

**VACCINE STRATEGIES:** Employers consider whether to require shots for workers - **PAGE 6**

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FEBRUARY 2021

**SPECIAL  
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## TELEHEALTH COMES OF AGE

Health care liability risks evolve as  
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The use of telehealth expanded rapidly amid pandemic-related shutdowns, bringing convenience and cost savings to both health care providers and patients. But that rapid growth could potentially lead to increased medical malpractice exposures. **PAGE 14**

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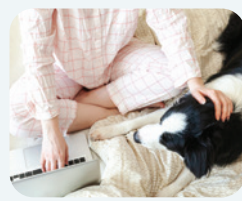


### ELLEN R. DUNKIN

Ellen R. Dunkin, senior vice president, general counsel and chief risk officer for Amalgamated Life Insurance Co. in White Plains, New York, is this year's president of the Risk & Insurance Management Society Inc. A member of RIMS for 15 years, she discusses her plans for the organization and the opportunities for risk managers to demonstrate their value as the industry moves beyond the pandemic. **PAGE 13**

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Nearly a third of working professionals say they'll quit if they're not allowed to keep telecommuting. **PAGE 27**



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# Pandemic data drives risk modeling

BY CLAIRE WILKINSON

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**P**andemic risk modeling is evolving to support the development of property/casualty insurance coverages going forward, though there are challenges due to the dynamic nature of outbreaks, industry experts say.

The ongoing COVID-19 pandemic has generated a bank of data that will be vital to modeling the next major infectious disease event, they say.

“What this pandemic has revealed is that underlying data are crucial to being able to build adequate models,” said Nita Madhav, CEO of Metabiota Inc., a San Francisco-based epidemic risk modeling insurtech.

Each of the models has different assumptions in place, she said.

“One of the things we are missing in the U.S. especially is some way of looking at what different models are saying and having a consolidated or an ensemble view,” Ms. Madhav said.

Similar to the National Hurricane Center’s view for an ongoing hurricane event, this would allow for a “common and best understanding” of what might happen, which would be beneficial for government entities, the insurance industry and other businesses, she said.

Up until COVID-19 most pandemic modeling from the insurance perspective had been geared to excess mortality on the life insurance side, said Simon Young, Washington-based senior director, Climate and Resilience Hub, at Willis Towers Watson PLC.

But that has changed, and the property/casualty side of the business, particularly related to business interruption insurance, has now realized that probabilistic pandemic models exist, Mr. Young said.

Catastrophe modeler Risk Management Solutions Inc. has had a pandemic model since 2005, said Robert Muir-Wood, chief risk officer for RMS in London.

“The principal focus for the model was on the life/health aspects of pandemics, and the model has been widely used in a number of securitization transactions,” Mr. Muir-Wood said.

In 2008 RMS tested a version of the model that also covered the business interruption impacts of pandemics.

“We found little interest among clients and in writing pandemic business interruption insurance, so we didn’t take that program further, but that is the basis for our modeling going forward,” Mr. Muir-Wood said.

The model needs to capture all potentially affected lines of coverage, in addition to life/health exposures, he said.

Since the first reported cases of COVID-19



in December 2019, the pandemic has gone in many different directions with multiple impacts, said Doug Fullam, director of life and health modeling at catastrophe modeler AIR Worldwide, part of Verisk Analytics Inc., in Boston.

While the bigger impacts were expected to be in the life insurance sector, the focus has shifted to the knock-on effects on the economy and its effect on health, travel, business interruption, liability and workers compensation insurance policies, he said.

AIR released its first pandemic model in 2013 and expanded it in 2016 to include bacterial and viral diseases in addition to previously modeled influenza, coronaviruses, such as those responsible for SARS and MERS, and filoviruses, including Ebola.

## INFECTIOUS DISEASE A ‘CRITICAL THREAT’

The World Economic Forum’s Global Risks Report 2021, released Jan. 17, found that:

- 58% of respondents view infectious diseases as a critical threat in the next two years.
- Infectious diseases rank as the top global risk in terms of impact in the next decade.

The report, based on a survey of more than 650 risk experts, was produced in conjunction with strategic partners Marsh & McLennan Cos. Inc. and Zurich Insurance Group Ltd.

It also collaborated with the World Bank on the launch of the Pandemic Emergency Financing Facility, which made a payout for COVID-19 in 2020, Mr. Fullam said.

“It is a risk that can be modeled. Can it be insured is a question for the larger business

and insurance community,” he said.

With COVID-19 the modeling has shifted to become highly data driven, highly localized, and is evolving in an era of real-time data, said Todor Penev, Atlanta-based senior vice president of Aon PLC’s health and benefits practice.

There’s been a big shift in the data toolkit and the ability to process data, he said.

“It used to be this type of modeling was done only by highly trained, very specialized epidemiologists. Now we have data scientists, mathematicians, statisticians, actuaries doing this kind of modeling,” Mr. Penev said.

Going forward models need to faster analyze information about different variants and their behaviors, said Reid Sawyer, Chicago-based head of the Emerging Risks Group of Marsh Advisory, a unit of Marsh LLC.

Infectious diseases ranked as the most critical threat facing economies in the World Economic Forum’s latest annual global risks report released in January.

“It’s fantastic that we’ve developed these incredibly sophisticated COVID-focused models but now we’ve got to develop models that contemplate other ways that pathogens should behave” and the effects on organizations, Mr. Sawyer said.

In the future there will be increasing convergence between the pathogen models and traditional business interruption modeling, and how to overwrite with insurance programs, he said.

There’s a lack of awareness about what tools are actually out there and how much is known about how to model this risk, Ms. Madhav said.

“It is possible to have estimates of the frequency and severity based on sound scientific principles and also to incorporate learnings from social science, given the human-driven nature of some of the risk,” she said.

## HUMAN ELEMENT COMPLICATES DISEASE RISK

**H**uman intervention and behavior in response to pandemics add to the challenges faced in modeling these risks, experts say.

The difference between a standard natural catastrophe and a pandemic is that human intervention is a key element in what happens, said Robert Muir-Wood, London-based chief risk officer for Risk Management Solutions Inc.

Lockdowns and social distancing are clearly designed to have some effect on reducing a pandemic’s spread, he said.

“The biggest human intervention of all is when a vaccine becomes available and how quickly it can be rolled out to the population to make a difference,”

Mr. Muir-Wood said.



The human element is a key component of how a pandemic will unfold, said Nita Madhav, CEO of Metabiota Inc., a San Francisco-based epidemic risk modeling insurtech.

“Epidemics don’t necessarily have to become pandemics. A large human element is related to how we respond to it and how we can mitigate it in real time. Humans have the ability through their actions to alter the course of an event,” Ms. Madhav said.

A pandemic is somewhat of a “moving target” because new variants can change its profile, said Todor Penev, Atlanta-based senior vice president of Aon PLC’s health and benefits practice.

With COVID-19 there are big geographic disparities even in parts of the U.S., for example, in terms of general infrastructure and compliance with public safety guidance. “There’s a behavior aspect to modeling,” Mr. Penev said.

Claire Wilkinson

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# COVID-19 vaccines: Employers weigh options en route to a shot in the arm

ANGELA CHILDERS  
& JUDY GREENWALD

As COVID-19 vaccine rollouts continue throughout the U.S. and the pool of individuals eligible for the inoculations expands beyond health care workers and senior citizens, employers must soon make decisions about their vaccination policies.

Although government agencies have said workplaces can require vaccinations, experts question whether that is the best choice, and warn that vaccine mandates can trigger the interactive process when workers object on medical or religious grounds, have workers compensation implications and potentially lead to widespread terminations of vaccine resisters.

“There’s a lot of ambiguity right now about when and if you can and cannot mandate a vaccine,” said Kevin O’Connor, co-chair of the labor and employment practice at Peckar & Abramson P.C. in River Edge, New Jersey.

The Equal Employment Opportunity Commission and the Occupational Safety and Health Administration have said that employers can mandate that workers receive the COVID-19 vaccine, but it may not be the best approach, experts say.

*“One school of thought is, how could you not vaccinate your workforce ... it would be negligent of you not to vaccinate your workforce.”*

Carrie Cherveney,  
Hub International Ltd.

Employers cannot automatically terminate workers who refuse the vaccine because of a disability or religious beliefs without first engaging in an interactive process to seek a reasonable accommodation under either the Americans with Disabilities Act or Title VII of the Civil Rights Act. The EEOC guidance says these workers can only be excluded if they cannot find such an accommodation.

But if workers do not fit into one of those inoculation exceptions on medical and religious grounds, employers need to be prepared to deal with the consequences and impose the appropriate responsive measure, said Carrie Cherveney, Tampa, Florida-based chief compliance officer for



Reuters

Hub International Ltd. “You might move someone into a position where they’re not making contact with the public,” she said. “In other circumstances, you might have to fire somebody, and you might not be prepared to do that. Can your culture and business needs sustain the downside of a mandatory vaccine program?”

Employers should also individually assess whether a mandatory program is the best idea for them based on their industry, the size of their company and the nature of the workers’ duties, said Melvin

J. Muskovitz, senior counsel with Dykema Gossett PLLC in Ann Arbor, Michigan.

In the health care industry, it’s much easier to mandate a vaccine because the workers have daily contact with patients, with the mandated exceptions of medical reasons or religious beliefs, Mr. O’Connor said.

“Some industries will determine that the vaccine will be mandatory,” but companies may also want to have separate policies based on job duties, said Gary Pearce, Detroit-based chief risk architect at risk management consultancy Aclaimant Inc. For example, the employer could create a

vaccination mandate for employees who work in close contact with the public but not those who are able to perform their duties remotely, he said.

“It’s going to be hard to shove a mandate down the throat of people who are working remotely and aren’t exposed,” Mr. Pearce said. “On the other hand, if you have people who work in close proximity, that’s going to make vaccination much more justifiable.”

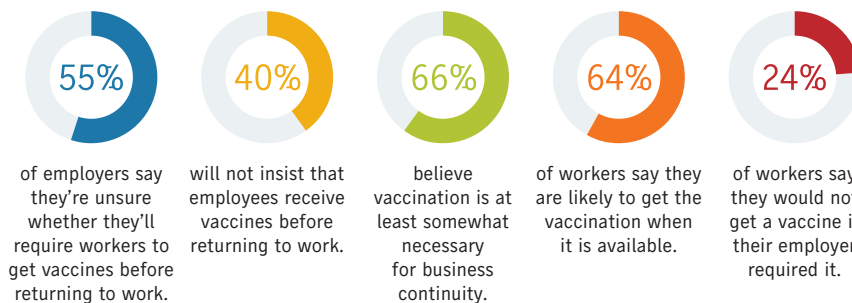
Several retailers have publicly declared that they will encourage their workers to get the vaccine and pay them to do so. On Jan. 13, Goodlettsville, Tennessee-based Dollar General Corp. released a statement declaring that the company would pay its retail hourly workers the equivalent of four hours of regular pay when they provide proof of completed COVID-19 vaccination, and allow retail salaried workers time away from work to receive their inoculations.

On Jan. 19, Batavia, Illinois-based grocery retailer Aldi Inc. also announced that it would provide hourly workers with up to four paid hours to get both doses of their vaccine and also cover the costs associated with vaccine administration.

But the politicization of the vaccine has led to reluctance by some workers to receive the inoculation, and employers will

## MANDATES OR NOT IN VACCINE ERA

Fewer than half of employers intend to require workers to receive a COVID-19 vaccination before returning to the workplace, but nearly two-thirds of workers said they’re likely to be vaccinated when it is available, according to a survey of nearly 1,000 human resource leaders and workers in more than 500 households in the U.S., conducted by the Society for Human Resource Management.



Source: The Society for Human Resource Management

understandably be reluctant to issue ultimatums on the issue, experts say.

"I would like for employers to be tolerant of employees who are afraid of having a brand-new vaccine," but "it's going to depend on the work environment," said Robin E. Shea, a partner with Constangy, Brooks, Smith & Prophete LLP in Winston-Salem, North Carolina.

"How do you handle a situation where easily 30% to 40% of your workforce will refuse to take the vaccine?" said Jeff Nowak, a shareholder with Littler Mendelson P.C. in Chicago. This is "a real, practical dilemma for employers as we move forward," he said.

Employers also need to ensure they are treating everyone equally — if they let some workers get away with ignoring the vaccine mandate but fire others, that "is a recipe for legal claims," said Brett E. Coburn, Atlanta-based partner with Alston & Bird LLP.

### Vaccine mandates have workers comp implications

A vaccination mandate may also have workers compensation implications, and employers "need to recognize that if they do impose a vaccination mandate that it's likely that they will have to pay for the vaccination, that this will be compensable work time and ... medical complications in a mandatory vaccination environment are going to be under workers compensation and be covered," Mr. Pearce said.

"If the employer mandates the use of the vaccination ... as a condition of continued employment, regardless of where the vaccination is obtained, it's likely to be considered a compensable injury" if the employee suffers

a severe reaction, said attorney Jeff Adelson, partner with Newport Beach, California, law firm Adelson McLean P.C.

Even if the employer does not mandate the vaccine but encourages it, and the worker suffers a vaccine-related injury, that could also be considered a compensable injury in certain states, such as California, he said.

One way to potentially avoid an adverse reaction turning into a workers comp claim is to provide a few days of paid time off for employees to get the shot and recover, Mr. Adelson said. Another option would be to have telemedicine options available for workers who have an adverse reaction, he said.

**"If the employer mandates the use of the vaccination ... it's likely to be considered a compensable injury" if the employee suffers a severe reaction.**

Jeff Adelson,  
Adelson McLean P.C.

"All of this is very much up in the air as far as how (vaccine reactions) are going to be treated in workers comp," said Carin Burford, Birmingham, Alabama-based shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C. "Comp cases are usually the last things to be asserted."

