed compensable. And nearly all states require documentation and proof.

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, is the go-to resource for tracking symptoms and making a diagnosis. While PTSD tends to get the most attention due to the wave of legislation passed by states in recent years, diagnoses for ailments such as depression and anxiety can also enter the comp system in states that permit such claims.

Connecting the condition to work is almost always a sticking point, experts say.

The claims can be "very challenging from an investigative perspective. Ultimately, we're looking at what's the proximate cause of the symptoms that this person is experiencing? And are they directly correlated to their workplace?" said Jeff Gurtcheff, Atlanta-based chief claims officer at CorVel Corp.



Green light to getting help

Once a mental injury claim is accepted as compensable, claims handlers adhere to guidelines for care as they do with physical claims. While some states have treatment guidelines, the evidence-based guidelines created by the Official Disability Guidelines, known as "ODG," comprise the industry standard, said Tammy Bradly, Birmingham, Alabama-based senior director of clinical product marketing for Enlyte Group LLC.

The guidelines for PTSD, for example, highlight that a worker may need antidepressant medication immediately, individual cognitive and group therapies, and hypnosis or brain stimulation. The guidelines say that on average a person with PTSD may be out of work for 110 days and a maximum of 147 days — under "best practice," the condition can be managed in 27 days, which does not always translate into returning to work.

Most third-party administrators and claims management organizations, especially in recent years, have well-versed staff who can manage the mental components of a claim.

"We strongly recommend, in addition to the resolution manager administratively handling the claim, that we have a clinical resource assigned," Ms. Cogbill said. "Our nurses are behavioral health certified, which means that they have background information on how to identify and support people who have various mental health issues."

A bumpy road

Gaining access to effective mental health care can be a challenge.

"There's a lack of mental health professionals for workers compensation and elsewhere," Ms. Cogbill said. "And oftentimes, finding providers that are willing to accept a fee schedule is an obstacle. If we're advocating for an injured worker, we need to get creative with our approach on identifying providers, whether that be making direct negotiation arrangements with them or connecting with a virtual physician who may not be in that particular region."

Return to work is also a challenge. A worker would need careful evaluation and possibly an alternative assignment, experts say.

"We have various return-to-work programs, so we can step that individual into some alternative employment to begin to have some structure around their day, and partner that with the clinical support as well," said Karen Thomas, Culpeper, Virginia-based vice president of clinical solutions for CorVel.

Reaching maximum medical improvement with a mental claim can be a roadblock that often requires a second opinion. Some states, such as California, have an independent medical review process for such claims.

"There might be a question on the treatment that was rendered or even on whether or not the person could return to work," Ms. Bradly said. "When you get to when the (claimant is) exhausted with treatment and you've not been successful, perhaps on working with the provider ... that's when you may want to bring in something like an independent medical exam."

SPECIAL REPORT

LARGEST THIRD-PARTY ADMINISTRATORS*

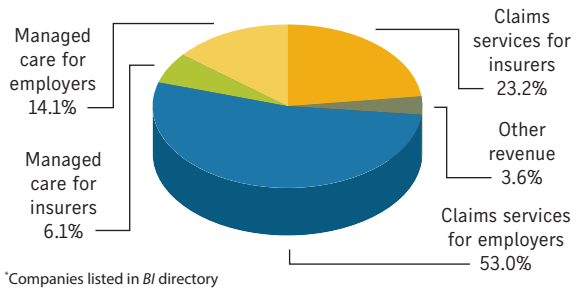
Ranked by 2023 gross revenue

Rank	Company	TPA services provided	Gross revenue 2023	Gross revenue 2022	% increase (decrease)	Total number of claims-handling staff	Officers
1	Sedgwick Claims Management Services Inc.	Multiline**	$4,642,782,332	$4,326,829,707	7.3%	28,958	Michael A. Arbour, CEO
2	UMR Inc.	Employee benefits only	$1,745,000,000	$1,540,000,000	13.3%	5,050	Scott Hogan, president-CEO
3	Gallagher Bassett Services Inc.	Multiline**	$1,433,000,000	$1,222,116,157	17.3%	8,224	Scott Hudson, president-CEO; Mike Hessling, CEO-North America
4	Crawford & Co.	Multiline**	$1,292,000,000	$1,189,482,000	8.6%	4,645	Rohit Verma, president-CEO
5	Luminare Health Benefits Inc.[1]	Employee benefits only	$783,000,000	$466,000,000[2]	68.0%	NA	Craig Julien, CEO
6	CorVel Corp.	Multiline**	$774,000,000	$704,000,000	9.9%	1,374	Gordon Clemons, chairman; Michael Combs, president-CEO
7	Meritain Health	Employee benefits only	$677,000,000	$618,000,000	9.5%	NA	Claudia Winsett, executive director
8	Helmsman Management Services LLC	Multiline**	$449,912,506	$427,348,000	5.3%	1,179	David Dwortz, president-CEO
9	ESIS Inc.	Multiline**	$395,700,000	$411,500,000	(3.8%)	1,379	Jim Shevlin, president
10	Charles Taylor	Property/ casualty only	$350,000,000	$310,000,000	12.9%	1,040	Christopher Schaffer, global chair-CEO; Robert Brown, group CEO

