TEXAS SURPLUS LINE REPORTER & INSURANCE NEWS

VOLUME 37 NUMBER 7 JULY 2020

NEWS IN BRIEF

PEOPLE

Effective Aug. 1, Steven Haynes becomes the new director and assistant professor of practice for the Risk Management and Insurance Program at The University of Texas at Dallas Naveen Jindal School of Management. Most recently, Haynes was property risk and claims manager for Lennox International. He also has over 10 years' experience working for Liberty Mutual, IAT Insurance Group and the City of Allen. Haynes recently completed course work for his Ph.D. at Oklahoma State University, where his dissertation examined the impact of disasters on small business and their use of innovation to increase resiliency. He holds a master's degree in public administration from the University of North Texas. He served in the U.S. Navy and resides in Allen. He replaces **Debra Richardson** who retired May 1.

Haynes

MEETINGS/EDUCATION

The Federation of Insurance Women of Texas announced the cancellation of its 76th Annual Convention and accompanying fund raising Bunco and golf tournaments, scheduled for San Marcos in late October. Instead, the association is making available online CE classes each month and an online event on Oct. 23-24. All elected officers of the statewide association will remain in their current positions through Oct. 2021, except for recording secretary, which has been filled on an interim basis by **Shanna Sutton**, Specialty Insurance Managers. The theme Wild about FIWT will remain for 2021 as well. Early registrants are asked to contact the Embassy Suites hotel directly to cancel room reservations.

NAIC

Hawaii became the 31st state to implement the National Association of Insurance Commissioners' state-based licensing system, a web-based application that, according to the NAIC, "helps streamline license processing, insurance education tracking, case management and revenue tracking." NAIC's July 13 media release said the system "helps insurance departments process license applications, renewals, inquiries, complaints, enforcement actions, and more with a minimum of effort while remaining compliant with nation uniformity initiatives." Neither Texas nor Louisiana has signed onto this

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IIAT chairman recalls his first footsteps in insurance

When Robert Nitsche took his first steps in the Hannes and Nitsche Insurance Agency in 1972, he could not possibly have known he would grow up to become the CEO of The Nitsche Group and chairman of the Independent Insurance Agents of Texas. Indeed, those were his very first steps ever.

Nitsche didn't just learn to walk at the agency that his grandfather, Robert "Bob" Nitsche, founded in 1949; he learned the business from the ground up. His father, Robert "R.J." Nitsche, had him reporting to the agency to help Mr. Oughtly vacuum floors and empty trash cans in the evening, Nitsche recalled.

Another early memory, said Nitsche, was pedaling his bicycle around Giddings,

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Robert Nitsche, 2020-2021 chairman of the Independent Insurance Agents of Texas

Surplus lines premium up 13.41 percent at midyear

With $466.1 million more in surplus lines premium reported for the first half of 2020 compared with the first half of 2019, the surplus lines market grew by 13.41 percent, a bit higher than last year's growth and surpassing midyear growth numbers for the previous three years. Total surplus lines premium reported to the Surplus Lines Stamping Office of Texas by June 30 reached nearly $3.94 billion, compared with last year's midyear total of $3.48 billion.

This increase in premium was accompanied by a 4.7 percent decrease in the number of policies filed with SLTX. In modest contrast, isolating the month of June only from the year-over-year comparison, a 9.8 percent increase in premium reported in June was accompanied by a 0.6 percent increase in number of policy filings.

SLTX Executive Director Greg Brandon said that June 2020 ranks as the third highest month of reported premium, exceeded only by May 2020 and July 2019.

As expected from these results, average premium per policy increased, from $9,204 in the first half of 2019, to $10,959 by June 30, 2020. This is a 19.06 percent increase in the average premium of a policy written in the surplus lines market.

Brandon said, "It appears that Texas policy buyers continue to see premium increases across most of the surplus lines." He added that no single line of coverage jumps out as a major influence of the increase even though "all the major property and casualty lines are generally seeing premium increases."

For the first six months of 2020, the largest dollar gain of $267.1 million was in Fire (including Allied Lines) which made up 36.48 percent of surplus lines writings in the first half of the year. This represents an increase of 22.82 percent over the first six months of 2019, very close to last year's midyear increase of 22.16 percent. Last year ended with Fire (including Allied Lines) up by 21.35 percent.

The larger line, Other Liability, account-

See **SURPLUS LINES PREMIUM** Page **4**

Stamping office seeks to lower stamping fee by half

The board of the Surplus Lines Stamping Office of Texas transmitted a request for a reduction in the stamping fee to Commissioner Kent Sullivan on June 29. The proposed reduction from 0.15 percent to 0.075 percent received a near-unanimous favorable vote by the board when it met by conference call on June 25. It cuts in half the stamping fee and could save Texas surplus lines policyholders about $6 million in the first year of implementation.

The reduced stamping fee would allow the office to gradually consume excess funds held in its unrestricted fund and bring the fund to the allowable balance by 2034, based on current expectations. The overfunding problem that has taken about four years to create, acknowledge and remedy may be resolved in about 13 or 14 years.

SLTX Data Analyst Christian Robinson based his projection on the premium growth trend since SLTX increased its fee to the current level in 2016 and the current growth rate of surplus lines premium. While he said he examined lower stamping fee rates that would bring the unrestricted fund balance into compliance sooner, he recommended the slower process as more prudent, given unknown influences such as changes in the market, resulting from the unprecedented COVID-19 pandemic or other factors still in the future, and potentially changing business needs of SLTX.

Robinson said it is too early to understand the impact of the pandemic on stamp-

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Lloyd's surrenders admitted licenses, concentrates on surplus lines, reinsurance

London Views
by Len Wilkins
London Correspondent

Lloyd's announced recently its decision to relinquish its admitted licenses in the U.S. Virgin Islands, Kentucky and Illinois. Lloyd's will concentrate on excess and surplus lines and reinsurance as its core markets. Lloyd's will lose $215 million of income, which represents one percent of its annual U.S. premium income.

Lloyds is the market leader of E&S business, and with these products being more flexible, Lloyd's sees E&S contracts as a better fit for the market and more likely to help Lloyd's achieve its strategic vision. Lloyd's stressed that the decision was not related to the local markets or the business it writes under its admitted licenses.

The changes aren't going to happen overnight, and Lloyd's is giving 12 months' notice of this move, which will allow the market and its key stakeholders time to make changes to their commercial business plans. From July 1, 2021, the Lloyds market will not accept any new business or programs on the licensed platforms. For existing and renewal business, Lloyd's will work with regulators in the licensed territories to develop plans that will mean little or no disruption to the local markets and to Lloyd's policyholders. Once arrangements are made with regulators in these territories, Lloyd's will issue more detailed guidance.

The potential $215 million that Lloyd's could lose from relinquishing its admitted licenses is unlikely to keep anyone in Lime Street awake at night. Lloyd's is the largest writer of surplus lines insurance in the U.S., and according to AM Best, wrote $11.8 billion in premiums in 2018. This gives the Lloyd's market 23.6 percent of the overall surplus lines market. The next largest player is AIG with a 7.1 percent share.

Lloyd's is updating its procedures for placing surplus lines, excess lines, and reinsurance. Soon the new systems will be in place, which will make it easier for coverholders to process and use binding authorities. While the admitted license market was a great way to do business initially, Lloyd's has updated its systems. Managing agents can now set up service companies to write business for them, either direct or via binding authorities, which allows managing agents to focus on planning for the future.

High Court BI test case

The test case involving Lloyd's man-

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Restaurateur loses B/I claim in Michigan court
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IIAT honors young agent and account manager
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Workers' comp for COVID varies by state
See Page 10

TDI disciplinary actions for June 2020
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TDI asserts tighter supervisory role over surplus lines office

On July 3, Insurance Commissioner Kent Sullivan ordered a new Plan of Operation for the Surplus Line Stamping Office of Texas. Sullivan's final version of the Plan of Operation differed from TDI's proposed version by accepting in total or in part several amendments offered by the stamping office's board and adding some language as well. Overall, the document creates tighter supervision of the stamping office by the Texas Department of Insurance than existed in the Plan of Operation that it replaces.