Based on the experiences of people vaccinated so far, reactions to



Reuters

the COVID-19 vaccine have been similar to those of other vaccines, and it's "likely that the majority of those (vaccine-related comp) claims, should they arise, are going to be nominal," said Natasa Timotijevic, associate in the Chicago office of Goldberg Segalla LLP.

There are some potential upsides to a mandatory vaccination program, experts say.

A company vaccine mandate could act as a supplementary defense in COVID-19 exposure claims, which could be particularly important in states such as Illinois with presumption of compensability laws for workplace-acquired coronavirus, Ms. Timotijevic said.

"One of the ways that employers can rebut that presumption," she said, "is demonstrating compliance with public health guidelines in place at time of exposure." If federal guidance encourages vaccination and the employer's vaccine policy is consistent with those guidelines, it could be one more piece of defense for rebutting those claims, she said.

A mandatory program may also be used as a defense to comp claims

and in allegations of violations of the Occupational Safety and Health Act's general duty clause, Ms. Cherveney said.

"One school of thought is, how could you not vaccinate your workforce ... it would be negligent of you not to vaccinate your workforce," she said. On the flip side, since the vaccine is only approved for emergency use, one could argue that forcing the workforce to get a vaccine that has not been thoroughly vetted is negligent, Ms. Cherveney said.

"What I think dilutes that argument is that both the CDC and the (U.S. Food and Drug Administration) have landed squarely on the side of, 'We recommend and urge you to get vaccinated,'" she said. "I think you're going to have a bigger uphill battle" with the emergency use argument.

With a vaccine still out of reach for the typical American worker for at least a few more months, employers have time to decide how to approach a vaccine policy, Mr. Nowak said.

"Take a step back, take a deep breath, and let's figure out reasonably how we can approach this," he said.

### SAFETY DEBATE

In a survey of more than 1,000 U.S. employees by employee survey firm Perceptyx Inc., workers ranked vaccinations as fourth among mitigation efforts that would make them feel most safe in the physical workplace.

**56%**

of respondents say they would get the vaccine if encouraged to do so by their employer.

**60%**

say they would if employers offered a monetary incentive of \$100 or more.

**60%**

are fearful of the potential side effects of the vaccine.

**67%**

believe the research and development of the vaccine is trustworthy.

**50%**

say their employers have encouraged them to get the vaccine when available.

**38%**

say their organizations are requiring vaccines in order to return to the physical workplace.

**64%**

believe there is no safe return to work until all employees are vaccinated.

Source: Perceptyx Inc.

## Clear communication helps mitigate workplace risks

**E**mployers that mandate or encourage COVID-19 vaccinations for their workforce need to be sure they are communicating their policies with their employees, protecting those who are unvaccinated and have a process in place for tracking inoculations, experts say.

"Obviously, not everyone is going to be willing (or able) to take the vaccination," said Sean Salvias, Phoenix-based senior market strategy lead for environment, health and safety at Origami Risk LLC.

Companies need to consider how they will track who has been fully vaccinated, who only received one dose and who may have signed a

waiver opting out of the vaccine for health or religious reasons, he said. They also need to keep tabs on positive COVID-19 cases reported by workers for state and local tracing purposes, particularly in states with stringent reporting requirements such as California, New Mexico and Virginia, he said.

For employers that want to encourage, but not require, employees to get vaccinated, effective communication that

allows workers to make a clear, scientific choice is crucial, said Deborah Roy, Falmouth, Maine-based president of SafeTech Consultants Inc. and president-elect of the American Society of Safety Professionals.

"I think it's a better approach than mandating it," she said. "Employers are going to have to really put a lot of effort into encouragement and education efforts," said Nicole Stockey, a partner with K&L Gates LLP in Pittsburgh.

Companies also need to make sure they're maintaining a safe workplace for those who are unvaccinated and continue to follow guidance from OSHA and the U.S. Centers for Disease Control and Prevention, as well as guidance from their state health departments, said Carin Burford, Birmingham, Alabama-based shareholder with Ogletree, Deakins, Nash, Smoak & Stewart P.C.

She also suggests employers print out hard copies of the ever-changing guidance. "Being able to prove that you followed the guidance, especially in a changing environment like this, a very fluid situation, is important."

Angela Childers

**I GOT MY COVID-19 VACCINE AT THE JAVITS CENTER!**

**VACCINATE NEW YORK**

# Growth of insurtech sector seen in IPOs, M&A

BY MATTHEW LERNER

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The insurtech sector continues to attract funding as high-profile initial public offerings such as Duck Creek Technologies Inc.'s last August, which raised more than \$400 million, provide momentum for the sector, investment and industry sources say.

Investors also see a path to profitability in strategic deals including Aon PLC's January 2020 purchase of New York-based digital insurance platform CoverWallet and the emergence of new tools such as special purpose acquisition companies.

"We're starting to see a lot of people being able to exit, and I think that's one of the things that continues to drive new investment," said Martha Notaras, managing partner at Brewer Lane Management LLC, a venture capital firm in Los Angeles.

Investors being able to "exit" an investment, to monetize profits through an initial public offering, strategic sale or other route, is one of the criteria considered at the outset of an insurtech investment, sources agree.

Insurtech investors have become more experienced and prudent, according to Marie Carr, principal of global growth strategy and U.S. financial services practice in Chicago for Price-waterhouseCoopers LLP.

"People want return on investment," she said. "We're over the frenzy days of 'I've got to be in it.'"

Ms. Carr added that while the bulk of investment dollars continue to flow into the property/casualty sector, the life and health sector is attracting interest from investors.

Jim Bramblet, managing director and North America insurance practice lead at Accenture PLC in Chicago, said he has been in conversations with software platform insurtechs that look at the success of other insurtech IPOs and want to know how to go to market. "They realize there is a viable path" for them, he said.

In addition to the Duck Creek IPO, other recent insurtech IPOs include personal lines insurers Lemonade Inc. and Root Inc., which both went public in 2020.



instagram.com/duckcreektech

Mr. Bramblet said he has also been in discussions with private equity firms that have viewed the successes in the property/casualty sector and want to replicate them in other areas such as life and annuities and benefits. "On both sides of the equation — those that are building the platforms themselves and those that are looking to invest in platforms. It's been half a dozen conversations in the past 60 days," he said.

Duck Creek reported software as a service subscription revenue rose 59% in the first quarter of its fiscal 2021, the three months ended Nov. 30, 2020, said Mike Jackowski, CEO of the Boston-based company.

The level of investment in the insurtech sector is "profound," with private equity firms investing in established insurtechs and venture capital investing in earlier stage startups, he said. "That's why you're seeing so much activity in the space — it's well rounded."

Later stage companies, whose technology has been proven, attract the attention of industry investors like insurers and reinsurers, said Andrew Johnston, Nashville-based global head of insurtech at Willis Re, the reinsurance brokerage unit of Willis Towers Watson

PLC. The vast majority of funding, however, still comes from private equity and venture capital firms, he said.

In the third quarter of 2020, the most recent period for which data is available, insurtechs globally raised \$2.5 billion across 104 deals, up 63% and 41%, respectively, compared with the second quarter, according to Willis Towers Watson.

The growing popularity of special purpose acquisition companies, or SPACs — shell companies formed to raise capital without the need for a traditional IPO — should provide another avenue for insurtech investing, Ms. Notaras said. "We're definitely going to see that as one of the exits," she said, noting that auto insurance insurtech Metromile Inc. went that route late in 2020.

As of Dec. 15, 2020, 265 SPACs had announced IPOs on major U.S. exchanges in 2020, versus 56 in 2019 and 43 in 2018, according to S&P Global Market Intelligence data. Metromile combined with SPAC Insu Acquisition Corp. II, which was set up by the financial services firm Cohen & Co., in November and raised \$294 million.

The need for connectivity and other technologies amid the remote working arrangements brought on by the COVID-19 pandemic have benefited technology companies, sources say.

"Talking to investors, demand has never been as strong. The whole agenda around digital transformation becomes more important," said Duck Creek's Mr. Jackowski.

"No single business or initiative has been able to achieve what COVID-19 has done in terms of getting our industry to appreciate the fundamental value of technology," Mr. Johnston said.

## ACQUISITIONS EMBOLDEN TECH COMPANIES

As insurtech companies continue to go public or be acquired by strategic buyers, some insurtechs have become acquirers themselves, creating another pathway for funding in the growing sector.

Investments, including acquisitions, are a "strategic pillar" in Duck Creek Technology Inc.'s growth strategy, according to CEO Mike Jackowski. The company's August 2020 initial public offering gave Duck Creek capital that allows it to make investments, he said.

The software as a service provider has acquired four companies since 2016, "mostly small tuck-ins, which have given us some additional capabilities," Mr. Jackowski said.

Other technology companies in the insurance sector have also been making acquisitions, said Martha Notaras, managing partner at Brewer Lane Management LLC in Los Angeles. Next Insurance Services Inc. purchased data analytics firm Juniper Labs LLC in December 2020. Bold Penguin Inc., itself acquired by American Family Insurance Mutual Holding Co. last month, had previously acquired Risk Genius in October 2020.

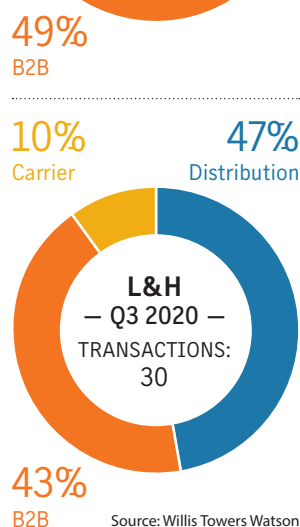
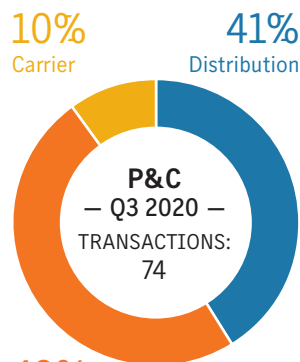
Insurtechs will increasingly become acquirers as they look to round out their value propositions with bolt-on deals that add capabilities, such as data analytics or machine learning, said Jim Bramblet, managing director and North America insurance practice lead at Accenture PLC in Chicago. "I would expect to see more of that," he said.

Program administrator Integrated Specialty Coverages LLC in San Diego uses its online platform to "tech enable" acquisitions made in the traditional insurance sector, according to founder and CEO Matt Grossberg. New products and capabilities, such as those gained through its recent purchase of Contractors Insurance Services Inc., can be added to the platform in a modular fashion, he said.

The company plans to continue building out its offerings. "We'll be consistently adding new products and programs to our platform, and our pipeline for acquisitions is robust at this point," Mr. Grossberg said.

Matthew Lerner

### INSURTECH TRANSACTIONS BY SUBSECTOR



Source: Willis Towers Watson



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# Broker M&A activity ends year on a high

BY TIMOTHY CUNNINGHAM,  
DANIEL MENZER AND  
STEVE GERMUNDSON

Broker merger and acquisition activity in 2020 surged past the 2019 deal count by 125, up nearly 20% to a new high-watermark. A look at the number of transactions in each quarter is a study in both the economic impact of the COVID-19 pandemic and the reaction to an expected increase in the capital gains tax rate.

The surge of 290 fourth-quarter transactions led to a total of 774 for the year, compared with 649 in 2019. This total includes U.S. and Canadian property/casualty and employee benefits brokerages, third-party administrators and related managing general agent operations, but it does not include agencies solely focused on life insurance, investment or financial management. We collect the information from public announcements, buyer websites and other sources in a consistent manner from year to year, but it does not include all transactions as many are never disclosed publicly.

The 290 reported fourth-quarter transactions was the largest quarterly total ever — the next largest was in the fourth quarter of 2019 when 173 deals were recorded. During the second half of 2020, there were 470 transactions reported, compared with only 321 for the same period in 2019. Even with the record-setting number of deals in 2020, we have not heard from the buyer community that there will be any letup in buyer or seller activity, and we expect 2021 to be another very active year for agency acquisitions, although perhaps not at last year's levels.

Buyers are broken down into the following categories:

- PE-Hybrid — Private equity backed and private firms with significant outside acquisition financial support
- Publicly traded
- Privately owned
- Bank owned
- Insurance companies
- Others

Once again, Grand Rapids, Michigan-based Acrisure LLC reported the most activity, with 108 closed transactions, an increase from the 98 completed in 2019. Acrisure has averaged 100 agency purchases each year for the past four years. Chicago-based Hub International Ltd. was second again, completing 64 deals, up from 52 in 2019 (see chart).