*Companies listed in *BI* directory **Includes employee benefits and/or property/casualty and/or workers compensation [1]Formerly Trustmark Health Benefits Inc. [2]Restated
Source: *BI* survey

TPA REVENUE*

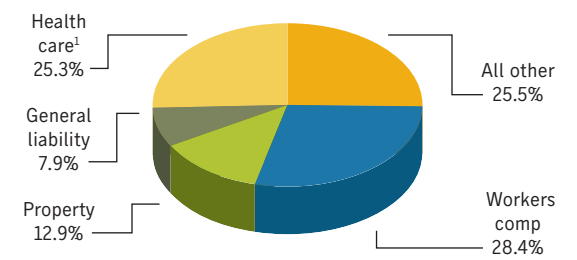
Percentage of 2023 revenue from all services provided



*Companies listed in *BI* directory

TYPES OF CLAIMS MANAGED*

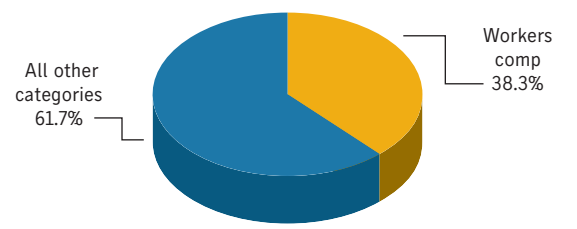
Percentage of claims by category



*Companies listed in *BI* directory
[1]Includes medical, vision, dental and prescription drugs

VALUE OF CLAIMS PAID*

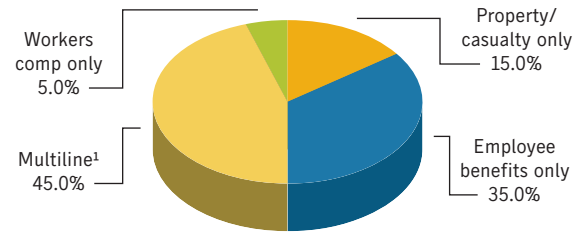
Based on the amount of claims paid in 2023



*Companies listed in *BI* directory

TYPES OF SERVICES PROVIDED*

Percentage of TPAs handling multiline[1], employee benefits only, property/casualty only and workers comp only in 2023



*Companies listed in *BI* directory
[1]Includes employee benefits and/or property/casualty and/or workers compensation
Source: *BI* survey

LARGEST CLAIMS-HANDLING TPAs*

Ranked by 2023 gross revenue from claims handled for employers

Rank	Company	2023 revenue[1]
1	Sedgwick Claims Management Services Inc.	$1,959,570,157
2	UMR Inc.	$1,745,000,000
3	Gallagher Bassett Services Inc.	$763,844,089
4	Luminare Health Benefits Inc.[2]	$720,000,000
5	Meritain Health	$627,300,000

*Companies listed in *BI* directory [1]Excludes managed care and medical billing services [2]Formerly Trustmark Health Benefits Inc.
Source: *BI* survey

LARGEST MULTILINE[1] TPAs*

Ranked by 2023 gross revenue from claims handled for employers

Rank	Company	2023 revenue[2]
1	Sedgwick Claims Management Services Inc.	$1,959,570,157
2	Gallagher Bassett Services Inc.	$763,844,089
3	ESIS Inc.	$268,400,000
4	Crawford & Co.	$195,000,000
5	Helmsman Management Services LLC	$158,688,031

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

LARGEST BENEFITS-ONLY TPAs*

Ranked by 2023 gross revenue from claims handled for employers

Rank	Company	2023 revenue[1]
1	UMR Inc.	$1,745,000,000
2	Luminare Health Benefits Inc.[2]	$720,000,000
3	Meritain Health	$627,300,000
4	Health Plans Inc. (HPI)	$74,408,809
5	Amalgamated Employee Benefits Administrators Inc.	$67,515,875

*Companies listed in *BI* directory [1]Excludes managed care and medical billing services [2]Formerly Trustmark Health Benefits Inc.
Source: *BI* survey

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PERSPECTIVES

Human adjusters teaming with AI agents way of the future for workers comp claims

Joe Powell is senior vice president of analytics and product innovation at Gallagher Bassett. He can be reached at joseph_powell@gbtpa.com.

In workers compensation claims, outcomes have historically depended on the quality of experts — both the claims adjuster and, less visibly, a team lending support to adjusters behind the scenes. What if that team wasn't just made up of human experts but also included a squad of artificial intelligence bots, or "agents," working in tandem, with each ready to assist with its specialized skills? That's the future, and it's closer than you might think.

Generative AI is the buzzword of the day, grabbing headlines left and right. But for those in the know, AI has been a secret weapon for years. For forward-thinking organizations, it's been a quiet partner in making decisions that significantly impact claim outcomes.

From reserving to clinical intervention, provider selection to litigation avoidance, and subrogation to return to work, AI has been there, quietly guiding key decisions and improving outcomes. It's the brainy assistant that never sleeps, tirelessly sifting through data to find golden nuggets of insight.

Up to this point, these various AI models have been spokes feeding information back to a human hub, typically the adjuster. As AI continues to proliferate, this could soon be akin to a basketball team in which the players only ever communicate with the coach — and never with each other. Whether on the court or with a claim, communication flows best when all the players on the team are actively engaging with one another.