According to the commissioner's order, the new Plan of Operation "facilitates the Commissioner's supervision of the stamping office, addresses deficiencies in stamping office operations, provides direction to the board of directors and the stamping office, and ensures flexibility by removing elements from the plan best suited for operational procedures."

The area of greatest discussion during the public hearing on June 17, industry representation on the board, held steady as TDI originally proposed: the five seats traditionally held by surplus lines industry folks are subject to no specifications. The commissioner rejected an amendment that would require the appointment of those with "significant knowledge of the Texas surplus lines insurance industry" to five of the nine board positions.

The final version also retained the authority of the commissioner's representatives to attend the closed executive sessions of the board, something the most recent board appointee called "bold and unusual." The ordered plan also retained the commissioner's increased role in hiring the executive director and his discretionary role in terminating the executive director.

Two amendments recommended by the SLTX board were adopted nearly as written: the prohibition for the stamping office to lend money and the authority for the commissioner to appoint successors to unexpired terms following removal of a member. The department did not go for the rest of the SLTX amendment, which stated the grounds and method for removing a board member. Instead, the new Plan of Operation makes all board members removable at the discretion of the commissioner.

TDI accepted in somewhat compromise terms three of the board's other amendments.

-As it now stands, TDI must receive six days' notice for the SLTX board to hold a meeting. TDI gave up a day from the seven days' notice in its initial proposal, but added the requirement that the stamping office provide a draft of meeting materials with the advance notice to the department. The SLTX board's amendments recommended adhering to the notice requirements of the Texas Open Meetings Act, which is set at 72 hours prior to a meeting. Notices are required by this state law to provide the date, hour, place and subject of each meeting, but not the meeting materials. No provision was made for the calling of special meetings with less notice.

The Plan of Operation ordered by TDI adds a lobbying prohibition that was not present in TDI's proposed Plan, in apparent answer to an SLTX board recommendation. The board's amendment would have prohibited board members or staff from influencing surplus lines regulation while using stamping office resources. However, the final Plan of Operation defaults to more general existing law contained in the Government Code Chapter 556, conferring the same lobbying and political prohibitions on stamping office board members and employees as though they are state employees.

-The board recommended adding an antitrust prohibition to the Plan of Operation that declared off limits specific topics for discussion at stamping office functions and meetings: rates, coverages, market practices, claims settlement practices, expenses or other competitive aspects of individual company's operations. The final version of the Plan of Operation ordered by Sullivan added an antitrust prohibition, but left the details of prohibited conversation for later. The department requires the stamping office to establish an antitrust policy and to submit it to TDI for review.

The review process allows a deputy commissioner to determine the antitrust policy to be inadequate and authorizes the deputy to require changes to the policy. This style of review process is also offered in six other areas of the Plan of Operation, making some board decisions uncertain on matters until TDI weighs in.

Under the new Plan of Operation, every board committee must have a charter outlining its purpose and duties. Each committee charter must be submitted for review to the deputy commissioner who upon determining the charter is "inadequate… may require changes to the charter."

Under the new Plan of Operation, every board member must sign a conflict of interest statement "confirming that they do not have an interest that is in substantial conflict with the proper discharge of their duties." This statement is subject to review by the department, and it too is subject to changes required by the deputy commissioner who finds the statement inadequate. There is an existing conflict statement that SLTX gives all directors to sign at the board's annual meeting; it is unknown if the department considers this statement adequate.

Also subject to department review and change requirements are SLTX documents that lay out plans to train new directors, the duties of the executive director, investment and cash management policies, and purchasing procedures.

New language added to the final Plan of Operation specifies that documents or reports the staff provides to board members must relate to "overseeing stamping office operations."

Board Chairwoman Rosemarie Marshall, AmWINS Access, plans to call a meeting soon to update existing procedures and to identify any new procedures to be implemented to be fully compliant with the new Plan of Operation. Marshall said, "There will be operational and procedural changes required, and we will begin the necessary work to institute those changes as quickly as possible."

TEXAS SURPLUS LINE REPORTER & INSURANCE NEWS

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Ignorance, fear and intolerance are the disease

By Michael G. Manes
Manes and Associates

Corona is a beer. It is also a virus. Beer, not just Corona, has been part of the culture of America all of my life and before. In Texas and Louisiana, it is a bigger part of our lives than in many other states. Nonetheless, in less than 5 months, Corona the virus, not the beer, has taken over the conversation, our attention, our fears, our hospitals, the economy, for many our jobs, and almost every other aspect of our lives in our country and much of the world.

That's the bad news. The good news is this is a transition phase, not the end of the world. Treatments will be found, and the condition will become controlled and eventually eradicated. To offer you a perspective from a historical standpoint – my grandfather, his two brothers, and his two sisters were all lepers (patients with Hansen's disease).

The first in our family to be diagnosed and sent to the leprosarium was Norbert. He entered the facility in 1919. His brother Albert died there in 1977. In between, Edmond, Marie and Amelia served time at the facility. Each spent most of their adult lives incarcerated at the U. S. Public Health Service Leprosarium in Carville, Louisiana. All died there.

I moved to Baton Rouge in 1973 and was able to connect with Uncle Albert. By then, patients were no longer incarcerated in Carville; they just lived there. Those in remission could come and go if they chose to do so. Uncle Albert invited Sheila (then my girlfriend, now wife) and me to join him for dinner at the original Ralph & Kacoo's Restaurant along False River in New Roads. He greeted me at the door as Sheila took a side trip to "freshen up."

Albert asked, "Does Sheila know where I am (meaning Carville, the Leprosarium)?"

I answered, "Yes," and explained that she was okay with it. He would not have imposed his presence and his condition on anyone without their blessing. The stigma was still too great.

As we were leaving that night, Sheila gave Uncle Albert a big hug and a kiss. I will go to my grave certain that Sheila held a special place in Albert's heart because she had kissed a leper.

In the name of enlightenment, modern day Hansen's disease is different from biblical leprosy. Unfortunately, most people learned of leprosy from the Bible where it is mentioned 55 times in the Old Testament and 13 times in the New. Over time, medical science learned that 95 percent of the population has a natural immunity to the disease. The remaining five percent are vulnerable to the disease, but it is not nearly as contagious as most feared. Today the disease can be treated with medication and without isolation. Patients aren't segregated from society and don't have to call out "leper" as they walk in the street.

I share this personal story with you to encourage all of us to keep this newest pandemic in perspective. Be aware of your circumstances as they are, the safeguards you can use to protect yourself and your family from the condition, the treatments available and soon to become available, and the community that you touch daily.

Be sensitive to your own condition when you're well and if you get sick. Do not deny symptoms. If symptoms appear, seek treatment immediately. Keep a safe distance from others if you become infected. Follow your commons sense and doctors' orders. If you're so inclined, pray.

As a final thought, consider the changes to the marketplace, your world, my world, our economy, and our lives that are occurring now and will continue for a while yet to come. A cure will be found, and we'll return to a new normal until the next generation of change (whether it's leprosy, AIDS, Ebola, Corona, or some disease as yet unknown) freezes us in fear. Ultimately we must confront our fears, adapt and change, and we will prevail.

This pandemic has been a game changer. Our economy came to a screeching halt. The government is spending more money than we have to protect yesterday and today until we have a chance to build tomorrow. Those comfortable with yesterday will stress over the changes; the newbies in the market will probably welcome the changes that occur.