The PE-Hybrid group remains the most active group of buyers, occupying eight of the top 10 spots and 543 of 774 transactions for the year, fully 70% of all agency acquisition deals. The acquisitions by the

## TOP BUYERS

The 10 most acquisitive buyers of insurance agencies and brokerages in the U.S. and Canada in 2020, with comparable totals for 2018 and 2019, are shown in the table below:

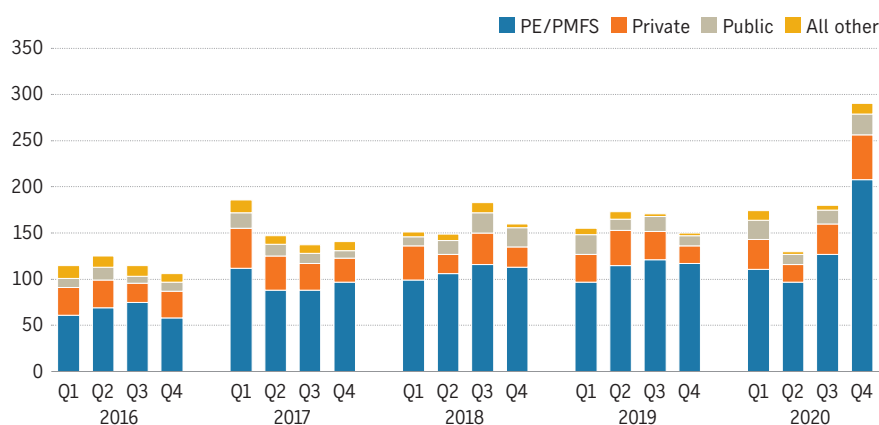
Buyer	Company type	2018	2019	2020
Acrisure LLC	Private equity/hybrid	101	98	108
Hub International Ltd.	Private equity/hybrid	59	52	64
BroadStreet Partners Inc.	Private equity/hybrid	34	34	58
World Insurance Associates LLC	Private equity/hybrid	9	18	42
AssuredPartners Inc.	Private equity/hybrid	38	44	38
PCF Insurance Services LLC	Private equity/hybrid	4	4	36
OneDigital Health and Benefits	Private equity/hybrid	27	17	29
Arthur J. Gallagher & Co.	Publicly held	36	34	23
The Hilb Group LLC	Private equity/hybrid	12	25	22
Brown & Brown Inc.	Publicly held	23	19	21
TOP 10 TOTALS		343	345	441
ALL OTHER		300	304	333
TOTALS FOR YEAR		643	649	774

## TOP FIRMS SOLD

There were nine top 100 firms sold during 2020.

Top 100 sold in 2020	Rank	PY Revenue	Date	Buyer
Assurance Agency Ltd.	35	\$115,000,000	4/1/2020	MMA
Associated Benefits & Risk Consulting	39	\$130,000,000	5/1/2020	USI
LMC Insurance & Risk Mgmt Inc.	58	\$57,000,000	2/11/2020	AssuredPartners Inc.
AH&T LLC Inc.	65	\$48,000,000	12/31/2020	Baldwin Risk Partners
Rose & Kiemann Inc.	67	\$49,056,000	8/1/2020	NFP Corp.
Burnham Services	79	\$39,000,000	12/31/2020	Baldwin Risk Partners
Sullivan Curtis Monroe LLC	85	\$35,989,000	7/1/2020	BroadStreet Partners Inc.
InsGroup Inc.	87	\$35,000,000	11/1/2020	Baldwin Risk Partners
People's United Insurance Agency Inc.	92	\$37,000,000	9/1/2020	AssuredPartners Inc.

## TRANSACTIONS BY QUARTER BY TYPE (2016 – 2020)



top 10 buyers — as measured in each year independently — comprised 57% of the total in 2020, compared with 53% in 2019, even though some of the top 10 in the list above showed year-over-year declines. There were also several firms inside the

top 10 that saw large increases, including newly listed PCF Insurance Services LLC going from four transactions in 2019 to 36 in 2020, World Insurance Associates LLC going from 18 to 42, and One Digital Health and Benefits going from 17 to 29,

to name a few.

In addition, three top 10 acquirers in 2019 that just missed appearing on the 2020 list each saw modest declines in deal counts: Patriot Growth Insurance Services LLC bought 18, down from 25; Risk Strategies Co. Inc. bought 18, down from 22; and Alera Group bought 17, down from 24.

Some other statistics from the 2020 buying activity:

- 32 different PE-Hybrid buyers acquired a combined 543 agencies in 2020, an average of 17 transactions each.
- 81 (compared with 45 in 2019) privately owned firms acquired 132 agencies, an average of just over 1.5 each.
- 95 firms acquired only one agency in 2020 while 30 acquired five or more.
- There were 72 first-time buyers in 2020.

Property/casualty brokers continued to dominate the sell-side M&A landscape, with 397 of the 774 transactions, or just over 50% of the total. Employee benefits brokers were the second most acquired category of firms in 2020, with 159 transactions representing 21% of the total.

There were nine top 100 firms sold during 2020.

There were also several investments and recapitalizations of some of the PE-Hybrid backed active buyers.

While the industry may not see another year quite as active as 2020, we expect 2021 to be highly active as a new wave of sellers look to avoid an expected capital gains tax increase under the Biden administration or simply to sell with a growth story. Agency valuations and multiples for the high-quality firms may inch higher to reach new upper limits as demand remains large and the supply of quality firms is reduced.



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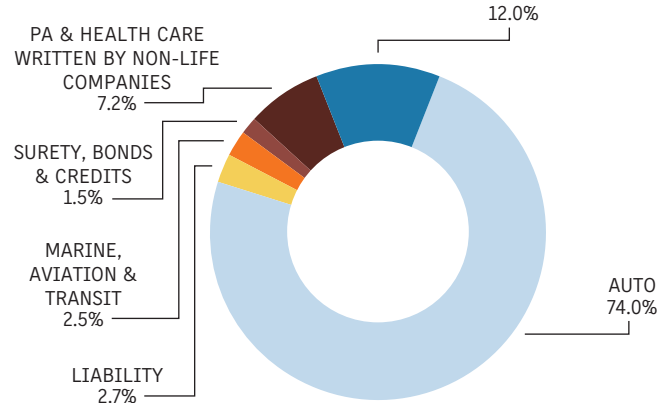
## PROFILE: ALBANIA

# 123

GLOBAL  
P/C MARKET  
RANKING

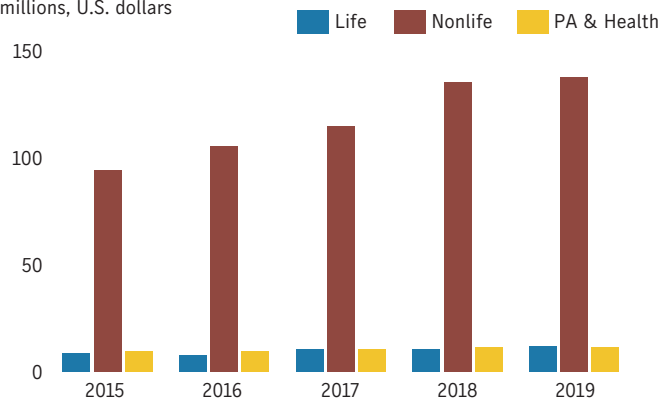
The Albanian insurance market has developed only since the fall of the Communist regime in the early 1990s. The political and economic history of the country left a legacy of problems that were reflected in the insurance market: the absence of a complete, coherent legislative framework; a shortage of technical and professional expertise at the supervisory and company levels; and the absence of an insurance culture and tradition among the population. Today, the industry is professionally regulated, there is a comprehensive insurance law, and the number of foreign equity participants in the market is increasing. Non-life premium income grew steadily over the six years to 2019. However, the nation's economy has suffered as a result of a 6.3 magnitude earthquake that struck in November 2019, causing \$1.1 billion of damage, and the impact of the coronavirus pandemic.

### MARKET SHARE



### MARKET GROWTH

In millions, U.S. dollars



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies

### COMPULSORY INSURANCE

- Auto third-party liability
- Workers compensation (state social security scheme)
- Professional indemnity for insurance intermediaries, loss adjusters, lawyers, notaries, engineers and architects
- Marine liability
- Shipowners' liability against marine oil pollution (financial guarantee or insurance)
- Hoteliers' liability
- Personal accident for workers in mines

### NONADMITTED

Nonadmitted insurance is not permitted in Albania because the law provides that insurance must be purchased from locally authorized insurers, with some exceptions, principally in marine, aviation and transit classes.

### INTERMEDIARIES

Intermediaries are not allowed to place business with nonadmitted insurers, with the exception of risks related to maritime and air transport; reinsurance of foreign investment; and insurance of persons not residing in the Republic of Albania. The law is silent as to whether intermediaries have to warn the insured that their insurer is not subject to local supervision in those circumstances where nonadmitted is allowed.

### MARKET PRACTICE

The insurance law tightened the rules on nonadmitted insurance by prohibiting local insurance companies from accepting business from unauthorized foreign brokers. According to market sources, the volumes involved are too insignificant to be an issue in the market.

### MARKET DEVELOPMENTS

Updated January 2021

- At first glance, the Albanian insurance market appears to be in good health. Nonlife premium income grew by 3.9% in 2019, following 5.48% growth in 2018, and compared with nominal GDP growth of 2.6% and 5.5% in those years. Profitability of auto business, which accounts for almost 74% of all nonlife insurance business, is good. Yet on closer inspection, there are several causes for concern.
- Motor business continues to be plagued by the issue of outstanding claims for the motor guarantee fund. This was originally thought to be for a total of \$3.27 million in claims for 2013 and prior, and an indeterminate amount for later years. Despite several cash calls on insurers in addition to the standard 1.5% levy on motor premiums, outstanding claims for 2013 and before still amount to about \$10.9 million, plus perhaps a similar amount for years after 2013. This precludes any quick solution to the stabilization of the motor fund's finances, despite this being one of the priorities of the insurance regulator, the Albanian Financial Supervisory Authority.
- Several of the eight companies in the non-life market are believed to be inadequately financed. Four were believed to be unable to meet the capital adequacy and solvency tests in 2019, and one had so far failed to produce returns.
- The economic impact of the COVID-19 pandemic will be considerable and ongoing. The number of reported cases in Albania has remained low, due in part to a nationwide lockdown and despite the proximity to and close relationship with Italy. Insurance is expected to be hit more by the economic downturn than by COVID-19 claims.

### AREA

11,100

square miles

### POPULATION

3.07

million

### MARKET CONCENTRATION

79.4%

market share of top five insurers

### 2021 GDP CHANGE (PROJECTED)

(7.5%)

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## Teacher pay case gets remanded

■ A federal appeals court overturned a lower court ruling against a teacher who was told upon her hiring that she did not need a higher salary because her husband worked.

Cheryl Kellogg was hired as a life science teacher by the Indiana Academy for Science, Mathematics and Humanities, a residential high school on Ball State University's campus in Muncie, Indiana, in 2006, with a starting salary of \$32,000, according to the ruling by the 7th U.S. Circuit Court of Appeals in Chicago in *Cheryl Kellogg v. Ball State University d/b/a Indiana Academy for Science, Mathematics and Humanities*.

At that time, the academy's executive co-director told her she did not need any more money because he knew her husband worked at Ball State, so the couple would have a "fine salary," according to court documents.

In 2017, when Ms. Kellogg complained to the dean of Ball State's Teacher's College, which oversees the academy, that she received less pay than her similarly situated male colleagues, she was told it was because of "salary compression," which meant those who were hired after her started at a higher salary.

Ms. Kellogg sued the academy in U.S. District Court in Indianapolis in 2018, charging the university violated Title VII of the Civil Rights Act of 1964 and the Equal Pay Act by engaging in sex-based pay discrimination.

The district court ruled in the academy's favor, holding it had provided an "undisputed gender-neutral explanation" for any discrepancy between Ms. Kellogg's salary and her male colleagues' pay.

The ruling was overturned by a unanimous three-judge appeals court panel. While the academy argued the co-director's statement was a "stray remark" with no "real link" to Ms. Kellogg's pay, it was "not water-cooler talk," the ruling said.

"It was a straightforward explanation by the academy's director, who had control over setting salaries, during salary negotiations that Kellogg did not need any more money 'because' her husband worked at the University.

"Few statements could more directly reveal the Academy's motivations," the panel said in reversing the lower court's ruling and remanding the case for further proceedings.

## Virus suit against Zurich to proceed

■ A federal district court in Cleveland refused to dismiss COVID-19 business interruption coverage litigation filed by a restaurant chain against a Zurich Insurance Group unit, holding its policy language was ambiguous, and a "microorganism" exclusion inapplicable.

Twinsburg, Ohio-based Henderson Road Restaurant Systems Inc., which operates restaurants in Ohio, Pennsylvania, Michigan, Indiana and Florida, filed suit against Zurich American Insurance Co. in U.S. District Court in Cleveland after it denied its business interruption claim in April, according to last month's ruling by the U.S. District Court in Cleveland in *Henderson Road Restaurant Systems Inc. v. Zurich American Insurance Co.*

The chain closed its restaurants in March in response to state government orders.



According to the ruling, Zurich's policy language provides it will pay for "direct physical loss of or damage to 'real property.' ... Based on this language Plaintiffs argue that physical loss of the real property means something different than damage to the real property and this is a valid argument.

"Otherwise, why would both phrases appear side-by-side separated by the disjunctive conjunction 'or'? Plaintiffs argue that they lost their real property when the state governments ordered that the properties could no longer be used for their intended purposes — as dine-in restaurants. The Policy's language is susceptible to this interpretation."

The ruling also held the policy's microorganism exclusion does not apply because "it did not identify the possibility" that, even absent any microorganism activity damaging the property, "Plaintiffs may be required to close their dine-in restaurants due to government orders responding to a public health crisis."

## Federal judge seeks COVID-19 guidance

■ A federal district court judge asked the Ohio Supreme Court to rule whether COVID-19's presence can be considered

an insured direct physical loss or damage to property under state law.

Judge Benita Y. Pearson, of U.S. District Court in Youngstown, asked the state Supreme Court to rule on the issue in connection with a COVID-19 business interruption suit filed by an audiology company, Boardman, Ohio-based Neuro-Communication Services Inc., against its insurer, The Cincinnati Insurance Co. The case is *Neuro-Communication Services Inc., et al. v. The Cincinnati Insurance Co.; The Cincinnati Casualty Co.; and The Cincinnati Indemnity Co.*

Neuro-Communication submitted a business interruption claim in March, which the insurer denied on the basis that it did not involve a direct physical loss to the property.

"Dozens, if not hundreds, of cases seeking coverage for losses related to the pandemic under policies similar or identical to that at issue in this case have been filed in both federal and state courts in Ohio," Judge Pearson said in the certification order filed with the state Supreme Court.