The solution is to develop AI agents that can communicate with one another, working as a bona fide team and ultimately presenting human experts with a cohesive plan. That plan will support the claims adjuster with recommendations and supporting information in making the critical decisions on the claim — decisions which, for the foreseeable future, will remain in the expert hands of the human adjuster.

Notably, large AI companies like Google and OpenAI, makers of ChatGPT, use a similar approach in creating their AI models. These GPT models are refined using an approach in which one AI agent proposes a response to an input, and a second AI agent grades the response based on what it has learned about human preferences. Similarly, in the claims world two or more AI agents working can generate significantly better recommendations when they work together.

To illustrate what this could look like in workers compensation, start by imagining components of your dream team for managing claims: intake and assignment staff to get things rolling; clinical oversight to flag clinical/psychosocial risks and mitigate them; litigation avoidance and fraud investigator experts to navigate and mitigate risks; a claim auditor to review output and ensure consistently high quality across the team; a comp law expert to provide up-to-date legal insights as needed; a licensed adjuster, accountable for critical claim decisions; and an administrative assistant to help coordinate the team.

Now, let's leap into the future where this team is AI-based. The moment a claim is filed, the AI team begins its work. An AI intake agent takes the First Notice of Loss and follows up with relevant questions helpful to the investigation of the claim. Key pieces of information are passed to AI teammates for further processing. Then, the clinical oversight agent reviews the information passed to it from the AI intake agent and spots signs of acute psychosocial challenges. It recommends immediate human clinical intervention and sends an alert to the litigation avoidance agent, given the observed relationships between psychosocial risks and litigation. Later, the claim auditor agent reviews claim facts collected to date and notices factual inconsistencies in verbal and written correspondence provided from intake. It engages the fraud investigator agent with this information to gauge the risk of fraud and determine appropriate next steps to mitigate risk. The legal expert reviews action plans recommended by the AI team and ensures adherence to relevant laws. Any regulations that would require action by the adjuster are flagged for follow-up.

Then, a claim assignment agent reviews output passed from the agents above, which it uses to determine the claim's unique risks and complexity. Based on this, it identifies the optimal licensed adjuster to handle the claim. Lastly, the administrative assistant agent compiles all findings, including action items, and schedules time for the designated adjuster to review them the next day.

By the time the human adjuster logs in, a coherent and cohesive plan is waiting for them. This AI dream team stays engaged 24/7, offering unwavering support throughout the claim's lifecycle.

This is the future of claims management: a blend of AI efficiency and human expertise, where much of the heavy lifting is done before the sun even rises. It's a vision in which AI agents work together to provide and empower the human adjuster with the information required to make the nuanced, critical decisions that truly require human judgment.

The technology to create a seamless, efficient and thorough claims management process is largely already here. However, it demands a paradigm shift — from isolated AI solutions to holistic AI teams that can collaborate effectively.

Currently, the market is flooded with AI solutions, but they often leave the human professional as the central "hub" in the wheel among an ever-growing number of AI "spokes," potentially creating a chokepoint as humans coordinate with disconnected AI models. What we need is an architecture in which the AI agents can self-coordinate.

There are two ways to capitalize on this opportunity. You can architect your own AI team. To build this team, you need to be great at not just building AI agents but also getting them to work as a team. One key to success in building your agents is establishing a rigorous evaluation methodology, ensuring your agents consistently outperform humans at the same task. Getting the agents to work as a team requires a long-term vision for the team's composition and rapid iteration to make that vision a reality. Or you can partner with a group with this vision. This involves partnering with firms with a vision for a team of AI agents. Be wary of firms that offer a collection of independent AI models with no plans to integrate these into a team.

Whether you want to build your own AI team or partner with a visionary group, the key is to be aware of the promise and peril of AI teamwork, and how they can be addressed with superior claim outcomes in mind. AI agents can achieve more and have more profound claims impact together than alone, but they need careful design, evaluation and integration to perform well. By planning for this opportunity, you can gain a competitive edge.

MARKET PULSE

MGA kWh Analytics offers energy property cover

■ San Francisco-based managing general agency kWh Analytics Inc. said it can write up to $75 million in property coverage per renewable energy project location, backed by increased capacity from Aspen Insurance Co.

In addition to the capacity increase, kWh will have delegated authority to cover accounts comprising up to 100% of operational solar and/or battery energy storage projects and up to 50% of wind and/or construction accounts.

KWh launched its property coverage for renewal energy projects last year, backed by Aspen. Four leading global reinsurers are now on the underwriting panel, kWh said.

Emperion announces standalone IME business

■ Emperion, a Wayne, Pennsylvania-based company offering independent medical examination services in workers compensation claims, announced it has taken on all IME, peer review and independent review organization services from Enlyte LLC.

The move comes after the two companies announced a separation agreement in February.

Emperion and Enlyte said all contractual and service agreements for current clients would be maintained by Emperion.

RB Jones unveils in-transit offering for cannabis

■ New York-based managing general underwriter RB Jones said it has launched an in-transit policy for cannabis.

Coverage for both facility owners and third-party transportation companies is backed by Atain Insurance Co., part of the H.W. Kaufman Financial Group Inc. family of companies, according to an RB Jones statement.

