SURPLUS LINE REPORTER & INSURANCE NEWS

VOLUME 42, NUMBER 6 JUNE 2020

NEWS IN BRIEF

MERGERS/ACQUISITIONS

Lighthouse Property Insurance Corp. completed a previously announced merger with Prepared Insurance Co. The combined company allows Lighthouse to assume Prepared's portfolio and write directly in the state of Florida, Lighthouse said in a news release on June 16. The result is a unified carrier with more than $200 million of gross written premium. Lighthouse also owns Lighthouse Excalibur Insurance Co., a Louisiana domiciled carrier with just over $60 million of gross written premium. The merger allows the company to enter the Florida homeowners market and expand across the Southeast, Lighthouse said in a statement. Prior to the merger, Lighthouse said it offered property/casualty insurance policies in Louisiana, Texas, North Carolina and South Carolina. The combined company has over $50 million in policyholder surplus and 170,000 homes insured across the Southeast, President **David Howard** said in a statement. Established in 2008, Lighthouse is rated A, Exceptional, by Demotech.

RATINGS

AM Best has maintained the under review with negative implications status for the Financial Strength Rating of A- (Excellent) of the members of Hallmark Insurance Group. The companies' operations are headquartered in Dallas. These ratings were placed under review with negative implications on March 4, 2020, following the announcement by Hallmark Financial that its 2019 statutory results will include a pretax adverse prior year loss development of $63.8 million, net of reinsurance. At the time, AM Best indicated that the ratings would remain under review until full-year reserve information was assessed. The maintaining of the under review with negative implications status follows an announcement by Hallmark Financial that it received notice from NASDAQ on May 13, 2020, as a result of the company's failure to file its Form 10-Q for the period ending March 31, 2020, and because it remains delinquent in filing its Form 10-K for the year ended Dec. 31, 2019. AM Best will continue to assess the impact of the adverse reserve development on the group's risk-adjusted capitalization, operating performance, business profile and enterprise risk management assessments. AM Best

See **NEWS IN BRIEF** Page **4**

Tort reform still a work in progress

Legislators have until June 30 to pass auto tort reform

With 10 days left, at this writing, in the Louisiana Legislature's 2020 First Extraordinary Session, Republican legislators appear to be extraordinarily determined to get some semblance of auto/tort reform passed that will be signed into law by the state's governor. Lawmakers have until the conclusion of the special session on June 30 to find a compromise that works; failing that, they appear ready to toss out the carrots and haul out the stick.

Gov. John Bel Edwards vetoing on June 12 SB 418, the Omnibus Premium Reduction Act, which passed during the 2020 Regular Session, solidified lawmakers' determination to draft reform legislation during the special session, which immediately followed the conclusion of the Regular Session.

That being said, the governor's veto was no surprise and can be attributed to part of the language in SB 418, which has been described as an "error in drafting," relative to the collateral source rule. Even though the error was an attempt to mollify trial lawyers and the governor, it just seemed to give them something else to complain about. The muddled language effectively gave plaintiffs another cause of action, which is to recover one and one-half times the amount of health insurance premiums paid for a period not to exceed one year prior to the date of the accident.

In his veto message, Edwards said he had worked with the author of the bill, Sen. Kirk Talbot, R-River Ridge, and other legislators and "presented areas where compromise could have been reached." Edwards added that his proposals "included items such as a reduction of the jury trial threshold, elimination of the seatbelt evidentiary prohibition, and simplification of the collateral source rule in a manner which would prevent the unfair recoveries complained of by many insurers."

Edwards said he remains "willing to work with anyone operating in good faith to reach a compromise" and is confident that an agreement can be reached "on a bill that will have broad support."

Edwards complained that "not a single insurance company testified in committee that Senate Bill 418 would actually reduce rates." He contended that a provision of the

See **TORT REFORM** Page **2**

Donelon C&Ds former Monroe agent

Commissioner of Insurance Jim Donelon has issued a cease and desist order to an unlicensed insurance producer in Monroe for continuing to transact insurance business after having his Louisiana producer's license revoked for failing to remit payments to an insurance company on behalf of an insured. A cease and desist order was issued separately to the Monroe agency for allowing an unlicensed agent to engage in the business of insurance.

Donelon announced May 29 that he issued a C&D to Mickey Glen Bennett, president of Bennett Seymour Insurance Agency in Monroe, and Donelon announced June 4 that a C&D was issued to the agency, which was incorporated in Louisiana on July 24, 1995. Bennett is listed on the Louisiana Secretary of State's website as the sole officer and registered agent of the corporation.

Bennett was originally cited by the department on July 26, 2019, for failing to remit premium to an insurance company or return the funds. Bennett held a property/casualty producer's license from June 2, 1993, until it was revoked Dec. 10, 2019, following his administrative appeal of the license revocation. Bennett's license had lapsed briefly in 2013 and 2015, according to department records.

According to the July 26, 2019, order revoking Bennett's license, on Oct. 30, 2018, Bennett sent an email to a premium finance company, IPFS Corporation, and requested a premium finance agreement for Perry and Sons, LLC, involving three policy renewals for the company, effective Oct. 31, 2018. The total combined premium due was $74,939.62.

On Nov. 1, 2018, IPFS sent three electronic payments totaling $67,445.72 to Bennett Seymour Insurance Inc. for the policy renewals, according to the order. The amount was the total premium less a down payment of $7,493.90, which Perry and Sons paid with a check on or about Nov. 2, 2018, made out to Bennett Seymour Ins.

Bennett was to send $61,910.82 to the broker, SCU/CRC Group, by Nov. 20, 2018. The amount was total combined premium, less commission. Bennett failed to send the invoiced amount to the broker, and the broker got no response from Bennett despite attempts to contact him regarding the delinquent payment.

Even though Perry and Sons made the scheduled monthly payments of $6,385.04 to IPFS, the company (Perry and Sons) received notice of cancellation for two of the insurance policies from Colony Insurance Company.

In the meantime, Perry and Sons sent to Bennett and Celeste Sackman at the agency an email regarding notices of cancellation

See **BENNETT GETS C&D** Page **5**

Sixth defendant pleads guilty in staged accidents

A sixth defendant, Mario Solomon, has pled guilty in a federal investigation into fraudulent lawsuits stemming from staged accidents involving tractor trailer rigs in the city of New Orleans. He joins five other defendants who pled guilty last year, putting pressure on the two remaining defendants who are awaiting trial as well as others who remain under investigation.

Solomon admitted, in a signed summary of the case against him, to playing a role in two staged accidents that took place near the Danziger Bridge on Chef Menteur Highway in June 2017.

According to the summary, Solomon traveled with Damian Labeaud, one of the two remaining defendants who is awaiting trial, to a restaurant where Labeaud met with Attorney A to discuss Labeaud's involvement with staging accidents with 18-wheeler tractor trailers.

Solomon was present at the restaurant for this meeting, but did not sit with Labeaud and Attorney A as they discussed how Labeaud would stage car accidents with 18-wheeler tractor trailers. As part of that agreement between Labeaud and Attorney A, Solomon learned Attorney A would pay Labeaud for his role in being the driver of the vehicle in the staged accidents and that Labeaud would receive advances from Attorney A.

Prosecutors have not identified Attorney A, but The Times-Picayune – New Orleans Advocate, pointed to New Orleans attorney Daniel Patrick Keating as Attorney A, who represented the sham accident victims in the lawsuits alleging injury which were filed after both accidents. In addition, WWL-TV previously reported that Keating is Attorney A, based on Keating's phone number cited by federal authorities and in civil court filings as the number that Labeaud called in connection with the accidents.

Solomon admitted in court documents

See **STAGED ACCIDENTS** Page **6**

Argo to pay SEC $900,000, CEO resigns
See Page 12

FCCI board terminates president and CEO
See Page 13

COVID-19 could cost Lloyd's $4.3 billion
See Page 17

Compensability of virus varies by state
See Page 20

Tort reform

FROM PAGE 1

bill made "rate reductions permissive rather than mandatory, and actually allowed for rate increases if insurers demonstrated a need."

As it stands now, lawmakers have filed about 20 bills during the special session dealing with auto tort reform that legislators are currently considering. A couple of the bills are comprehensive, while others address proposed changes piecemeal.

One of the more comprehensive bills, HB 44, the Omnibus Premium Reduction Act, by Rep. Ray Garofalo, R-Chalmette, which is preferred by the business and insurance community, was deferred to pave the way for legislators to coalesce around HB 57, the Civil Justice Reform Act, by House Speaker Clay Schexnayder, R-Gonzales.

Garofalo's bill would increase the general one-year prescriptive period for delictual actions arising from a vehiclular accident to a two-year prescriptive period; reduce the threshold for a jury trial to $35,000, except for tort actions for which the threshold would be $5,000; provide for a six-person jury for certain trials, provide for reduced damages to amounts paid or payable from collateral sources, repeal the limitation on presenting evidence of the failure to wear a safety belt, and specify when the right of direct action exists.

Schexnayder's bill would reduce the jury trial threshold to $10,000; provide for the transfer of cases from courts of limited jurisdiction to district courts for a jury trial, not including non-tort lawsuits when the amount of controversy does not exceed the parish or city courts jurisdictional limit; provide that medical expense payments are limited to the amount actually paid and what is reasonable and customary, and repeals the limitation on presenting evidence of the failure to wear a safety belt.

Schexnayder's bill was heard by the House Committee on Civil Law and Procedure on June 9 and reported to the House for consideration by a vote of 10-0-1. The bill was debated by the House on June 15 and passed 78-22, a wide enough margin to override a veto, which is not necessarily indicative that the votes will be there to override the veto.

Schexnayder's bill is considered a compromise bill by the industry, in that it accomplishes most of what the business and insurance communities are pushing, while giving up direct action, all in search of common ground with Edwards. The bill does not extend prescription from one to two years and does not include a mandatory rate reduction.

HB 57 was heard by the Senate Judiciary A Committee on June 15 where it was reported favorably by a 4-2 vote and is scheduled to be heard in the Senate June 22.

The bill was amended in committee to change the collateral source language to language more closely aligned with HB 418 of the Regular Session. There remain concerns about the collateral source language, but leadership is moving toward a solution.

Several of those who testified on behalf of HB 57 indicated that the industry sees the collateral source issue as the most important of the issues the comprehensive bills deal with. Sen. Heather Cloud, R-Turkey Creek, talked about the difficulty she is

See **TORT REFORM** Page **10**

Surplus Line Reporter & Insurance News

CAROL J. DEGRAW HARRIS, CPCU, ASLI
EDITOR

ANDREW DEGRAW
BUSINESS MANAGER

LEN WILKINS
LONDON CORRESPONDENT

CHARLES HARTWELL
FOUNDER

SURPLUS LINE REPORTER & INSURANCE NEWS is published by The Surplus Line Reporter, Inc., New Orleans, Louisiana, and is not affiliated with any trade or industry association.

SUBSCRIPTIONS: Subscriptions are sold on an annual basis at a cost of $20 for one year or $30 for two years. Back copies are available at $5 each, when available. All inquiries should be mailed to the Subscription Department.

CHANGE OF ADDRESS: Send correction form, along with your address label, to the Subscription Department.

ADVERTISING: Advertising costs are based on frequency and size of ads. For more information: Andrew DeGraw.

PHONE: 504-371-8260
E-Mail: cdegraw945@aol.com
adegraw722@aol.com
Website: www.surpluslinereporter.com

P.O. Box 1089
Gretna, LA 70054-1089

You can't squeeze blood out of a turnip

By Michael G. Manes
Manes and Associates

When people say that you can't squeeze blood out of a turnip, it means that you cannot get something from a person, especially money that the person doesn't have. My informal current research and an over 25-year lookback suggest that we in Louisiana are not yet squeezed dry, but high costs for car insurance are getting too close for the comfort of the average consumer.

From a push card distributed recently: "Why is auto insurance in Louisiana so much higher than in other states?" The information dropped on my front door relied on 2018 data gathered by Insure.com. In April, Insure.com updated its published car insurance rates state-by-state using 2019 data.