In the future, many will be working from home and liking it; some will miss the office. It doesn't matter. It's not a popularity contest. It is us feeling our way into a new tomorrow and the next generation of change that will occur and upset our now new comfort zone.

When one thing is different, it is change; when everything is different, it is chaos. Tomorrow may seem a world of chaos. The good news is that opportunities remain for those flexible enough and prepared for the world as it will be. Enjoy your ride; we each get only one ticket.

No Hansen's disease patients remain at the facility in Carville. The old timers have passed, and new patients with the disease can be treated at their home. The grounds at Carville remain unchanged from when it was the leprosarium. Most of the property is used as a boot camp for troubled youth. One building serves as a museum to tell the Carville Leprosarium story. I encourage you to visit the facility if you have the chance. It's about 30 miles from Baton Rouge near St. Gabriel, Louisiana, and was the only leprosarium in the continental United States. Understanding the impact and history of this disease eases the burdens of the current one.

"We have nothing to fear but fear itself." FDR. Peace.

***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 Louisiana State University.*

NEWS IN BRIEF

FROM PAGE 1

system. Neighbors Oklahoma, New Mexico and Arkansas are among the NAIC's State Based Systems members.

MERGERS/ACQUISITIONS

On June 5, Worldwide Facilities announced its acquisition of Royal Oak Underwriters, a wholesaler based in Richmond, Virginia. The acquisition marks an expansion of Worldwide Facilities' nationwide footprint. Royal Oak Underwriters serves retail agents in Virginia, Maryland, Washington, D.C, Pennsylvania, North Carolina and Tennessee. Marsh, Berry and Company served as the financial advisor to Worldwide Facilities in this transaction; **Tom Rogan** of TBR Consultants served as advisor to Royal Oak.

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Midyear Comparison of SLTX Premium Processed by Line of Business

Line of Business	Premium through 6/2020	Premium through 6/2019	Dollar Change	% Change
Fire (Including Allied Lines)	$1,437,738,074	$1,170,598,554	267,139,520	22.82%
Allied Lines	110,818,660	85,321,975	25,496,685	29.88%
Farmowners Multiple Peril	**831,583**	**1,215,901**	**(384,318)**	**-31.61%**
Homeowners Multiple Peril	**114,829,683**	**115,127,451**	**(297,769)**	**-0.26%**
Commercial Multiple Peril	165,526,795	157,364,069	8,162,727	5.19%
Ocean Marine	11,769,504	18,158,785	(6,389,281)	-35.19%
Inland Marine	**49,958,288**	**46,770,203**	**3,188,085**	**6.82%**
Medical Malpractice	**50,392,600**	**57,549,467**	**(7,156,868)**	**-12.44%**
Earthquake	472,657	182,702	289,956	158.70%
Group Accident & Health	38,340,231	44,454,595	(6,114,364)	-13.75%
All Other A&H	**5,300,545**	**6,639,895**	**(1,339,350)**	**-20.17%**
Other Liability	**1,671,412,629**	**1,482,171,802**	**189,240,827**	**12.77%**
Products Liability	13,863,137	13,538,390	324,747	2.40%
Oth Priv Pass Auto Liability	(76,118)	17,486	(93,604)	-535.31%
Other Comm Auto Liability	**113,352,085**	**116,551,115**	**(3,199,030)**	**-2.74%**
Private Passenger Auto P.D.	**456,286**	**302,338**	**153,948**	**50.92%**
Commercial Auto P. D.	96,889,144	99,017,070	(2,127,927)	-2.15%
Aircraft (all perils)	3,734,793	2,100,866	1,633,927	77.77%
Fidelity	**1,916,478**	**2,145,488**	**(229,010)**	**-10.67%**
Surety	**(6,685,651)**	**3,315,989**	**(10,001,641)**	**-301.62%**
Burglary & Theft	2,492,588	1,972,007	520,582	26.40%
Boiler & Machinery	0	623	(623)	-100.00%
Credit	**54,863,183**	**50,037,617**	**4,825,566**	**9.64%**
Agg write-ins for other lines	**3,066,373**	**589,572**	**2,476,801**	**420.10%**
TOTAL	**$3,941,263,546**	**3,475,143,960**	**466,119,586**	**13.41%**

Note: Due to rounding figures may not total.

Surplus lines premium

FROM PAGE 1

ing for 42.41 percent of first six months surplus lines premium, was up 12.77 percent, or $189.2 million. At the end of last year, Other Liability was up by 14.85 percent, sustaining the 14.04 percent growth it had achieved by midyear 2019.

Most of the gains within the Other Liability Line were in Excess/Umbrella, which was up $130.6 million, or 24.78 percent, and GL Premises Liability Commercial with an increase of $48.8 million, or 9.21 percent over midyear 2019. Also up within the line were GL Contingency Liability, Professional Other (including E&O), Professional D&O; Personal Liability, and Pollution.

These increases more than offset declines within the Other Liability line. Reported premium for Oil and Gas Liability decreased by $10.3 million or 28.4 percent. Smaller dollar decreases were shared by GL-Contractual, which had negative premium for the period; GL-Cyber Liability; Employers Liability; GL-Liquor; GL-Owners and Contractors Protective (OCP); Special Events Liability, and Terrorism.

After the two larger lines, the largest premium increase was in Allied Lines, up nearly $25.5 million or 29.88 percent. The next largest dollar gain was in Commercial Multiple Peril, up nearly $8.2 million, or 5.19 percent; still, this line trails its 2018 midyear results by more than $39.5 million in premium. The largest percentage increase was in Aircraft (All Perils), which was up 77.77 percent or $1.6 million. Together, these lines made up just over seven percent of premium reported to SLTX for the first half of 2020.

Declines in premium were spread over 12 lines. Together, these lines made up 10.8 percent of the total premium volume at midyear 2020. At the end of last year, these same lines made up 13.2 percent of surplus lines total premium volume.

The largest decline was in Surety, which reported more than $6.6 million in negative premium in 2020. Medical Malpractice premium was down nearly $7.2 million, or 12.44 percent; Ocean Marine was down nearly $6.4 million or 35.19 percent, and Group Accident and Health was down $6.1 million, or 13.75 percent.

Other lines showing midyear-to-midyear multimillion dollar decreases in premium were Other Commercial Auto Liability, down nearly $3.2 million or 2.74 percent, and Commercial Auto Physical Damage, down $2.1 million, or 2.15 percent.

Multi-state premium for the first half of 2020 was about $185 million, or 4.7 percent of the total taxable premium reported by June 30. At midyear 2019, multi-state premium was just under $210 million or 6.0 percent of the total taxable premium. By policy count, the 1,499 multi-state policies made up 0.4 percent of all policies filed by June 30, and was slightly up from the 1,479 multi-state policies filed in 2019's first half.

The midyear policy and premium report of the stamping office showed that there have been 1,305 policies filed for exempt commercial purchasers and 78 for industrial insureds through June 30, 2020.

SLTX continues to receive mailed filings, but noted that at midyear, 97.8 percent of all filings were made online. As of midyear, SLTX has collected more than $5.9 million in stamping fees.

Beginning this year, the Wholesale and Specialty Insurance Association will report at midyear and yearend premium totals and policy counts for the 15 states with surplus lines service offices, said Brandon. Previously, SLTX gathered and reported this information.

NEWS IN BRIEF

FROM PAGE 3

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 in June. The result is a unified carrier with more than $200 million of gross written premium. Lighthouse 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 company ranks 29th in market share among homeowners carriers in Texas according to TDI's 2019 Annual Report. The report attributed a 0.64 percent market share in Texas to the carrier, with $59.39 million in premium.