"As these cases wend through the various court systems, differing interpretations of Ohio contract law by different courts threaten to undermine the uniform application of that law to similarly situated litigants," the order said.

## Insurer not required to defend vape suit

■ Excess and surplus lines insurer Scottsdale Insurance Co. does not have to defend a suit brought against a vape store by a customer who suffered severe burns after e-cigarette batteries exploded in his pocket, a federal court ruled.

According to court documents in *Scottsdale Insurance Co. v. Aqueous Vapor LLC, Adam Williams*, Mr. Williams bought e-cigarette batteries from an Aqueous Vapor store in Independence, Missouri, and shortly after he installed them when he returned home, they exploded in his pocket. Mr. Williams suffered second- and third-degree burns, which required extensive medical care, including skin grafts, court documents say.

Mr. Williams sued Aqueous Vapor and the company sought coverage under its commercial insurance policy with Scottsdale Insurance.

The Scottsdale, Arizona-based insurer denied coverage, citing the products-completed operations hazard exclusion in the policy, among other arguments.

Judge Roseann A. Ketchmark of the U.S. District Court for the Western District of Missouri granted Scottsdale's motion to dismiss the case.

"The exclusion precludes coverage for bodily injury occurring away from the premises owned or rented by Aqueous Vapor and arising out of their product or work," the judge ruled.

## DOCKET



### SEA CAPTAIN WINS \$11M IN TRIP CASE

A sea captain is entitled to more than \$11 million in lost future earnings after he was injured tripping over a stair in a hatch door. In *Rivera v. Kirby Offshore Marine LLC*, the 5th U.S. Circuit Court of Appeals in New Orleans unanimously affirmed a district court's ruling that Capt. Jay Rivera, a state-commissioned branch pilot assisting vessels in navigating the Port Corpus Christi Ship Channel and the LaQuinta Channel in Texas, was not an employee for workers compensation purposes and that the company was therefore liable for his injuries.

### NEGLIGENCE AWARD FOR INJURY AFFIRMED

A Texas appeals court affirmed a \$930,000 arbitration award to a trailer manufacturing worker who sued for negligence following a workplace injury in 2017. Joseph Julian, an employee of Load Trail LLC, was lifting a toolbox when he was knocked to the ground by what he believed was a forklift. He was diagnosed with herniated discs and underwent lumbar fusion surgery, according to documents in *Load Trail, LLC, v. Joseph Julian*, filed in the Court of Appeals of Texas, Sixth District, in Texarkana.

### WORKER LOSES AMA RATINGS DISPUTE

The Kansas Supreme Court ruled in favor of a food distributor in a long-standing fight over which version of the American Medical Association's guidelines should be used for assigning worker impairment ratings. The Kansas Supreme Court, in *Johnson v. U.S. Food Service*, reversed an appellate court decision, ruling that 2013 state reforms that require workers who suffered an injury on or after Jan. 1, 2015, to be assessed based on the Sixth Edition of the AMA guidelines are constitutional. Howard Johnson III, who was working for U.S. Food Service when he injured his spine trying to open a trailer door that had been frozen shut, filed the original suit.



Ellen R. Dunkin, senior vice president, general counsel and chief risk officer for Amalgamated Life Insurance Co. in White Plains, New York, assumed the presidency of the Risk & Insurance Management Society Inc., effective Jan 1. Ms. Dunkin, who has been a member of RIMS for 15 years and served as president of RIMS New York chapter from 2015 to 2016, discussed the opportunities for risk managers to demonstrate their value as the industry moves beyond the pandemic and the need to take an enterprise-wide view of risk with *Business Insurance* Deputy Editor Claire Wilkinson. Edited excerpts follow.

## Ellen R. Dunkin

RISK & INSURANCE MANAGEMENT SOCIETY

**Q** You were general counsel and director of government affairs at RIMS from 1998 to 2007. In what ways has that experience helped you on the way to becoming president?

**A** I started my career as a corporate securities attorney in New York working for a law firm. After that, I was at Marsh & McLennan Cos. Inc. for nine years in their risk management department. When I left Marsh, I became general counsel at RIMS. I really got a whole different perspective seeing the industry from the risk manager's viewpoint. I also had the opportunity to engage in the educational offerings that RIMS provides and to attend the annual conference. When I left RIMS and went to work at Crump Group Inc. in their legal department, I was asked to put together an enterprise risk management program. At that point I had a great network of risk managers I was able to tap into, as well as the knowledge I built while at RIMS. That worked out so well they asked me to take over the insurance program. Suddenly I went from being the corporate lawyer to the risk manager as well. That led to me joining RIMS as a risk manager.

**Q** What are your goals for RIMS in the year ahead?

**A** Coming out of 2020, which was an extremely challenging year for everyone, we've learned a lot. We've learned that risk managers need to be out there at the forefront. We need to be indispensable to our companies and to show our value, because we tend to view issues from a risk perspective as opposed to a financial or business perspective. My goal in my presidency is to find ways to show value. RIMS can help do that by developing resources that highlight the opportunities for risk professionals to speak up, to communicate what our value is, to provide us with educational opportunities, to learn, to provide the network and resources to prove that we're actually indispensable.

**Q** As you take the reins as RIMS president one year into a global pandemic what do you see as the key challenges?

**A** Obviously managing risk during a pandemic is a little different from what we're used to. It's given us the opportunity to highlight the importance of looking

at the upside of risk. I want to be able to give risk managers the resources to identify the challenges that have come up in the pandemic. We have to continue to provide the service that we were providing before but in a different way. That's an opportunity to take a bigger-picture view.

**Q** How has the pandemic changed the risk manager's role, and what are the opportunities for the profession as the industry moves beyond the pandemic?

**A** Whatever you did before the pandemic you probably have to do a lot of that now. But the way you may be providing that service to your company certainly has changed. As we've all become remote it's much easier to become more siloed. Probably the worst thing a risk manager can do is to become siloed. You can't manage risk if you don't know what the risks are. Risk managers need to take more of a holistic, enterprise-wide view of risk, and they can't be afraid to speak up.



**Q** RIMS has been vocal on the need for a public/private partnership for pandemic risk. Does that continue to be a priority?

**A** Yes, that is one of our priorities for our government affairs team. We're still looking to see what happens with the new Congress. It's still an issue on the insurance side right now. So many business interruption policies have exclusions for pandemics and yet there are so many companies that were forced to shut down because of the pandemic, that lost money, that haven't been able to reopen. The restaurant industry is probably the No. 1 that everyone thinks about, and yet they couldn't recover on their business interruption

policies. So it's definitely a priority.

**Q** How do you think insurers can better meet the needs of buyers?

**A** In general, it's always important to have a good relationship with your underwriters and a good relationship with your brokers who are your go-between. Transparency on the risk manager side is just as important as transparency from the insurance side. You have to be willing to speak up and ask for what you want because nobody is going to give it to you for free.

**Q** With the annual conference canceled last year and virtual this year, how can risk managers effectively network?

**A** There is definitely something special about meeting with colleagues and business partners at RIMS annual conference that I think we all took for granted. While we look forward to the day when we can all meet in-person again, I have been impressed by the global risk management community, their ingenuity and their perseverance. Despite all obstacles, they have demonstrated their commitment to the profession — not just attending but taking active roles in developing and delivering many of RIMS collaborative engagements. In a way, the business world underestimated the power of technology and its ability to instantaneously connect people from around the globe. Every day, we are identifying new opportunities to use those technologies to our advantage. Risk management is a relationship business and RIMS is committed to building an all-digital conference program that offers those crucially important networking experiences.

**Q** What would your advice be to young risk professionals entering the business today?

**A** To get involved and show your worth. Don't be afraid to speak out even if you think what you have to say might not be important. When I was involved in the RIMS New York chapter we used to go to job fairs at St. John's University's school of risk management and we used to let students know this is a really good professional association to be involved in because there are a lot of people who can help you. We would mentor students. I am still a proponent of that.

Probably the worst thing a risk manager can do is to become siloed. You can't manage risk if you don't know what the risks are.

# TELEHEALTH ADVANCES BEYOND PANDEMIC

Online medical consultations raise questions concerning medical malpractice risks as insurers assess protocols

BY JUDY GREENWALD

[jgreenwald@businessinsurance.com](mailto:jgreenwald@businessinsurance.com)

**R**apid growth in the use of telehealth during the COVID-19 pandemic potentially could lead to increased medical malpractice exposures, but usage protocols can significantly reduce the risks.

While care must be taken with the technology's implementation and there will be some increase in claims, reflecting its greater popularity, experts say they do not expect telemedicine to generate a significant rise in claims.

Although various forms of telehealth have been available for decades, the sector saw a massive boost in use in the days immediately after the initial pandemic-induced shutdowns early last year as patients were cut off from



## TRAINING AND PROTOCOLS

Experts say that to avoid telehealth-related medical malpractice and other claims health care providers should:

- Establish protocols as to when patients should be seen in-person
- Train physicians and other medical professionals on the use of telehealth
- Establish good communications between doctors and their patients
- Have another medical professional, such as a nurse, present during a visit
- Obtain patients' informed consent
- Retain a general counsel who keeps up to date on changing regulations
- Carefully vet telehealth vendors
- Make sure telehealth appointments are privately conducted on secure, encrypted platforms

Source: *Business Insurance* interviews

**"It's an excellent platform for relatively minor needs, but we know at some point those needs may go beyond that."**

Kathryn Meyers,  
Aon PLC

to pandemic-related restrictions, but it is expected to retain a significant number of proponents even after the crisis subsides, because of the convenience and cost savings it provides.

Observers say insurers in general are willing to provide coverage for the risk.

Some experts believe that, properly approached, telehealth could even lead to improved claims experience (see story below).

But while many of the risks associated with telehealth are comparable to those in traditional medicine, there is an added layer of concern surrounding cyber risks (see story page 16).

Before the pandemic, telehealth was used largely to provide care to poorly served areas, according to experts. It "was largely a Medicare, rural-based payment

structure," said Doris Fisher Sanchez, Chicago-based senior clinical and enterprise risk management consultant for Willis Towers Watson PLC's national health care team.

"Pre-pandemic, people were hesitant to move to virtual medicine, and then when the pandemic hit there really wasn't an option," and they realized it was just as good, if not better, than the usual delivery method because it offered the privacy of their own homes and cost less, said Jennifer Schoenthal, Atlanta-based global leader for virtual care for Beazley PLC.

Many insurers are comfortable with telehealth because it's not a new concept, said Paula Sullivan, Chicago-based senior vice president with Marsh LLC's national health care practice. "It's an exposure that can be underwritten for," she said.

One of the issues telehealth providers and med mal insurers face is physician licensing. State laws usually require physicians to be licensed in the state where their patients are located. Some states have relaxed this requirement, but only for the duration of the pandemic.

On the federal level, the U.S. Department of Health and Human Services has temporarily lifted requirements that providers be licensed in the same state where they provide services for federal programs such as Medicare and Medicaid.

On a more permanent basis, the Interstate Medical Licensure Compact permits physicians to cross state lines to provide care in participating states.

Twenty-nine states plus the District of

See **TELEHEALTH** next page

in-person doctor visits.

The technology allows physicians and other health care providers to consult with, monitor and provide other services to patients without personal contact.

Its usage has diminished more recently as patients and physicians have adapted

## Improved risk management a welcome step forward

**W**hile telehealth-delivered medical care offers obvious operating efficiencies to health care providers and convenience to patients, it also can lead to improved risk management, experts say.

The increased use of telehealth can enhance safety because patients do not sit in doctors' waiting rooms with other sick people, said Mike Stinson, vice president of government relations and public policy at the Rockville, Maryland-based Medical Professional Liability Association.

One of the exciting opportunities telemedicine provides is the increased ability to create accurate medical records as the physician-patient encounter occurs, said Dr. David L.



Feldman, chief medical officer for The Doctors Co., a Napa, California-based medical malpractice insurer.

In addition, a recorded telehealth exam can be used as a defense in

medical malpractice cases — for example, if there is a dispute over how long a consultation lasted, said Dr. John C. Evanko, chief medical officer for Burlington, Vermont-based med mal

insurer MCIC Vermont LLC, a reciprocal risk retention group.

Also, for treatment of mental health patients, telehealth can give health care providers a better idea of patients' home environment, he said.

Angela W. Russell, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Baltimore, said patients tend to be less distracted during their telehealth appointments because they must stay focused on a screen. "In some ways, it's a more intimate interaction," she said.

The days of physicians making home visits with their black bags are over, "but this is basically the same thing," Dr. Evanko said.

Judy Greenwald

## TELEHEALTH

Continued from previous page

Columbia and the territory of Guam participate in the compact and other states are in the process of introducing legislation to join the compact, according to the Interstate Medical Licensure Compact Commission in Littleton, Colorado.

Only a handful of states have yet to begin the interstate licensure process, Ms. Sullivan said.

Experts say telehealth can reduce costs and improve health care delivery when appropriately used. "It's an excellent platform for relatively minor needs, but we know at some point those needs may go beyond that" and require in-person care, said Kathryn Meyers, Chicago-based managing director of brokering for Aon PLC's national health care practice.

"Health care providers' inability to use all their senses to diagnose a patient can create a greater risk" of incorrect diagnosis in some medical disciplines, said Judy Klein, Columbus, Ohio-based business development lead and manager in risk management and analytics for med mal insurer Coverys Inc. "They really need to have a process and plan in place" as to when in-person visits are required.

Certain guidelines must be in place for emergencies, such as a patient showing signs of a stroke, so that he or she can immediately be rerouted to a physical exam, said Susan Hankins, Atlanta-based senior production specialist with Iron-Health, a Liberty Mutual Insurance Co. subsidiary. "Make sure the health issue

is appropriate for the medium," she said.

