

# Claims<sup>®</sup>

COVERING THE BUSINESS OF LOSS

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# EDITOR'S NOTE



Cali Grimbela

**T**here has been an avalanche of sexual harassment claims in the mainstream media of late as men in all areas of business have faced a wide range of accusations. As more and more women come forward to share their experiences, the reactions have been varied and no one disputes that sexual harassment exists in every industry.

For insurers, each claim will need to be explored and the outcome determined on the case's individual merits. Some claims will be denied due to lack of evidence or the length of time that has passed since the incident, others may be covered by employment practices liability insurance.

A couple of things to keep in mind. For anyone who has been subjected to some form of harassment, the details will be clear and memorable, no matter how many years or months have passed. Each woman will have her own reasons for not coming forward when the event occurred or will be able to explain what happened when she did.

I know first-hand that people are reluctant to believe the word of a young employee over the word of a man who holds a position of power and has been with a company for many years. It is a classic case of "he said," "she said," and usually there is limited evidence that the harassment occurred because it normally takes place when no one else is around.

If the employee doing the harassing has been employed by a company for a while, people do know about the behavior but may say that's the way he is, or you'll just have to put up with it. Women are frequently told that no one will believe them or that if they report it, no one will want to hire them in the future. In my case, I told several people inside and outside of the company who did nothing, so ultimately I chose to leave – older and wiser.

There are other types of harassment in the workplace that employers should be aware of and have policies in place to address. Both parties to any incidents need to be treated with respect and have the opportunity to be heard. Ken Brownlee provides an excellent overview on questions to ask and what to consider when one of these claims crosses your desk.

Sadly, this is one type of claim where there will be no winners, only losers.

A handwritten signature in black ink that reads "Patti Harman".

**Patricia L. Harman**, Editor-in-Chief  
pharman@alm.com

# NATIONAL REPORT



## California Dept. of Insurance Issues Formal Notice about Wildfire Claims

By Rosalie L. Donlon, PropertyCasualty360.com

In the aftermath of the Northern California wildfires, on Nov. 20, Insurance Commissioner Dave Jones directed the California Department of Insurance to issue a formal notice to insurers, licensed public adjusters and admitted carriers to make sure all claims adjusters assigned to wildfire claims, including those not licensed in California, are properly trained on the California Unfair Practices Act,

Fair Claims Settlement Practices Regulations, and all laws relating to property and casualty insurance claims handling.

The guidance continues to be important as Southern Californians deal with wildfires in the Los Angeles area.

On Oct. 13, 2017, Jones issued a Declaration of Emergency Situation in California due to the fires, which allowed insurance companies to use out-of-state

adjusters to handle the large volume of claims resulting from the North Bay Fires and other fires. Recently, the commissioner said in a statement, his office has received feedback from wildfire survivors, public officials and others that some of the representations made by insurance adjusters conflict with California law.

“Helping residents start the claims process in the face of so many losses and claims necessitated extraordinary actions,” said Insurance Commissioner Dave Jones. “While getting claims settled is a priority, it must be done according to the laws in place to protect policyholders through a difficult process. I issued this notice to remind insurers that claims adjusters must be properly trained and process all claims according to California law.”

### Misinformation is worse than no information

The Department of Insurance noted that several fire survivors provided examples of incorrect insurer statements, such as the following:

- An incorrect time frame was provided to collect full replacement cost to rebuild. Policyholders were told they have between 6 and 12 months. In a state of emergency, as these fires were, policyholders have no less than 24 months under California law.
- Fire survivors were advised that if they decide not to rebuild in the same location, the policyholder could not receive full replacement benefits. Instead, California law provides policyholders may choose to rebuild in the same location, a new location or purchase an already built home in another location.
- Survivors were told their additional living expense benefit would expire in 12 months. Under California law, in a state of emergency, policyholders have up to 24 months.

Any insurance claims adjusters with questions regarding the notice should call the Department of Insurance Licensing Hotline at 800-967-9331.

# Catastrophe Losses Triple for P&C Insurers in 2017, Fitch Ratings Reports

By Danielle Ling, PropertyCasualty360.com

North American property & casualty insurers were hit hard by catastrophe losses in the first nine months of 2017, leading to a deterioration in operating results, a new Fitch Ratings special report explains.

Fitch Ratings compiled nine-month GAAP financial results for 52 P&C reinsurers that are publicly traded or report GAAP consolidated results.

The nine-month GAAP financial results for this group show operating return on equity (ROAE) declined to 4.3% compared to 7.1% in the first nine months of 2016. The Fitch report says only seven out of the 52 P&C insurers reported an operating ROAE above 10% through the first three quarters of this year.

Driven by Hurricanes Harvey, Irma and Maria, reported catastrophe losses nearly tripled from this time last year to \$27.9 billion, compared to \$9.7 billion in 2016. Experts say 2017 could end up being a record year for insured catastrophe losses, as various industry estimates expect losses to reach \$70-100 billion.

“The reinsurance and Florida specialist segments were especially hit hard by catastrophe losses, which represented nearly 25% and over 16% of earned premium through the first nine months of this year, respectively,” said Director Chris Grimes of Fitch Ratings. Fitch believes that 2017 may see a record for insured catastrophe losses for the U.S. property and casualty market.

Strong investment results offset the weaker underwriting earnings, the report explains. The aggregate group (excluding Berkshire Hathaway Inc.) reported realized gains of \$2.1 billion in the first 9 months of 2017, up from a \$400 million realized loss in 2016.

Boosting operating results across all sectors, net investment income increased to \$36.5 billion, compared to \$34.6 billion in the previous year.

Fitch maintains a Stable Rating Outlook for each of the sectors covered in this report (U.S. commercial, U.S. personal, and global reinsurance). Broad-based rating changes are unlikely in the next 12-24 months. Personal and commercial lines have stable sector outlooks, while the reinsurance sector’s outlook is negative, as intense market competition and sluggish cedent demand have resulted in a soft reinsurance capacity.

Fitch’s “North American Property & Casualty Insurers Nine Month 2017 Results” special report is available at [www.fitchratings.com](http://www.fitchratings.com).

# Wells Fargo Insurance License at Risk after Investigation

By Denny Jacob, PropertyCasualty360.com

Wells Fargo was served with an accusation by the California Department of Insurance seeking to suspend or revoke its licenses to transact personal insurance for alleged improper insurance sales practices related to the company’s online insurance referral program.

The accusation is the result of a department investigation that found that from 2008 to 2016, Wells Fargo customers were issued approximately 1,500 insurance policies and charged premiums without their knowledge or permission.

“Companies that are licensed to transact insurance have an obligation to act with

integrity, comply with all state and insurance laws and represent the best interests of consumers,” said Insurance Commissioner Dave Jones. “When any producer violates consumer trust in the name of profit, it reflects poorly on the entire profession.”

## History of regulatory woes

Unfortunately for Wells Fargo’s insurance practice, this is not its first offense.

In July, the company planned to compensate more than 500,000 borrowers who were unwittingly sold car insurance. Despite its questionable practices, the company was surrounded by a major scandal on the banking side last year.



In 2016, Wells Fargo paid \$185 million to government regulators to settle claims that the bank opened fraudulent deposit and credit card accounts. A bank review found that there were approximately 3.5 million unauthorized deposit and credit card accounts opened from 2009 to 2016. Bank employees opened these unauthorized accounts as part of an incentive compensation program that indirectly encouraged improper sales practices and was not adequately overseen by bank management.

Wells Fargo is expected to file a Notice of Defense. 📌



# REPORTER'S NOTEBOOK



## Product recalls are the largest driver of liability claims says Allianz Global

DEFECTIVE PRODUCTS HAVE COST INSURERS BILLIONS OVER THE LAST 5 YEARS

By Patricia L. Harman, PropertyCasualty360.com

Remember the exploding cell phone batteries last year in the Samsung Galaxy Note 7 that airlines wouldn't allow on their planes? Or the faulty Takata airbags that impacted at least 19 auto manufacturers and more than 60 million vehicles in 2015? And the more than 30 million GM vehicles that were recalled because of faulty ignition switches in 2014?