TWIA

The Executive Committee of the Texas Windstorm Insurance Association met on June 22 to review the employee benefits structure. Of particular concern is the deficiency in funding of TWIA's participation in the Pension Plan for Insurance Organizations, a defined benefit pension plan having 62 participating employers across the U.S. **Steve Weisbart,** chairman of the

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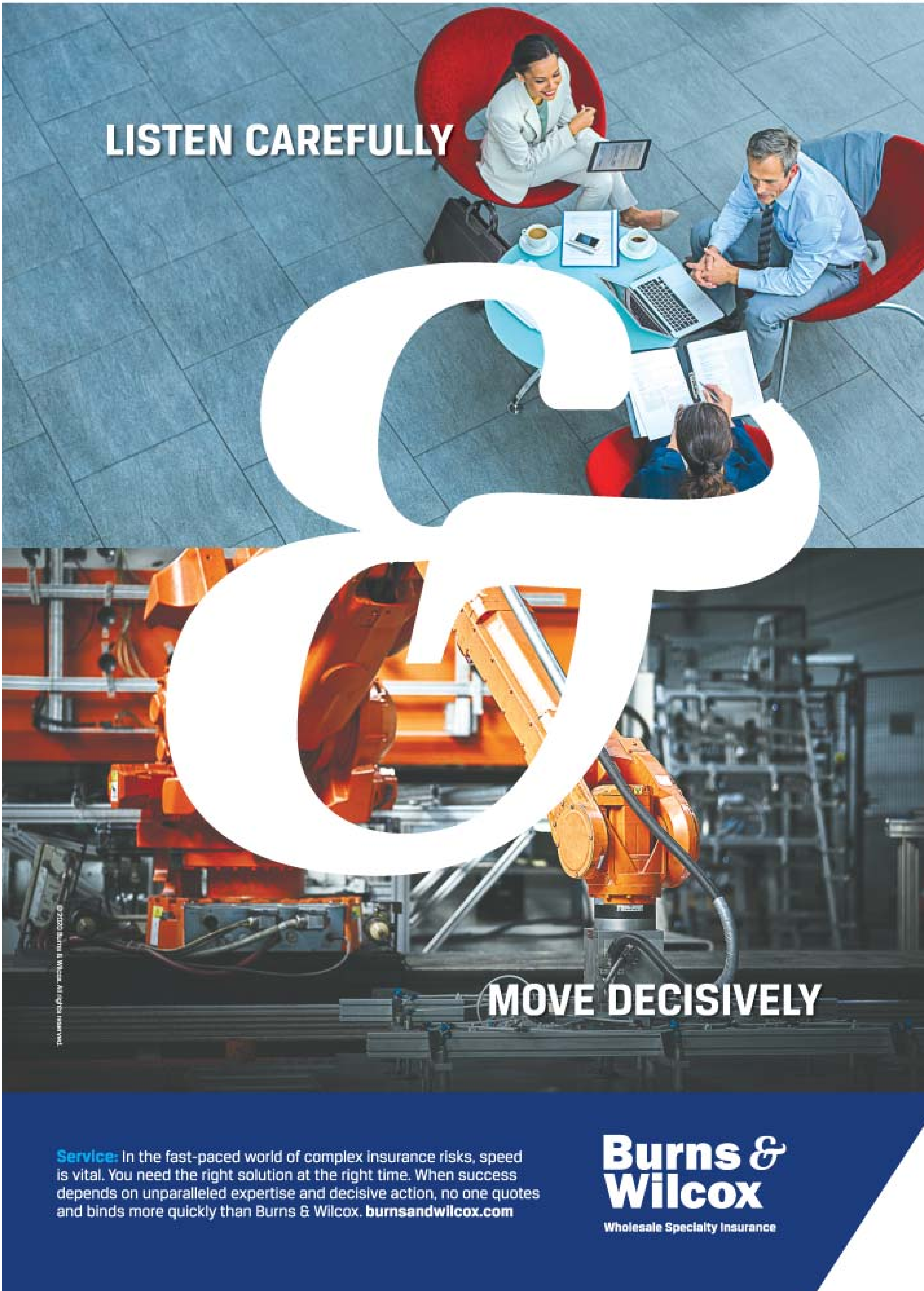
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Restaurateur's claim for COVID-19 business income is dismissed by Michigan court for lack of physical damage

A July 1 state trial court decision from Lansing, Michigan, likely brought a collective sigh of relief from insurers as Judge Joyce Draganchuk issued a summary disposition from the bench, finding Michigan Insurance not responsible for business interruption claims made by local restaurateur, Nick Gavrilides. It appears to be the first B/I court decision on a coronavirus claim in the U.S.

While the case appears to have resolved basic B/I property insurance coverage questions in one state, plaintiffs may still advance similar or other theories since insurance is regulated state-by-state and policy language may differ.

Draganchuk found that there was no property damage at the premises, so a business interruption claim was not triggered. Even if the plaintiff had alleged property damage resulting from the presence of the coronavirus, which he did not, said the judge, the virus exclusion of the policy would have nullified such a claim.

The July 1 hearing was conducted by video conference with the judge on the bench and attorneys and the plaintiff at various locations, presumably their homes or offices. The hearing was on defense counsel Henry Emrich's motion for summary disposition.

The policy wording was substantially different from the AXA case in France, said Dallas attorney Steven Badger, Zelle law firm, commenting on the case while he conducted a webinar simultaneously for TSLA and FIWT listeners.

At the hearing, Draganchuk said the plaintiff in the case focused on lack of access and, therefore, lack of use and loss, She said he looked at some "isolated words" of the policy, failing to take a "full look at the coverage that is provided under the policy."

The judge read parts of the policy from the bench: "Coverage is provided for actual loss of business income sustained during a suspension of operations…. The suspension must be caused by direct physical loss of or damage to property."

Draganchuk continued reading the policy into the record, "The loss or damage must be caused by or result from a covered cause of loss."

Draganchuk concluded, "Only direct physical loss is covered." She said relying on plain meaning of words as well as federal case law, "Direct physical loss of or damage to the property has to be something with material existence, something that is tangible… something that alters the physical integrity of the property." She said the plaintiff's original petition alleged nothing about physical loss or damage to the property. Instead, she said, the complaint talked about loss of business due to government orders shutting down restaurants for dine-in service. Plaintiff not only did not allege presence of COVID-19 in either of the plaintiff's two restaurants, the petition, said Draganchuk, stated that the virus was not present in either location.

She dismissed the plaintiff's argument that the physical requirement was met as a result of people being physically restricted from dine-in services as "simply nonsense." She also rejected the plaintiff's claim that the virus exclusion language of the policy was vague and, therefore, should not apply.

She went on to state, "A virus can't cause physical harm to a property because viruses harm people, not property." She further concluded that any loss due to government orders also required direct physical loss to property to become a covered claim.

According to the judge, plaintiff attorney Matthew Heos also alleged that the policy contained contradictions that "render it illusory" in that it conferred coverage for losses due to governmental orders, but then the policy took the coverage away.

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A virtual hearing in Michigan disposed of a COVID-19 business interruption claim. View hearing on YouTube; search for Judge Joyce Draganchuk.

IIAT chairman

FROM PAGE 1

taking Polaroid pictures and writing down measurements for the inspection reports the agency submitted to insurers on behalf of applicants for homeowners insurance. He was paid $5 per file. In his inaugural speech during the June 10 virtual installation, Nitsche recalled being a gopher, handyman, desk assembler and mover, mail boy and the computer help desk while enrolled in school.

Officially, Nitsche started at The Nitsche Group as CFO in 1995 when it carried the name Insurance Network of Texas, still a family run business but growing across the state. He had just earned an MBA from Southern Methodist, having earned his BBA from Baylor University in 1993. In 2010, Nitsche was appointed CEO of The Nitsche Group, which has undergone a few name changes over the years.

In 2010, Nitsche had just completed a three-year executive education program at Harvard Business School which combined on-campus and distance learning. The Owner/President Management (OPM) Program included at least one month on campus each year. Nitsche deems it an honor that he is considered a Harvard alumnus when he returns to the Boston campus each year for 10 days to renew his certification.