The product includes all cannabis, hemp and CBD products, and targeted classes of business include the supply chain, from growers, cultivators and hemp/CBD manufacturers to distributors and dispensaries, the statement said.

Limits offered are $250,000 for cannabis in transit any one covered vehicle; $25,000 cash in transit any one covered vehicle; $5,000 any one unattended vehicle; and $25,000 for debris removal, according to an email from a spokeswoman.

Mark Engel, senior vice president and managing director for RB Jones, said in the statement the cannabis sector remains challenging given the varying regulatory conditions nationwide and is "severely underinsured."

PRODUCTS & SERVICES

Aurenity expands excess casualty program

■ Managing general agent Aurenity said it has expanded its buffer excess casualty program with Everspan Group Inc. to a $5 million lead excess offering.

The program targets construction, hospitality, real estate and products, writing both unsupported and supported excess over Aurenity's primary general liability, the MGA said in a statement.

The expansion is from previous structures typically of $4 million with $1 million excess and $3 million with $2 million excess, with flexibility to write shorter layers as necessary, according to an email from a spokeswoman.

The program was launched in April.

Mosaic offers arbitration default insurance

■ Bermuda-based insurer Mosaic Insurance Holdings Ltd. said it has launched global capacity of $65 million in arbitration award default insurance, which compensates parties against breaches of investment treaties or contractual obligations by sovereign states.

Arbitration award default insurance protects a claimant against a respondent state's failure to pay an award rendered against it. Mosaic offers both pre-award and post-award coverages, with capacity of $65 million per risk and term provisions of five years, with extensions on a case-by-case basis, Mosaic said in a statement.

Mosaic's political risk division offers political risk/contract frustration and credit risk coverage globally, as well as coverages for transactional liability, cyber, political violence, environmental liability, financial institutions and professional liability, the statement said.

Artex launches transportation captive

■ Artex Risk Solutions Inc., the captive management unit of Arthur J. Gallagher & Co., launched a group captive to address risks for transportation, trucking for hire, convenience store operators and petroleum marketers.

The captive will provide coverage for workers compensation, auto liability and auto physical damage.

Artex is the captive consultant and manager, and coverage is provided by Midwest Employers Casualty and Carolina Casualty, units of W.R. Berkley Corp.

Claims administration and loss control are provided by Gallagher Bassett Services Inc. and Carolina Casualty.

"The U.S. transportation industry has experienced pockets of reduced insurance and risk management options in recent years due to labor shortages, supply chain challenges and a distressed insurance market," said Martin Hughes, executive vice president, specialty risk transfer, for Artex in North America.

Marsh unveils digital asset facility

■ Marsh LLC said it has launched a global facility providing up to $825 million in capacity for digital asset custodians, including financial institutions.

The facility, available to Marsh clients globally, will provide coverage to organizations with digital assets held offline – known as cold storage. Coverage is also available for companies that have assets secured by multiparty computation, or other custody solutions that do not operate entirely offline.

Backed by various Lloyd's of London syndicates and London-based international insurers, the facility provides digital asset custodians with coverage for risks related to physical natural perils, third-party physical theft and internal collusion by employees responsible for secure storage.

The facility was developed by Marsh Specialty's digital asset team in New York and London.

DEALS & MOVES

Arch agrees to buy Fireman's Fund business

German insurer Allianz Global Corporate & Specialty SE has agreed to sell its U.S. mid-market and entertainment insurance business underwritten through Fireman's Fund to an Arch Capital Group Ltd. unit for $450 million.

Arch Insurance North America will assume $2 billion in loss reserves associated with the business, the Allianz SE unit said in a statement.

The business sold to Arch totaled about $1.7 billion in gross premium in 2023.

Axa XL exits US crop insurance business

Farmers Mutual Hail Insurance Co. of Iowa said it has acquired Global Ag Insurance Services LLC from commercial and specialty insurer Axa XL, a unit of Axa SA.

Terms of the transaction were not disclosed.

Fresno, California-based Global Ag offers crop insurance through the U.S. Department of Agriculture multi-peril crop insurance program, Des Moines, Iowa-based Farmers Mutual said in a statement.

Brown & Brown acquires Florida ag risk agencies

Daytona Beach, Florida-based Brown & Brown Inc. said it has acquired the assets of Chapp Inc. and Citrus Insurance Services Inc., combined agencies specializing in agricultural insurance placement.

Terms of the transaction were not disclosed.

Chapp and Citrus Insurance employees will join Brown & Brown offices in Lakeland and Sebring, Florida, according to a statement.

Gallagher buys pair of Florida firms

Arthur J. Gallagher & Co. said it has acquired Fort Myers, Florida-based Specialty Risk Management Services LLC and its affiliate, Private Client Insurance Services LLC.

Terms of the transaction were not disclosed.

Specialty Risk Management Services manages a property insurance program for businesses in Florida, and Private Client Insurance Services is an agency specializing in commercial risks, condominium associations and personal lines.

COMMENTARY

Balancing AI risks against opportunities

The use of generative artificial intelligence by insurers and their customers is growing exponentially as more companies make use of the increasingly accessible technology.

The benefits for businesses will be undoubtedly vast as production processes are streamlined, accuracy becomes pinpointed, and creativity is enhanced. Insurers and brokers, too, will see gains from AI as they use it to improve claims handling, underwriting and placement services.