Louisiana ranked second in the U.S., with an annual average auto insurance premium of $2,389, second to Michigan, and just ahead of Florida. Texas ranked fourth, with an average personal auto annual premium of $2,050. The national average was $1,517.

Louisiana's insurance rates are of intense concern, as the average insurance premium represents a disproportionately high share of household income. Louisiana's 2019 median household income was $49,665. There's just not enough juice in the turnip. (Median household income in Texas is $84,471.)

When premiums in your state are a problem, it may be time to take action. First define the problem and its cause. Then ask, "What action?"

Shakespeare's Henry IV, Part 2, offers one course of action: "The first thing we do, let's kill all the lawyers," Shakespeare has the character Dick the Butcher say. Regardless of whether Shakespeare believes killing the lawyers is a solution, the line indicates the powerful role lawyers played then and still play in the modern community.

In 1993, the legal community in Louisiana exercised considerable control over the legislative process. With a sympathetic governor (Edwin Edwards), the plaintiffs bar planned to extend its reach with more lawyer-friendly legislation. The business community grew quite concerned and countered with its own brand of legislative activism.

It was then that a group called Citizens for Auto Reform (CAR) was born, and I became an active member. The group's strategy was to introduce a verbal threshold No Fault legislative proposal that would distract lawyers from their litigation expansion plans. It worked. The bill failed, but it kept the trial lawyers' lobbying team very busy playing defense.

We created a 10-page report, No Fault Makes Sense for Consumers. We began a statewide outreach through editorial boards, flyers, civic groups, radio interviews, and more. This was before the Internet was ubiquitous. (If you would like a copy of this report – send an email to squareoneconsulting@cox.net indicating CAR REPORT on the subject line.)

The report used the word consumer to mean the purchaser of insurance. Politicians, we knew, don't limit the meaning to the purchaser. In general commerce, the term consumer refers to the user of the product, the person paying for the product, and influencers of the buying decision.

In the politics of the insurance realm, the purchaser (policyholder) and the user (claimant) are generally two different people with differing interests, and state lawmakers hold the balancing power over their interests. Enter regulators, attorneys, judges and lobbyists who influence the lawmakers, and you understand the difficulty of achieving a fair balance of interests.

My experience indicates that the marketplace and premium payers will favorably respond to sincere efforts to reduce the litigation and the excesses of the marketplace. Three real world experiences, some from my time more than 25 years ago on the road with the CAR initiative, come to mind.

The CAR team met with the editorial board of a central Louisiana newspaper. We were discussing the problems of the uninsured motorist market. A reporter in the room became enraged explaining, "I just got hit by an uninsured motorist. If I get hit again, I'll take care of the SOB myself!"

Joking, I said, "He'll sue you!"

When the reporter responded with more rage at my flippant remark, I realized his rage needed to be taken seriously.

Subsequently, I was invited to address a local civic club. In attendance was a trial lawyer and son of a leader of the trial lawyers' association. "Watch out," warned one of the meeting organizers. "He's going to

See **SQUEEZE BLOOD** Page **4**

Squeeze blood

FROM PAGE 3

attack you (verbally) from the audience."

No worries, I responded. "He knows the vast majority of the members of this club are paying the cost of very high premiums." The attorney raised not one word of opposition to my remarks.

Around 10 years later, Jacob Landry, my distant cousin, passed away. He was a prominent citizen and respected attorney in New Iberia. Smitty, his brother and my family's attorney, delivered the eulogy. After the service, I offered my condolences to Smitty. He introduced me to the attorney at his side, "This is Mike. His job is to attack attorneys."

I smiled at his lack of diplomacy, but instead of countering his remark, I said, "Smitty, if all attorneys were like Mr. Jacob, I'd be out of work."

Those of you who know me through this column know that I have not made attacking attorneys my life's work. As the 2020 legislature advances many of the same auto insurance reforms it has debated for more than 25 years, I can't help but wonder if the policyholders are on the verge of improving the balance.

Once the purchasers of insurance are sufficiently enraged to show up for the public policy debates, the more likely the public policy crafted by the legislature will reach a more acceptable balance. The coronavirus experience may actually provide the needed catalyst.

The novel coronavirus has caused economic challenges to most, if not all, of us. These challenges have not been seen since the Great Depression. Our economic oxygen has been or is being cut off. We're ready to fight. Marketplace anger and frustration can and will motivate transformational change. Remember Howard Beale's famously shouted line in the movie Network (1976): "I'm mad as hell, and I'm not going to take it anymore."

I believe that the majority of folks paying the premium costs of insurance are tired of subsidizing trial lawyers, their billboards and their TV ads. In this post coronavirus world, most consumers feel just like Howard Beale. We'll soon learn if they are mad enough to rebalance the world of insurance and tort law.

MICHAEL G. MANES is the owner of Manes and Associates, a New Iberia-based consulting business focusing on planning, sales and operations, and change. He has over 47 years of insurance industry experience, including serving as an instructor of Risk and Insurance at LSU.

NEWS IN BRIEF

FROM PAGE 1

will look to resolve the under review status once there is more clarity on the company's plan to regain compliance with NASDAQ and full-year reserve information is reviewed. The financial strength rating remains under review with negative implications for the following members of Hallmark Insurance Group: American Hallmark Insurance Company of Texas, Hallmark Insurance Company, Hallmark Specialty Insurance Company, Hallmark County Mutual Insurance Company and Hallmark National Insurance Company.

COVID LAWSUITS

As the U.S. economy opens up, market observers expect insurers to face a barrage of new lawsuits related to COVID-19 in addition to the business interruption disputes already in the pipeline. The list of litigation is likely to include commercial general liability, surety and trade credit sectors, BestWeek reported May 29. More than 2,295 state and federal lawsuits have been filed over COVID-19, including 374 dealing with insurance matters, as of May 27, according to a law firm tracking the cases.

COVID CLAIMS

Wells Fargo and Company warns that coronavirus-related losses in the property and casualty sector could reach $100 billion, Business Insurance said in an article on June 5. Wells Fargo anticipates that workers' compensation policies may be responsible for the majority of those losses, the insurance publication said. The workers' compensation sector remains profitable, but rates have remained flat. Meanwhile, workers' compensation losses could reach $17 billion to $34 billion. Wells Fargo analysts believe total deaths from COVID-19 could range between 120,000 and 150,000. The total number of cases, however, could total 2.3 million. Wells Fargo says about a quarter of those cases will result in workers' compensation claims, with 11 percent of those being severe, three percent being critical cases, and five percent resulting in death.

A Florida Department of Financial Services' Division of Workers' Compensation report reveals that health care workers accounted for 45.7 percent of COVID-19 indemnity workers' compensation claims filed in Florida as of May 31, Business Insurance reported June 9. The report tallied 3,807 time-off, coronavirus-related claims filed since the start of the pandemic, totaling $3.2 million in benefits paid. The report also found that 37.6 percent of claims came from the protective services sector, which includes first responders. Service industry workers represented 9.1 percent of claims, office workers 6.1 percent, and airline workers 1.5 percent. Self-insured governments paid the largest amount, at $1.8 million, while private insurers paid $856,484. COVID-19 claims represented 2.9 percent of total paid workers' compensation benefits in Florida from the start of the pandemic through May 31. The report said there were 1,718 claims denials, of which 19 were in the health care

See **NEWS IN BRIEF** Page **9**

Bennett gets C&D

FROM PAGE 1

received from the SCU/CRC, the order states.

Bennett responded via email to Perry and Sons and claimed he was waiting on the rescinding notices, according to the order. Investigators say Bennett told Perry and Sons that SCU/CRC owed him money and "this is all a mistake." At the time, the order says, Bennett had a credit of $24,697.30 with SCU/CRC on another insured's policy; however, Bennett owed SCU/CRC premiums for three other policies unrelated to Perry and Sons. On Feb. 14, 2019, SCU/CRC placed an accounting hold on Bennett Seymour until all past due balances were cleared. Prior to the order of revocation, the agency was still on hold as balances had not been cleared, according to the order.

The upshot is that Perry and Sons' policies with Colony Insurance Company were canceled, effective Jan. 14, 2019. Whereupon, Perry and Sons obtained a new insurance agent, and on Feb. 21, 2019, paid SCU/CRC $61,910.82, the amount Bennett failed to remit to the broker three months earlier. Although Perry and Sons paid the premium in full, the company also continued to pay the premium finance company out of fear their account would be considered delinquent, investigators found.

On Feb. 22, 2019, Bennett was advised that Perry and Sons had made payment in full for the Colony insurance policies, and IPFS requested that Bennett return the amount that IPFS had sent him to finance the policies.

Although IPFS originally sent $67,445.72 to Bennett, he sent a payment to IPFS on March 4, 2019, in the amount of $49,918.69 which was the payoff amount for the premium due. LDI says in its order that Bennett withheld $17,527.03 from the finance company.

Perry and Sons made four of the 11 scheduled payments of $6,385.04, totaling $25,540.16, prior to Bennett paying the payoff amount. Perry and Sons was reimbursed $6,368.01 by the finance company, leaving Perry and Sons out of pocket $19,172.15, for canceled policies, despite making the payments as required and being uninsured from Jan. 14, 2019, to Feb. 21, 2019.

The LDI notified Bennett on May 23, 2019, of the department's proposed regulatory action, and did not receive a written response from Bennett, instead two signed green cards were returned to LDI and one letter was unclaimed.

LDI concluded that Bennett acted "with intent and full knowledge" of the facts as presented by LDI. The department revoked Bennett's license, effective 30 days after the July 26, 2019, notice of revocation order was issued, and fined him $500, payable immediately.

On May 27 this year, the Division of Fraud Enforcement of the Louisiana Department of Insurance, received notice that Bennett continued to perform duties reserved for licensed agents. According to the LDI news release of May 29, Bennett accepted more than $70,000 in client funds for a commercial indemnity policy. LDI fraud investigators found that Bennett received payment and provided a scanned copy of a policy to the insured, but coverage was never bound.

According to the C&D order, Bennett sent an email using the email address mickey@bssi.com on May 9, 2020, to Tom Nicholson of Gulf Inland LLC under the signature "Mickey G. Bennett Bennett Seymour Insurance." Bennett attached a scanned copy of RSUI Indemnity Insurance Company policy #NHT907113. The insured on the policy was Gulf Inland. The policy period was from July 1, 2019, to July 1, 2020.

The LDI said investigators contacted RSUI, which revealed that it had no record of the policy, according to the C&D order.

In a telephone message, Nicholson told the Reporter that it "would be inappropriate" for him to comment on the issue since it is a "legal matter."

On or about June 2, 2020, LDI received additional information and documentation that Bennett was engaging in the business of insurance as recently as May 12, 2020, when he negotiated and sold a policy of insurance for Good Hope Hills LLC in Louisiana.

According to that C&D order, the department has the authority to suspend, revoke or refuse to renew the license of an entity for failing to remove or discharge any person who has had an insurance producer license revoked or suspended or is found to have violated any provision of the Insurance Code.

In addition to Bennett and the agency, the June 4 C&D of the agency was sent to

See **BENNETT GETS C&D** Page **6**

Staged accidents

FROM PAGE 1

that he participated in the staged accidents as a "spotter," recruited by Labeaud. As a "spotter," Solomon would follow Labeaud in a separate vehicle as Labeaud prepared to stage accidents. After the accidents, Solomon would pick up Labeaud after he exited the vehicle in which he had staged an accident.

In exchange for serving as a "spotter," Labeaud paid Solomon. Solomon served as a "spotter" in at least two accidents staged with 18-wheeler tractor-trailers. Solomon pled guilty to a charge of wire fraud conspiracy for his role as the "spotter" in the staged accidents.