These three product recalls alone cost an estimated \$34 billion according to a new study from Allianz Global Corporate & Specialty (AGCS), the Allianz carrier that focuses on corporate and specialty business.

The analysis by AGCS, Product Recall: Managing The Impact of the New Risk Landscape, found that "defective product-related risk is the single largest driver

of liability claims" with losses from product recalls being the greatest contributor to the cost. Recalls cause both financial and safety risks, and losses have cost insurers more than \$2 billion over the last five years. They undermine the public's trust of a product, interrupt sales and business development, and increase the risk of litigation.

Christof Bentele, head of global crisis management at AGCS said in a press release that "product recalls have risen steadily in the past decade," citing "tougher regulation and harsher penalties, the rise of large multinational corporations and complex global supply chains, growing consumer awareness" and even the rise in social media as some of the contributing factors to the increase in recalls.

### Who has the most recalls?

AGCS examined 367 claims from 28 countries affecting 12 different industry

sectors to determine which business specialties garnered the most claims. The top sectors affected by recalls based on the value of their insurance claims were:

- Automotive/industrial supplier - 71%
- Food & beverage - 16%
- IT/electronics - 3%
- Retail - 3%
- Manufacturing/packaging - 3%
- Medical - 2%
- Transportation/logistics - 1%
- Domestic appliances - <1%
- Chemical - <1%
- Engineering/construction - <1%

The auto industry by far has the highest value claims, accounting for 70% of the cost of recalls, and illustrating how interconnected and complex these claims are because the same parts (think airbags and electronics) are used by multiple manufacturers in their vehicles.

“We see an increasing number of recalls with higher units in the automotive industry,” said Carsten Kriegelstein, regional head of liability, Central and Eastern Europe for AGCS. “This is driven by factors such as more complex engineering, reduced product testing times, outsourcing of R&D and increasing cost pressures.”

He adds that “the technological shift in the automotive industry towards electric and autonomous mobility will create further recall risks.”

Issues in the food and beverage industry are more related to food allergens that may not be identified on packaging or contaminants such as listeria, salmonella or foreign particles like glass or metal.

The numbers and impact to industries changes slightly when examining the number of actual claims by industry.

- Automotive/industrial supplier - 42%
- Food & beverage - 18%
- Domestic appliances - 10%
- Retail - 7%
- Medical - 6%
- IT/electronics - 5%
- Manufacturing/packaging - 5%
- Chemical - 3%

- Transportation/logistics - 2%
- Engineering/construction - 1%

The automotive and food and beverage industries are responsible for approximately 60% of the claims AGCS saw in their research.

## Trends in product recalls

AGCS estimates the average cost of a significant recall can exceed \$12 million. For example, Bloomberg reported that recalls involving airbags in 60 to 70 million vehicles could cost an estimated \$25 billion. AGCS says the number of recalls are increasing for multiple reasons:

- An increase in regulations affecting product safety.
- Increasing consolidation and complexity in supply chains.
- Improvements in product testing.
- Increase in the recognition of pathogens.
- Pressure to increase profit margins.
- Increase in the use of social media & consumer awareness of safety issues.
- Pressures from original equipment manufacturers and retailers.

Experts from AGCS also identified key drivers that will impact product recalls in the future:

### 1. The “ripple effect”



The increasingly complex and global supply chains mean that millions of customers around the globe can be affected by a single product recall. It may also impact numerous manufacturers, since a component may be used in a wide variety of products (e.g., batteries).

### 2. Tougher regulations increase the number of recalls

“There is now much more attention on how companies deal with defective or contaminated products, how responsive they are and how resilient their product safety systems are,” explains Bentele.

### 3. Unrecognized toxins, allergens and contaminants



Mislabeled ingredients or failure to identify them because they are allergens are frequent causes of food recalls. However, products made in foreign countries have increasingly been found to contain toxins such as lead, arsenic and cadmium, leading to recalls of toothpaste, toys and children’s jewelry.

### 4. Increase in food fraud

As economic pressures mount, this is leading to more risks from human error, the use of cheaper suppliers or even personnel cuts with more experienced workers replaced by newer workers who may be unfamiliar with some of the dangers. Mixing inferior products can have disastrous results, such as in China in 2008, when powdered milk was tainted with melamine and had to be recalled.

“Food fraud has become a major issue that has resulted in large recalls, reputational damage and major losses,” said Bentele.

### 5. Non-safety related recalls

To protect their reputations, some companies are recalling products when it is determined that they were made by child labor or do not meet certain consumer expectations. Some recalls can have a

“Food fraud has become a major issue that has resulted in large recalls, reputational damage and major losses,” said Bentele.

longer “tail,” meaning the exposures for manufacturers and insurers could last longer than anticipated, since food could be purchased and stored for an extended period of time or an item kept for months or years before it is used. Coverage will depend on the policy in place and when the incident occurred.

**6. The impact of social media**



The rise of social media has given unhappy customers an option to voice their displeasure immediately when a product doesn't perform as expected or poses a danger, and the information (whether it is true or not) can travel at lightning speeds around the globe. By the same token, manufacturers and businesses can use their access to educate consumers and address concerns. The danger arises when companies are innocent, but get caught up in the furor.

“Social media is a real game-changer,” said Stewart Eaton, head of product recall, regional unit London, for AGCS in the report. “An erroneous post or tweet can cause reputational damage and directly impact the size of a recall. Social

media adds a whole new dimension to product recall losses, meaning companies need to react much faster.”

**7. Recalls for products from Asia and China increase**

The US-China Economic and Security Review Commission said that approximately 23% of the products in the U.S. are manufactured in China, but account for 51% of the product safety recalls. In the European Union, that figure is 62%.

“There is a clear link between product recall claims and the shift in manufacturing to Asia and China,” explained Bentele. “Product quality management levels in Asia are improving, but they are not yet up with the levels seen in the U.S. and Europe.”

**8. Cyber recall risks**

Like many industries, manufacturing is just beginning to see the impact of cyber risks on their technology. As it becomes more automated, the dangers from a cyber event increase. Examples include syringes that had an incorrect dosage of medication and pacemakers that required a security patch.

“Cyber is currently an underestimated risk for product recall,” added Bentele. “We have already seen incidents of recalls for cyber security vulnerabilities in products like cars and cameras. Concern about automation and machine learning is also likely to be accompanied by an increase in product risk.”

Recalls will continue to become more complex as technology changes and supply chains span the globe. Autonomous cars and 3D printing are just two new areas where manufacturers could see an increase in liability and recalls.

“How will insurance policies interact, including product liability, recall and cyber?” asked Bentele. “As yet, there are no definite answers.”

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# The Many Uses of Drones



**D**rones, or unmanned aerial systems (UAS), are rapidly gaining the attention of virtually every industry as a means of gaining greater efficiency in operations and reducing costs. Drone use has grown exponentially over the past few years, following development of drones for personal and commercial use. Because the use of drones has grown so rapidly, it has been difficult to keep up with the opportunities they offer to industries, including the insurance industry.

While most of us have heard about Amazon's proposed use of drones to deliver packages to customers in 30 minutes or less, or Walmart's plan to use drones to handle inventory at its warehouses, there are many more uses being implemented, tested or proposed.

## **Law enforcement**

There are approximately 34 U.S. agencies using drones in public safety and law enforcement, an increase of more than 500% over the past two years. The functions most advantageous to law enforcement offer not only efficiency in operations but improve safety and help save lives.