Nitsche sees his role with IIAT and his agency as a means to attract the next generation into the insurance business. He understands that the COVID-19 experience adds to the difficulty of inviting Generation Z-ers into insurance careers. The insurance industry "has an image issue going forward." As agents who have seen customers' claims denied for business interruption losses due to the pandemic, "it's tough…a P.R. nightmare," he said.

There are lots of upset customers, Nitsche said, even though he does not fault insurers for not paying losses that were never insured by the policy and for which no premium was paid. "Insurers must pay as contracted," he said. "Still, the perception looks bad."

For generations, insurance has had to overcome a "bad connotation" as a career choice. His predecessor chairman, Mark Ray, said the same last year when he had to convince his own father his insurance career choice was a noble one. Nitsche, his agency, the state association and the national Big I have a new challenge to overcome. Restoring a positive image of insurance is especially important, said Nitsche, because insurance is a part of every business and business deal. "There is no substitute for what we bring."

For two years, Nitsche served on the Advisory Board for Baylor Business School. While no longer on the advisory panel, Nitsche continues to serve as an occasional guest speaker in the college classroom. He has been discouraged in the past when college students don't have high regard for the career potential of insurance. "Kids look for industries that are great to be in," Nitsche said. "Insurance didn't make their top-10 list before COVID. This PR nightmare hurts our ability to promote the industry."

For encouragement, he looks to the new hires The Nitsche Group has made. One young man, a recent magna cum laude graduate of Baylor University, joined The Nitsche Group as his first job out of college. Nitsche said the young man has been "wowed by the role of insurance in people's lives."

Nitsche is committed to ELITExans to "get the word out to more young people and those young at heart who are looking for a career that is financially rewarding and makes a difference to others."

Nitsche is a fan of higher education, not just in the insurance field, as it prepares young people for the adult world. His dad founded a college scholarship in 1989, a scholarship award that continues today. The scholarship is in honor of his younger brother who died at 16 in an alcohol-related automobile accident. In addition to academic credentials, the scholarship rewards students who agree to abstain from alcohol until age 21. Since its creation, more than $625,000 has been awarded to college-bound men and women, who are able to renew their stipend on an annual basis while they remain qualified and enrolled.

Preparation is always good, said Nitsche, who relies on a lesson learned 10 years ago when he emergency landed a small plane on a feeder highway to I-35. Nitsche, the pilot, was the only person aboard for a twin engine certification flight. The engine blew up, and immediately Nitsche looked for a safe place to land. It wasn't as frightening as some think, he said, because he had practiced the maneuver. Many times when his instructor was onboard, the instructor would reach over and kill the engine as Nitsche approached the landing. Despite the student Nitsche's complaining, the instructor repeated this action, until he was certain that optimal preparation had been achieved.

It's a lesson in preparation that carries over into his career. Insurance is so specialized, Nitsche said. "It's not even understood by CPAs or attorneys. Yet it can offer professional level employment to people even without a college degree."

The Nitsche Group has about 107 employees, he said. More than half of the management team is under 40 or in their early 40s. He said he prefers bringing in young people as "there are no bad habits to break." They are also more adaptable; he said he doesn't hear anyone say "This is the way we've always done it."

Nitsche was installed chairman of IIAT by his father R.J. Nitsche during the June 10 virtual business meeting. Nitsche is joined on IIAT's executive team by Gaylon Brown, TexCap Insurance in Dallas, as chairman-elect, and Mark Bridges, Insurica in Amarillo, as vice chairman. New board members include Billy Crocker, Alliant Insurance in Austin, and Casey Nelson, Integrity Risk Management in Frisco. Executive director Marit Peters thanked outgoing board member Jeff Brady, who she said has been on the board throughout her entire tenure with the association.

Restoring a positive image of insurance is especially important, said Nitsche, because insurance is a part of every business and business deal.

Elected officers for IIAT 2020-2021 term raise their right hands for R.J. Nitsche to install them virtually.

Case dismissed

FROM PAGE 6

Draganchuk found the policy language clear and consistent on the "physical damage requirement," not contradictory as the plaintiff alleged.

Heos offered to amend the petition if given the opportunity; however, Draganchuk made it clear that no alteration of the petition could change the fact that there is no direct physical loss to the property that would trigger coverage under the insurance policy.

The lawsuit stemmed from Michigan Insurance's denial of a $650,000 business interruption claim. The hearing was conducted on Zoom and recorded; it can be viewed on YouTube; search for the judge's name. As of July 17, the YouTube recording had 5,834 views, 44 thumbs up, 2 thumbs down and six comments.

IIAT honors young agent and veteran account manager

The Independent Insurance Agents of Texas conferred annual honors of ELITExan Young Agent of the Year and Account Manager of the Year for 2020 despite not being able to host its annual trade show and convention in person in San Antonio as planned. Among his parting duties as outgoing chairman of IIAT, Mark Ray, Borden Insurance Agency, announced Russell Luttrell, Benton-Luttrell Insurance, as the young agent honoree, and Karla Stoffle, Upshaw Insurance, as the honored account manager during the virtual annual business meeting on June 10.

Luttrell, said Ray, grew up in the insurance business. His father, Roger, is partner/owner of Benton-Luttrell Agency. Still, the younger Luttrell started his financial services career initially as a commercial banker, then joined the carrier side of the insurance industry, where he worked for 10 years. He joined Benton-Luttrell Insurance in Van Alstyne in 2017.

Luttrell worked five years for Central Insurance Companies as a commercial lines underwriter in its Irving office. Then he joined FCCI Insurance Group in 2012 to assist the carrier in entering the Texas market. Before Luttrell left FCCI in 2017, the insurer grew from no Texas presence to more than $50 million in written premium. Today, Luttrell is risk advisor at the Benton-Luttrell Insurance agency. His primary focus is on commercial lines production.

Luttrell

Having earned a B.A. from Texas Tech University in 2005, Luttrell continued his professional education, earning CPCU, CIC and AU designations. His volunteer experience includes Embrace Texas and the Leukemia and Lymphoma Society. Luttrell has also served the McKinney Chamber of Commerce through the McKinney Young Professionals.

The award conferred on Luttrell, officially named the André P. Juneau ELITExan of the Year Award is given annually to a young insurance professional in Texas who has achieved success through hard work, community engagement and industry participation in a manner that is considered exceptional for his age. The award is named for a past president of IIAT who died in 2006 from cancer at 47. Juneau himself received the Young Agent Award in 1995.

Account Manager of the Year Karla Stoffle exemplifies outstanding leadership and service to the independent agency system and to the public.

Stoffle has 38 years of experience in the insurance industry, having been both a claims specialist and an account service representative. She has been an account executive with Upshaw Insurance since 2012. Previously, Stoffle was with Amerisure Insurance, Unitrin Business Insurance and Specialty Insurance Managers.

Stoffle serves on Upshaw's communications, education and community involvement committees. She said her favorite volunteer work is with Habitat for Humanity, a cause she donates to, raises money for and provides hands-on labor. "The look on the families' faces when they are given the keys is priceless and moments I cherish forever," she said.

Ray acknowledged Stoffle as "an amazing person." Customers comment on her courtesy, said Ray, adding that her nomination for the award noted that she spreads happiness among customers and colleagues at the agency.

The account manager award includes a $1,500 prize, travel expenses and complimentary registration to the Joe Vincent Management Seminar in Austin in January. There Stoffle and Luttrell will be acknowledged in-person before the insurance professionals attending the event. At that time, the 2020 Drex Foreman Award, IIAT's highest award will be conferred. The Drex Foreman Award, usually announced at the annual trade show convention in June, honors an insurance leader's long-term service to the industry, the association and the community.