According to the signed summary, on June 6, 2017, the day of the first staged accident, Solomon and Labeaud called one another 10 times between 9:13 a.m. and 12:26 p.m. During these conversations, Solomon and Labeaud discussed the accident that Labeaud planned to stage that day with Solomon's assistance. Prior to the accident, Labeaud and Solomon met four of the five defendants who have already pled guilty, Lucinda Thomas, Mary Wade, Judy Williams and Dashontae Young, at a restaurant. At approximately 12:30 p.m. that day, Labeaud drove with Thomas, Wade, Williams and Young in Thomas's vehicle, a 2009 Chevrolet Avalanche, east on Chef Menteur Highway in New Orleans and intentionally collided with a 2017 Freightliner tractor-trailer that was merging onto Chef Menteur Highway. Solomon was following in his silver Chevrolet Silverado pickup truck.

Immediately after the accident, Labeaud exited the Avalanche and left the scene of the accident. Between 12:39 p.m. and 1:29 p.m., Solomon and Labeaud called one another seven times. During this timeframe, Solomon picked up Labeaud in Solomon's pickup truck. Solomon then returned to the scene of the staged accident with Labeaud.

At that time, Labeaud made false statements to the New Orleans Police Department officers, who were on the scene, stating that the driver of the 2017 Freightliner tractor-trailer had been at fault. Following the June 6, 2017, staged accident, Solomon and Labeaud met with Attorney A and Attorney A paid Labeaud $7,500 for staging the accident and another accident. Using the funds paid by Attorney A, Labeaud then paid Solomon for serving as the "spotter."

Following the June 6, 2017, staged accident, Thomas, Wade, Williams and Young hired Attorney A to represent them. According to the signed summary, in representing Thomas, Wade, Williams and Young, Attorney A caused interstate wires to be transmitted to recover monetary damages in connection with the staged accident. Namely, Attorney A negotiated a settlement on behalf of Young prior to filing the lawsuit with Covenant Transportation Group (Covenant), the parent company of Southern Refrigerated Transport Inc. (SRT), which operated the tractor-trailer involved in the June 6 staged accident. Attorney A deposited the $20,000 settlement check for Young that Attorney A received for settling Young's claim. In effectuating the settlement, Young caused Covenant to issue from its bank account a check in the amount of $20,000. Attorney A then deposited that check into an Iberia account. In depositing the check, Attorney A caused an electronic wire communications to be sent from Louisiana to the Federal Reserve in Atlanta, Georgia.

Attorney A also filed lawsuits on behalf of Thomas, Wade and Williams against SRT, Covenant and IQS Insurance Risk Retention Group Inc. (SRT and Covenant's insurer) seeking to obtain monetary damages in connection with the June 6, 2017, staged accident.

Solomon was deposed in connection with the lawsuit that Attorney A filed on behalf of Thomas, Williams and Wade. Solomon was in custody at the time of the deposition as the result of an unrelated narcotics conviction. Prior to the deposition, Attorney A visited with Solomon and discussed what Solomon should say in the deposition regarding the

See STAGED ACCIDENTS Page 8

Bennett gets C&D

FROM PAGE 5

Bobby Lynn Sackman at a Hudson Circle address in Monroe, but his agent's license shows a Benton address in Bossier Parish. Sackman's property and casualty license is valid through June 30, 2021, according the LDI's website, which lists Sackman as an employee of the Bennett Seymour agency.

LDI said in the C&Ds that it will report its administrative actions to the National Insurance Producer Registry.

Bennett has 30 days from May 28 when the C&D was issued to request a hearing in writing. Bennett Seymour has 30 days from June 4 when its C&D was ordered to request a hearing in writing. An appeal does not stay the C&D order.

The Reporter was unable to reach Bennett at the agency, nor did he return a telephone call after a message was left with an individual at the Bennett Seymour answer service prior to the agency's C&D order being issued.

Matthew Stewart, LDI deputy commissioner, Division of Fraud and Enforcement, declined to comment and referred the Reporter to John W. Tobler at LDI's Division of Public Affairs. Tobler said he "cannot comment on ongoing reviews."

Staged accidents

FROM PAGE 6

June 6, 2017, staged accident.

According to the signed summary, Solomon lied during the deposition by stating that he was not driving with Labeaud on June 6, 2017, following the staged accident, that he did not witness the staged accident, and that he did not return to the scene with Labeaud following the staged accident.

As part of the scheme to defraud, Thomas, Wade and Williams were treated by doctors at the direction of Attorney A, according to indictments of Thomas, Wade and Williams. Also part of the scheme to defraud, according to prosecutors, was that Thomas underwent neck surgery because Attorney A told her she would get more money from the lawsuit if she had the surgery.

As part of the scheme to defraud, Thomas, Wade and Williams each provided false testimony in depositions taken in conjunction with the lawsuits filed by Attorney A. After a year pursuing their lawsuits, the three settled their cases for $7,500 each.

Thomas, Wade, Williams and Young pled guilty to the same charges as Solomon last year.

In another staged accident on June 12, 2017, Solomon and Labeaud called one another five times between 10:02 a.m. and 11:01 a.m. During the conversations, Solomon and Labeaud discussed the accident that Labeaud planned to stage that day. At approximately 11:30 a.m., Labeaud drove a 2005 Chevrolet Trailblazer with Larry Williams, Genetta Isreal and another individual as passengers to the Danziger Bridge and parked the vehicle in the far right-lane heading east on Chef Menteur Highway to locate an 18-wheeler tractor-trailer to collide with. Solomon waited in his pickup truck on the Danziger Bridge behind the Trailblazer operated by Labeaud. At about 11:30 a.m., Labeaud located and intentionally collided with a 2015 Peterbilt tractor-trailer owned by Southeastern Motor Freight Inc. (SMF) driving east on Chef Menteur.

Immediately after the accident, Labeaud exited the vehicle and left the scene. Labeaud called Solomon who then picked up Labeaud after he fled from the accident scene on foot. Following the accident on June 12, 2017, Solomon and Labeaud spoke on the phone three times that day. On June 30, 2017, Attorney A paid Labeaud $5,000 for staging the June 12, 2017, accident. Labeaud then gave a portion of the $5,000 to Solomon for his assistance staging the accident.

On June 12, 2018, Attorney B, who worked with Attorney A, filed a personal injury lawsuit on behalf of Williams, Isreal and another individual against SMF and its insurers, Hudson Specialty Insurance Company and Napa River Insurance Services.

On June 27, 2018, an employee of SMF in Jefferson, Louisiana, sent an email that traveled across state lines to an employee of NAPA in Indianapolis, Indiana, that attached the Williams lawsuit. Further, during the course of the Williams lawsuit, Attorney B made a settlement demand attempting to resolve the case via email.

Williams was one of the other five defendants who pled guilty last year to similar charges as Solomon.

Labeaud paid Solomon approximately $1,000 for serving as a spotter in connection with the June 6 and June 12, 2017, staged accidents.

Truckers assembled in Baton Rouge to urge legislation

Mark Arceneaux assembled a fleet of 30 trucks at the state capitol on May 28 to urge passage of SB 418, by Sen. Kirk Talbot. Parked along both sides of the Spanish Town Road, the truckers each gave up at least $1,000 in daily earnings to encourage the Louisiana House of Representatives to support the bill that, if enacted, could reduce their operating costs.

Thirteen tenacious truckers, tired of high insurance rates, spent the night parked in front of the capitol grounds when the Omnibus Premium Reduction Act of 2020 was delayed for a house floor vote until May 29.

The bill passed the legislature but was vetoed by Gov. John Bel Edwards.

NEWS IN BRIEF

FROM PAGE 4

space. The most claims were in March when 1,949 were filed. The number declined to 300 claims in May.

WEATHER

Cristobal is the third named storm to form and impact the United States coast during this hurricane season. The center of the storm made landfall along the coast of southeast Louisiana on June 7. Karen Clark and Company estimated June 11 that insured losses from Cristobal will reach nearly $150 million. KCC said its estimate includes privately insured wind and storm surge damage to residential, commercial and industrial properties and vehicles. However, KCC's estimate does not include losses from the National Flood Insurance Program. No major structural damage is expected from Cristobal's maximum sustained winds, but power outages have been reported in Louisiana, Mississippi and Alabama, KCC said, adding that restoring power has been complicated by restrictions due to the COVID-19 pandemic. In Louisiana, drones were employed to help utility worker deployment, while crews were limited by social distancing restrictions due to the pandemic, KCC said. Minor flooding from storm surge was seen from Atchafalaya to Pensacola, with more significant flooding near Lake Pontchartrain.

Severe weather in May pushed the U.S. insurance and reinsurance market to its third consecutive month of insured multi-million dollar losses, according to Impact Forecasting, the weather, climate and risk modeling unit of Aon. In total, economic losses are expected to rise above $5 billion for May, of which more than $2 billion is expected to be insured. In April severe storms (hail, tornado and straight-line wind) caused around $4 billion in economic losses, with insured losses approaching $2.5 billion. March losses amounted to $2.4 billion, with $1.5 to $1.0 billion of insured losses.

CYBER INSURANCE

Aon, released on June 11 the fifth edition of its U.S. Cyber Market Update, which covers the cyber insurance industry's 2019 performance. The

See **NEWS IN BRIEF** Page **10**

Tort reform

FROM PAGE 2

having in getting insurance for her company's dump trucks and opined that collateral source is the most important issue on the commercial side.

Blaming the legislature for its recalcitrance to improve the state's legal environment, Cloud said she understands why "companies don't want to come and testify before the people who drove them out (of the state)."

"You set the environment. It is your regulatory and legal environment," Kevin Cunningham, representing APCIA, told Cloud. "When insurance companies stop taking your money, you have a problem," he said, quoting Jeff Albright, IIABL.

Albright told the panel that the main difference between Louisiana and other states is that the bodily injury claim rate is twice the national average in Louisiana, which explains why automobile rates in Louisiana are twice as high. The only area in loss experience where "we are out of whack is BI claims, and the reason is that our judicial system encourages BI claims," he said.

Lou Fey, who chairs the Louisiana Property and Casualty Commission and represents PIA, said that HB 57 would "start the process of recovery."

Only 15 percent of the average jury verdict goes to the injured party, Fey said, the rest of the award goes to attorneys and medical providers. He added that there is no evidence that the jury threshold has an impact on the number of trials, and pointed out that less than one percent of cases go to a jury trial.

If the carrot approach doesn't work, the legislature's stick is to pass suspensive resolutions.

The way a suspensive resolution works is: If both chambers of the legislature pass a resolution suspending an existing law, the suspension of the law is not subject to a veto by the governor.

Suspensive resolutions would repeal the laws immediately, and the suspension would last until 60 days after the 2021 Regular Session of the state's legislature. The legislature can extend the suspensions one year at a time until as long as the House and Senate have the votes.

On June 17, the House Committee on Civil Law and Procedure passed three resolutions by Rep. Alan Seabaugh, R-Shreveport, and the Senate Judiciary A Committee passed three resolutions by Sen. Robert Mills, R-Oil City.

HCR 18 and SCR 14 would suspend the seatbelt gag law.

HCR 19 and SCR 15 would repeal direct action in its entirety. There would be no exceptions as are in the proposed legislation.

HCR 20 and SCR 16 would repeal the jury trial threshold entirely, effectively the jury threshold would go from $50,000 to zero.

HCR 18 was reported favorably by the House Committee on Civil Law and Procedure by a vote of 10-5-1. HCR 19 was reported favorably by the committee on an 11-5-1 vote. HCR 20 was reported favorably with amendments on an 8-6-1 vote. All three are pending floor action in the House.

SCR 14, SCR 15 and SCR 16 were passed by the Senate Judiciary A Committee and are pending in the Senate and scheduled to be heard June 22.