Good communications can be an issue, experts say. Most physicians are not like Marcus Welby, said Larry Hansard, Washington-based Arthur J. Gallagher & Co.'s health care practice director. They tend to be analytical by nature and often "don't have the greatest communication skills," he said.

Some health care providers are already challenged when they see patients face to face, and telehealth "adds another layer of distance," said Lana Dealy, Kansas City, Missouri-based clinical risk consultant for Lockton Cos. LLC. Having someone else present during an exam, such as a nurse, "may help bridge that gap," she said.

*"We're seeing huge increases in insurance premiums and availability of coverage, but that's really more a result of claims severity in this space. It's not an impact, necessarily, for the pandemic and telehealth."*

Paula Sullivan,  
Marsh LLC

Many of the risks associated with telehealth, though, are the same as those in traditional in-person medicine, including failure to diagnose or delayed diagnosis, failure to follow up, improper documentation and failure to refer patients to spe-

cialists, Ms. Klein said.

Telehealth is not a specialty, it is a delivery method, "so the claims we see tend to be the same as in traditional brick and mortar," Ms. Schoenthal said.

Informed consent to the use of telehealth is essential, experts say. Health care providers should make sure patients' informed consent is documented in some way to be sure they understand the risk and concerns associated with telehealth, said Angela W. Russell, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Baltimore.

The number of reported telehealth-related medical malpractice cases so far has been "remarkably small," said Joseph P. McMenam, a medical doctor who is principal at McMenam Law Offices PLLC in Richmond, Virginia.

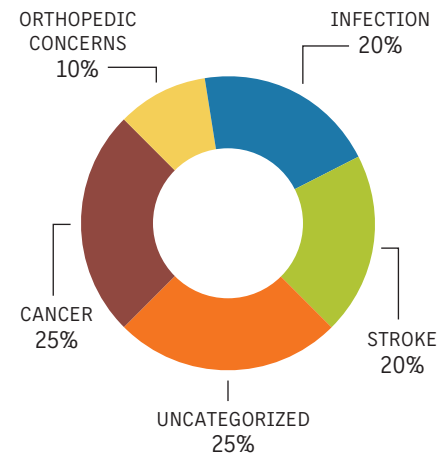
"To date, I'm happy to report I'm not aware of any malpractice issues that have specifically been attributed to the use of telehealth," said Elaine Ziemba, chief risk officer and vice president of Stanford Medicine in Palo Alto, California, which includes three hospitals affiliated with the Stanford University School of Medicine.

Although there were some initial concerns, "we all quickly realized the use of technology alone was not the basis that would increase risk," if standards of care and good medical practices are followed, Ms. Ziemba said.

Ms. Sullivan said telehealth hasn't yet had a direct effect on the med mal market.

"We're seeing huge increases in insurance premiums and availability of coverage, but that's really more a result of claims severity in this space. It's not an impact, necessarily, for the pandemic and

## ALLEGATIONS OF MISSED DIAGNOSES IN TELEMEDICINE CLAIMS



Source: The Doctors Co.

telehealth," Ms. Sullivan said.

"The carriers have been very slow to react to this increased exposure," said Trent Sullivan, West Hartford, Connecticut-based principal with EPIC Insurance Brokers & Consultants.

But given the big increase in usage, claims will likely follow, said Mr. Hansard of Gallagher.

While companies that specialize in telehealth would be evaluated separately by med mal insurers, the typical physician who incorporates some telehealth medicine into their practice would not be affected, assuming they practice within their state guidelines, said Dr. David L. Feldman, chief medical officer for The Doctors Co., a Napa, California-based medical malpractice insurer.

## Privacy, security a rising concern for online consultations

With medical information viewed as a highly desirable asset on the black market, cyber risks associated with the use of telehealth have become a major concern.

Health care information is about 20 times more valuable to criminals than credit card or financial information because of the amount it sells for, said Paula Sullivan, Chicago-based senior vice president with Marsh LLC's health care practice.

Medical information, which is particularly valuable if it includes social security numbers, cannot be changed as readily as a credit card number and can be used to submit fake medical claims, purchase prescriptions or receive treatment under a false name.

"When you think about the sheer volume of cases of medical information that's now transmitted through the



internet, the potential (for hacking) is that much greater," she said.

There are many safeguards that should be put in place to secure health information transmitted via telehealth tools, she said.

"If the bad guys can figure out what

the Joint Chiefs of Staff are saying (on the Internet) what are the chances of Dr. Smith on Main Street?" asked Joseph P. McMenam, a medical doctor who is principal of McMenam Law Offices PLLC in Richmond, Virginia.

Providers should ensure that the

platforms they use are confidential and that data is encrypted, said Angela W. Russell, a partner with Wilson Elser Moskowitz Edelman & Dicker LLP in Baltimore. They should also encourage patients to maintain the privacy of the sessions, she said, noting she has learned of telehealth exams conducted while patients were walking through Walmart.

Brenda Craig, senior vice president at Houston-based Skyward Specialty Insurance Group Inc., said health care providers should be careful to work with a reputable platform that is a known entity.

More telehealth vendors are springing up, "and, frankly, it's difficult to tell their level of qualification, so you have to really be careful about vetting these vendors," Ms. Sullivan.

Judy Greenwald





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## MANAGEMENT LIABILITY

# Hard D&O market persists despite new capital

BY JUDY GREENWALD

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### INSIDE

#### FRESH CAPACITY

A flurry of D&O entrants and underwriter hires may impact the market. **PAGE 19**

#### BLANK CHECK COMPANIES

As SPAC activity reaches all-time high, lawsuits may follow. **PAGE 20**

#### RESEARCH & DATA

D&O insurance pricing, class action activity, SEC filings and underwriter views on future trends. **PAGE 21**

**D**irectors and officers liability insurance policyholders face challenges on issues including diversity, climate change and special purpose acquisition companies, as well as the prospect of more enforcement actions under the Biden administration, which could affect their insurance coverage as they contend with a tough market.

The ongoing momentum toward higher rates, less capacity and more retentions continued and even intensified during the Jan. 1, 2021, renewals, experts say, all while companies continued to grapple with the COVID-19 pandemic.

While there is no immediate end in sight to the challenges, new capital has entered the market and several experienced D&O underwriters have switched insurers, which likely signals more

capacity entering the sector, experts say (see story page 19).

The number of class action securities lawsuits filed, which drive many D&O claims, declined in 2020, but many believe the drop was largely due to court shut-downs in the pandemic's early days, rather than portending any litigation relief.

Meanwhile, some experts say they are bracing for litigation in connection with the increase in the number of special

**“We’re continuing to see insurers cutting their capacity, such as by putting up lower limits per client, and we’re seeing continued increases in pricing.”**

Sarah Downey,  
Marsh USA Inc.

purpose acquisition companies (see story page 20).

The market continues to be challenging, said Sarah Downey, New York-based FINPRO and D&O product leader for Marsh USA Inc.

“We’re continuing to see insurers cutting their capacity, such as by putting up lower limits per client, and we’re seeing continued increases in pricing,” she said.

Renewals in each of the last four quarters have become successively harder to place, said Brian Dunphy, senior vice president and managing director at Alliant Insurance Services Inc. in New York. “It was a very, very taxing year.”

Underwriters raised retentions, sometimes by three times year-over-year, and capacity has been a continuing issue, with only the “best in class” getting more than \$15 million, Mr. Dunphy said.

In general, publicly held companies are facing 15% to 25% increases and private companies 5% to 15%, but others “are continuing to see increases beyond that range,” including financially troubled companies hit by the pandemic, life science and high-tech companies, and those with recent claims experience, said Kevin LaCroix, executive vice president in Beachwood, Ohio, for RT ProExec, a division of R-T Specialty LLC.

Mr. LaCroix said that while overall rates were lower for private companies, very large companies — including unicorns, which are startup companies with valuations of at least \$1 billion — are seeing price hikes on the same scale as public companies.

No immediate end is in sight, observers say. It may be the end of the second quarter or the beginning of the third quarter before there is a change, Mr. LaCroix said.

The D&O market will continue to be challenging at least through the early part of this year, Ms. Downey said

“I don’t see any letup at this point,” with the “best case” a change in the latter part of the third quarter, Mr. Dunphy said.

While there are indications that policyholders can expect increases in the near term, there are some signs that the market is stabilizing, said Rob Yellen, New York-based executive vice president of Willis Towers Watson PLC’s FINEX North America practice.

While it is not “puppies and rainbows, it’s not all doom and gloom,” he said.

Observers anticipate the continued impact of environmental social gover-

## Capital injections add needed capacity

**F**resh capital entering the directors and officers liability insurance market and movement among high-level underwriters are welcome in the hard market, experts say.

The new developments, though, are not expected to lead to a return to cutthroat competition.

“You’ve got some new people looking at the books of business in a different way” and new capacity that will have a moderating effect on the market, said Rodger Laurite, Atlanta-based executive lines practice leader for the southeast for Lockton Cos. LLC.

Much of the new capacity is targeted at excess layers.

The plan has been to give brokers and insureds an option to fill out their towers where holes had come up, said Greg Flood, founder and senior partner at Balance Partners LLC, a Huntington, New York-based managing general agent and one of the recent entrants in the market.

Other relatively new underwriters that have entered the market include New York-based managing general underwriter Bowhead Specialty Underwriters Inc., which was formed by Madison, Wisconsin-based American Family Mutual Insurance Co., Greenwich, Connecticut-based Gallatin Point Partners LLC and Bowhead CEO Stephen Sills. Mr. Sills is the former chairman and CEO of Middleton, Wisconsin-based CapSpecialty, a subsidiary of Allegheny Corp., and Arlington, Virginia-based Professional Risk Management Services Inc. The company will initially focus

on professional liability and excess casualty capacity, Mr. Sills said.

In addition, Omaha, Nebraska-based Applied Underwriters Inc. has launched a D&O division in the U.S. and hired former American International Group Inc. executive Stephen McGill to head the unit.



Among others, Skyward Specialty Insurance, formerly Houston International Insurance Group Ltd., said in November it was expanding its management liability coverage, offering to include an excess public D&O product.

In January, Cincinnati-based Core Specialty Insurance Holdings Inc. said it had made an underwriting arrangement with New York-based Celerity Pro, an insurtech professional liability and cyber risk underwriter backed by a Munich Reinsurance Co. unit, to provide directors and officers liability insurance for the U.S. management liability market.

And French reinsurer Scor SE will enter the D&O market with a U.S. focus this year, according to reports.

There has also been significant movement among D&O executives, which experts say could reflect renewed interest in the sector by the hiring companies.

For instance, QBE North America hired Dan Fortin and Todd Greeley from Berkshire Hathaway Specialty Insurance Inc. to lead its financial lines business, and Berkshire subsequently hired former AIG underwriter Brady Head as senior vice president and product line officer for D&O in North America.

QBE will likely be more active in the sector than it has been in the past, Mr. Fortin said.

In addition, Deirdre Martin, formerly senior vice president, financial lines, public company division, with AIG in New York, joined Sompco International Holdings Ltd. as senior vice president, U.S. commercial management liability, in March.

In September, Ascot Group Ltd. said it had named New York-based Andy Stirk, formerly managing director at Marsh LLC, where he oversaw the North American growth strategy for the FINPRO risk practice, as chief commercial officer.

The changes in the market signal “that people are changing their underwriting strategies and are trying to get ahead of what is to come in terms of how this is going to shake out” with respect to the global economy, and they want to make sure they have the right people in place, said Heather Fong-Quade, Chicago-based regional head of product development, North America, financial lines, for Allianz SE.

“It’s a call back to traditional, disciplined underwriting” that focuses on “basic meat and potatoes,” she said.

Judy Greenwald

nance, or ESG, lawsuits, which reflect climate change-related and diversity-based lawsuits.

Many point to the California legislature’s passage of A.B. 979, which requires publicly traded companies in the state to have at least one minority director by Dec. 31, 2021. The NASDAQ stock exchange has also filed a proposal with

**“There’s a lot of question marks still to be answered, but it’s very clear the direction we’re headed in, and as D&O carriers we’re certainly worried about that.”**

Jeremie Saada,  
Beazley Group PLC

the Securities and Exchange Commission that would require its listed companies to have at least two diverse board members.

“We did see in 2020, particularly in the fourth quarter, a push for board diversity,” which is going to be very important

for clients, said Christine Williams, New York-based CEO of Aon PLC’s financial services group.

If companies don’t comply, they will potentially be subject to regulatory and enforcement actions, said Andrew Doherty, New York-based national executive and professional risk solutions practice leader for USI Insurance Services LLC.

While there’s been a lull in SEC enforcement actions, companies should prepare for a resumption of activity under the Biden administration, said Jeremie Saada, New York-based head of U.S. executive risk for Beazley Group PLC.

“There’s a lot of question marks still to be answered, but it’s very clear the direction we’re headed in, and as D&O carriers we’re certainly worried about that,” he said.

Many believe last year’s decrease in class action securities litigation does not reflect future trends. There were 324 federal securities class action lawsuits filed in 2020, which was a nearly 20% decrease from the 402 filed in 2019, according to Mr. LaCroix’s D&O Diary blog.

Many attribute the decrease at least in part to court closings caused by the pandemic.

See **D&O** next page



### DIVERSITY, CLIMATE AND REGULATORY CHANGE

Factors expected to affect the directors and officers liability insurance market in 2021 include:

- Continued higher rates and retentions and lower limits, at least through the first half
- Special purpose acquisition vehicles
- Additional capacity entering the market and executive turnover
- Climate change litigation
- Board diversity issues and requirements
- Biden administration-led regulatory and legislative changes
- Pandemic-related events, including increased bankruptcies
- Continued securities class action litigation

Source: Business Insurance executive interviews

## D&O

Continued from previous page

“I think it was just, in many ways, the calm before the storm,” said Laura Coppola, New York-based global head of financial and professional liability at Swiss Re Corporate Solutions.