Stoffle

During the business meeting in June, Ray also recognized ELITExas for its fundraising efforts that culminated in donating $35,280 to Feeding Texas. The contribution was made up of $17,640 raised online by the young agents and matched by IIAT. The amount raised will fund more than 140,000 meals for needy Texans.

ELITExas presents $35,280 to Feeding Texas on behalf of the young agents and IIAT. Behind their COVID-19 protective masks, from left, are William Page, Marsh Wortham; Billy Crocker, Alliant Insurance Services; Jill Douglas, IIAT, Dawn Starostka, Feeding Texas, and Meredith Spears, BKCW Insurance.


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Compensability for the 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. 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

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Stamping fee

FROM PAGE 1

ing office revenue. He noted that surplus lines policy pricings are increasing, but a reduced surplus lines policy count could bring a decrease in surplus lines premium.

A more rapid decrease, said Robinson, could potentially trigger another increase in the stamping fee, which "would put additional strain on the industry."

SLTX is limited by its Plan of Operation to maintain an unrestricted reserve fund balance no greater than double the rolling annual average of the previous five years of audited operating expenses. As of April 30, 2020, this formula puts the maximum fund balance at $7.3 million. The actual balance on April 30 was $22.0 million, or $14.7 million in excess.

Back in 2016, the stamping fee was increased to cover added expenses of a technology project. Then, as revenue exceeded expenses, the board started to designate excess funds for the purchase of a home-office building, a purpose not specifically allowed in the stamping office's Plan of Operation. In 2019, the real estate fund was abolished, returning $10.0 million to the unrestricted fund balance. Over the course of the four years 2016 through 2019, SLTX's total revenue of $35.9 million exceeded its expenses of $14.8 million.

Robinson's conservative approach projects $65.8 million in stamping fees over the next five years if held at the current 0.15 percent level. Expenses over the same period of time are projected at $31.7 million. At this rate, the unrestricted fund balance would reach $60.2 million by the end of 2025.

Instead, the halving of the fee would produce a fund balance of $12 million by that time, still above the current maximum level, but likely closer to the maximum allowed level as SLTX projects expenses to grow by about 5.89 percent each year during that period. Robinson settled on this growth rate because it is the average SLTX growth rate over the previous 20 years. He projected the unrestricted fund would diminish to its allowed maximum by 2034.

All nine board members were present for the June 25 meeting. One day earlier, the proposed reduction was reviewed by the SLTX Finance and Audit Committee, which in turn recommended the adjustment to the full board. One board member, Kori Johanson, H.W. Kaufman Group, abstained on the board's roll call vote on the stamping fee.

The insurance commissioner has final say on the timing and amount of the stamping fee reduction.

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."

COVID compensability

FROM PAGE 10

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 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 will 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.

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.

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COVID compensability

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

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.

NEWS IN BRIEF

FROM PAGE 4

PPIO named fiduciaries and chief economist of the Insurance Information Institute, told the committee that TWIA's funding ratio is currently at about 70 percent of what it is obligated to contribute, and the association is required to amortize its shortfall to reach 100 percent within eight years. TWIA's total pension plan obligation for the coming year was estimated at a $1.9 million normal contribution, plus a $460,000 contribution to edge toward the required funding level.

In preparation for its Aug. 4 board meeting which is slated to include discussion of possible rate changes, the Texas Windstorm Insurance Association held a publicly available online meeting of its July 21 Actuarial and Underwriting Committee to review the staff prepared rate adequacy analysis. Willis Towers Watson, the firm selected on June 30 to perform an independent study of TWIA's rate adequacy and use of hurricane modeling in rate setting, offered preliminary comments. By law, TWIA must submit an annual rate filing with the Texas Department of Insurance by Aug. 15.

SLTX

During the board meeting of June 25, the Surplus Lines Stamping Office of Texas staff announced that the total cost to date of implementation of the SMART electronic filing system is about $6.55 million, with some work remaining, despite the June 12 partial release. The latest release does not yet include capabilities for corrections, reports, downloads or significant inquiries, which should still be completed in the Electronic Filing System. As features are deployed for SMART, filers will be notified.

MARIT'S READS

John Maxwell's "How Successful People Lead" is an inspiring and quick read. I found this book in the pocket of an airplane seat during the first week of my new job five years ago. It was exactly what I needed to focus my leadership journey. Maxwell outlines essential things you need to know about the five critical stages of leadership: Position–People follow because they have to; Permission–People follow because they want to; Production–People follow because of what you have done for the organization; People Development–People follow because of what you have done for them personally; Pinnacle–People follow because of who you are and what you represent. For each level you will learn the upsides and downsides, and how to master one level and move up to the next. There are great reminders for all of us no matter our position in an organization. One of my favorite quotes is "If you think you're leading but no one is following, then you are only taking a walk."

-**Marit Peters**, IIAT president and executive director

London views

FROM PAGE 1

aging agents and insurance companies who wrote business interruption insurance continues in the U.K.'s High Court test.

Having filed a 42-page defense document, Lloyd's managing agent Hiscox was not delighted to learn that the court allowed the Hospitality Insurance Group Action and the Hiscox Action Group to intervene in the test case and make written and oral submissions. The Hiscox Action Group has 369 plaintiffs who claim $60 million in damages. So far, all the defendants have filed their defense documents, and these are available on the Financial Conduct Authority's website. The FCA has served its reply, which sets out its response to the defenses. The FCA received more than 90 detailed submissions from policyholders and other stakeholders on the defenses.

What happens now is a series of arguments by the FCA and defendants before the judges. The judges will consider their verdict between July 20 and July 30. Until then, there will be a lot of worried people.

Axa's payout on COVID-19 BI claims

To the dismay of the insurers fighting against business interruption payouts for COVID-19 claims, Axa and its U.K. subsidiary, Axa XL, have paid COVID-19 claims on policy forms that are similar to those being defended in the High Court.

This is the first time the London market has fragmented on the issue and is worrying insurers, as they see this move undermining arguments that they are not liable under their similar wording. The way the laws work in the U.K. is that words have their natural and ordinary meaning. If there is any ambiguity, a court may be influenced by what the London market as a whole understands by the term or phrase.

Obviously, one insurer paying out does not make its rivals pay out as well. Individual circumstances are taken into account, but then again, an insurer may want to pay out for reputational reasons. Apparently, while Axa refuses claims under its standard policy, the ones it paid on are all placed through brokers and had separate wordings.

Lloyd's ideas for recovery

Although still in the middle of the COVID-19 crisis, Lloyd's is already looking at how the insurance industry could fast-track global economic and societal recovery from the far-reaching impacts of COVID-19. Lloyd's idea is for three partnerships to understand, model and provide insurance for systemic catastrophic events. Lloyd's sees three customer needs. In the short term is the need to ensure business resilience to a further wave of COVID-19 and to safeguard employees and customers as a business reopens. The medium-term need is for more flexible insurance cover for the more volatile business environment, including protection for a resilient supply chain, and protection from cyber and digital economy risks. Third, there is the long-term need for risk mitigation and prevention services. Two of these needs require support from governments and the reinsurance industry, but if enacted could provide protection for future waves of COVID-19 as well as other future pandemics. Lloyd's has developed these ideas into a report titled Supporting Global Recovery and Resilience for Customers and Economies: the Insurance Response to COVID-19.

Lloyd's has come up with three proposals for the industry. The first proposal is called ReStart. This is a new insurance solution that Lloyd's is developing to offer business interruption to cover future waves of COVID-19. To achieve this, Lloyd's plans to pool limited capacity from several Lloyd's syndicates. Initially, the cover would be offered only to smaller businesses but would be expanded in time.