Some uses include bomb detection, search and rescue, traffic collisions, active

shooter investigations, SWAT and tactical operations, analysis of crime scenes, surveillance operations and crowd monitoring. Anytime a drone can be used to go into a dangerous situation it improves the safety of our law enforcement and civilians, and a drone can capture a bird's eye view of crime scenes, accidents, disasters and searches more rapidly, in more minute detail, and in a less costly and less dangerous way than using only humans can.

## **3-D imaging**

Drones can now be equipped with 3-D imaging and high-resolution cameras with video capabilities, enabling them to gather highly detailed renderings, which can be saved, analyzed and used for mul-

multiple purposes in a variety of applications. These uses include search and rescue, archaeological discovery, and construction or structural monitoring.

As evidenced by videos following Hurricanes Harvey and Irma, drones allow news organizations to provide real-time, close-up videos of events as they happen. Because they are operable any hour of the day or night, irrespective of weather conditions, drones are proving effective for security patrols over large commercial or industrial properties, securing the safety of the business as well as the staff.

## **Disasters**

Drones, some no larger than a model airplane, were sent into areas of Texas and Florida to assess hurricane and flood damage. In Texas, 43 different organizations received special FAA authorization to operate drones in the hurricane areas. Some insurance companies were permitted to do inspections, as well as energy companies to ensure there were no oil or gas leaks.

Drones are nimble and fast, and their high-resolution cameras can zoom in



and look inside buildings for damage and missing persons, all at a safe distance for the responders.

### **Agriculture**

Agricultural drone use is beneficial for surveying, monitoring, and weed or disease management of large crops. In the future, there are predictions that swarms of bee-sized drones will be able to fly among farm fields, mapping the location of weeds with the help of onboard vision systems. However, the U.S. is unlikely to be able to use drones for crop surveys in the near future due to individual state licensing requirements and the need to comply with both FAA requirements and Part 337 chemical and toxic regulations.

### **Construction**

Drones can collect video footage for tracking and monitoring construction progress, and highlighting deficiencies or needed resources. The use of drones provides a way to monitor and evaluate resources and project status in real time, without interrupting work in progress while keeping workers and civilians safe from the project site.

### **Medical deliveries**

Drones could transport medical samples and supplies, including defibrillators that could help revive people from cardiac arrests. A drone carrying an automated external defibrillator (AED) could be activated by a dispatcher and sent to an address provided by a 911 caller so anyone nearby can use it. They could also be sent into areas that may be inaccessible or otherwise difficult to quickly reach by other means.

Testing is taking place for drones to deliver medical supplies in rural Virginia, Bhutan and Papua New Guinea. UNICEF is testing the feasibility of using drones to transport lab samples in Malawi.

### **Inventory control**

Drone-based wireless systems could scan and locate items in warehouses, and with

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There are approximately 34 U.S. agencies using drones in public safety and law enforcement, an increase of more than 500% over the past two years.

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each item identified by an RFID (radio frequency identifier) sticker, the drone could pinpoint an item's precise location. A drone operator could then dispatch a small drone equipped with its own RFID tag to fly throughout the warehouse, scanning, cataloging and localizing all of the RFID items in the warehouse. In addition to reducing the number of personnel needed to conduct inventories, drones also allow access to items normally requiring a ladder or lift to reach.

### **Hazardous equipment inspections**

Drones offer a safer alternative for performing inspections of outdoor power and utility lines and equipment. Autonomous drones can capture minute details in the surrounding environment and acquire precise and reliable scan results for inspecting downed or damaged power lines, towers, wind turbine blades, mine shafts, dams, bridges, barges, electric and water utilities.

### **Insurance claims process**

Drones can also facilitate efficient claims adjusting. Adjusters must obtain an FAA Remote Pilot Certificate to fly drones, and be aware of the privacy regulations related to their use.

Drones are especially useful in gathering information following a disaster,

going into dangerous areas where there are debris and downed trees and power lines. Drone use allows immediate data collection and risk monitoring to assess flood damage and direct claims adjusters on the ground. Before drone technology, it would have been weeks before adjusters could safely enter large flooded sites to assess damages.

Drones allow adjusters safe access to areas such as steep roofs to document accurate dimensions and take high-quality photos of damage. The drone-mounted cameras can zoom in to see damage on a single roof shingle.

Conducting regular inspections with drone cameras can record changes in the condition of property and areas of deterioration to help address latent problems before they become a major crisis.

### **Loss control and prevention**

Companies can prevent losses as well as measure those that have already occurred by using drones to collect instantaneous and precise data, particularly from natural disasters. In some situations, drones can identify risks from disasters as they are happening ranging from volcanic eruptions to fires, floods and hurricanes. With the collection of real-time data, insurers could encourage people to avoid particularly risky areas, helping their customers avoid undue risk and perhaps saving lives.

They could also be used to capture data for a loss prevention survey in areas that are inaccessible to an engineer or surveyor. Areas such as dams, bridges, electric utilities, water towers and wastewater treatment facilities, asphalt plants, solar power farms, oil and gas operations, or other sites that pose specific risks are good candidates for drone inspections.

### Real estate

The real estate industry is using drones to get better photographs and to market their listings. The detailed video drones capture, including remote access and large and dangerous terrain, assist the industry in showing or completing property boundaries, property surveys, property development, identifying sur-



rounding areas, and the interior and exterior of buildings.


### Entertainment

Drones can shoot high-resolution and 3D images for films, including quickly capturing strategic film scenes, video weddings and sports events. In addition, drones can operate in inclement weather that might prevent or distort other methods of capturing video.

### Conservation

There are many conservation uses for drones ranging from thermal imaging to detect wildlife and people acting illegally, to searching for dolphins in the Amazon River and monitoring trees and forests. Drones facilitate wildlife management when used to track endangered species and to map out nesting areas that are in need of protection.

### Other drone applications

Drone capabilities and uses continue to develop in tandem with advances in technology and artificial intelligence. These new uses require additional coverage and provide unique risks that must be addressed by insurers. 

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# Playing it Safe: Cyber Security for Small- to Medium-Sized Businesses



**B**ig companies like Target, Yahoo and Equifax are typically the unhappy recipients of big news coverage following data disasters. This is not surprising, given the size of the events. At Target, credit and debit card information or contact information for approximately 40 million people was purloined, leading to the resignations of both the CEO and CIO.

Three billion user accounts were affected during the Yahoo event, including the names, telephone numbers, e-mail addresses, birth dates and telephone numbers of 500 million users.

During the most recent big data disaster, bad actors stole social security numbers, birth dates, addresses, and in some cases drivers' license numbers of 145.5 million consumers from Equifax.

While these disastrous events can be likened to floods, the persistent drip at small- to medium-sized businesses can be just as damaging for targeted companies. While cyber attacks on big companies can

generate vast quantities of valuable data for cyber criminals, these companies are typically well defended. Although small- to medium-sized businesses are less valuable targets for these criminals, their IT systems are also easier to penetrate.

## Prevention matters

Here are a few guidelines small- to medium-sized companies can follow regarding cyber defense.

**Cyber Security starts at home** — According to a report published by IBM, company insiders are responsible for 60% of cyber attacks on these companies. IBM

has identified insider status as anyone who has received credentials granting him or her physical or remote access to a company's digital assets.

As a result, companies should award credentials to access sensitive digital assets with careful thought and consideration. If an employee or contractor is either fired from or chooses to leave a firm, future access to these assets should be quickly blocked.

Effective cyber security begins with careful physical security. An employee or contractor who copies digital assets onto a portable drive and then walks out the door can do as much damage as a hacker who infiltrates your IT system from across the globe.

**Train those with access to your digital assets to avoid the perils of ransomware** — Bad actors behind ransomware cannot succeed in restricting access to a company's own computer system without the unknowing participation of their victims.