But as the technology is implemented, the nature of the risks being insured will also likely be transformed, whether it be through the emergence of new exposures or because of the intensification of existing risks.

As we report on page 20 in this month's cover story, insurers, brokers and legal experts are mulling both the potential upsides and downsides that AI could bring. On the one hand, the technology might lead to enhanced safety, but the threat of bias being ingrained in an AI application could lead to far bigger losses when something goes wrong.

Gavin Souter
EDITOR

And, given the huge amount of data that AI processes rely on, cyber liability and privacy risks will be amplified as use of the technology expands.

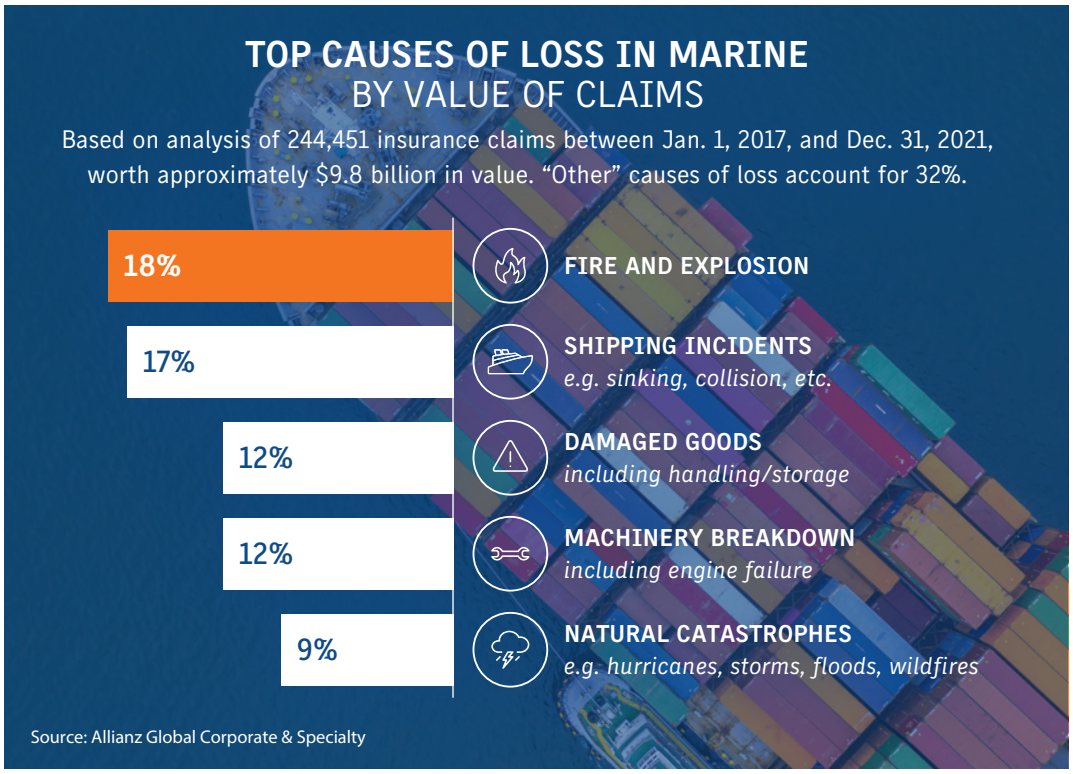
Numerous other potential risks will almost certainly emerge that risk managers and insurers will need to react to.

Reassuringly, insurers so far appear to be responding with a measured approach to the advance of AI and are waiting to see how claims data plays out rather than imposing exclusions based on speculative concerns. Such a response makes sense given that we are only at the beginning of what is likely to be the transformative implementation of AI and even more powerful technology, such as quantum computing, is in the process of development.

As advances are made, risk managers must remain attuned to developments in their organizations and ensure that their risk management processes incorporate the changes that are taking place and that appropriate safety and security measures are implemented. By inserting themselves into the AI conversation, risk managers can go a long way to protecting corporations from the potential pitfalls that they will face in the race to take advantage of the technology.

Ultimately, the successful management of the risks inherent in the adoption of AI will depend on a successful balance of embracing innovation and preventing inadvertent or deliberate misuse.

By approaching AI adoption with foresight, diligence and a commitment to ethical principles, insurers and risk managers can help unleash its potential while safeguarding against its inherent vulnerabilities. By doing so, they can establish a more resilient and equitable insurance sector that will fulfill its traditional role of supporting the economy and being positioned to help it recover when things inevitably go awry.



VIEWPOINT

Bridge investigation critical

BY CLAIRE WILKINSON
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The collapse of the Francis Scott Key Bridge in Baltimore on March 26 after it was hit by a container ship is expected to result in the costliest marine insurance loss ever.

Six construction workers died when the 984-foot cargo ship Dali lost power and crashed into a support pylon of the bridge resulting in the collapse of the structure into the Patapsco River.

Some analysts put the insured loss at up to $4 billion. While this is manageable for the industry, it would surpass the 2012 Costa Concordia disaster that resulted in a record marine insurance loss of around $1.5 billion.