NEWS IN BRIEF

FROM PAGE 9

2019 U.S. Cyber Insurance Profits and Performance report analyzes 192 U.S. insurers that reported direct cyber premiums to the National Association of Insurance Commissioners in 2019 – up from 184 insurers in 2018. Notably, U.S. cyber premiums grew to $2.26 billion in 2019, an 11 percent increase from the year prior. Some 90 insurers wrote more than $1 million and 41 wrote more than $5 million. Overall, the top 10 cyber insurers accounted for 69 percent of direct written premium. The insurance industry experienced an increase of ransomware attacks in 2019. Losses were spread across companies of all sizes. Despite the increased loss ratio, the combined ratio for 2019 suggests continued profitability for the U.S. cyber insurance industry in 2019. The report found that the loss ratio increased from 35 percent to 45 percent, driven by claim frequency; the average 2019 claim frequency across all companies was 5.6 claims per 1,000 policies, up from 4.2 in 2018; the jump in frequency more than offset a reduction in the claim severity, where the average claim size fell slightly from $50,401 in 2018 to $48,709 in 2019.

TRAVEL INSURANCE SURGES

Despite the continued COVID-19 pandemic, Americans are still willing to travel abroad and U.S. travel insurers are seeing a surge in demand for highly priced "cancel for any reason" policies, according to Reuters in an article appearing June 3. As destinations in Europe and Asia ease lockdowns, several U.S. industry figures said that holidaymakers booking for later in the year were paying around 40 percent more for insurance as a result. Data from U.S. comparison website Squaremouth shows purchases of the comprehensive any-reason cover surged by 680 percent compared with a year ago. More than a third of holidaymakers planning summer trips searched for a policy that included cancellation or medical coverage if they contract COVID-19 or are quarantined. The shift in behavior is one area of opportunity for the insurance industry to develop new products. However, it also leaves the sector, which already faces huge and varying claims from businesses and households hit by the pandemic, on the hook for bumper payouts should a new wave of infections force new travel restrictions or create alarm.

Argo group agrees to pay $900,000 penalty to SEC

Argo Group International Holdings Ltd. has agreed to pay a $900,000 civil penalty to settle charges brought by the SEC that it failed to disclose millions of dollars in perquisites provided to its former CEO, Mark E. Watson III, a San Antonio, Texas, native, according to a June 4 SEC order.

The SEC's order charges Argo, with violating federal securities law provisions concerning proxy solicitations, reporting, books and records, and internal controls, the agency said.

Without admitting or denying the SEC's findings, Argo consented to the SEC's cease-and-desist order and civil penalty.

Argo is headquartered in Bermuda, but maintains its U.S. headquarters in San Antonio. Several of the dozens of insurance companies in the group do business in Louisiana and Texas, some as admitted and others as non-admitted insurers.

The agency said that Argo in its proxy statements for 2014 through 2018 failed to disclose over $5.3 million worth of perks and personal benefits provided to Watson. The proxy statements disclose approximately $1.22 million worth of perks and benefits, with an annual average of about $244,000, which consisted of retirement, as well as housing, medical premiums and financial planning services.

The statements understated Watson's benefits by about $1 million per year, or 400 percent, according to the SEC. Items that Argo paid for, but did not disclose, include personal use of corporate aircraft, helicopter trips and other personal travel, personal use of corporate autos, rent and other housing costs on a Bermuda residence, transportation for family members, personal services provided by Argo employees, club memberships, and tickets and transportation to entertainment events, the SEC said.

An article in the San Antonio Express that appeared in March is more specific about Watson's expenses. Rent on Watson's Bermuda residence accounted for almost a third of the perks he received from 2017 through 2019, according to the Express. In addition, the company paid almost $200,000 for his housekeeper, nearly $175,000 for furniture and about $175,000 for various expenses in Bermuda, which included home maintenance, utilities, flowers, cable, a golf cart, wine and food.

Watson had personal use of company-owned condominiums in Miami Beach and a company-owned boat.

In February 2019, an Argo shareholder issued a press release in which it alleged, among other things, the misuse of Argo assets by Watson, including the undisclosed personal use of corporate aircraft, according to the SEC order.

On April 12, 2019, during a proxy contest with this shareholder in connection with Argo's May 2019 annual shareholders meeting, Argo filed a definitive proxy statement that failed to disclose over $1 million worth of perks, including over $230,000 related to Watson's use of the corporate aircraft, the SEC said.

Two publications, the San Antonio Express and Reinsurance News, both identified the activist investor as Voce Capital Management LLC of San Francisco.

Moreover, the SEC found fault with Argo for failing to institute internal accounting controls relating to payments for the benefit of and reimbursement to Watson.

Argo conducted an internal investigation, which was launched in June 2019, after receipt of a subpoena from the SEC, the order said.

Thereafter, Watson resigned and agreed to reimburse Argo for certain perks and/or personal expenses, subject to an arbitration process as to any items Watson disputes.

Watson's resignation as Argo's CEO and president became effective Nov. 5, 2019, and his resignation as a member of Argo's board of directors became effective on Dec. 30, 2019, according to the SEC's order. Also in December, five members of Argo's board retired. The five retiring members are those previously identified by Voce as "The Big 5" and "over-tenured and controlling" board members.

Watson received $2.5 million from the company as part of a separation agreement. He also became vested in restricted stock, according to the Express.

Watson's total compensation last year was $12.5 million, up from $8.2 million in 2018 and $2.7 million in 2017. Of the $12.5 million Watson received in 2019, $1.2 million was salary, $7.9 million was stock and $3.4 million was other types of compensation, salary.com revealed citing proxy statements filed for 2019. Proxy statements for other years show: of the $8.2 million in 2018, $1.1 million was salary, $6.0 million was stock and $254,136 was other types of compensation, and in 2017, Watson got $1.1 million in salary, $1.6 million as stock and $289,444 as other.

Watson became president and CEO of Argonaut Insurance in 2000 and moved its corporate office to San Antonio in 2001. The company was renamed Argo Group International Holdings after it merged with Bermuda-based PXRE, entering the reinsurance business and moving its home office to Bermuda, according to Wikipedia.

In 2018, Argo moved the listing of its shares from the NASDAQ to the New York Stock Exchange. On May 7, 2018, Watson rang the opening bell of the NYSE.

In 2010, the company paid out $25 million in claims for the Deepwater Horizon oil spill in the Gulf of Mexico, Wikipedia said.

With Argo under new leadership, the company has sold the aircraft and listed certain corporate real estate for sale, the Express said quoting Argo's new CEO Kevin Rehnberg, who was previously president of U.S. operations for Argo. The company also canceled marketing and sponsorship contracts.

In May, Argo reported a net loss for the first quarter of 2020, having suffered $26.2 million of claims related to the effects of COVID-19, Reinsurance News reported. The company would have been profitable absent the pandemic. The 2020 first quarter net loss amounted to $18.8 million, compared to a net profit of $91.2 million in the first quarter of 2019.

Argo's gross written premiums were up 8.6 percent to $825.9 million, compared to $760.8 million for the first quarter of 2019. Argo attributed its growth to U.S. lines of business, while premium growth in the international segment was flat compared to the 2019 first quarter.

FCCI board of directors terminates CEO and president

FCCI Insurance Group announced May 12 that the company's board of directors voted to terminate Craig Johnson as chief executive officer and president and also removed him from the board, effective immediately.

In a May 10 statement by FCCI, the board appointed Christopher S. Shoucair to the role of interim chief executive officer and president and said that "Mr. Johnson would be taking a leave of absence from the company, its subsidiaries, affiliates and the board to avoid a distraction for the company while he responds to these allegations." The statement followed Johnson's arrest on a charge of failing to leave a property on the order of the owner, one charge of resisting arrest without violence and two charges of battery on a police officer.

The board also announced May 10 that it had retained independent professional advisors to review and monitor the situation, and that the board "is committed to continuing to act in the best interests of FCCI and its policyholders."

Two days later, the board announced on May 12 its decision to terminate Johnson as chief executive officer and president.

Shoucair was the insurance group's executive vice president, chief financial officer and treasurer before being tapped to fill in as the interim chief executive officer and president.

"The board is confident that Mr. Shoucair and his team are well-positioned to continue to execute the company's strategy and to support all of FCCI's stakeholders during this interim period," FCCI said in a statement.

In addition, "the insurance group maintains the highest standards of integrity, transparency and accountability.

"All of the FCCI team members remain focused on delivering exceptional customer service to meet the needs of FCCI's agency partners and policyholders."

According to the Business Observer in Sarasota, Florida, Johnson's charges by Sarasota police officers stem from an incident that took place at Wicked Cantina, just north of downtown Sarasota. The owners and employees of the restaurant, according to a probable cause affidavit filed with the Sarasota Police Department, asked Johnson and two people with him to leave, "due to their high level of intoxication" and because they were "instigating arguments with other customers."

When police arrived, around 9:40 p.m., Johnson allegedly "continued to refuse to leave and became aggressive," the Observer article states. Police say Johnson then swung a closed fist at one officer, missing contact, and then shoved two officers.

Johnson was taken to the ground and handcuffed, the affidavit states, and according to the Observer, while being escorted to the vehicle he "began ranting about his personal relationship with Sarasota Sheriff (Tom) Knight" and said that officers would "pay" because of his friendship with the sheriff.

In addition, officers said Johnson kept resisting, falling to the ground to avoid being placed in the police car, and refusing to "lift his feet into the vehicle in an attempt to stop the door from being closed," the Sarasota Police affidavit states. "Johnson continued to rant" and stated to officers, "I'm going to knock you out" and said that officers were responding like they were going to a "black neighborhood."

Johnson was charged with two counts of battery on an officer; one count of resisting an officer: obstruction without violence; and one count of trespassing: failing to leave a property when ordered by owner. According to reports, Johnson posted $1,000 bond and was released May 8.

In an email to the Reporter, Johnson's lawyer, Derek Byrd, The Byrd Law Firm, said that Craig Johnson did not wish to comment at this time on his arrest.

According to the Observer, Johnson was considered a rising star in commercial insurance and within FCCI. He was named CEO in April 2011, when he replaced longtime leader G.W. Jacobs, who had retired. FCCI's revenue has grown at least 60 percent under Johnson, from $529 million in 2012 to nearly $850 million in 2018. The company now has some 850 employees.

Also according to the Observer, Johnson, in his nearly decade at the helm of FCCI, developed a reputation as being an approachable CEO, often holding coffee town halls and dressing up for Halloween skits. He recently held "Corona with Craig" video meetings, updating the employees on the company's pandemic response.

Serio dies in New Orleans at 76

Vincent Joseph Serio III (Vince), a 40-plus year veteran of the insurance industry, passed away June 5, 2020, in New Orleans at the age of 76.

Serio was born in New Orleans, where he went to Holy Cross High School, and he lived in Slidell for the past 28 years. His family

Vince Serio with the golf bag he got when he retired in 2007.

was his first love, and he enjoyed fishing, hunting, LSU football and traveling.

Serio will be remembered for his wit, work ethic, sense of humor, kindness, and commitment to his family.

When Serio retired from the insurance business in July 2007, the Reporter interviewed him for a story, the essence of which follows:

Golf, fishing and duck hunting and whatever else he wants to do were on Vince Serio's agenda when he retired 13 years ago. Upon his retirement, Serio reminisced about the day he started in the insurance business. It was Friday the 13th in 1963 when he went to work in the mail room at Hartford.

He remembered the good times at Hartford. As Serio told the story, one of the funniest men around the New Orleans branch office was an ex-marine in charge of the mail room. The former marine was very orderly, and everything had to be neatly squared off. A vice president of Hartford came by one day and asked, "How many people are working here?" The ex-marine replied, "About half of them."

Serio was 11 years with Hartford before taking a job in Morgan City on the agency side of the business.

The next stop in his career was back to New Orleans and marketing for The Risk Exchange. Serio started an agency/wholesale operation after The Risk Exchange folded, but after a few years, he went to work for USG Insurance Services.

Serio saw markets as the biggest change during the years he was in the business. He believed the retail agents lost the authority they previously exercised and no longer are treated with dignity and respect by their carriers.

Recalling the Big I conventions at the Broadwater Hotel in Mississippi, Serio said agents were catered to back then and treated well by companies. "It didn't matter the size of the agency; companies treated the smallest producers like the biggest producers." In the 40-plus years he was in the business Serio had "lots of good fun" and met "interesting people," many of whom he counted among his friends.