The following rules of thumb for employees and contractors can help to frustrate efforts to hold your company hostage:

- Train your personnel to recognize the difference between bogus e-mails, advertisements and legitimate efforts.
- Stay up to date on all IT protection systems, including anti-virus software.
- Do not click on any unknown e-mails or attachments.
- Do not store client data on unsecured devices.
- Never connect unprotected personal devices to company IT systems. This includes flash drives.
- Vet all third-party IT vendors scrupulously.

**Wi-Fi hotspots are a tricky proposition and should be approached with caution** — Next time one of your employees decides to access your company IT system



via a Wi-Fi hotspot at a Starbucks, Panera, the train station, a hotel or other public space, ask him or her to remember 95% of Wi-Fi traffic is unencrypted. If the hacker sitting at the next table or across the lobby seizes the opportunity to penetrate your corporate server, all digital assets will become vulnerable. Following are a few rules of thumb to manage this risk:

- Nothing is for nothing, including any network labeled “Free Wi-Fi.” Simply don’t go there.
- Before logging in, set all websites to “HTTP secure.”
- Use a VPN before logging into a company network.
- Do not access bank accounts, brokerage accounts, credit card accounts and subscription services via a Wi-Fi hotspot. In fact, anytime a user name and password are required to gain access to a website, count to ten and find another useful activity.

**Accept your vulnerability** — It has been said it isn’t a matter of whether or not a cyber intruder will victimize a company, but when. To best defend against such an event, companies are advised to prepare in advance. Following are a few guidelines:

- It should go without saying, transfer the risk to cyber insurance coverage since your company will be attacked by a cyber intruder who steals your own company’s and clients’ sensitive information.
- Rigorously guard against cyber intrusions, while documenting the actions you have taken. This documentation will be enormously useful if a client or vendor sues you following a cyber event.
- Prepare a game plan for the potential consequences if a cyber intruder hijacks your IT system — inability to pay bills, access account information, collect payments, withdraw and add funds, run payroll and perform the many other bookkeeping and financial activities you presently conduct online – before a cyber event occurs.

With 62% of cyber attacks impacting small- to medium-sized companies, hackers know they are vulnerable. Even worse, only 40% of small companies suf-

fering a cyber attack are still in business six months later, making training and preparation even more critical to mitigating the risks and helping a company recover as quickly as possible. 🍷

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# Emotional Intelligence Provides Valuable Insights for Claims Professionals



**F**rom the moment we are born, we are taking in information and filing it away – everything from the way mom looks at us during a 2 a.m. feeding to the way we pick out a new shirt in a department store. Our content filter, that reservoir of knowledge critical to our survival, keeps all of this information filed away in clusters so we can make quick decisions, “I love that shirt” or “Eww, what are you wearing?!”

While this system is very efficient, is also very lazy. For example, the “I love this shirt” response is efficient, it quickly arrives at the decision. However, it does not take into consideration the price of the shirt or how much money we have to buy it.

Now, you can see where the lazy part can be a real problem. If we simply act upon “I love this shirt,” we end up with way too many shirts and not enough money. The same impulse that kept us from being eaten by a sabretooth tiger in prehistoric

times will also cause us to own a closet full of shirts that we never wear. That is where emotional intelligence (commonly referred to as EQ) steps in to help us make better decisions.

Emotional intelligence is the space between receiving experiences and our logical brain having the opportunity to process the information to form a reasonable response. It involves a person’s ability to comprehend what motivates themselves and others, manage their emotions and self-control, have empathy for others, and develop good interpersonal skills that allow them to better understand and work effectively with others.

People considered impulsive or who have impulsive tendencies often have a low EQ. Also, our EQ can be better (or worse) depending on the environment or situation. For example, some people may handle the stress of work better than the stress of home. They may be in a good mood and easygoing around their friends, but be stiff and impersonal in the office. This of all goes back to the content filter. Everyone has unique “triggers” that will make them act out of character.

Perhaps you have a rough unemotional exterior, except when you see a puppy dog. The dog triggers an emotion outside of your normal behavior. The better we become at understanding our triggers, the more we can begin to control them and provide more consistent responses regardless of the environment.

## Millennials and EQ

So what does all of this have to do with millennials? In a word, everything! If you do a reasonable amount of research on millennials, you will find individuals with



high EQs, which means that their generation is capable of even higher EQs. If you compare their average EQ score to the average baby boomer, you will find that the boomers have a much higher score. Now the question is, why? The answer is simple: experience. Baby boomers don't have higher EQs because they are boomers, they have higher EQs because they have more experience.

By comparison, if you were to study enough boomers, you would find cases of low EQ in their demographic. The key is every generation has people with below and above average EQ scores. Some people are nurtured through life to have a higher score and some are not.

If you could travel back to 1967 and test the boomers of today back then, you would find those same people had lower scores. EQ is like a muscle, it can strengthen or weaken with use and the proper training (or lack thereof).

### Why EQ matters in insurance

Learning to read people, what they are feeling and their veracity is an important aspect of the claims process. Developing a stronger EQ affects our perceptions of a given situation.

Some may believe that millennials have lower EQ scores. Part of that involves differing perceptions of the world. Neither perception is right nor wrong; they are simply different. A strong EQ comes from a wide range of experiences and being open to looking at situations through a different lens.

We tend to look at the world and say, "my way is the best way," and then we look for people who align with our feelings. This is commonly called the "mob mentality" and it is apparent everywhere from high school cliques and drug gangs, to political and religious affiliations.

Very rarely is there a hard absolute answer. Good people do bad things and bad

people do good things. Depending on the act and the perception of "good" in the person, we will extol or criticize that person. Think of the last time someone you really like said or did something you did not approve of or condone. Depending on how much you like or dislike that person, and how much you approve or disapprove of the act, this will modify your content filter and shape your perception of that person.

Like the other generations, millennials will continue to develop their emotional intelligence as they gain more experience. They certainly do face challenges other generations did not, and they have different tools they can use to address them. Not better, not worse, just different. ♥

Mike Shelah (mike@mikeshelah.com) is the founder of Mike Shelah Consulting. An admitted "LinkedIn geek," he loves talking LinkedIn, sales and emotional intelligence to anyone who will listen.

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# Masonry Wall Cracks: Shelf Angle Failure



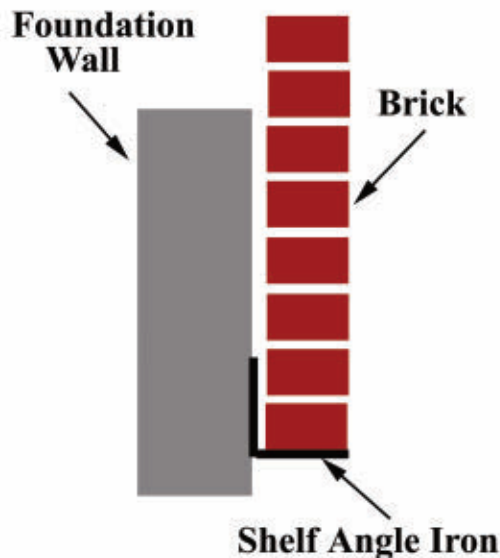
▲ Figure 1

Cracks in masonry walls can have multiple causes including construction defects or the settling of the foundation. Determining the accurate cause will take some careful investigation.

Figure 1 is a view of an insured's brick wall that started cracking near the base (upper arrow). One of the lower masonry units had fallen out, leaving the gap as indicated by the lower arrow. One may suggest that this is typical settling of the foundation wall, but no such downward deflection was noted in the foundation. There appeared to be a problem with the steel support of the brick veneer.

Figure 2 reviews the concept of the shelf angle support typically used in the construction of residential brick walls. The angle iron is secured to the foundation wall to support the weight of the masonry veneer wall. This transfers the weight of the veneer wall to the foundation, which can support the load without significant deflection when the foundation is designed properly.

Figure 3 is a view of the angle iron at one of the corners of the insured's ma-



▲ Figure 2



▲ Figure 3

sonry wall. The angle iron was fastened to the foundation wall at the ends only, with no fastening in the middle of the support.