Most claims are expected to be directed toward the marine insurance market initially, with multiple policies affected, including protection and indemnity insurance, which covers third-party property damage and liability; marine hull insurance, which covers physical damage to the vessel; and marine cargo. Business interruption, inland marine, property and workers compensation policies may also be triggered. London-based marine mutual insurer The Britannia P&I Club provided P&I cover for the ship.

The costs of cleaning up the bridge and container debris, moving the vessel so that the channel and Port of Baltimore can safely reopen to shipping traffic, and a lengthy process to rebuild the bridge, will add to the scale of the loss.

Ancient maritime provisions add another layer of complexity and are likely to make this a particularly lengthy and costly claim. Grace Ocean Private Ltd., the ship's Singapore-based owner, has declared "general average" — a long-standing maritime principle whereby all parties involved in a voyage share in any damage or expenditure incurred. General average claims can take years to resolve.

Under the terms of general average, cargo owners pay a contribution — based on a percentage of their own interests' value — to cover the damages or costs of others involved in a voyage. Some cargo insurance policies include coverage for general average, which means the insurer will post a bond to secure the release of cargo.

There are mixed views on this unwieldy process. The International Union of Marine Insurers has lobbied against it over the years. General average has a significant impact on cargo customers because, if it is declared, the time it takes to release cargo is exponentially longer on a large container vessel, Allianz Global Corporate & Specialty SE said in its recently published annual shipping loss review.

Given the litigious nature of the U.S. system of commerce, a lengthy legal fallout is inevitable. By April 1, the shipowner and Synergy Marine PTE Ltd., the vessel's management company, had filed a petition in federal court in Baltimore under the Limitation of Liability Act of 1851, known as the Titanic law, seeking to limit their liability for damage in the incident to the value of the vessel plus its freight. The city of Baltimore has since filed suit in the same court seeking to hold the owner and manager liable and alleging that the disaster was the result of "carelessness, negligence and recklessness."

Meanwhile, rumors swirl about the cause of the incident. The FBI has opened a criminal investigation into the crash. A U.S. National Transportation Safety Board probe is ongoing. The findings of these investigations will be critical to determining the cause of the loss and how claims, including general average, are handled.

With so much at stake for the numerous parties involved, it is imperative that the investigative process is transparent and the lessons learned from the collision are incorporated into marine safety protocols to prevent similar tragedies in the future.

A cyber catastrophe requires a bespoke insurance approach

Sezaneh Seymour is a Washington-based vice president and head of regulatory risk and policy at Coalition Inc. She can be reached at sezaneh.seymour@coalitioninc.com.

As part of the White House's National Cybersecurity Strategy, launched last year, the Biden Administration is evaluating the need for a federal cyber insurance backstop. It's a contentious topic that saw hotspots of attention over the past year and more.

A catastrophic cyber event in the insurance context is widely understood to mean a single systemic event that results in financial damages so great that they exceed the insurable losses the industry could afford to pay. Some advocates argue a backstop is needed to provide a financial safety net to shore up the insurance sector's ability to withstand such an event and preemptively stabilize the economy. Others argue a backstop is needed to induce insurers to make available wider cyber coverage, either by accelerating market penetration or by motivating insurers to offer war coverage or coverage for cyber breaches that lead to the destruction of physical assets, also known as the cyber-physical gap. Some have even suggested the government should act as a reinsurer to underwrite common attritional risks taken by private insurers.

Risks of a backstop

A backstop comes with the significant risk of distorting a nascent and thriving cyber insurance market, misallocating public resources and driving moral hazard. That is why past federal intervention in the insurance sector has only come after a market failure and not in anticipation of one.

Previous backstops, such as the Terrorism Risk Insurance Program and National Flood Insurance Program, were created because economic activity was adversely affected when entities could not procure sufficient insurance coverage. This is fundamentally different from cyber risk, where there is no indication that businesses are choosing to forgo economic activity because they cannot secure cyber coverage. In fact, the opposite is true: Every day, more businesses are embracing digital tools and services and adopting cyber insurance. The cyber insurance industry has expanded significantly without federal intervention and is poised to continue that growth.

One major gap

Headlines about state-sponsored hackers lurking in U.S. infrastructure poised to disrupt or damage critical services appear almost weekly. Digital breaches that result in physical damage would be costly and time-consuming to repair. These events would not typically be eligible for insurance coverage, but they would have the potential to severely disrupt the U.S. economy. A backstop is appropriate if the federal government wants to act preemptively to make this kind of coverage available and position the economy to be resilient to these kinds of events.

Outside of a policy decision to address this gap in coverage, there is a lack of compelling evidence to support federal intervention to safeguard against the possibility of a catastrophic event more generally. That's because the likelihood and magnitude of a catastrophic cyber event are overstated. Among the reasons these risks are overstated is the insurance industry effectively limits coverage to risks it can insure or otherwise mitigates risk when uncertain. For example, some insurers and reinsurers are issuing insurance-linked securities to transfer reinsurance risks for catastrophic events to capital markets. And most of the industry has collectively decided that war and the cyber-physical gap are too risky to insure under current conditions.

Bespoke approach needed

Most existing federal backstop models are untested and designed for perils that are fundamentally different from cyber risk. Cyber risk insurance requires a bespoke approach.