Over the years Serio was involved in PIA and Big I. He held officer positions with the Northshore PIA Chapter.

He leaves behind his wife of 54 years, Susan, two sons and a daughter, Courtney Dupuis, who is in the insurance business in Covington.

Terrebonne Insurance Agency celebrates its 60th anniversary

In 1960, Frederick D. Thibodeaux bought out the investors in Terrebonne Insurance Agency and became the sole owner-operator of the agency. Upon acquiring the agency, he moved to Houma, renting the old KHOM building. In 1973, Thibodeaux hired Linda Fazzio who stayed with the agency until her retirement in 2014. In 1986, he bought a house and turned it into his office. As the business grew, so did the structure. Thibodeaux's daughter, Kelly Thibodeaux joined the agency in 1977 and daughter Kitty Ford, joined in 1998 after a career in the medical field. The agency was moved to Highway 311 in the growth area of the parish. Fred Thibodeaux retired in early 2000 and left his daughters to run the agency. Terrebonne Insurance is still independently owned and has grown from a staff of three in 1980 to 13 in the 2000s. In the photo is the current staff of Terrebonne Insurance Agency in front of the building on Highway 311 in Houma.

COVID-19 virus could cost Lloyd's up to $4.3 billion

London Views
by Len Wilkins
London Correspondent

While it's far too early to calculate accurately the cost of COVID-19 to the London market, Lloyd's number crunchers announced that the market expects to pay out between $3.0 billion and $4.3 billion to its global customers as a result of the virus. This is more than Lloyd's 2019 profits. The estimated 2020 underwriting losses covered by the industry as a result of COVID-19 are approximately $107 billion, according to Lloyd's.

If the losses are at the top end of Lloyd's estimates, they will be on a par with 9/11's $4.7 billion in 2001 and the combined impact of hurricanes Harvey, Irma and Maria in 2017, which led to a payout of $4.8 billion by the Lloyd's market. The problem is that Lloyd's believes the scale and complexity of COVID-19 is still hitting home and that the overall cost to insurers is likely to be far greater than the aforementioned events.

It's a lot of money, but not beyond Lloyd's ability to pay without a problem even if the losses rise further, which is expected if the current lockdown continues into another quarter.

Lloyd's studied the economic impact of the potential COVID-19 losses and considered underwriting losses and the reduction in value of investments. The effect of social distancing and the lockdown on the forecasted drop in GDP were added to the mix. Investment decline is expected to be greater than the insurance claims. Industrywide, the reduction in investment portfolios is estimated to be around $100 billion, which would bring the projected total loss to the industry to $205 billion. Effectively, it's not the payment of claims that will hurt the most; it will be the loss of income from investments and the reduced value of these investments if companies go to the wall.

Historically, major losses the industry suffered were contained geographically and occurred over a relatively short time. COVID-19 is very different. It is global, systemic and has a potential long-term impact continuing until a vaccine is found.

Lloyd's believes that event cancellation will bring in the biggest percentage loss, at 31 percent of the $4.3 billion total. Property follows closely at 29 percent; credit lines are expected to make up 11 percent of the total, and another 15 classes together will produce 29 percent of the claims. Lloyd's expects the geographic spread will be U.S. 58 percent, U.K. 15 percent, Europe seven percent and the rest of the world 20 percent. These figures won't make anyone confident who is hoping to make a claim on their business interruption policy.

John Neal, CEO of Lloyd's, said, "The global insurance industry is paying out on a very wide range of policies to support businesses and people affected by COVID-19. What makes COVID-19 unique is not just the devastating continuing human and social impact, but also the economic shock. Taking all those factors together will challenge the industry as never before, but we will keep focused on supporting our customers and continuing to pay claims over the weeks and months ahead."

Lloyd's is never slow to spot an opportunity, and already its experts and innovators have started creating new policies to support the immediate health response to COVID-19 as well as the longer-term exit strategy. They include coverage in the search for diagnostics, treatments and vaccinations, and one syndicate is already insuring over 100 individual clinical trials relating to COVID-19 that are taking place around the world. Lloyd's Lab and Product Innovation Facility is helping fast track development of insurance products to support the response to COVID-19, and further initiatives are expected in the coming weeks.

One initiative is the establishment of a Recover Re insurance vehicle offering after-the-event cover for pandemic-related business recovery, including the current COVID-19 pandemic.

Meanwhile, the underwriting room remains closed, and nearly everyone is working from home. Things seem to be going well, and Lloyd's hopes to reopen the market in mid-August.

How the market will react is anybody's guess. Some broking houses feel they can cut down on active staff if they use electronic placing, and underwriters seem to be more productive electronically. In fact, the only people with problems are the business producers who can't go out to get new business.

One thing is certain, with losses on their way, a hard market will follow. Market observers believe rates will rise across the board, and they forecast three years of increases. Just as well when you look at

See **LONDON VIEWS** Page **18**

London views

FROM PAGE 17

Lloyd's projected figures for 2018 and 2019.

Lloyd's holds firm on BI claims

The disputes between Lloyd's managing agents and their clients over the payment of business interruption claims continues. One of the main sellers of this insurance, Hiscox, has offered a nominal goodwill payment to a number of clients to apologize for not making it clear that pandemics are not covered under their policies. Not surprisingly, the clients are not impressed.

Like many insurers, Hiscox faces legal action from hundreds of firms and has admitted its explanation of cover "should have been clearer." The managing agent says it is paying claims that are covered by its policies fairly and quickly. Hiscox is adamant that its policies do not include diseases linked to pandemics such as coronavirus due to the difficulty of insurers' being able to quantify the potential risk.

Hiscox admits that some policies cover denial of access by public authorities when policyholders are ordered not to use or access their premises following a small number of localized incidents, but Hiscox says these policies do not cover general shutdowns ordered by governments.

The feeling in the market is that it is unlikely that Hiscox will be held liable for these losses. Over 90 percent of all business interruption policies clearly do not cover a pandemic risk because clients did not want to buy it at the cost quoted.

According to a survey by Lloyd's broker Aon last year, risk managers rated a pandemic crisis as only the 60th most pressing risk. The facts are that most firms did not want to buy the cover; the cover was not generally available, and buyers did not consider the rates quoted to be commercially viable. Unfortunately, history has shown that attitudes and memories change when a major loss occurs.

FCA confirms court action

Hiscox is one of five Lloyd's managing agents involved in the test case run by the U.K.'s Financial Conduct Authority. Managing agents Arch Insurance (UK) Limited, Argenta Syndicate Management Limited, MS Amlin Underwriting Limited and QBE UK are also involved. The insurance companies involved are the Royal Sun Alliance, Ecclesiastical Insurance and Zurich Insurance. The case will examine 17 wordings from these eight and from a number of different insurers. The insurers face possibly responding to thousands of claims they have so far denied.

With billions of pounds at stake, the London market is looking at this case with some unease. If the wordings are found to be ambiguous, the result could be financially ruinous and potentially force some of the insurers into bankruptcy.

The court action is expected to begin shortly and should last around two weeks. The FCA warned policyholders that, although their insurers are named in the action, it does not mean they will have a valid claim. The FCA already said that, in its view, the pandemic has not triggered valid claims under most business interruption policies.

Insurers are not the only ones concerned with the outcome of the case. If policyholders are denied a valid claim from their insurers, they are expected to take action against the advisors who arranged their coverage.

There are concerns among brokers that some may have failed to meet their clients' instructions to cover a pandemic loss. Brokers have relied on insurers' policy wordings, and if these are found not to cover the pandemic, brokers can expect huge claims for alleged negligence. Apparently, there is a particular problem with clients who tried to purchase cover early this year when cover for notifiable diseases was still available. Allegedly some brokers drafted their own wordings, and there are concerns that the details of the cover are ambiguous.

There are also allegations that some brokers did not believe their clients' cover was valid for the pandemic and failed to pass on claims notifications to insurers. Some of these claims are now time-barred. However, the word on the street is that, while some claims can be expected, there is no likelihood of a surge of negligence claims.

U.S. Treasury gives Lloyd's optimism

A senior member of the U.S. Treasury, Frederick W. Vaughan, has written a letter making it clear that Treasury is opposed to wholesale forcing insurers to pay business interruption claims. London has been worried that retroactive legal action by some U.S. states could lead to changing the terms of insurance contracts and compel them to

See **LONDON VIEWS** Page **19**

London views

FROM PAGE 18

cover business interruption losses caused by COVID-19. Vaughan's letter says that, while insurers should pay valid claims, he is concerned over fundamental conflicts that could threaten the stability of the industry.

Hard years for Lloyd's underwriters

Lloyd's has released its latest update for the 2018 and 2019 underwriting years. With 2020 already declared a loss due to the COVID-19 virus, it seems the next three years will be all red ink and underwriting losses for Lloyd's. While figures for the whole market are supplied, only individual figures are provided for the nonaligned syndicates.

As usual, Lloyd's has published figures for the worst case, best case and mid case scenarios. For 2018, the market as a whole is expected to have a loss of 9.76 percent of its capacity based on the worst-case figures, with only one syndicate estimating a profit and one a breakeven. The other 31 syndicates have losses varying from 65.00 percent of capacity to 2.50 percent. Even the best-case forecast shows a 3.52 percent loss for the market overall, while the mid-case is a 6.64 percent loss.

Managing Agents with some explaining to do are those that manage Hiscox's Syndicate 6104 with a loss of 65.00 percent on the worst-case figures, Charles Taylor 1884 with a loss of 55.01 percent and Astra 6123 with a loss of 48.58 percent of their underwriting capacity. On the plus side, only Chaucer's Syndicate 1176 shows an expected profit of 15.00 percent.

The best-case figures for the 2018 underwriting year show 15 syndicates reporting an estimated profit, but only two of these are in double digits – Chaucer's Syndicate 1176 at 35.00 percent and Beazley Syndicate 623 at 10.00 percent. A further three syndicates hope to break even on the year, which leaves 13 forecasting a loss.

For 2019 the market as a whole is expected to have a loss of 4.76 percent of its capacity, based on the worst-case figures, with seven syndicates estimating a profit and four expecting to break even. This still leaves 21 nonaligned syndicates making losses. The best case shows a 2.05 percent profit for the overall market, while the mid-case is a 1.35 percent loss.

Individually, the worst-case figures for 2019 show Hiscox Syndicate 6104 forecasting a 75 percent loss, way ahead of Brit's Syndicate 2988 which forecasts a 21.26 percent loss. Seven syndicates forecast profits ranging from MAP Syndicate 6103 with a 12.50 percent profit to Covery's Syndicate 1991's 1.09 percent. A further four syndicates expect to break even which leaves 19 syndicates expecting losses.

The best-case figures for 2019 show a lot of black ink, with 25 syndicates expecting profits ranging from MAP Syndicate 6103's 32.50 percent to Canopius Syndicate 4444's 0.83 percent. Two syndicates hope to break even which leaves five with losses.

Underwriters will grasp the expected hard market like it is a life raft.

New funds at Lloyd's portal

Lloyd's is going to launch a digital platform to develop its existing Lloyd's Members Access system. To join Lloyd's, one has to deposit funds, but finding out the value of these at any one time has been paper driven and difficult. The new platform will enable capital providers and supporting stakeholders to have access to their data and documents through a simple and intuitive portal 24/7, and access can be via laptop or mobile.

London Matters 2020 is out

Some years ago, the London market felt the need to advertise its value to the industry and published information about the market in a report called London Matters. The London Market Group, which started life as the Market Reform Group, now updates the report regularly, and the latest edition came out recently.

The report states that the London market remains the largest global (re)insurance hub in the world. Like Mark Twain, the reports of its death are greatly exaggerated, and the predictions that its significance would diminish as business moved elsewhere has not borne out. The gap between London and the total amount written in Bermuda, Switzerland and Singapore has, in fact, widened from $16 billion in 2015 to $23 billion in 2018.