Figure 4 shows the middle of the angle iron which has fractured and dropped down, causing a loss of support of the veneer and the initiation of a large crack in the grouting between masonry units.

Figure 5 is a close-up of the fracture surface. The lower arrow points to torch cut marks suggesting that this angle iron was cut at one time and then re-welded to form a straight piece. The upper arrow points to a poorly executed weld.

There was evidence of undercuts and lack of penetration, characteristic of a





▲ Figure 4

poor welding technique that resulted in a defective weld. The weld eventually failed, causing loss of support and development of cracks in the veneer. The root cause is a construction defect resulting in



▲ Figure 5

the failure of the shelf angle iron and not settling of the foundation. 📌

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Roberts Consulting Engineers, Inc., which provides professional engineering services in accident reconstruction, failure analysis, fire causation, explosion analysis, and biomechanics.

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# Assessing Risks and Liabilities of Commercial Drones



**W**hether for construction or design, the insurance industry is going to see an increase in demand for commercial drone insurance. As commercial drone usage becomes widespread, all areas of insurance will have to start addressing the correlating risks and liabilities.

Commercial drones are becoming another “tool of the trade” for many industries. For example, a pipeline inspector who is responsible for inspecting thousands of miles of pipeline may rely on a drone to assist with inspections instead of doing them on foot.

## Data susceptibility

In the era of big data, it is important to consider how the insurance industry covers different types of data breaches. Imag-

ine if a commercial drone falls out of the sky: It is transporting data, and that data may be hijacked by whomever discovers the drone – similar to if someone were to misplace their laptop and ultimately have their confidential information stolen. Or perhaps the drone itself is stolen while in operation and the data is compromised because a thief can access data through the data storage within the drone.

Though data susceptibility is not unique to commercial drones, it is a liability. In-

surance professionals will need to evaluate the liability appropriately and determine the best course of action to address it.

## Coverage for drone operators

Individuals and businesses are already looking for insurance policies that cover a commercial drone operator. However, there is also interest coming from others, such as large land surveyors or general contractors, who are in turn subcontracting work to third-party commercial drone operators. This means the amount of information the insurer receives on the third-party drone operator is limited. Furthermore, the responsibility of securing insurance coverage is falling on the shoulders of these general contractors because of the due diligence involved in

hiring a licensed drone operator. They are looking for someone who is following the rules and regulations and has appropriate security software in place.


There is always fear of the unknown – especially in the insurance industry. As a result, many carriers are reluctant to provide coverage on new technologies and products until they are 100% positive in their course of action. Unfortunately, this means a delay in access to coverage and an increase in both liability and risk for the uninsured, and there are many sectors utilizing commercial drones for work that insurers are unaware of or may be unfamiliar with.

### Types of coverage

There are likely many insurance agencies that would unwittingly tell a prospective insured, “Yes, we would cover a claim involving a drone,” but they do not have a specific coverage endorsement that addresses applicable areas. This will be especially interesting in coming months as contractors re-

Though data susceptibility is not unique to commercial drones, it is a liability. Insurance professionals will need to evaluate the liability appropriately and determine the best course of action to address it.

build homes throughout Texas, Florida and Puerto Rico. Commercial drones are often used to both assess damage and inspect work. The large number of homes that need to be rebuilt — some say approximately half a million homes — will accordingly increase the number of commercial drones that need to be insured.

It will be interesting to see how insurers will modify or expand their coverage of commercial drones in the coming years as their use increases. 

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# AND THE VERDICT IS...

A LOOK AT SOME OF THE LEGAL DECISIONS IMPACTING INSURANCE ACROSS THE COUNTRY

## 9th Circuit reduces \$2.5M bad faith award against GEICO to \$1M

CONDUCT ONLY “MODERATELY” REPREHENSIBLE

Steven A. Meyerowitz, Esq.



**T**he U.S. Court of Appeals for the Ninth Circuit has reduced a \$2.5 million punitive damages award against GEICO Indemnity Company to \$1,064,282.44 after finding, among other things, that its conduct had been only of “low to moderate reprehensibility.”

### The case

Louise King’s husband was killed on Aug. 27, 2011, by a drugged driver who did not have insurance. When King submitted her claim for uninsured motorist coverage to her carrier, GEICO, the carrier offered half of what was available under the policy in

exchange for a release of all claims. When King refused to sign the release, GEICO refused to pay any of the insurance proceeds. King filed suit for wrongful death and survival as the representative of her husband’s estate. She also filed a claim on her own behalf for emotional distress.

In February 2014, a Montana jury awarded King \$266,070.61 in compensatory damages and legal fees:

- \$100,000 for GEICO’s violation of the Montana Unfair Trade Practices Act (UTPA),
- \$100,000 under the insurance policy for her emotional distress, and

— \$66,070.61 in legal fees, interest, and costs.

The jury also awarded King punitive damages of \$2.5 million.

(GEICO’s obligations to the estate of King’s husband had been discharged before the trial.)

The U.S. District Court for the District of Montana declined GEICO’s request to reduce the punitive damages award, and the insurer appealed to the Ninth Circuit.

### The Ninth Circuit’s decision

The circuit court reduced the punitive damages award to \$1,064,282.44.

In its decision, the Ninth Circuit explained that it reviewed anew the district court’s determination that the punitive damages award was constitutionally appropriate. The circuit court then observed that three “guideposts” informed the analysis:

1. The degree of reprehensibility;
2. The disparity between the harm suffered and the punitive damages award; and
3. The difference between the punitive damages award and comparable authorized civil penalties.

With respect to the first factor, the circuit court reasoned that, on the one hand, King had suffered “only economic and emotional harm.” She had not been physically injured and GEICO had not shown “indifference to the health or safety of [Ms.] King or anyone else,” according to the circuit court.

On the other hand, the circuit court continued, the jury’s verdict regarding GEICO’s liability under the UTPA indi-

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cated that the jury believed that GEICO had acted in bad faith.

The circuit court decided that GEICO's conduct, "while not admirable, was of low to moderate reprehensibility."

### Disparity between actual harm and level of damages

With respect to the second factor, the Ninth Circuit found that the disparity between King's "actual harm" and the level of punitive damages awarded her was "significant." The circuit court said that it was not bound by any particular formula, but added that when an insurer's conduct was "not particularly egregious" and there were "significant economic damages," a four-to-one ratio was "a good proxy for the limits of constitutionality."


The circuit court explained that the ratio between King's actual harm – \$266,070.61 – and her punitive damages

award – \$2.5 million – was roughly nine-to-one. This was "significantly higher than the four-to-one proxy [it applied] in similar contexts," the Ninth Circuit said.

With respect to the third factor, the circuit court pointed out that the comparable civil penalty in Montana was a fine for violation of the Montana insurance code that could not exceed \$25,000 and that a fine on insurance producers or adjusters could not exceed \$5,000 per violation. Thus, the Ninth Circuit noted, the maximum relevant civil penalty was "significantly lower than the \$2.5 million punitive damages award."

Therefore, the Ninth Circuit concluded that the \$2.5 million punitive damages award was "unconstitutionally excessive" — even though it complied with the Montana law limiting punitive damages to the lesser of \$10 million or three percent of the defendant's net worth.

Given the "low to moderate reprehensibility of GEICO's conduct" and the "disparate ratio" between King's actual harm and the punitive damages award, the circuit court applied a four-to-one ratio and directed the district court to remit the punitive damages award to \$1,064,282.44.

The case is King v. GEICO Indemity Co. 

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# INSIGHTS FOR HANDLING A SEXUAL HARASSMENT CLAIM

Insurance coverage may or may not apply

By Ken Brownlee, CPCU

**F**ollowing the election of Donald Trump and his campaign comments on acts of harassment as “locker room talk” in 2016, a number of celebrities ranging from television stars to news media reporters and even U.S. Senators and House members, were caught in a “me too” movement of allegations by women of sexual harassment, assault and inappropriate activities. Some of these incidents had taken place as many as 40 years earlier.