The combination of concerns about climate change, the change in administrations and the new Biden administration’s appointees will likely result in regulatory reform and new legislation, and an increase in associated litigation, she said.

The pandemic will have two effects in the D&O area, said Priya Cherian Huskins, San Francisco-based partner and senior vice president at broker Woodruff Sawyer & Co.

First, an increase in bankruptcies will hit the D&O market, she said.

Second, she said, “We have the situation of companies continuing to make disclosures related to COVID-19, and, of course, any time you have disclosures about unusual events you have the possibility of plaintiffs, after the fact, taking the position the disclosure was misleading.”

## Spectacular rise of SPACs spurs claims concern

**D**irectors and officers liability insurance experts are bracing for increased litigation that focuses on special purpose acquisition companies, which had explosive growth last year.

SPACs, which are also known as “blank check companies,” are shell companies formed for the purpose of raising capital to acquire existing businesses, and usually have two years to make an acquisition.

There were 248 SPACs formed in 2020 that raised a combined \$83.04 billion in gross proceeds, according to website SPACinsider.com. That compared with 59 in 2019, when \$13.6 billion was raised.

In December, the U.S. Securities and Exchange Commission issued separately an investor bulletin and disclosure guidance on SPACs.

The investor bulletin said it was important to understand how to evaluate a SPAC investment, “including the financial interests and motivations

of the SPAC sponsors and related persons,” and discusses the factors investors should know before the initial business combination and at the time of the combination.

“With an increasing number of SPACs seeking to acquire operating businesses, it is important to consider whether attractive initial business combinations will become scarcer,” the bulletin said.

The disclosure guidance warned that the economic interests of a SPAC’s management team and directors and officers “often differ from the economic interests of public shareholders, which may lead to conflicts of interest as they evaluate and decide whether to recommend business combination transactions to shareholders.”

Litigation already filed includes a putative class action complaint filed against electric car manufacturer Nikola Corp. in U.S. District Court in Phoenix in September in *Daniel Borteanu v. Nikola Corp.* Phoenix-based Nikola was

acquired by a publicly traded SPAC in June. The suit charges the defendants with making “materially false and misleading statements.”

“The clock is ticking” for SPACs to make acquisitions, said Phil Norton, Chicago-based president of Arthur J. Gallagher & Co.’s professional liability division.

Many anticipate that as they do so, plaintiff attorneys will seize on them to file D&O litigation, including complaints similar to those they have made regarding more traditional merger and acquisition deals, such as the price negotiated.

“The uptick in the number of SPACs was incredible,” which raises the question of whether there will be an increase in claims, because these SPACs have to do business combinations within two years, said Rodger Laurite, Atlanta-based executive lines practice leader for the southeast for Lockton Cos. LLC.

Judy Greenwald

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– Mark Wilhelm, CEO



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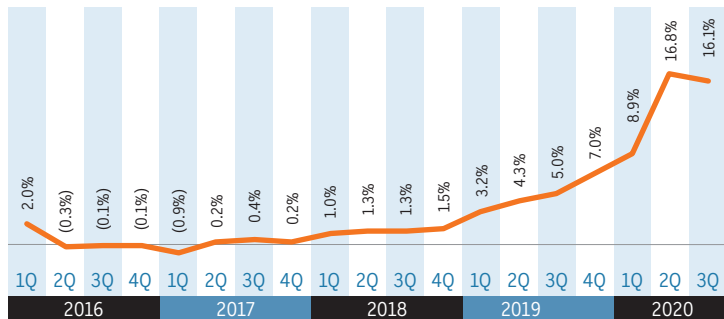
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# DIRECTORS AND OFFICERS LIABILITY INSURANCE

## D&O RENEWAL PRICING

According to the Council of Insurance Agents and Brokers' Q3 2020 Commercial Property/Casualty Market Index, premiums continued to increase for all lines of business. Premiums for D&O saw a significant average increase of 16.1%, down slightly from the 16.8% increase recorded in the second quarter. This marked the 13th consecutive quarter of price increases for this line.

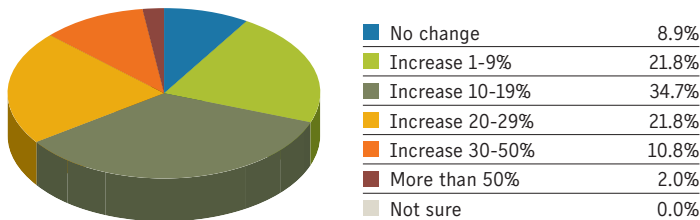
AVERAGE D&O RENEWAL PRICING CHANGES BY QUARTER SINCE 2016



Source: Council of Insurance Agents & Brokers

## D&O PRICING

During the third quarter of 2020, 91.1% of survey respondents saw increases in premium rates for D&O liability coverage, while none reported a decrease. It is possible that the ongoing pandemic drove this increase, but only 20% of respondents said COVID-19 was responsible for increased D&O claim activity.

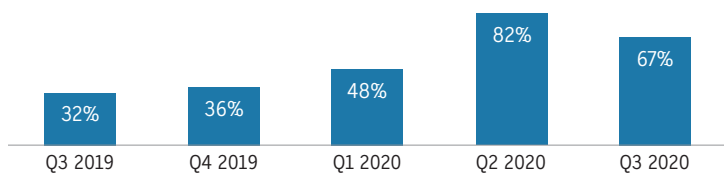


Source: Council of Insurance Agents & Brokers

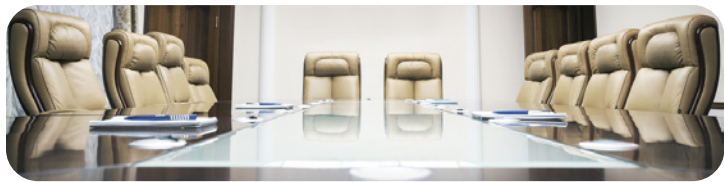
## D&O UNDERWRITING CAPACITY

The significant price increases for D&O were accompanied by equally significant decreases in capacity. This capacity contraction came with increased deductibles, lower limits and reduced coverage.

PERCENTAGE OF BROKERS REPORTING A DROP IN UNDERWRITING CAPACITY

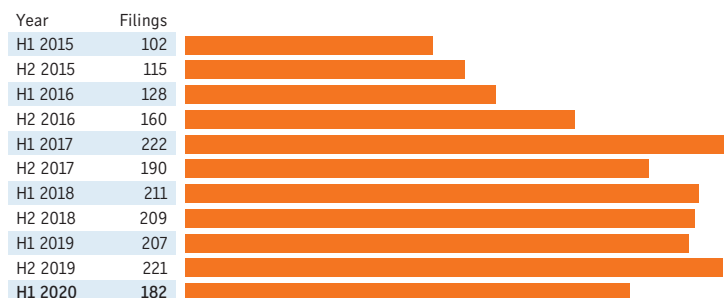


Source: Council of Insurance Agents and Brokers



## CLASS ACTIONS

The total number of federal class action filings dropped by 18% in the first half of 2020 compared with the second half of 2019.

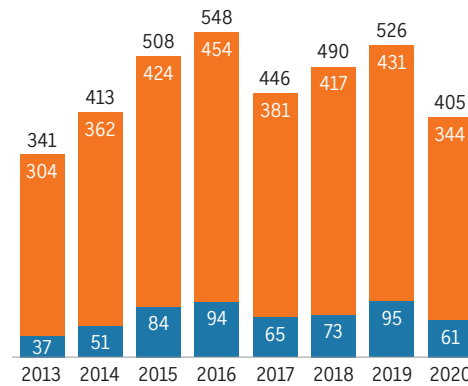


Source: Cornerstone Research Inc.

## SEC FILINGS

The U.S. Securities and Exchange Commission filed a total of 405 independent actions in 2020, the lowest total since 2013. However, the SEC imposed a record \$4.68 billion in monetary settlements.

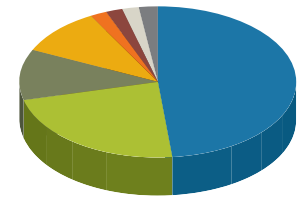
■ Non-public companies and subsidiaries  
■ Public companies and subsidiaries



Source: Cornerstone Research Inc. using Securities Enforcement Empirical Database (SEED), SEC data

## SEC ALLEGATIONS

Issuer reporting and disclosure was the most common type of SEC allegation in 2020, accounting for nearly half of all public company and subsidiaries actions.



Allegation Type	Percentage
Issuer reporting and disclosure	49%
Investment adviser/investment company	23%
Foreign Corrupt Practices Act	11%
Broker dealer	10%
Public finance abuse	2%
Securities offering	2%
Market manipulation	2%
Other	2%
<b>Total number of actions</b>	<b>61</b>

Source: Cornerstone Research Inc., using Securities Enforcement Empirical Database (SEED), SEC data

## SPAC AND U.S. IPO ACTIVITY

2020 saw a record 248 special purpose acquisition company initial public offerings, making up more than half of total IPOs in the U.S. SPAC proceeds jumped 512% from 2019, accounting for 46% of total U.S. IPO proceeds.

Year	Number of SPAC IPOs	Total number of U.S. IPOs	Percent of total IPOs	SPAC proceeds (in millions)	Total U.S. IPOs (in millions)	Percent of total
2021 to date	67	79	85%	\$19,381	\$27,823	70%
2020	248	450	55%	\$83,214	\$179,217	46%
2019	59	213	28%	\$13,600	\$72,200	19%
2018	46	225	20%	\$10,750	\$63,890	17%
2017	34	189	18%	\$10,048	\$50,268	20%
2016	13	111	12%	\$3,499	\$25,779	14%
2015	20	173	12%	\$3,902	\$39,232	10%
2014	12	258	5%	\$1,750	\$93,040	2%
2013	10	220	5%	\$1,447	\$70,777	2%
2012	9	147	6%	\$490	\$50,131	1%
2011	16	144	11%	\$1,110	\$43,240	3%

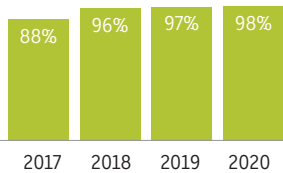
Source: SPAC Analytics

## UNDERWRITERS' PERSPECTIVE

For its eighth annual edition of the D&O Looking Ahead Guide, Woodruff Sawyer & Co. surveyed 34 insurers, including top D&O carriers AIG, Axa XL, Great American, Lloyd's, Old Republic and Tokio Marine HCC, regarding the current risk environment, risk appetite, and future pricing expectations. Here are excerpts of the survey results:

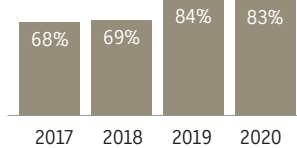
Is D&O risk going up?

98% of underwriters say risk is increasing



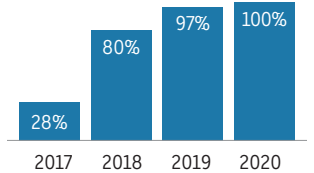
Are companies as aware as they should be about the risk and cost of D&O litigation?

83% of underwriters think that companies underestimate the current risk and cost of litigation

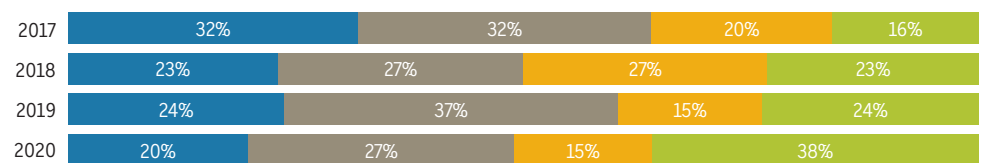


Do you expect D&O insurance premium rates for mature public companies to go up, stay the same, or go down?

100% of underwriters expect D&O premiums to go up



Who is the most critical person at a company when you think about mitigating D&O risk?



Source: Woodruff Sawyer & Co.

■ CEO ■ CFO ■ General Counsel ■ Board of Directors

## Cyber MGA offers excess coverage

■ Technology-based managing general agent Cowbell Cyber Inc. launched an excess cyber coverage line.

The Pleasanton, California-based MGA said the Prime Plus program will offer businesses with up to \$1 billion in revenue \$10 million in excess limits. The coverage is offered on a follow form basis and can provide drop-down features, according to details on Cowbell Cyber's website.

The coverage includes Cowbell Cyber's risk monitoring and risk mitigation services.

Prime Plus is written on paper provided by fronting insurer Obsidian Insurance Holdings Inc. and backed by a panel of reinsurers, a Cowbell Cyber statement said. Obsidian launched as a Delaware-domiciled excess and surplus lines insurer in September 2020.

Cowbell Cyber launched last January offering standalone cyber insurance to small- and medium-sized companies.

## KCC launches multiperil winter storm model

■ Karen Clark & Co., the Boston-based catastrophe modeling firm, released a U.S. winter storm model that captures loss potential from the subperils of snow and ice, freezing temperatures and high winds.

The model includes live event coverage so that insurers can predict their claims and losses from storms as they are unfolding, KCC said in a statement.

On average, winter storms cause nearly \$3 billion in insured loss annually and can cause over \$20 billion in extreme events, KCC said.

The winter storm reference model includes different classifications of winter storms, not just typical nor'easters, but also Arctic high-pressure systems, KCC said.

KCC's scientists combined advanced numerical weather prediction data and techniques with historical winter storm climatology.

"The benefit of using NWP is that we can capture the specific atmospheric conditions that lead to each subperil," Daniel Ward, KCC senior meteorologist, said in the statement.