It came as no surprise that North America replaces the U.K. and Ireland as the biggest source of income to the London market. The U.S. has been Lloyd's biggest market for years, and now the London company market has jumped on the bandwagon.

While London's share of the developed markets is secure, it continues to underperform in emerging markets in Asia and Africa.

Matthew Moore, chairman of the LMG said, "This report finds the London market in good shape. Aggregate market share held steady, maintaining its dominance over other (re)insurance centers, attracting more U.S. business than ever before and increasing its contribution to U.K. gross domestic product. Nevertheless, some of the underlying challenges from the first London Matters report in 2014 remain. Our share of reinsurance business is shrinking, and our share in emerging markets remains small. We need to replace an aging workforce, and there is more work to do on closing the gender pay gap."

The report was written before COVID-19 emerged, and does not include its impact on the market, but does state that effects of COVID-19 on market structure, products, processes and working practices are likely to be profound and long-lasting.

Moore added, "The current crisis shows that the market can support its trading partners and clients through the toughest of challenges. The fact that it is doing so today is in part down to its adoption of previous LMG initiatives. For example, electronic placement through PPL has meant that remote working has been possible and that contracts have been placed and renewed with legal certainty."

Compensability for coronavirus depends on the state

In some states workers' comp covers all viruses

Whether or not the coronavirus constitutes a compensable disease under workers' compensation mostly depends on the state where the business is located. In a few states, all viruses are covered; in other states none are, and many states fall somewhere in between.

That was part of the message delivered by Judge David Langham, deputy chief judge of compensation claims for the Florida Office of Judges of Compensation Claims at the Division of Administrative Hearings. Langham made his remarks May 14 during a webinar hosted by the Workers' Compensation Research Institute. The interviewer for the webinar was Dr. John Ruser, president and CEO of WCRI.

Describing the situation with workers' compensation hearings in Florida during the coronavirus pandemic, Langham said that some changes had to be made. "We are still holding hearings, but many are now via videos." He explained that there has been a "general decrease in filing volume, so it looks like COVID is slowing down the workers' compensation system, not speeding it up."

Ruser asked how diseases have been treated in the past in the workers' compensation system.

Calling it a "broad question," Langham, urged listeners to first "think about the fact that … we have a separation of powers between national and state governments, and traditionally, we have a workers' compensation system that has been on a state by state basis.

To illustrate the disparities in systems, Langham chose two "pole stars," Arkansas and Hawaii, to explain the compensability of the flu bug.

In Arkansas, there is no coverage under workers' compensation for what they call "ordinary diseases of life" or diseases to which the public is exposed, Langham said.

> *To illustrate the disparities in systems, Langham chose two 'pole stars,' Arkansas and Hawaii, to explain the compensability of the flu bug.*

On the other extreme is Hawaii, where there is coverage for virtually any viral infection. Between those two are a lot of different potential outcomes, he said, declaring that it might be difficult to characterize the system in the U.S. as being "either easy or hard."

As Langham describes it, "whether we like it or not, workers' compensation is a socialist process." He explained the disparity between Washington and Kentucky. Kentucky is a free market state, he said, where private carriers provide workers' compensation coverage. On the other hand, Washington is a monopolistic state. Benefits come from the state coffers, with employers paying in like they do for unemployment insurance. It is different from a free market. Langham said.

As Langham explained, workers' compensation is largely about drawing boxes around what is included in a set. As states make decisions about what is included in the set, they are making decisions about what is covered. They are talking about populations, he said, and then "we start talking about the cost to cover those various items" in the set.

In short, the answer to Ruser's question is that "there is a spectrum of responses. Some states are more liberal with (covering) viral infections, and some states not so much," Langham said.

Because of COVID-19, things are changing a little, according to Langham, who believes the changes stem from the fact that COVID-19 is a virus that does not have an effective human intervention at this point. COVID-19 is different from other viruses because health care providers cannot intervene since there is no vaccine. "If there was a vaccine, we would not see the public outcry," he said. "This is a different kind of threat for that reason, and it is a threat to any and all of us at any moment in time."

The other difference Langham sees is that, ordinarily, with a virus or the cold, people are symptomatic. "We can avoid the person with the blurry eyes who is sneezing or has a runny nose. That is not so with COVID-19. We don't know who has the virus or who might be communicating it. Those differences cause us to question whether we need a different reaction. We are doing that with the economy and now with medicine."

States are acting independently, he observed. There is a separation of powers among the executive and judicial branches in states, and there are constitutional challenges about the way various powers are acting or reacting in trying to deal with this new threat and its novelty.

Legislation has passed in a couple of states and been introduced in others (including Louisiana where it failed) that would mandate coverage, Langham said. "We can't ever get too excited about a legislator introducing a bill, because we know it is a long path from bill to law … but we have seen statutes enacted in a couple of states," he said.

"Frankly, where we have seen the bulk of the activity has not been in the court system. It has been in the executive branch," he said.

Governors and commissioners have stepped in and imposed a broad variety of executive orders and emergency actions to try to deal with the infection and the economic impact of the infection. The pervasiveness of those orders varies from state

See **COVID COMPENSABILITY** Page **22**

COVID compensability

FROM PAGE 21

to state, according to Langham.

Returning to the Arkansas example, Langham said there is an executive order that simply says, "We are going to ignore the statutory prohibitions," that just means for the near term there will be limited focus on the law. In his view that order can be challenged.

At the other end of that spectrum are states like Washington and Kentucky which have enacted very broad extensions of their law, not just that the virus could be covered or problematic, but that it would be presumptively so, primarily for first responders, a group that is easy to define, Langham explained.

He noted that for years, presumptions of workers' compensation coverage for first responders have been enacted across the country. Therefore, presumptions apply to police officers, firefighters, paramedics and sometimes corrections officers.

More recently, states like Washington and Kentucky enacted broader coverage, which now includes, not just first responders, but front line employees. Front line has been "so broadly defined as to talk about folks like grocery store clerks." These are people that states' chief executives see as being at particular risk for contracting the disease.

The second reason for covering and broadly defining front line employees is the "parade of horribles" or "what ifs," Langham said. "What if you picked up the phone and called 911 and there was no one to send. What if there is no one to put the groceries on the grocery store shelves."

Those risks are driving the executive orders, according to Langham.

The most pervasive executive order, in his opinion, is California's, in which Gov. Gavin Newsom did a presumption similar to Washington's and Kentucky's that is applicable to anyone who goes to their place of employment. According to Langham the California presumption does not include people who work at home; otherwise, in California anyone who gets the coronavirus and has been to their place of employment in the last 14 days is presumed to have a compensable occupational disease. Langham described that as a "systemic change," but there is a limitation in that the governor's order only covers about 100 days, beginning in early March and stretching forward about 60 days beyond May 14.

Who has the burden of proof?

Ruser asked Langham how the burden of proof is moving.

In response, Langham said that there is a school of thought in this country that the burden of proof is a critical compensation issue. That is because the party that has the burden of proof is going to have the more difficult time prevailing. Additionally, in the court system, it has always been that the moving party has the burden of proof.

Langham said that the mover has the burden of proof. "If you are the prosecutor, it is the state's burden to prove (defendants) are guilty. They go into the system presumed innocent."

The workers' compensation system works similarly, he explained. In most of the cases, the employer is presumed to not be liable, and the burden is on the workers to come in and demonstrate that they have a compensable injury that fits within the parameters of the law, and that they are entitled to the benefits they are seeking.

With presumption, who has to bear the burden of proof is altered. "Keep in mind it is going to be very difficult to prove compensability or lack of compensability in a viral setting," Langham said. "If you have silicosis or asbestosis or if a worker comes down with black lung, it makes sense that the cause is occupational because we don't have coal dust at home and we don't have it in supermarkets. It makes sense that it is occupational, and it is related (to work)."

Viruses will be more difficult. Langham explained that the problem with COVID-19 is that by the time someone knows they have it, they may not remember being around a person who was hacking and coughing. "For all we know you may have gotten it from someone who has no symptoms. You could get it at the grocery store, at work or from someone who was walking down the street. There is no telling. You can get it anywhere."

In states where there is a presumption that COVID-19 was contracted in the workplace, the employer will have to prove the worker got the virus somewhere else. Whoever has the burden will be in a "tough corner," Langham said. "It will be a tough case to prove."

In states that haven't enacted presumptions, the burden is on the employee. In this instance, the employee "will have a tough time proving (causation)."

Will COVID-19 change compensability?

Langham was asked whether or not he believes COVID-19 will change compensability in the workers' compensation system and/or threaten the viability of the system.

See **COVID COMPENSABILITY** Page **23**

COVID compensability

FROM PAGE 22

To insure the viability of the system, Langham said, several congressmen on a federal level are pushing for a backstop, but he is not sure it can pass. "When TRIA was passed, it was a highly emotional time, and there was a lot of drive. It is increasingly more difficult to reauthorize that act each time it comes up for expiration."

As legislatures start meeting around the country, he said, they will propose solutions dealing with viral infections and the impact they can have on employers and employees. Whether the proposed solutions will be specifically in workers' compensation, Langham could not say, but he believes many of them will be.

It remains to be seen whether or not the peace of mind of having a backstop is worth the cost of covering those infections.

> *'What you are seeing is not necessarily about science. It is not necessarily about the law. It's a policy choice of where the lines are drawn....'*
>
> -Langham

He believes the coronavirus will change the workers' compensation system, but could not say how markedly it will change the system because he is not sure about the number of losses and is not sure if legislatures can come up with innovative solutions to deal with those problems.

Is COVID-19 compensable?

When asked whether or not COVID-19 will be compensable, Langham said it depends on where the business is, whether it is in California or Florida, a presumption state or non-presumption state. The odds are that compensability in California will be somewhere close to 100 percent, Langham predicted. "The only stopper there is whether or not you have been to your place of employment in the last 14 days. If you have been, it's presumed that you got it at work."

In a non-presumption state, it will be hard to prove compensability of the novel coronavirus, just like it is hard to prove where someone got influenza. The virus is easy to get. He believes not a lot of those cases will prevail in Arkansas because it will be very difficult and expensive to prove.

In Florida, the burden is on the employee to prove the disease arose out of the course and scope of employment, he said. "It has been difficult for an injured worker to prove … and remains so today."

Can governors' orders trump statutes?

Langham is doubtful that a governor's executive order regarding causation can overcome the statute regarding causation standards.

Pundits argue that a lot of the governors issuing orders have "stepped out of their lane" and are acting beyond their constitutional power, he said.

In some states, such as Illinois, there has been a reaction.

According to Langham, one of the first states to create a presumption of compensability for essential workers was Illinois. The state's governor did not create the presumption; the state's workers' compensation commission did. The presumption lasted about 18-20 days and was withdrawn because business associations filed a lawsuit, and the judge ruled that the workers' compensation commission overstepped its legal bounds.

According to Langham, the real question is whether costs will become pervasive enough for litigation to be worth its cost. Litigation is expensive, so if the presumptions do not create great costs in a jurisdiction, he believes challenges will not get filed. If presumptions do create a significant financial impact, he believes challenges will get filed and separation of powers will be argued. Depending on the state, some presumptions will be susceptible to the same retraction or overruling by the courts that took place in Illinois.

Some people argue that the lines drawn defining who is essential and therefore covered are "rather arbitrary and unfair," he said.

Can COVID-19 meet criteria?

Langham was asked by a webinar attendee how the illness (disease of life) can meet the criteria for compensability when the illness is not driven by the disease but by underlying conditions.

"The easy answer is that it cannot meet the fundamental framework for compensability," Langham responded. The way the statutes were drawn and amended historically, the disease would not meet the standard for compensability except in states like Hawaii that made a conscious decision to include the virus as an occupational disease. "What you are seeing is not necessarily about science. It is not necessarily about the law. It's a policy choice of where the lines are drawn indicating what and who are included and what and who are not," he said.