First, any backstop must narrowly address an existing gap in the insurance marketplace: the cyber-physical gap. An example would be a breach of a pipeline system in which a hacker manipulates pipeline pressure to trigger an explosion. That type of physical destruction would generally be excluded from cyber policies by property damage exclusions and from property/casualty policies by computer attack exclusions.

This gap in coverage exists today because cyber insurers lack the capital to offer limits that would cover property damage at this scale, and property/casualty insurers lack the comfort with cyber risk that would be required to underwrite this coverage. It's a conundrum, to say the least. A carefully designed backstop could induce new coverage to address this gap without impeding market growth.

Some in the industry have advocated for cyber-related war coverage. A backstop could cover cyber-physical incidents regardless of the actor causing the incident. Such an approach expands coverage while avoiding the challenges associated with the protracted and opaque process of government attribution of a specific event to a nation-state.

Second, a backstop must improve cyber resilience and not transfer to the taxpayer the financial consequences of poor cyber hygiene. To accomplish this, all policyholders should meet certain minimum-security requirements to be eligible for coverage, such as maintaining a patching cadence, segmenting operational technology and IT networks, implementing multifactor authentication, and deploying and actively monitoring an endpoint detection solution.

Additionally, all critical infrastructure owners and operators should be required to obtain insurance coverage. This is necessary because U.S. cyber insurance penetration is low at roughly 26%. Insuring the cyber-physical gap will require a much larger pool of policyholders, in part to buttress solvency and alleviate adverse selection. The Price-Anderson Act of 1957 offers precedent for mandating commercial coverage under federal law.

Third, because cyber risk is dynamic, a backstop should incentivize policyholders to maintain high cybersecurity standards throughout the life of their policy, not just at bind. One way of accomplishing that is with a shared-cost model. While the threshold for a catastrophic event will evolve, it should be a function of four variables: loss threshold, cause of aggregation, number of policyholders impacted, and number of insurers impacted. Once that threshold is triggered, the backstop should reimburse policyholders for at least 85% of their total loss. Policyholders should pay the remaining 15% of costs to maintain accountability.

Finally, insurers must retain discretion to price policies according to risk and to make coverage contingent on good cyber hygiene. Any arbitrary public pricing model will distort a nascent and competitive market in a manner that will reduce coverage and undermine the public interest.

By all measures, the cyber insurance industry is healthy and poised to grow without federal intervention. It is also true, though, that there are gaps in the kinds of coverage available today, specifically the cyber-physical gap. That gap exists because insurers deem those events as uninsurable under current conditions. If there is a public interest in having the insurance industry buttress our economy and provide new coverage for cyber-physical events, then a backstop is necessary. But we must ensure that any backstop is designed to improve our nation's digital resilience and avoid moral hazard. A backstop must not simply transfer the financial consequences of cyber insecurity to the taxpayer.

"Insurance is a wonderful career destination, but as leaders we have to ask ourselves: Are we creating the experiences for existing and new colleagues to believe this? With the rapid advancements in technology, companies that efficiently build new models at scale will win the race."

UP CLOSE

Kimberly George

NEW JOB TITLE: Chicago-based global chief brand officer, Sedgwick Inc.

PREVIOUS POSITION: Chicago-based global head, product development and innovation, Sedgwick Inc.

OUTLOOK FOR THE INDUSTRY: With the evolution of risk and risk management, insurance is more important than ever. Tech is changing the way we think about and do business, and much of that change is happening right now. It is exciting to experience the technology and data science advancements that are transforming the industry. From driving efficiencies and supporting automation models, to improving claim insights and outcomes, and improving customer experience — all are rapidly evolving insurance and claims management and changing the way we care for people.

GOALS FOR YOUR NEW POSITION: I'm breaking new ground as Sedgwick's first chief brand officer. I look forward to working with our colleagues to align our mission and purpose for our customers. Providing care is at the heart of our work at Sedgwick, from our services to our culture.

CHALLENGES FACING THE INDUSTRY: Attracting and retaining colleagues, while shifting from training to development, is an important component companies must solve for. Insurance is a wonderful career destination, but as leaders we have to ask ourselves: Are we creating the experiences for existing and new colleagues to believe this? With the rapid advancements in technology, companies that efficiently build new models at scale will win the race.

FIRST EXPERIENCE: Early in my career, I was a nurse case manager focusing on catastrophic injuries. That position aligned well with my nursing experience and jump-started my passion for the insurance industry.

ADVICE FOR A NEWCOMER: My advice would be to network within your company and externally to create a broad group of people around you. Also, seek out feedback on your performance to support your personal and professional development.

DREAM JOB: Talk show host. I love stories and the art of storytelling.

COLLEGE MAJOR: Nursing

LOOKING FORWARD TO: I am honored to work for Sedgwick as long as I have — 22 years — and I have been a brand ambassador for much of my career. What excites me about my new role is the untapped possibilities that come with a new position.

FAVORITE MEAL: Seafood is my favorite cuisine when I'm looking to treat myself.

FAVORITE BOOK: Related to my current role, I am enjoying "On Brand" by Aliza Licht.

HOBBIES: I love to travel with my husband, family and friends. Spending time in the mountains, on a beach, or floating in waters around the world are top activities on my travel bucket list.

TV SHOW: Any kind of documentary series.