Like the sexual activities of clergy that cost the Roman Catholic Church millions of dollars in settlements, the public learned that many of these accusers had been “paid off” by the alleged attackers, sometimes with public funds.

Headline and TV news coverage served as a wake-up call to employers and institutions that the days of male domination was coming to an end, a warning that caused many corporate human resource, legal and risk management personnel to wonder what would happen when some of their employees – or executives – were accused of being sexual predators.

## **The cost to defend**

Defending such allegations is expensive, whether or not they are true, and that is part of the problem. If an employee or associate is wrongfully accused and is terminated, the entity is then exposed to a “wrongful termination” claim. If, on the other hand, the individual admits to the allegation(s) despite any statute of limitations, a settlement may be needed to resolve the matter, and the employee or associate terminated.



The cost in bad publicity alone can be horrendous, and the reputation of the organization (as well as the involved individual) ruined. Many entities are calling in human resource experts to conduct classes or training sessions with employees to try to prevent future situations. However, with the amount of turnover in today's workforce, such classes are needed more often than annually.

### Examining the allegation

An accusation of some alleged act that occurred more than a year earlier has to be suspect. There may well be valid reasons the alleged victim did not come forward sooner, but the delay and nature of the allegation may also have some ulterior motive, such as revenge, some psychological problem, or even blackmail. The accused employee or associate should be permitted a face-to-face encounter with the accuser, with the corporate representative (human resources, legal or risk management) present.

If an insurance company is involved, their claims representative should also be present. It must be determined exactly what is being alleged; this might be anything from innocent touching, such as a hug or (as occurred with President George W. Bush, a "neck massage" of the female German chancellor) some other innocent gesture that was neither sexual

in intent nor physically harmful. On the other hand, it may be serious: genital exposure, inappropriate touching or groping without consent, or rape.

It is necessary to know what kind of proof the accuser has besides his or her own memory. If possible, record what each party says was actually stated at the time of the incident. "I told him to stop" might have a different effect than, "I was too shocked to say anything," which the accused might have interpreted as consent, when it was not.

Find out the circumstances of why and how the two individuals came to be alone (if they were) or whether there were witnesses. Was alcohol consumption or drug usage involved? If either party discussed the incident with anyone else, that person should be contacted.

### What insurance coverage applies?

In many, if not most states, some form of mental anguish or emotional distress is considered to be an "injury" for purposes of a liability policy. However, it would be the rare case that would involve physical "bodily injury" or a covered "personal injury" under a homeowners or commercial general liability policy. For employers named as co-defendants, however, depending on the policy language, an employment practices or D&O policy could

potentially apply to an allegation of sexual harassment by an employee, former employee or outsider.

The problem with these and other liability policies is that a coverage denial, if the coverage would otherwise apply, cannot be made if the allegations of the claim or suit are denied by the accused person and are potentially "groundless, false or fraudulent," even though that phraseology appears only in the homeowners liability coverage forms.

If a claim might fit the coverage, the insurer may have to provide an investigation and defense under a reservation of rights until it is first determined whether the insurance does apply to the allegations, and second, whether the insured person is actually liable. In sexual abuse, harassment or similar allegations of a wrongful act, evidence of the validity of the claim would bar coverage.

A Homeowners Section II – Liability or Personal Liability form usually contains specific exclusions for "bodily injury" that arises out of "sexual molestation, corporal punishment or physical or mental abuse." (The commercial general liability policy does not have such an exclusion.)

While the definition of sexual harassment might include sexual molestation or mental abuse, harassment is not a term used in these policies, and can have a wide-ranging definition, from any inappropriate spo-



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## DEFENDING SUCH ALLEGATIONS IS EXPENSIVE, WHETHER OR NOT THEY ARE TRUE, AND THAT IS PART OF THE PROBLEM.

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ken words, observation of a sexual nature, inappropriate touching that does not injure, or a misconstrued gesture. The Webster's New World Dictionary defines "harass" as "to trouble, worry, or torment, as with cares, debts, repeated questions, etc." and "to trouble by repeated raids or attacks, etc., harry."

Sexual harassment is not separately defined in the Second Edition. When one party accuses another of sexual harassment, there is no particular legal definition beyond the typical understanding that it means "unwanted sexual advances" or requests for sexual favors and other verbal or physical coercion or harassment of a sexual nature. It is, however, a form of sex discrimination in violation of Title VII of the Civil Rights Act of 1964, subject to EEOC investigation and penalties for any employer who allows it to occur, another motivation to stop it before it occurs.

A directors & officers liability (executive protection form) covers a "wrongful act," which is often defined as "(a) any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted or allegedly committed or attempted by an Insured Person in his or her Insured Capacity, or for purposes of coverage under Insuring Clause 3 by the Organization, or (b) any other matter claimed against an Insured Person solely by reason of his or her serving in an Insured Capacity."

However, an exclusion (e) applies to any actual "bodily injury, mental anguish, emotional distress, sickness, disease or death...." Further, it could apply vicariously against an officer or director if committed by someone under their supervision, whether the officer or director was aware of the harassment or not.

Employment practices liability forms also uses terminology such as "wrongful act," although as both these forms and D&O forms are "claims made," the date of the alleged act is very important in determining if coverage might apply. Further, the definition of "wrongful act" implies that the claimant/plaintiff is or was an employee, not an outsider, and exclusions apply to "criminal, fraudulent or malicious acts...."

### Determining damages

The insurer must be cautious about assessing damages; in a well-publicized case a jury might award millions of dollars in punitive damages. Often the claimant may actually have few verifiable damages beyond alleged bad memories or emotional discomfort. Very few executives, officers or employees, if there is no coverage, can afford the costs of such litigation, win or lose.

But if the insurer is defending a questionable, or even doubtful, claim under a reservation of rights where the insured person has denied the allegations, unless there is a "written consent to settle" clause

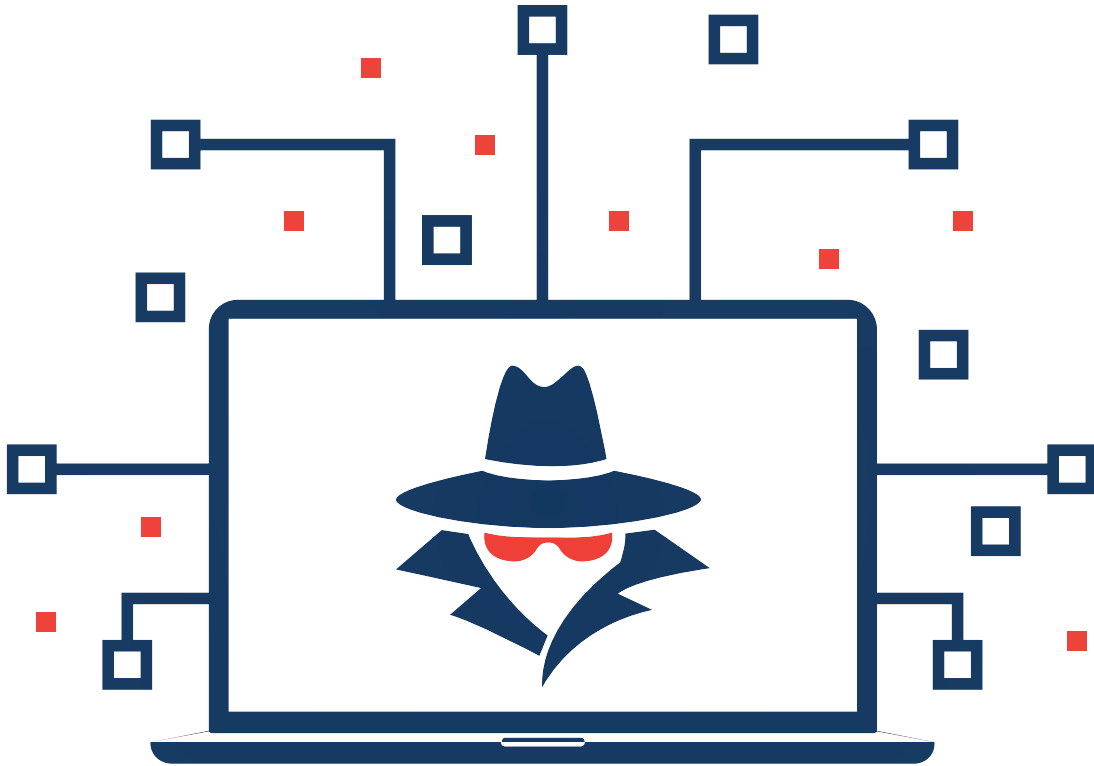
in the policy, the insurer should consider a possible opportunity for mediation or settlement, even though the accused has not been proven guilty or denies fault. That said, if the allegations and demands of an employee or former employee have either blackmail, revenge or retaliation for a legitimate termination or other disciplinary action at their root, the claim should be denied and vigorously defended in court unless liability is proven.