Proposal two, known as Recovery Re, is a Lloyd's plan to offer after-the-event insurance. As the name suggests, this is aimed at getting damaged business and economies back on track following a pandemic. It would provide immediate relief and cover for non-damage business interruption risks over the long-term. Cover for the current COVID-19 crisis could be included. If executed, Recovery Re could efficiently inject commercial and government funds into an economy and support those customers who have limited borrowing capacity. This is an international solution and could be adopted in any country where the government has the resources, financial markets and the commitment to support it.

The term black swan is used for an unpredictable event that is beyond what is normally expected of a situation. Lloyd's adopted this name for its third proposal, Black Swan Re. This is a reinsurance framework for a government and insurance industry partnership to protect customers from a black swan incident that could cause devastation and long-term impact. While a pandemic would trigger claims from Black Swan Re, other events, such as the loss of critical infrastructure or utilities, could also trigger recoveries. Lloyd's idea is for a reinsurance company that would supply cover for commercial non-damage business interruption for black swan events through insurance industry pooled capital that would be backed by government guarantees to pay out if the pool had insufficient funds. The idea is similar to that of government backed terrorist pools around the world.

Lloyd's also believes there is a need to better understand, model and provide insurance for systemic catastrophe events. Lloyd's intends to kick-start the creation of a Centre of Excellence, already partly accomplished with Lloyd's Innovation Lab, which works with insurtechs that can provide some of these capabilities. Work is going on to explore the application of an epidemic tracker to better evaluate and underwrite pandemic risk, as well as solutions to help close the insurance gap for systemic risks. In parallel, Lloyd's Product Innovation Facility focuses on innovating products to respond to an accelerated shift toward intangible-driven business models in response to COVID-19.

Lloyd's to reopen Sept. 1

Lloyd's hoped to return home in August, but that has been pushed back until Sept. 1. There are detailed plans in place to enable the reopening of Lloyd's 1 Lime Street headquarters and underwriting room while adhering to government guidelines ensuring social distancing. The government easing of the U.K.'s COVID-19 lockdown will have to continue.

The health and safety of all market participants and minimizing the spread of the COVID-19 virus is Lloyd's principal priority, so when the market reopens, it will look vastly different with several important safety measures in place. There will be fewer people. The capacity of those allowed to work in the underwriting room will be reduced from its usual 100 percent to 45 percent. This will allow everyone to adhere to the U.K. Government's social distancing guidelines. Clear plastic screens will be installed on all underwriting boxes to enable confidential conver-

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sations to safely continue.

That leads to another problem. What happens when the 45 percent capacity is reached? For normal shopping in the U.K. this isn't too much of a problem. You wait in a queue outside until someone leaves, and the queue master lets in the next person. Lloyd's is therefore working with the market to determine a class of business rota system to help manage capacity in the underwriting room.

Usually, each managing agent sets its own opening hours, so some syndicates are willing to write business at 9.00 a.m., while others want their coffee first. With safety now a priority, this system is being reviewed with the market, and there will be confirmed opening hours for everyone.

There are usually four ways to enter the underwriting room on the ground floor. In the U.K. two-way openings are not allowed, so Lloyd's will operate with two entrances and two exits to the building, as well as queuing and one-way systems installed in a variety of locations. Escalators will be operational for normal use; and lifts will be restricted to two passengers at a time.

There will be no compulsory temperature-check on arrival, but Lloyd's will provide thermal cameras for voluntary use.

Will Lloyd's staff return?

While Lloyd's plans are going ahead, there are still concerns about how many people will return to the market. In the U.K. anyone over 70 is supposed to self-isolate, and several in the Lloyd's community are above 70. For the younger members of the community, there may be childcare problems because U.K. schools are closed until later in the year.

However, the main threat to the reopened room is changes in the way the market operated over the last few months. Many companies have adopted digital trading with staff benefitting from no commuting and employers benefitting by reduced operating costs.

To help the market, Lloyd's accelerated its plans to improve its digital connectivity. This does not just apply to the Lloyd's building but also online with a virtual room. This online environment will combine the best features of 1 Lime Street with digital technology as part of the market's Future at Lloyd's.

Lloyds is testing a number of digital platforms that will enable brokers and underwriters to connect and collaborate online and aims to launch a virtual room by Sept. 1. To support the concept, a number of digital connectivity enhancements will be put in place. They include a Connectivity Bar, which will be located on the ground floor of the Lloyd's building and will act as a help desk for all market participants. Digital booths will be located in the café area and other spaces to allow confidential virtual meetings. The booths will be equipped with the latest digital screens and high-speed WiFi connections. Network connectivity around the Lloyd's building has been enhanced, enabling easier and quicker public access to Lloyd's high speed WiFi network.

API simplifies electronic placement

Apart from all the changes to the room, Lloyd's has announced a new application program interface (API), which will help London Market brokers and underwriters place business electronically. This forms part of Lloyd's work on developing the next generation of PPL (Placing Platform Limited). The new interface enables the frictionless flow of electronic placement data for submissions and quotes between carriers and brokers using either PPL or any other proprietary electronic placing platform.

Atrium Underwriting Limited will be the first to adopt the new API, which was developed by Lloyd's in collaboration with PPL and LIMOSS as well as several other Lloyd's brokers and underwriters. LIMOSS stands for London Insurance Market Operations and Strategic Sourcing. It is a not-for-profit company set up by the Lloyd's Market Association, the International Underwriters Association and Lloyds. The company sources and operates common market services for the London Insurance Market.

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AmTrust reaches $10.5 million civil settlement with SEC

AmTrust Financial Services Inc. and its former chief financial officer agreed June 17 to pay $10.5 million to settle allegations they failed to fully disclose how they estimated losses from insurance claims. The civil settlement with the Securities and Exchange Commission resolves an investigation that has been going on the better part of seven years, according to news sources.

The SEC said in a statement on June 17 that it had charged AmTrust and its former CFO, Ronald E. Pipoly Jr., with failing to disclose material facts about how the company estimated its insurance losses and reserves from Dec. 31, 2009, through Dec. 31, 2015.

According to the SEC complaint, AmTrust and Pipoly failed to properly disclose the company's process for reporting management's best estimate of loss reserves in its filings with the SEC. The complaint alleges that AmTrust and Pipoly disclosed the company's general actuarial process for estimating loss reserves, but failed to disclose that Pipoly made consolidated accounting adjustments that did not properly consider the actuarial analyses and diverged from the company's actuarial estimates.

The complaint further alleges that AmTrust failed to disclose the specific factors or assumptions supporting Pipoly's judgmental adjustments, and failed to maintain sufficient supporting documentation for management's best estimate. Further, AmTrust and Pipoly allegedly failed to disclose the loss contingencies created by Pipoly's judgmental adjustments to the company's historical experience. According to the complaint, by the end of 2015, Pipoly's total adjustments exceeded $300 million and impacted all of AmTrust's reporting segments.

The SEC's complaint, filed in federal court in the Southern District of New York, charges AmTrust and Pipoly with violating the antifraud provisions of the Securities Act of 1933, and violating or aiding and abetting violations of the reporting, record-keeping, and internal controls provisions of the Securities Exchange Act of 1934.

Without admitting or denying the SEC's allegations, AmTrust and Pipoly have agreed to permanent injunctions against future violations of these provisions and to pay civil penalties of $10.3 million and $75,000, respectively. Pipoly also agreed to disgorge $140,000 and pay $22,499 in prejudgment interest.

The settlements with AmTrust and Pipoly are subject to court approval, the SEC said in its statement.

The SEC's investigation was conducted by investigators in the SEC's Fort Worth Regional Office, and the SEC's litigation was led by attorneys of the Fort Worth Office.

AmTrust is a Delaware corporation, headquartered in New York. AmTrust's common stock was registered with the SEC and traded on the NASDAQ. AmTrust's preferred stock and subordinated notes were registered and traded on the New York Stock Exchange.