Webinar attendees polled

Attendees at a workers' compensation webinar hosted by the Workers' Compensation Research Institute on May 14 were asked to respond to two poll questions.

The first question put to webinar participants was whether or not a state workers' compensation system should cover all essential workers (nurses, police, grocery store employees, etc.). In response to the question, 56 percent of webinar participants said "yes"; 25 percent said "no," and 18 percent were unsure.

The second question asked of webinar participants was whether or not they are concerned about the financial impact of the virus on workers' compensation systems around the country. In response, 79 percent answered "yes" and 21 percent answered "no."

Insurers prepare for mass tort actions spawned by pandemic

Attorney Steven Badger, partner of the Zelle law firm, said the novel coronavirus has provided plaintiffs with a "mass tort opportunity," as he introduced two other Zelle partners for a webinar on class action and multidistrict litigation. "Personally," said Badger, "this is the most important webinar in the series."

Zelle has offered several webinars for insurance executives and attorneys since March and published several related white papers on the multitude of insurance issues connected to the COVID-19 pandemic. The April 28 webinar was titled Square Peg/Round Hole: Why COVID-19 Coverage Disputes Don't Fit the Template for Class Actions and MDLs. The webinar was attended by more than 300, with the audience including insurance executives, claims professionals, underwriters, product developers, fraud investigators and attorneys.

James R. Martin, partner in Zelle's Washington office, and Dan Millea, a partner in Minneapolis, joined forces to present the arguments against allowing COVID-19 business interruption litigation to proceed as either class action or MDLs. Both attorneys specialize in class actions. Martin's expertise includes antitrust and unfair competition and financial services class action litigation. Millea's expertise includes bad faith and extra-contractual liability and commercial litigation.

Attorneys across the U.S. have begun seeking class action status on behalf of representatives of restaurants and other businesses who were denied insurance coverage for lost business income due to the novel coronavirus. Millea said he knew of two instances where attorneys have sought consolidation of pretrial proceedings of actions from several jurisdictions under federal provisions for multidistrict civil actions.

Together, Martin and Millea offered their take on how this should play out.

Class actions and MDLs, said Martin, are used to promote judicial efficiency. They are used to aggregate claims in a single forum with common discovery. The reasons Martin and Millea gave for why the business interruption litigation is unsuited for this judicial efficiency are that there will be individualized fact issues, multiple legal theories, and claims for damages that are available by statute only in some states. "Aggregating these cases in class actions or MDL settings will serve no real benefit for the courts or the claimants," said Martin.

Martin said that class actions serve a legitimate purpose when everyone is harmed in the same way. Allowing smaller claims to be aggregated may be the only sensible means of achieving a just resolution, he said. "It also means that some (class actions) won't have merit," Martin said. Stated more formally in the Zelle white paper that Martin co-authored: "The aggregating nature of the class actions also incentives plaintiffs to pursue lawsuits when the damages are likely too small to justify litigation, but a class action would offer those with small claims the opportunity for meaningful redress. However, class actions can occasionally subject defendants to costly or abusive litigation."

Martin explained that class actions are brought by a single plaintiff on behalf of some defined group or class. In order for the action to proceed on behalf of the class, the court must certify that a class exists. Class actions may seek injunctive relief or damages, or both.

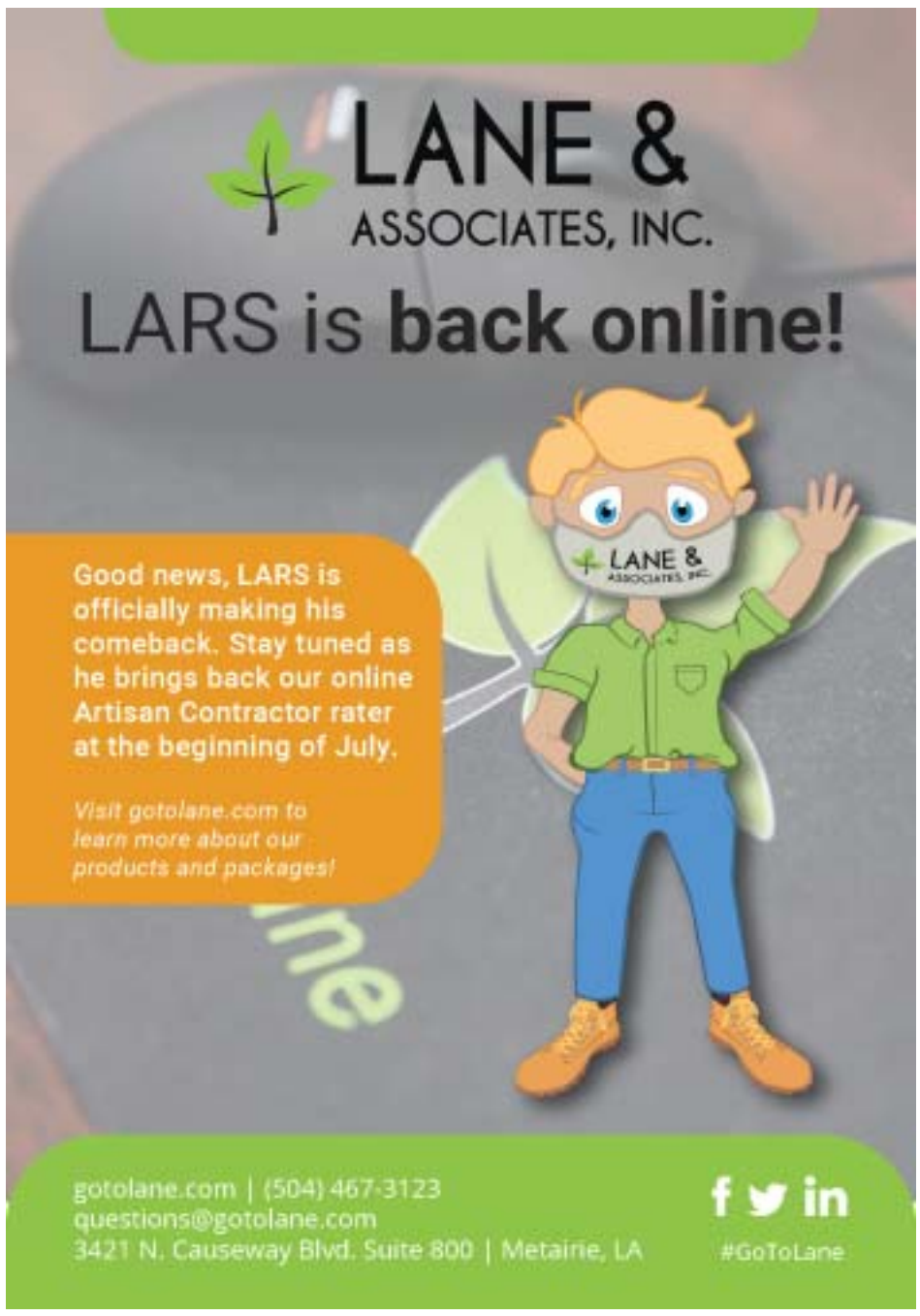
Federal rule provides the prerequisites for defining a class: numerosity, commonality, typicality and adequacy of representation.

"There are a lot of claims out there," said Millea. Business income has been lost, and business owners want to recover it. Millea expects that the action seeking certification would meet the first prerequisite, numerosity.

The commonality hurdle is different, said Millea. There will be variations in policy language and endorsements. "All the (insurance) policies are different," he said. Different state laws will apply. There are multiple market situations; different civil authorities imposed different limitations. Causation might be common among the members of the class, but damages will differ. "Every policyholder will have his own individual losses that need to be proved individually," Millea said.

The typicality and adequacy factors will also be difficult to prove to the court, Millea said. The class plaintiff claims to be typical of the class, he said. What if the representative's policy has a virus exclu-

See **MASS TORTS** Page **25**



Mass torts

FROM PAGE 24

sion, he questioned, but the other class members do not have the exclusion? Perhaps, said Millea, the class representative has no strength of facts. "He can't represent members who have a better set of facts."

Two additional factors must be met for any class seeking monetary damages: predominance and superiority. Martin and Millea expect that coronavirus class actions will meet neither hurdle.

The predominance standard is tougher than commonality, said Millea. According to Martin's white paper, the plaintiff must show that common questions of law and fact predominate over individual questions and he must present a model of the damages that stem from the defendant's alleged wrongdoing. Millea said there are multiple scenarios among various claimants; he said that individual issues will predominate over common questions.

If class is asserted on a nationwide basis, it will fail, Millea predicted. "Insurance law is state based." The class action will run up against laws that are different from state to state, he said. "There is no way to measure damages on class-wide basis."

To certify a damages seeking class, the court would also have to certify that the class action method is the superior method of adjudicating the claim and that it is manageable. Initially, there may be some subset of declaratory judgment actions that could fit into a class, said Millea. But that would require a critical mass of identical policies, a single insurer defendant, and targeted legal issues. One benefit would be to resolve one or more coverage questions on the same policy form, in the same state. This class, however, said Millea, is too small to exist as a class.

The number of individualized issues defeats the efficiencies of a class action, said Millea. Any class would need to be decertified for determination of damages. The class would devolve into an unmanageable series of minitrials and consume judicial resources. "Class-wide treatment would be worse, not better, than separate actions," said Millea.

According to a published report, Cleveland Attorney Robert Rutter disagrees and sees a class action remedy as appropriate for restaurants shuttered by the coronavirus in Ohio. Rutter, who also owns restaurants, specializes in representing policyholders in lawsuits against their insurers. His bio on his firm's website says he is one of only 25 lawyers in Ohio certified by the state bar association as a specialist in insurance coverage law. His firm, Rutter and Russin, filed the class action in state court after reviewing "60 different insurance forms from hundreds of clients," according to an article published in the Cleveland Scene on April 28.

In the article, Rutter said he is starting with the "low hanging fruit," policies that do not contain virus-exclusion clauses. While he found such polices among those issued by Cincinnati Insurance, Western Reserve Group and State Farm, his firm's initial action is against only Cincinnati Insurance.

The Cleveland Scene quoted Rutter as seeing this initial case as precedent setting: "The first case will dictate what will happen," he said. "If we prevail against Cincinnati, there's really no reason we wouldn't prevail against policies that are similar." The Cleveland Scene article did not indicate the number of restaurants Rutter expects his class action to represent, and he did not return a call from the Reporter asking for this information.

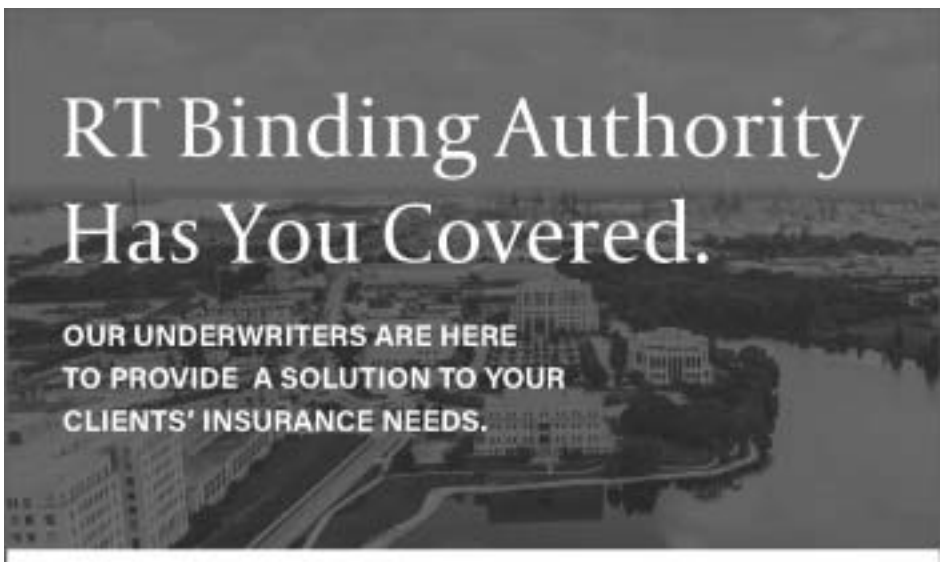
Martin and Millea also took a look at the role MDLs or multidistrict litigation could play in providing federal courts efficiencies as they grapple with what is expected to be a large number of coverage disputes.