KCC has reproduced 35 historical events and generated over 19,000 additional events with NWP techniques to create a stochastic event set that represents potential future winter storms that are meteorologically feasible but have not yet occurred, he said.

For each event, three high-resolution footprints are generated: one for snow and ice accumulation, one for wind and



## Cat modeler updates app for cyber risks

■ Catastrophe modeler Risk Management Solutions Inc. said it has issued an update to its RMS Cyber Solutions Version 5.0 that includes a new cyber solutions underwriting application.

The Newark, California-based company said the application will allow users to price and select cyber risks without the need for large sets of in-house claims data.

It said the application models cyber risk by leveraging various scientific methods and integrating large datasets from the RMS Cyber Incident Database, which includes 100,000 data breach events, threat intelligence, dark web scanning, vulnerability management and "outside-in/cyber-hygiene scorers."

RMS said it has also rolled out the latest iteration of its RMS Solutions Portfolio Management application, which aims to help insurers understand the extent of previously unquantifiable cyber risks.

The company said the combination of the RMS pricing engine and portfolio management application is designed to drive consistency between a customer's underwriting and portfolio management workflows.

one for freeze.

With the live-event coverage, KCC meteorologists monitor the daily weather and develop event footprints for major

events so insurers can proactively track the annual aggregate losses from winter storm activity against their portfolio of risks, KCC said.

The KCC US Winter Storm Reference Model is implemented on the RiskInsight open loss modeling platform, and all components are transparent to model users, KCC said.

## Construction weather parametric policy launched

■ Zurich North America launched a parametric insurance policy to cover the financial losses incurred by owners and contractors due to construction project delays caused by severe weather.

In a statement, Zurich said the construction weather parametric insurance policy provides coverage for non-physical damage-related project delays that traditional builders risk insurance does not cover.

Maximum limits of up to \$10 million are available under the policy, a Zurich spokeswoman said via email.

Unlike builders risk, which requires physical damage to project elements for a claim to be paid, the parametric insurance pays out based on predetermined weather events occurring in the project's location, such as extreme rain, wind or temperatures, Zurich said.

Parametric policyholders can buy coverage for one or more weather perils, and coverage duration can be tailored to the peak season for the weather risk and pegged to milestones in the construction schedule, Zurich said in the statement.

Perils, thresholds, limits, deductibles and coverage duration under the policy can be tailored to meet the individual needs of buyers, and threshold options for each peril are based on historical weather data at the project location.

Coverage responds as long as the trigger event occurs, the project is impacted within the agreed-upon dates and the deductible has been met, Zurich said.

## Insurer links with insurtech to offer D&O coverage

■ Core Specialty Insurance Holdings Inc. has made an underwriting arrangement with Celerity Pro, an insurtech professional liability and cyber risk underwriter backed by a Munich Reinsurance Co. unit, to provide directors and officers liability insurance for the U.S. management liability market.

The program will be available to the wholesale market in the Northeast and Mid-Atlantic regions on a nonadmitted basis. It is offering limits of up to \$5 million per incident, with a \$15 million aggregate, according to a spokesman.

## DEALS & MOVES

### Gallagher acquires California MGA

Arthur J. Gallagher & Co. acquired San Diego-based Atlas General Holdings LLC.

Terms of the transaction were not disclosed.

Doing business as Atlas General Insurance Services, the multiline program manager and managing general agency offers workers compensation, commercial lines and specialty property programs nationwide. The company employs 160.

### Hub expands California footprint

Hub International Ltd. has acquired Modesto, California-based brokerage Capax Management and Insurance Services Inc., Hub said in a statement.

Terms of the transaction were not disclosed.

Capax, which specializes in agriculture coverage and offers captive management services, provides multiline, personal and commercial insurance, and employee benefits consulting, Hub said in a statement.

Capax will expand the depth of Hub's insurance and risk management offerings in the region, said Michael Der Manouel, executive vice president of Hub California Central Valley.

### Constellation Affiliated buys cyber wholesaler

Constellation Affiliated Partners LLC has acquired Atlanta-based specialty wholesale broker and managing general agent INSUREtrust LLC, which does business as ITDC Insurance Services.

Terms of the transaction were not disclosed.

INSUREtrust distributes cyber liability, technology errors and omissions and miscellaneous professional liability coverages.

The partnership with Constellation will support an additional \$1 billion in gross written premium.

### Alliant acquires Connecticut brokerage

Alliant Insurance Services Inc. acquired BridgePoint Risk Management LLC, Alliant said in a statement.

Terms of the transaction were not disclosed.

Greenwich, Connecticut-based BridgePoint provides coverage nationally for business owners, high-profile executives, athletes, entertainers, and collectors of fine art, jewelry, wine and automobiles, the statement said.

# Talent underpins AIG vision for success, sustainable growth



AIG<sup>1</sup> has always been a place where talented insurance professionals can do innovative things. This tradition continues with AIG's ongoing commitment to embracing diversity, equity and inclusion. As part of this critical effort, AIG proudly presents profiles of inspiring executives, beginning with Allison Barrett, Head of North America Financial Lines.

Allison Barrett was recently promoted to Head of North America Financial Lines at AIG. Previously, she was the Global Head of Multinational in AIG's General Insurance business. She has had an extensive career in insurance and her industry commitments include serving on the board of the PLUS Foundation and she co-founded a nonprofit organization with an inclusive network for female Financial Lines insurance and reinsurance professionals, known as The Bridge. In this profile, she shares her perspective on the industry.

"It is a privilege for me to lead one of the top financial lines franchises in the industry. I take pride in having the opportunity to lead a team with such a strong passion for AIG's clients, our broker partners and each other — especially through the ongoing change, uncertainty and market conditions of this year," Barrett said.

"We show up to the 'virtual' office each day driven by a relentless commitment to excellence. Our community really cares about clients and believes in the value of the product that we are providing. We challenge each other to do better, to think smarter and continuously raise the bar in developing innovative solutions to solve for the next emerging risk on the horizon, of which there is no shortage. The financial lines risk landscape is constantly evolving, and we are always growing and learning along with our industry partners and clients."

Barrett said she was honored "to join the ranks of many other female leaders at the helms of other marquee financial lines franchises in the industry. As women in top leadership roles, we have the opportunity, and the responsibility, to lead from the front and raise awareness of the benefits of diversity. I am a strong believer that adding different voices and perspectives to the table yields better business decisions and a more rewarding work environment."

## Vision for 2021

Barrett said her vision at AIG is for her team "to lead the North America Financial Lines market in providing innovative and sustainable solutions through an engaged and knowledgeable team that delivers directed growth through intentional opportunity selection while promoting a culture that values diversity, inclusion, excellence and colleague development."

She added: "There's a value and emphasis placed on client and trading relationships that AIG

has kept at the core of its way of doing business for a very long time. We are focused on taking a balanced approach to having long-term, mutually beneficial relationships with our clients. This includes proactive communication and transparency around our strategies. We remain committed to an evidence-based dialogue and collaboration with our distribution partners and clients to ensure a mutual understanding of current market dynamics and the solutions available. As one of the largest, most established primary financial lines carriers, we are able to provide clients with unique, real-time insights that help to enable well-informed decisions. We are open to innovative ways to thinking about what's happening in clients' eyes and what's happening in their businesses, because it's an ever-changing and evolving environment for all of us.

"At the core of our success is our talent. We are creating growth opportunities for our existing deeply talented team and are welcoming new members who are also recognized for their leadership and technical expertise in the market. Our goal is to build the leading Financial Lines team in the industry, and we believe that we are well on our way."

## Advice worth sharing

Barrett shared some career advice she has found helpful. "I have been fortunate to receive advice from a number of great people. Some of the best career advice I can share, in no particular order, is:

**"Be bold.** If not you, then who? Identify what your goals are and pursue them relentlessly. Only you can decide what success looks like. Do not be afraid to take chances and seek out new opportunities. Take charge of your own career.

**"Be decisive.** Follow through on making informed decisions toward progress, not perfection. Hold yourself and others accountable, and do not be afraid to admit mistakes. Some of the most innovative ideas are born from previous trial and error.

**"Be authentic.** It takes courage to bring your whole self to work, but people can feel your genuine approach and it gives them permission to do the same.

**"Treat every interaction as an opportunity to make an impression.** Always show up and be at your best, because you never know who will be at the table and how they may be able to contribute to your career.



**Allison Barrett**  
Head of North America Financial Lines  
American International Group

**"Embrace networks.** Cultivating connections is an extremely important part of my professional life and has greatly helped enhance my career. So much so, that in 2018 I co-founded [The Bridge](#), an inclusive nonprofit organization whose mission is to develop and advance the women of Financial Lines by providing them with meaningful education, mentoring and networking opportunities."

## Inspiration for life and work

Barrett noted success in business and life often comes from someone who inspires us. Her own inspiration comes from her mom, she said. "When someone asks who has most inspired me, I credit my mother, Katrina. She worked tirelessly to give us access to opportunities and life experiences, and she taught us to work hard to be our best every day, with the understanding that our best would always be good enough; to respect those around us; to take every interaction seriously; to be grateful; to give back; and to laugh and enjoy life.

"She maintained a career while being present at home, and she was a driving force in our house, a real partner to my father. She is unapologetic about who she is and what she believes in, but she is able to convey her thoughts and feelings in a way that they are heard. Her support has provided me with a life-long safety net that has allowed me to take the risks I needed to achieve all that I have today. She always said that she wanted to raise strong, independent daughters — and I think anyone who knows my sister and me would say she succeeded."

To learn more about AIG,  
please visit [www.AIG.com](http://www.AIG.com).



## Times demand resilient response

The first few weeks of a new year are often accompanied by feelings of optimism as we put the struggles of the past 12 months behind us and look forward to better times ahead. The opening of 2021, however, is enough to test the resolve of the most cockeyed optimist.

Although COVID-19 vaccines are being rolled out, tens of thousands more are expected to die of the disease and new variants of the virus are straining medical systems in a growing number of countries.

In politics, while many in the U.S. electorate were elated by a change in administration, many others felt the opposite and many more, regardless of political affiliation, stared in disbelief at the sight of the U.S. Capitol being stormed by a mob.

And in the ongoing saga of long-term increases in damage caused by natural catastrophes, the planet's continued struggles with the effects of climate change don't look like they will be relieved any time soon.

Adding to the sobering outlook were several reports released last month looking at various risks threatening the world.

The World Economic Forum's annual Global Risks Report detailed the risk concerns of global business leaders (see graphic), with many of the top concerns sounding almost biblical in nature, though in many ways a plague of frogs would be less foreboding.

Allianz Global Corporate & Specialty SE released its annual Allianz Risk Barometer, which showed that business interruption

was the top risk for 2021, up from second-highest risk last year, followed by pandemic outbreak at No. 2, up from No. 17 last year. Cyber incidents slipped from the top spot but was still the No. 3 risk.

And a report by Aon PLC showed that although 2020 won't go down as a terrible year for natural catastrophes, it was still pretty awful, with 416 events resulting in \$268 billion in global economic damage, which was 8% above the annual average in the 21st century.

At the center of all these concerns is the question of how to address the risks we face, and if ever there were a time to stress the importance of risk management it's now.

The WEF report called for investing in "risk champions" at the national level to lead crisis response efforts and encourage international cooperation. Such leadership is also needed at the level of individual organizations to assess risks and respond to them. We've all heard a lot over the past decade about the need to build resilience into companies and government entities, and it's precisely to respond to unpredictable catastrophes such as global pandemics that resilient entities need to be established.

There's no simple solution and the answers will be different for each organization, but risk managers have the chance to lead the charge to resilience and, we can all hope, make the outlook less bleak.



**Gavin Souter**  
EDITOR

### GLOBAL RISKS HORIZONS

According to the World Economic Forum's 2021 Global Risk Perception Survey, the nine most concerning global risks are:

1. Climate action failure
2. Livelihood crises
3. Infectious disease
4. Biodiversity loss
5. Social cohesion erosion
6. Prolonged stagnation
7. Debt crises
8. Human environmental damage
9. Extreme weather

Respondents were asked to rank the three risks they consider the most concerning and select up to five risks driving their top concerns.

### VIEWPOINT

## Vaccine rollout risks abound

BY CLAIRE WILKINSON

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Perhaps the most hopeful news since the COVID-19 pandemic began was the approval late last year for emergency use of vaccines, first in the United Kingdom, followed shortly thereafter by the United States. As COVID-19 vaccine rollouts continue in the U.S. and people wait their turn in line, it's remarkable to think just how fast science has responded and the pharmaceutical, manufacturing, distribution and health care sectors, along with academia, have collaborated with the common purpose of halting the spread of a disease that has claimed so many lives.

Risk and risk management — and insurance — are at the core of any vaccination program and especially this one. Even as pharmaceutical companies began testing possible vaccines in clinical trials, some manufacturing was already underway — at a risk. That's a risk not many businesses would dare to take and all while working at speed with safety and efficacy paramount. Fortunately, to date the vaccines have led to few adverse events or reported side effects and appear to be effective against new variants of the virus.

But there are still many unknowns. How long protection is effective and if the vaccines will continue to be successful against new variants, and if they are safe for children under 16 are just a few open questions.

As we report on page 6, as the pool of individuals eligible for inoculation in the U.S. widens, employers must evaluate their vaccination policies and decide whether mandating vaccines for employees is the best choice. Legal experts may advise that employers can require the vaccine but that doesn't mean every business should consider it a green light. In the health care industry, for example, it may be

much easier to mandate vaccinations because workers are in close proximity with patients, but in other industries things may not be so clear cut. Employers also need to consider exemptions for medical reasons and on religious grounds. The hesitancy of some employees to get a vaccination or their inability to secure an appointment due to limited supply are other practical concerns that employers should be prepared to handle. In addition, imposing mandates may also have workers compensation implications.