As of Dec 31, 2015, AmTrust had 17 wholly owned domestic subsidiaries that collectively were licensed to provide workers' compensation insurance and commercial property and casualty insurance in all 50 states, the District of Columbia and Puerto Rico. AmTrust's wholly owned international subsidiaries also provided insurance in Europe and Bermuda, according to the SEC civil proceeding.

As the SEC described it, AmTrust was a "highly acquisitive" company that grew rapidly, both domestically and internationally. The company's consolidated gross written premium surged from $1.2 billion in 2009 to $6.8 billion in 2015. By Dec. 31, 2015, AmTrust had approximately 6,200 employees serving 12 countries and territories.

On June 21, 2018, AmTrust's public stockholders approved an offer to purchase their common stock in a going-private transaction. The transaction closed on Nov. 29, 2018, and trading in AmTrust's common stock was suspended, according to the SEC's civil action. AmTrust's common stock was subsequently delisted, and on Feb. 7, 2019, AmTrust voluntarily delisted the listed securities as well. As a result AmTrust's reporting obligations were suspended, and AmTrust is no longer required to file any reports with the SEC.

Before AmTrust announced the go-private deal in January 2018, AmTrust's common stock had tumbled to less than $9 per share in late November 2017 from about $28 per share in December 2016, according to S&P Global. The company had made multiple earnings restatements and delayed making required financial reports in 2017. Those issues were accompanied by "substantial quarterly losses" and charges that surprised the analysts who followed the insurer at the time, S&P Global said.

When the deal was proposed, the Karfunkel-Zyskind family owned or controlled about 43 percent of AmTrust's outstanding common shares, S&P Global reported, a stake large enough to control the company led by Barry Zyskind. Shareholders weren't happy with the proposed deal and pushed for a higher price. Eventually, a panel of directors agreed to $12.50 per share.

Ultimately, investor Carl Icahn pressured the family and Stone Point to raise their offer to $14.75 a share, where the deal closed in November 2018 at an equity value of $2.9 billion, S&P Global said.

A class action lawsuit was filed against AmTrust, Zyskind and Pipoly in July 2014 seeking damages on behalf of investors who purchased AmTrust common and preferred stock between Feb. 15, 2011, and Dec. 11, 2013.

In the lawsuit, plaintiffs Michael Harris and Stuart Schapiro alleged that AmTrust understated its losses from insurance operations by $289.9 million, and thereby overstated its income by a like amount. The plaintiffs cite a Dec. 12, 2013, report by analyst firm Geoinvesting that exposed AmTrust as a "House of Cards." Drawing on financial information that AmTrust's subsidiaries filed with state insurance commissioners in the U.S. and in Bermuda, Geoinvesting demonstrated that from fiscal 2010 through 2012, AmTrust concealed the $289.9 million in losses through an "unknown accounting manipulation."

AmTrust's subsidiaries' individual financial reports filed with insurance regulators showed aggregate loss and loss adjustment expenses for 2010 through 2012 that was $289.9 million greater than the loss and loss adjustment expenses that AmTrust reported in its consolidated financial statements in its annual reports with the SEC for 2010 through 2012.

In a footnote, the plaintiffs explain that Geoinvesting hypothesized that AmTrust hid the losses by having its U.S. subsidiaries cede some of their losses to AmTrust's Bermuda reinsurer, which then ceded them to its Luxembourg subsidiaries, while retaining the corresponding insurance premiums in its Bermuda subsidiary. AmTrust then consolidated its entire operations without ever recognizing or revealing to investors at least $276.9 million of losses ceded to its Luxembourg subsidiaries. Plaintiffs could not determine whether or not that particular accounting manipulation actually occurred.

AmTrust responded to the Geoinvesting report by contending the report was full of inaccuracies and that AmTrust's financial reporting and that of its foreign subsidiaries was in conformity with GAAP, AmTrust said in court papers filed in the U.S. District Court for the Southern District of New York.

In his opinion filed Sept. 9, 2017, U.S. District Judge Lewis A. Kaplan of the Southern District of New York saw things AmTrust's way and dismissed three lawsuits that were filed in 2017 alleging securities violations. The lead plaintiff was New England Carpenters Guaranteed Annuity and Pension Funds. Other plaintiffs were Albano and Jupiter Capital, ILRT and Stanley Newmark.

What the plaintiffs did know is that, prior to AmTrust, Pipoly was the controller and an executive officer at PRS Insurance Group, the parent company of Credit General, a property and casualty insurer that was liquidated in 2001 by Ohio regulators after it was revealed that its CEO, Robert Lucia, had committed fraud and stolen $30.0 million through transactions with a series of related party offshore entities. Lucia was accused of bank fraud, money laundering and filing false tax returns in a 16-count federal indictment for his fraud at PRS. He pled guilty and was sentenced to 10 months in prison and fined more than $56,000.

Pipoly became CFO of AmTrust after he assisted AmTrust in purchasing certain assets from PRS Group, according to the lawsuit. Pipoly served as executive vice president and chief financial officer of AmTrust from 2005 until June 5, 2017, according to court documents.

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Lloyd's merges board and council

Lloyd's has now merged its board and ruling council to form a single governing body. It has taken steps to ensure its governance and management of the Lloyd's market and corporation are as efficient as possible while representative of different stakeholders. Originally proposed in November last year, the Lloyd's Market Association (LMA), the Association of Lloyd's Members (ALM), the High Premium Group (HPG) and Lloyd's Members' Agents consulted on the project.

Lloyd's confirms that, effective June 1, the members of the council are its chairman, Bruce Carnegie-Brown; eight members nominated by the Bank of England, including John Neal (Lloyd's CEO), Angela Crawford-Ingle (Audit Committee chairwoman) and Neil Maidment (Risk Committee chairman); three working members; two corporate external members, and one individual external member.

Originally there was to be a fully contested election process in April but COVID-19 prevented that from happening. Instead, Lloyd's rolled over existing members of the council and retained Karen Green and Dominick Hoare as special advisors to the council until full elections can be held, which is expected to happen before the end of 2020.

TDI Final Disciplinary Actions, June 2020*

Date	Name and City	Action Taken	Violation
6/2/2020	Amica Mutual Insurance Company, Providence, Rhode Island	Restitution ordered to claimants whose prior roof claim was paid at ACV amount; report to TDI due Sept. 1, 2020[C1]	Failed to conspicuously place notice of reduction in roof coverage in homeowners' renewal policies
6/29/2020	Cable's Roofing & Construction; Darren L Cable, Tyler	Fined $2,500[C2]	Roofing company and owner acted and/or advertised as a public insurance adjuster without a license
6/29/2020	Elite Home Solutions Inc.; Kirk Buchanan, McKinney	Fined $6,000[C2]	Roofing company and owner acted and/or advertised as a public insurance adjuster without a license
6/16/2020	Nationwide Lloyds of San Antonio Nationwide Property and Casualty Insurance Company; Nationwide General Insurance Company, Columbus, OH	Fined jointly and severally $300,000; restitution ordered with report due to TDI by Aug. 1, 2020[C2]	Violated laws relating to rate filing requirements, disclosure of deductibles, claims practices, and cancellations and non-renewals
6/29/2020	Daniel Sanchez, Brownsville, TX	Ordered to pay $3,113 in restitution[C1]	Collected payment from an insured for coverage but did not forward payment to the insurer
6/16/2020	Trevor Schulze, Denver, CO	Adjuster designated home state Texas license granted subject with one-year probated suspension[C2]	Felony kidnapping conviction related to domestic dispute with spouse; rehabilitation demonstrated

***Except for consent orders, actions may be appealed to State District Court.**

[C1]Consent order: Parties agreed to consent order with express reservation that they do not admit to a violation of the Texas Insurance Code or of a rule and that the existence of a violation is in dispute.

[C2]Consent order: Parties waived rights to other procedures.

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