MDLs, said Martin, are available only in the federal court system. It is a special procedure in which federal civil cases from different judicial districts are transferred to one court for all pretrial procedures. The cases are then returned to local jurisdictions to be tried or settled. According to Martin, the cases must share a common question of fact; MDL panels do not address questions of law.

"MDLs take a long time," Martin said. He knows of one MDL that is in its seventh year of pretrial discovery. Not all cases brought together are approved for MDL, he added, citing the Chinese drywall cases where the MDL judicial panel in Dallas rejected coordination of declaratory relief actions.

Martin said it would be unusual to put

See **MASS TORTS** Page **26**



Florida approves plan for Capitol Preferred to shed policies

The Florida Office of Insurance Regulation (OIR) has approved a plan that will allow Capitol Preferred Insurance Company to cancel approximately 23,800 policies with 45 days' notice. The policies were originally written in the voluntary market by its affiliate Southern Fidelity Property and Casualty Inc. and were acquired by Capitol Preferred during its merger with Southern Fidelity on Feb. 28, 2019.

The 23,800 Southern Fidelity block of policies is comprised mostly of homeowners' (HO-3) policies but also includes 12 tenant (HO-4) policies and approximately 4,500 condominium unit owner (HO-6) policies.

Originally, Capitol Preferred requested to cancel 27,500 policies, but after analyzing the request, OIR determined that canceling 23,800 policies from the Southern Fidelity block of policies would "produce similar financial results" for the company, and resulted in almost 4,000 fewer policy cancellations. According to OIR data, Capitol Preferred had 117,266 policies in force as of Dec. 31, 2019, and 108,870 as of May 3.

Approval of such a request by the OIR requires a finding that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and OIR approves the insurer's financial plan.

Based on documentation provided by Capitol Preferred, and the financial projections reviewed by OIR, the Southern Fidelity block of policies materially contributed to both Capitol Preferred's past and projected losses and to its projected increase in reinsurance costs.

According to OIR, the documentation Capitol Preferred provided reflects that, without a reduction in the number of policies in force, the cost of catastrophe reinsurance for the 2020 Atlantic hurricane season will materially increase. Capitol Preferred's reinsurance cost is based on a number of factors, including the number and type of policies in force, location of the policies, and the loss history associated with those policies.

In a May 12 consent order, OIR found that the early cancellation of the Capitol Preferred policies was necessary based on the magnitude of losses in 2017, 2018 and 2019, the increased cost of reinsurance, and it "was in the best interests of the public and policyholders."

Capitol Preferred's losses for 2017, 2018 and 2019, according to the consent order, were $5.1 million, $17.9 million and $25.7 million respectively. OIR found that losses of that magnitude are not sustainable, and if the underlying conditions that contributed to the losses remain unaddressed, continued losses may result in Capitol Preferred being in hazardous financial condition.

Capitol Preferred represented to OIR that the Southern Fidelity block of policies generated significant losses.

Capitol Preferred made a "use and file' rate filing with OIR in December 2019 that implemented a 47 percent rate increase for the Southern Fidelity block of policies, effective Feb. 15, 2020. The 47 percent rate increase was amended by Capitol Preferred to a 36.5 percent rate increase in late January of 2020.

The rate increase was the subject of a public rate hearing held by OIR in February 2020. The projections reviewed by OIR indicate that even with a substantial rate increase the Southern Fidelity block of policies will continue to generate unsustainable losses. The data and documentation provided by Capitol Preferred in connection with the rate filing supported an overall average statewide increase of 33.5 percent, which was approved.

To approve the early cancellation of policies, OIR required Capitol Preferred to:

-Actively facilitate the placement of the Southern Fidelity policies with other insurers in the market;

-Continue to file monthly financial statements with OIR until further notice (These financial statements will be in the NAIC monthly statement format and submitted no later than the 21st of the following month. In addition, the report will include a listing of all policies in force by county and total insured value by county.);

-Limit its new and renewal business written to the number of policies shown in the pro forma provided to OIR by Capitol Preferred (Any change or increase to this new or renewal business limitation must be filed with and approved by OIR. No policies from the Southern Fidelity block of policies may be rewritten on a different Capitol Preferred policy form or by an affiliated insurer.).

As a result of the operational losses for the last three years and the threat of continued losses, Capitol Preferred must submit an updated business plan to OIR by 5 p.m. July 1, 2020. The updated business plan must demonstrate Capitol Preferred's ability to generate successful operating results by the implementation of underwriting changes, rate adjustments, operational savings, capital management and other significant modifications of its current business model.

The updated business plan must run from July 1 to Dec. 31, 2023, and must include all assumptions used in its preparation, pro forma projections and cash flow analysis, and must include reinsurance necessary to provide coverage for at least a 130-year event.

The updated business plan must reflect the effects of the following:

In addition to the business plan, Capitol Preferred must file with OIR a five-year strategic plan, which may be updated on a yearly basis and approved by its board of directors.

Through Dec. 31, 2020, Capitol Preferred needs the prior approval of OIR to:

-Dispose of or encumber any assets;

-Lend any of its funds;

-Invest any of its funds except in accordance with its established investment policies in the ordinary course of business;

-Transfer any of its property other than in the ordinary course of business;

-Incur any debt, obligation, or liability;

-Merge or consolidate with another company;

-Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract of insurance, except as permitted in accordance with its approved underwriting guidelines;

-Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy or certificate;

-Make any material change in management or provide bonus or severance packages to any employee;

-Pay any dividends, or

-Enter any new or amend any existing agreements with affiliates.

In addition, the consent order allows OIR to retain an individual or entity, at the expense of Capitol Preferred, to review all of the company's direct and indirect expenses of its affiliates to determine if those expenses are fair and reasonable.

If Capitol Preferred fails to comply with any terms of the Consent Order, OIR may immediately suspend, revoke, or take other administrative action upon the company's Certificate of Authority in Florida.

Mass torts

FROM PAGE 25

these kinds of cases in MDL. He offered a pie chart of 190 pending MDLs that take in more than 130,000 individual cases. More than half of these cases are products liability and antitrust cases, which bear similar facts.

Millea added that he knows of two MDL applications regarding COVID-19 coverage claims pending so far, one in Illinois and one in Pennsylvania. He expects there may be more. "These will play out over the next few months," Millea said.

The insurance policies of these MDL litigants provide general all risk physical damage, said Millea. He said the plaintiffs are claiming to have suffered property damage and/or business interruption loss. The alternative remedies sought are payment for damages or a declaration of coverage.

Millea said the cases lack commonality of facts. "Can the presence of the virus be assumed or proven on a broad basis, or does every claim differ?" Millea questioned. He said that physical damage involves proof, which must be provided on a business-by-business basis. Interpretation of policy language, said Millea, is purely a legal question, which is outside the purview of the MDL judicial panel. "Policy issues are legal questions," said Millea, "not questions of fact. These are not decided in the MDL process."

The Zelle attorneys reiterated the advice that every claim be investigated. Even with relatively consistent policy forms, any institutional decision to deny with a form letter would become fodder for a class action, said Martin.

Autonomous cars will prevent only one-third of crashes

Human error plays a role in almost all crashes, but self-driving cars may have trouble avoiding some of the same mistakes, according to a new study by the Insurance Institute of Highway Safety.

Automation has been held up as a potential game changer, but autonomous vehicles might prevent only about a third of all crashes if automated systems drive too much like people, according to the IIHS study results released June 4.

"It's likely that fully self-driving cars will eventually identify hazards better than people, but we found that this alone would not prevent the bulk of crashes," said Jessica Cicchino, IIHS vice president for research and a coauthor of the study.

Conventional thinking has it that self-driving vehicles could one day make crashes a thing of the past. The reality is not that simple. According to a national survey of police-reported crashes, driver error is the final failure in the chain of events leading to more than nine out of 10 crashes.

But the Institute's analysis suggests that only about a third of those crashes were the result of mistakes that automated vehicles would be expected to avoid simply because they have more accurate perception than human drivers and aren't vulnerable to incapacitation. To avoid the other two-thirds, they would need to be specifically programed to prioritize safety over speed and convenience.

"Building self-driving cars that drive as well as people do is a big challenge in itself," said IIHS Research Scientist Alexandra Mueller, lead author of the study. "But they'd actually need to be better than that to deliver on the promises we've all heard."

To estimate how many crashes might continue to occur if self-driving cars are designed to make the same decisions about risk that humans do, IIHS researchers examined more than 5,000 police-reported crashes from the National Motor Vehicle Crash Causation Survey. Collected by the National Highway Traffic Safety Administration, this sample is representative of crashes across the U.S. in which at least one vehicle was towed away, and emergency medical services were called to the scene.

> *'It's likely that fully self-driving cars will eventually identify hazards better than people, but we found that this alone would not prevent the bulk of crashes.'*
>
> -Cicchino

The IIHS team reviewed the case files and separated the driver-related factors that contributed to the crashes into five categories:

-**Sensing and perceiving** errors included things like driver distraction, impeded visibility and failing to recognize hazards before it was too late.

-**Predicting errors** occurred when drivers misjudged a gap in traffic, incorrectly estimated how fast another vehicle was going or made an incorrect assumption about what another road user was going to do.

-**Planning and deciding** errors included driving too fast or too slow for the road conditions, driving aggressively or leaving too little following distance from the vehicle ahead.

-**Execution and performance** errors included inadequate or incorrect evasive maneuvers, over compensation and other mistakes in controlling the vehicle.

-**Incapacitation** involved impairment due to alcohol or drug use, medical problems or falling asleep at the wheel.

The researchers also determined that some crashes were unavoidable, such as those caused by a vehicle failure like a blowout or broken axle.

For the study, the researchers imagined a future in which all the vehicles on the road are self-driving. They assumed these future vehicles would prevent those crashes that were caused exclusively by perception errors or involved an incapacitated driver. That's because cameras and sensors of fully autonomous vehicles could be expected to monitor the roadway and identify potential hazards better than a human driver and be incapable of distraction or incapacitation.

Crashes due to only sensing and perceiving errors accounted for 24 percent of the total, and incapacitation accounted for 10 percent. Those crashes might be avoided if all vehicles on the road were self-driving – though it would require sensors that worked perfectly and systems that never malfunctioned. The remaining two-thirds might still occur unless autonomous vehicles are also specifically programed to avoid other types of predicting, decision-making and performance errors.

Consider the crash of an Uber test vehicle that killed a pedestrian in Tempe, Arizona, in March 2018. Its automated driving system initially struggled to correctly identify 49-year-old Elaine Herzberg on the side of the road. But once it did, it still was not able to predict that she would cross in front of the vehicle, and it failed to execute the correct evasive maneuver to avoid striking her when she did so.

Planning and deciding errors, such as speeding and illegal maneuvers, were contributing factors in about 40 percent of crashes in the study sample. The fact that deliberate decisions made by drivers can lead to crashes indicates that rider preferences might sometimes conflict with the safety priorities of autonomous vehicles. For self-driving vehicles to live up to their promise of eliminating most crashes, they will have to be designed to focus on safety rather than rider preference when those two are at odds.

Self-driving vehicles will need not only to obey traffic laws, but also to adapt to road conditions and implement driving strategies that account for uncertainty about what other road users will do, such as driving more slowly than a human driver would in areas with high pedestrian traffic or in low-visibility conditions.

"Our analysis shows that it will be crucial for designers to prioritize safety over rider preferences if autonomous vehicles are to live up to their promise to be safer than human drivers," Mueller said.

SURPLUS LINE REPORTER
& INSURANCE NEWS
P. O. Box 1089, Gretna, LA 70054-1089
504-371-8260

PRSRT STD
U.S. Postage
PAID
Permit #88
Baton Rouge, LA