Risk managers and insurers have an important role to play in underpinning a robust and secure transportation and distribution system for vaccines. The logistics and supply chain challenges involve multiple modes of transportation and storage and the need to keep a temperature-sensitive cargo within the prescribed range. Mitigating loss due to temperature fluctuations, theft and physical damage is critical. In July 2020, Lloyd's of London gave preliminary approval to an insurance facility providing coverage for COVID-19 vaccine shipments developed by technology company Parsyl Inc. By December, Lloyd's and Parsyl had launched a global health risk facility backed by 14 reinsurers and insurers to cover the distribution of COVID-19 vaccines to developing countries, after securing a \$26.7 million loan from the U.S. International Development Finance Corp. This public-private partnership, and the broader cooperation of public and private entities to bring vaccines to market and into the arms of individuals around the world, demonstrates that this form of collaboration is a viable way to address some of society's most complex risks.

As with any large-scale program, there will be inequities and inconsistencies along the way and it's important that risk managers continue to bring their expertise to bear and make their voices heard at the risk-sharing table.



# COVID-19 may have opened a Pandora's box of new employment practices liability exposures



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As with so many facets of our daily life, the COVID-19 pandemic has changed the playbook for many employers across the country. Many companies have had to pivot rapidly to a more remote and virtualized workforce. Others have had to implement new workplace safety protocols to try to ensure the health of onsite staff. Some companies are implementing return-to-work policies, while still more are poised for renewed shutdowns as the pandemic rages throughout the country.

Any moment of abrupt change in workplace practices raises the potential for new liability exposures. When the catalyst for that change is a rapidly evolving public health crisis, with shifting mandates and health guidance, the environment can be even more confusing for employees and employers alike.

So it's no surprise that there have been hundreds of suits brought against businesses, particularly small businesses, for employment practices related to the COVID-19 pandemic. It's fair to say the pandemic has ripped open a Pandora's box of potential employment liability issues that employers should be aware of. These include:

**Discrimination:** With some employees returning to the office or other work locations on an invitation-only basis, employers could be faced with suits alleging discrimination based on which employees received such invitations.

Alternately, some employees may allege discrimination in employer decisions not to allow employees to work remotely or to allow some to work remotely but not others.

Discrimination claims may also arise from seemingly benign actions, such as employers' refusing to extend return-to-work invitations to individuals in higher-risk categories.

**Wrongful demotion or failure to promote:** Some businesses are making their return-to-office policies voluntary. In such a situation, employees who opted not to return to the office as soon as other employees may allege that their decision to work remotely stunted their career opportunities or caused them to be passed over for promotions that were awarded to colleagues who returned to the office sooner.

**Harassment:** While virtual work may have eliminated the potential for instances of physical harassment at the office, it hasn't necessarily stopped avenues of harassment. Employees participating in video calls are often sharing views of their homes and personal lives that could potentially lead to hurtful comments and bullying.

**Wage and hour complaints:** Remote work can often result in employees work-



ing longer or disjointed hours when the boundary between work and home blurs. Additionally, it may be more difficult to accurately track employees' working hours when they work remotely, which results in a potential disconnect between what a worker claims as hours worked and what an employer accounts for. This potential confusion opens the door for hourly or nonexempt employees to bring suits alleging they were deprived of pay, or overtime, when working remotely.

**Sick leave:** The Families First Coronavirus Response Act, signed into law on March 18, 2020, generally "requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19," according to the U.S. Department of Labor. Employees may sue their employers alleging improperly denied leave requests under the Families First Act or under the Family and Medical Leave Act of 1993, which generally gives employees the ability to take unpaid leave to care for themselves or relatives who are seriously ill.

**Abrupt change in workplace practices raises the potential for new liability exposures. ... It's no surprise there have been hundreds of suits brought against businesses.**

**Invasion of privacy:** Some states have issued guidance for return-to-work protocols that include employee health screening and quarantining when employees fall ill or have been in close contact with others who are, or are presumed to be, infected. These guidelines could lead to scenarios where an employee's sensitive health information is accidentally or purposefully disclosed. Employees may face questions regarding their personal health status, whether they have comorbidities, their family history, recent travel and other sensitive questions that, however well intentioned, could present another invasion of

privacy risk exposure for an employer.

## Protection needed

These novel circumstances, which could well persist even after the pandemic begins to recede, highlight the need for businesses to carry adequate insurance against employment practices liability risk exposures. An EPL insurance program, informed by close monitoring of regulatory, legislative, case law and employment trends, can help insurers protect businesses of all sizes from claims arising in the workplace. Coverages and considerations include:

**Legal fees and damages:** An EPL policy will generally pay for defense costs including legal fees to defend an employer facing an employment practices liability suit. Where appropriate, coverage may be extended to damages related to wrongful acts committed by an employer such as instances of harassment, invasion of privacy, wrongful termination and failure to promote.

**Who is an insured?:** EPL policies typically cover employees, business partners and, if the business is a limited liability company, its members and managers. If the policy is issued to an individual, coverage generally extends to that individual's spouse, too.

**Employment law coverage:** While EPL policies generally don't indemnify employers for violating applicable employment laws, they may contain exceptions for Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act and the Family and Medical Leave Act of 1993, among others.

**Potential coverage for past acts:** Depending on the subject policy provisions, EPL coverages may be available on a claims-made basis and potentially cover an incident that leads to a claim that occurred before the policy was in force, provided the policy is in force when the claim is reported.

Employers face a significant degree of uncertainty as the pandemic continues. An EPL risk transfer policy may offer a degree of reassurance that they have the appropriate coverage should a COVID-era employment claim arise.



### UP CLOSE

## Esther Omoloyin

**NEW JOB TITLE:** Princeton, New Jersey-based co-chair, national workers compensation practice, Goldberg Segalla LLP.

**PREVIOUS POSITION:** Princeton, New Jersey-based head of workers compensation practice, Goldberg Segalla LLP.

**OUTLOOK FOR THE INDUSTRY:** The practice of law has weathered many storms and will continue to do so. Some areas of law heat up or cool down with changes in the economy, but workers compensation is an area of law that is always steady. When the economy is strong, there are more employees in the workforce, resulting in more claims. You might expect that, in a weak economy, workers compensation claims would decrease; however, claims tend to remain steady or even increase when the economy is not doing well.

**GOALS FOR YOUR NEW POSITION:** In this new role, I plan to partner with my co-chairs, Damon Gruber and Sean McKinley, to take our group to the next level. They, along with respective state leaders, have done a phenomenal job of expanding Goldberg Segalla's workers compensation group from New York into nine other states: New Jersey, Connecticut, Pennsylvania, Maryland, North Carolina, Florida, Illinois, Missouri and California. Our next steps include expanding our strength and teams in those states, and eventually developing teams in other states.

**CHALLENGES FACING THE INDUSTRY:** COVID-19 has been a big challenge for the workers compensation industry in New Jersey and across the country as court hearings ground to a halt nationally. However, as we look around months later, most states have handled the new climate well and adapted to the new environment.

**FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET:** After my clerkship with the New Jersey Appellate Division, I worked in the workers compensation department of a different New Jersey firm, and while I enjoyed workers compensation, I knew I had not found my work home and family yet. It wasn't until I joined Goldberg Segalla to start the New Jersey workers compensation team seven years ago that I found that home and family.

**ADVICE FOR A NEWCOMER:** Be intentional about your career and where you want to take it. Most people don't start out in their dream job, but you can work your way there. I think it's important to remember that money isn't everything. I always say that it's important to pick a job and area that you enjoy, and make sure you surround yourself with good people. I have practiced workers compensation my entire career, but I enjoy it so much better at Goldberg Segalla.

**DREAM JOB:** My dream job would be to travel the world, enjoy the cuisine, and write about my journeys and the food.

**LOOKING FORWARD TO:** I am most looking forward to working with more of my colleagues outside of New Jersey.

**COLLEGE MAJOR:** I was an accounting major and I went to law school with the intention of becoming a tax attorney.

**FAVORITE MEAL:** I love a good steak with potatoes and mushrooms.

**FAVORITE BOOK:** "Half of a Yellow Sun," by Chimamanda Ngozi Adichie.

**TV SHOW:** My favorite TV show is "The Office." There are many laugh-out-loud moments in the show.

**ON A SATURDAY AFTERNOON:** I most enjoy spending time with my husband. It doesn't matter whether we are shopping, hiking or cleaning the house. Fine, maybe not cleaning the house.

"You might expect that, in a weak economy, workers compensation claims would decrease; however, claims tend to remain steady or even increase when the economy is not doing well."

### SEE MORE ONLINE

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Ryan Specialty Group LLC hired former Aon PLC executive **John Zern** to develop its new wholesale benefits brokerage unit. Mr. Zern will be based in Chicago as president

and CEO of Ryan Specialty Benefits, which will include its wholesale and managing general underwriting benefits business.



Skyward Specialty Insurance Group Inc. hired former OneBeacon Insurance Group LLC executive **Brenda Craig** to lead its new health care professional liability

business. Richmond, Virginia-based Ms. Craig had been underwriting manager at Berkley Aspire, but until September was president of health care at OneBeacon.



Chubb Ltd. named **Michael Kessler** division president of the insurer's global cyber risk insurance business. Mr. Kessler, based in Philadelphia, was named vice president

of Chubb Group, a title he still holds, and chief reinsurance officer in 2016.



Zurich North America's former cyber and professional lines underwriting chief, **Yosha DeLong**, joined Hamilton, Bermuda-based startup Mosaic Insurance Holdings

Ltd. as senior vice president and head of cyber underwriting. Chicago-based Ms. DeLong was named one of *Business Insurance's* 2019 Women to Watch.



Berkshire Hathaway Specialty Insurance Co. named former American International Group Inc. underwriter **Brady Head** senior vice president and product line officer

for directors and officers liability insurance in North America. Mr. Head had led management liability at AIG.



Lockton Cos. LLC named former Arthur J. Gallagher & Co. broker **Michele Centeno** senior vice president. Ms. Centeno, based in Boca Raton, Florida, had been

senior vice president at Gallagher.



## Teacher corrects alleged plagiarism

The storyline of a pack of teenagers living in the bucolic Outer Banks off the coast of North Carolina who aim to find a missing treasure is not so out there.

That's according to a high school English teacher in Hamptonville, North Carolina, who says in a federal lawsuit filed in federal court in Georgia that the creators of the hit Netflix show "Outer Banks" stole the idea for the show from his 2016 novel "Pennywise: The Hunt for Blackbeard's Treasure!," the Winston Salem Journal reported.

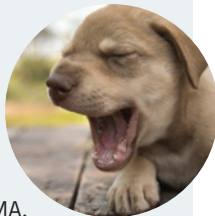
Kevin "K.W." Wooten, who teaches English and creative writing, named Netflix Inc. and the show's creators, Daniel S. Burke and brothers Jonas J. Pate and Joshua W. Pate, who grew up in Winston-Salem, North Carolina, as defendants.

## Regulators aim to throw states a bone

The Pet Insurance Working Group of the National Association of Insurance Commissioners is working on a model law on pet health insurance to help states regulate such factors as exclusions, deductibles, preexisting conditions and limits, according to an article on the American Veterinary Medical Association website.

The NAIC working group is slated to release the final version of its model law to the public late this year, according to the AVMA.

"The goal of the model law is to establish clear rules for the sale of pet insurance and provide important disclosures to pet owners purchasing this product," Ray Farmer, NAIC president and South Carolina Department of Insurance director, told the AVMA. "States would have to adopt the model law for this regulatory framework to apply to the industry in their state."



# Nearly a third of workers will quit without option to work in pajamas



Twenty-nine percent of working professionals will quit their job if not allowed to continue working remotely with their current employer, and another 62% of employees will prefer employers that offer telecommuting in the future, according to a survey of 1,022 professionals conducted by resume-builder website LiveCareer.com.

Miss working at the office? Nope, as 81% of working professionals enjoy working remotely, with 65% stating that remote work has positively affected their work-life balance.

Meanwhile, the top three biggest work-from-home challenges are home distractions, staying motivated and communication, according to the results.

What will get people up and going to the office again? Free snacks and coffee, more paid time off, and a pay raise were listed in the top three moves that might help win telecommuters back.

## Robots put safety on cruise control

Tom Cruise is aiming to terminate COVID-19 safety breaches on the set of the latest "Mission Impossible" film with the deployment of two robots, following an infamous rant that made headlines.

Paying "huge sums," Mr. Cruise bought two "state-of-the-art" robots to patrol the set of "Mission Impossible 7," The Sun newspaper in London reported.



The robots can do more than tell staffers to stay away from one another. Both can also administer on-the-spot COVID-19 tests.

"Tom is so serious about making sure the shoot isn't shut down that he's splashed out on these robots as he can't be everywhere to ensure people are behaving themselves," a film crew member told the newspaper, adding that the robots are "sophisticated and rather intimidating."

"It's like the Terminator, only not as violent," the crewmember told The Sun.



## Too bad insurance wasn't a category

The risk management program manager at Children's Hospital in Los Angeles who is originally from Rugby, North Dakota.

Who is Josiah Jenkins?

As reported by a local Fox affiliate in Minot, North Dakota, Mr. Jenkins recently fulfilled a lifelong dream of being a contestant on the television game show "Jeopardy."

"I hope I did everyone back home proud, because I did feel like, OK, I have to show up well for all my teachers and everyone back in Rugby who really made it possible for me to be here in the first place," Mr. Jenkins told a reporter.

Mr. Jenkins did not win, but as runner-up managed to take home a consolation prize of \$2,000, courtesy of car insurer GEICO.



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