ON A SATURDAY AFTERNOON: Time with family and friends can never be beaten.

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ON THE MOVE

Willis Towers Watson PLC named former Aon PLC executive **Neil Harrison** global head of claims. New York-based Mr. Harrison, who had been with Aon for more than 15 years, was named global chief claims officer at the brokerage in 2019.

Victor Insurance Managers LLC, the managing general underwriting business of Marsh LLC, named **Tim McDougald** president of its U.S. specialty business. Mr. McDougald previously was New England operations leader at Marsh.

Alliant Insurance Services Inc. named former Marsh McLennan Agency executive **April Files** senior vice president, Americas division. Based in Houston, Ms. Files was most recently senior director commercial lines and sales producer for Marsh McLennan Agency, the small and midsized brokerage unit of Marsh LLC.

Aon PLC named **Uri Dallal** New York City market leader. He succeeds Christine Williams, who was recently named Northeast regional leader. Previously, Mr. Dallal was a managing director and the U.S. regional leader within Aon's financial services group.

Lockton Cos. LLC hired former Marsh LLC managing director **Manpreet Gill** as executive vice president of the brokerage's global technology risk practice group, a newly created position. Mr. Gill previously worked as a managing director in Marsh's communications, media and technology practice. He will be based in San Francisco.

Swiss Re Ltd. named Zurich-based **Andreas Berger** to succeed Christian Mumenthaler as group CEO on July 1. Mr. Mumenthaler announced he is stepping down. Mr. Berger has been CEO of Swiss Re Corporate Solutions.

Metallica COVID suit fades to black

Enter Taylor Swift lyrics: A record-scratching moment for metalheads everywhere.

A California judge quoted the pop star's bubbly prose to help squash the popular heavy metal band Metallica's argument that "factors other than coronavirus" could have led to six concerts being canceled in 2020, and that insurers at Lloyd's of London owed the band $3 million in losses, according to the San Francisco Chronicle.

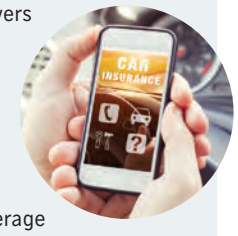
The judge in Los Angeles dismissed this argument as unrealistic given the severe impact of the disease at the time, writing that it was "absurd to think that government closures were not the result of COVID-19."

The judge added, "To paraphrase Taylor Swift: 'We were there. We remember it all too well.'"

Many insurers had denied Metallica's claim, like so many others, due to a communicable disease exclusion, according to the article.

Virginia is for liability coverage

After a state law passed last year, Virginia is joining every state in the U.S. — except New Hampshire — that requires drivers to buy car insurance.



By July 1, all drivers in Old Dominion must carry coverage, leaving in the dust the requirement that drivers who opted to go without coverage pay an uninsured motorist fee.

As New Hampshire and Virginia were long touted as the only states to not require automobile insurance coverage, personal finance gurus have argued the decision to go without coverage is a bad one and leaves drivers open to liability — a long, winding road involving repair and medical costs — if they are involved in a crash.

Sightseers seek to buck trend of cashless entry to national parks

From Mount Rushmore to Yellowstone, cash isn't king for visitors of America's National Parks, according to a lawsuit over the National Park Service's refusal to accept paper currency for entry.

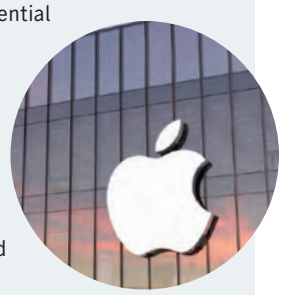
Three Americans — from California, Georgia and New York — filed the lawsuit in federal court in Washington saying the park service violated federal law by not allowing visitors to pay cash to enter various parks, monuments and historic sites, according to USA Today.

The lawsuit says the park service's policy violates federal law that says that "coins and currency ... are legal tender for all debts, public charges, taxes and dues."

"Thus, NPS' refusal to accept U.S. Currency tendered for entrance fees constitutes a clear violation of federal law," says the lawsuit, obtained by USA Today.

Apple sues over bathroom leaks

The company that made it easy for people to conduct business while doing their business in the bathroom is suing one of its former software engineers over his allegedly leaking confidential information and using his bathroom breaks to delete messaging apps that may have contained evidence.



Apple, maker of the go-everywhere-and-do-everything-with-it iPhone, is suing Andrew Aude, who worked as a software engineer at the Cupertino, California-based company's iOS division, for allegedly using his company cellphone to send thousands of text messages to reporters from The Wall Street Journal over a five-year period, according to an article in the New York Post.

Apple alleges that the media leaks were designed to "kill" products and features "with which he took issue," according to the lawsuit.

Judge rules court is not kindergarten

A Vermont trial court judge recently flushed an insurance company's collection dispute with a plumbing contractor, finding an attorney's failure to appear for trial after being unable to find parking was no reason to reopen the case.

The judge gave counsel for Acuity Insurance Co. an extra 15 minutes, rather than the usual five minutes, to appear for the trial and had a serious issue with his excuse.

"Seriously?" the judge wrote in *Acuity Insurance v. Gartner Plumbing*.

"Court is not kindergarten. Lawyers are obliged to manage their schedules so that they get to court on time," the judge wrote.

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