It is likely that events in late 2017 will lead to an increase in sexual harassment claims or lawsuits; many may be barred by statutes of limitations, one defense factor that should be examined early in the claim. Another involves the relationships between the accuser and the accused, and whether the harassment is verified.

If insurance coverage applies, the claims representative (attorney or adjuster) should proceed with extreme caution, usually under a reservation of rights agreement, discussed and acknowledged by the accused. For individuals not in an employment situation, additional caution is needed, and every aspect of policy language should be fully understood by all parties. 🍷

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# CYBERSECURITY THREATS IN THE INSURANCE INDUSTRY

INSURERS AND THEIR DATA ARE PARTICULARLY VULNERABLE TO HACKERS

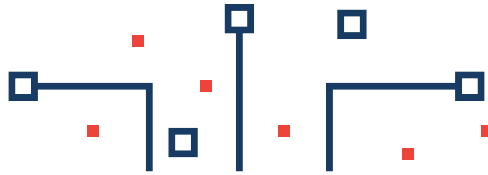
**“PHYSICIAN, HEAL THYSELF” IS AN EXPRESSION THAT** many people use to criticize a lack of standards among groups or organizations that are charged with enforcing those same standards among others. And a paraphrase that applies to the insurance business is “insurer, protect thyself.”

It turns out that for a business that is so conscious — and conscientious — of all things involving risk, the insurance industry neglects its own risk, especially when it comes to data breaches. That neglect has cost companies millions in court settlements and regulatory fines.

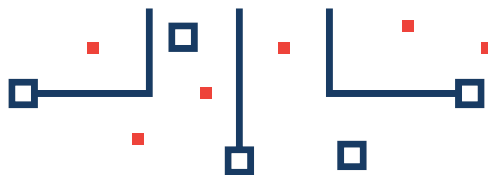
## **You’ve been breached**

Among the insurance companies that have paid a price for failing to prevent data breaches is Nationwide Mutual and its subsidiary, Allied Property and Casualty Insurance Company. Nationwide is on the hook for a more than \$5 million fine resulting from a 2012 data breach that divulged details on 1.27 million customers.

**BY TAL VEGVIZER**



Nationwide is on the hook for a more than \$5 million fine resulting from a 2012 data breach that divulged details on 1.27 million customers.



Also on the firing line are CareFirst, which is the target of a class-action lawsuit for a 2014 data breach that affected more than one million people, and Horizon Blue Cross Blue Shield, which is in the midst of class-action suit over a 2013 breach that hit 800,000 victims when their data was accessed.

The Horizon case is notable because the records were on two laptops stolen from the insurer's Newark, N.J., headquarters and were not encrypted, as required by federal law. Horizon has numerous procedures (and presumably numerous employees) dedicated to risk assessment and evaluation, but when it came to its own risk assessment, the company was unprepared.

These are just a few examples; the industry knows it has a problem and is anxious to solve it. According to a report by Accenture, insurance companies experience on average 113 cyber attacks each year — with one out of every three successful in causing a data breach. With that, two thirds of companies said they didn't even realize they had been hacked until the damage was done — and 61% admitted that it took them “months” to detect breaches.

### Recipient beware

These organizations have presumably installed state-of-the-art cybersecurity systems. The report says that 72% of companies believe they have “completely embedded cybersecurity into their cultures.” Despite that effort, according to the Accenture report, the danger from hackers for the insurance industry is even greater than in the financial industry.

“The ability of cyber crooks to monetize stolen data, enabled by the dark web and crypto-currencies like Bitcoin, has changed the focus of many attackers,” Accenture says. “The actual money is heavily guarded, even in cyber space, but personal data is much easier to steal.” Companies may believe they are sufficiently protected, but the statistics prove otherwise.

If insurance companies are major targets for hackers, it stands to reason that they will try harder to breach security systems — which means that companies need to shore up their weakest security links. In insurance companies, like almost everywhere else, it's the people who work there who are the weakest link. A whopping 91% of cyber attacks and resulting data breaches in 2016 started with a spear phishing email, according to a recent study.

In a spear phishing attack, victims are tricked into clicking on something — a web link or an e-mail attachment — that allows hackers to surreptitiously connect to their systems, allowing them a foothold they can exploit to laterally move throughout the network until they find useful information.

As a result, many companies have instituted programs to educate, persuade or threaten employees into being more careful when handling links or attachments, and as a result there is a greater awareness of the dangers involved in making those connections. But even with that awareness, victims apparently can't help themselves; a study at Friedrich-Alexander University shows that even with full knowledge of the risks involved, as many as 56% of e-mail recipients and some 40% of Facebook users still clicked on links sent them by an unknown sender.

### Smarter computing

Companies clearly can't rely on their employees to protect the organization; yet it appears they can't rely on cybersecurity systems either, which apparently are unable to mitigate the risks posed by phishing.

What's left, then? One idea is to prevent employee access to the internet altogether; but in an interconnected world, that's impractical. However, companies can opt for a system based on preventing hackers from getting into a system by breaking the direct connection between an employee's click, and a hacker's access. Connections are made in a "safe zone," where they are evaluated before they are allowed to proceed. The concept, known as network segregation, is an upgrade of the sandbox, which enables users to isolate suspicious files and run them without impacting the rest of the computer.

In a network segregation scheme, internal corporate networks containing essential information — user records, corporate data and the like — are kept out of the internet altogether. E-mail messages and attachments are broken down and analyzed in the safe zone, where their



connections and activities are checked to ensure they are legitimate — such as if a link that is supposed to go to a specific website does indeed lead there, or is redirected to another site, a sure sign of a cyber-attack.

If malware, redirection, or any other suspicious activity is detected, the element responsible for that activity is neu-

tralized, and the message or attachment is reconstructed and forwarded to the recipient. Thus, the suspicious item is sanitized, but workflow is not interrupted — an improvement over a sandbox, which would just dump a suspicious file.

With this system, insurance companies or other businesses could better protect themselves from breaches based on phishing campaigns, the root of much of the cyber-insecurity encountered today. While cybersecurity is essential for any company, staying cyber safe is a matter of business life and death for insurance companies — especially since courts are taking a harder stance against companies that fail to protect their customers' personally identifiable information. 📌

Tal Vegvizer (info@bufferzonesecurity.com) is the director of R&D at BUFFERZONE.

**LJP** Law Journal Press

## International Arbitration: Commercial and Investment Treaty Law and Practice

by Elliot E. Polebaum

For international business transactions, international arbitration is the dispute resolution mechanism of choice. While not without room for improvement, international commercial arbitration offers distinct advantages over litigating in the public courts of one's counterparty.

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The screenshot shows the 'Claims Connection' eNewsletter header with the tagline 'Plugging Claims Professionals Into the P&C Industry' and the 'PROPERTY CASUALTY 360' logo. The main content area is divided into sections: 'Web Exclusive' featuring an article titled 'Regulators Share Top 10 Grievances About P&C Insurers' by Christina Bramlet; 'Top News' featuring 'Top and Bottom 5 Most Costly States to Make an Insurance Claim' by Caterina Pontoriero; 'Claims IQ' with sub-sections for 'Industry Events Calendar', 'Claim-Handling Guidelines', and 'Web Seminars'; and 'Connect with Us'. A sidebar on the right contains a promotional banner for 'THE P&C INDUSTRY NEW RESEARCH AND BEST PRACTICES YOU DELIVERED TO YOU' and a subscription prompt: 'Subscribe to PROPERTY CASUALTY 360 Daily eNews Today!'.

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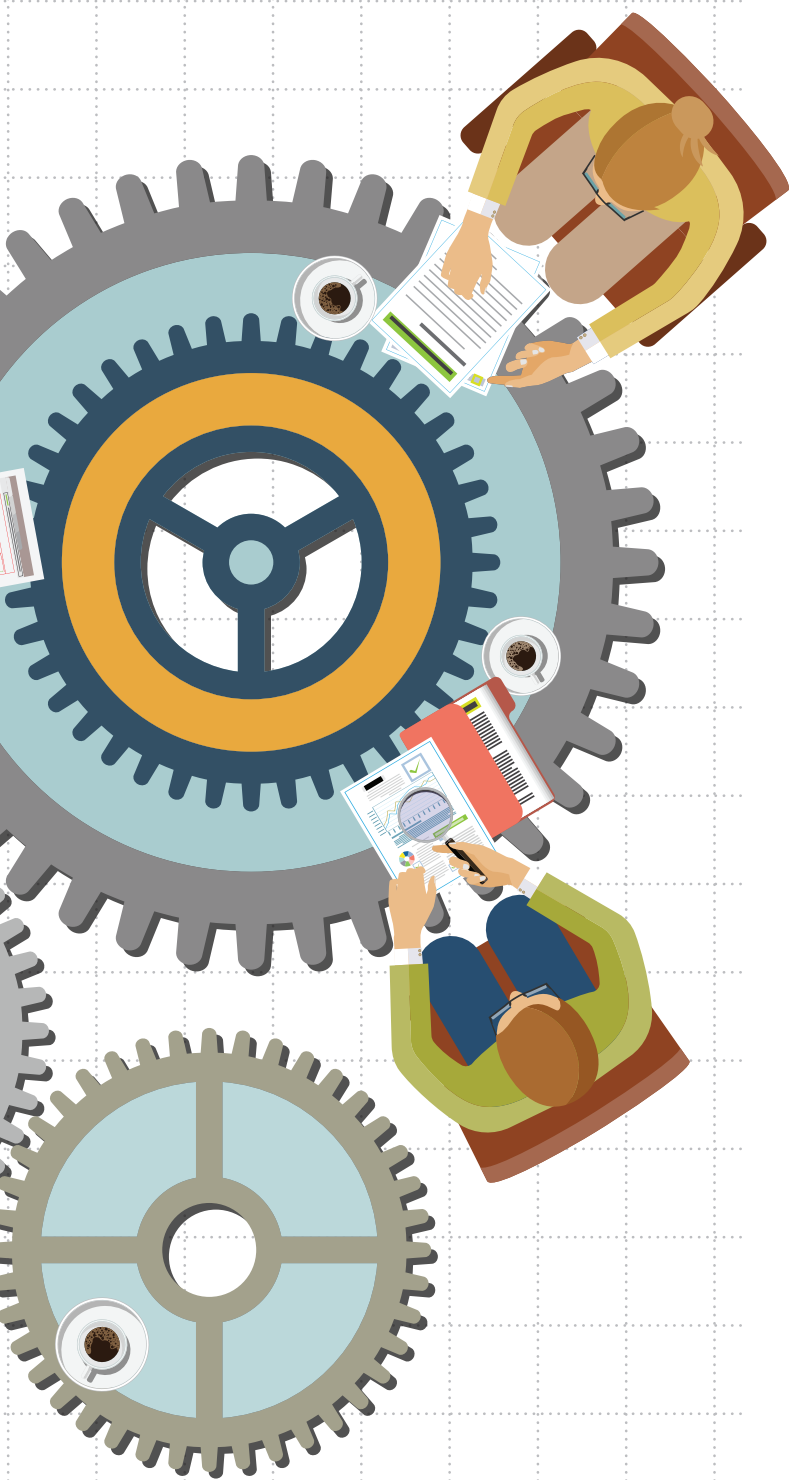
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## Smart Strategies for Effective Crisis Management

Preparing for the unexpected is a “must do” for every business

BY BILL KOWALSKI

**W**e live in an unpredictable time, and in the business world, things can turn upside down in a hurry and without warning. When a crisis hits, unpreparedness often results in problems ranging from a complete lack of a crisis plan to a failure to adhere to the plan once a crisis occurs. The most effective way to handle a crisis is to have a plan and not only update it, but make a regular practice of putting it into action.

Businesses should explore the various potential crisis situations they can face. Emergencies such as weather-related disasters, violence, fire and cyberattack plans should be charted out and regularly examined; however, business leaders should also be regularly looking out for business-oriented risks in their occupational areas. Vulnerabilities such as a public relations disaster, marketing, operations or IT crashes, or even the sudden death of key individuals can throw companies without a plan in place into full crisis mode.

### Preparation trumps panic

It is important that businesses prepare like true emergency responders. Teams should not go into panic, but should be able to smoothly enact the plan. Think of it like a fire station: Firetrucks are constantly serviced and polished, hoses are hooked up, tools and equipment are properly organized and ready to be pulled from the shelf. That way, when the bell rings, they are fully prepared and can quickly move into action at a moment's notice. Business crisis plans should be no different. Every plan should be well-prepared, practiced and each individual should know their role and be ready to perform it at any time.

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Crisis management plans should include an immediate response to a crisis, a business operations plan, and finally, a contingency plan for each potential situation. The particular defenses for each situation should be well-known and easy to apply once needed. Individuals throughout the company should know their roles and be able to execute them without hesitation.

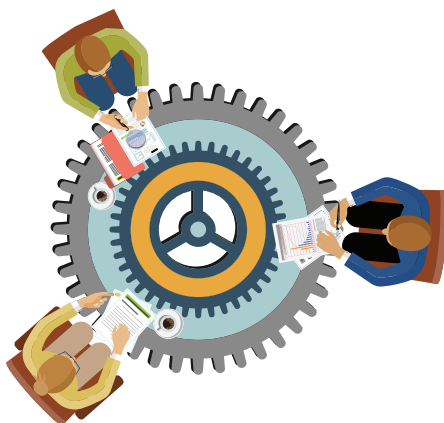
Safety is the first priority in dealing with a violent or disaster-related situation. Weather emergencies and active shooter plans need to be practiced regularly so employees know not only their roles, but the role of the employee in the cubicle next to them to lend assistance if needed. Businesses with higher turnover should revisit and test their plans more frequently to ensure every staff member on any day is prepared to face challenging situations.

### Damage assessments

Once everyone is deemed to be safe, companies should assess the damage from the situation and shift to the business operations plan to determine whether or not they can still meet the current needs of the enterprise. Can operations resume immediately or do you have to shift to a business contingency plan?

A key element to answering this question and handling any potentially disastrous situation is to maintain an up-to-date and comprehensive inventory. A regularly updated inventory and equipment audit is also crucial during the insurance claims process for crises such as theft or the destruction of a business. Video or paper inventory documentation is recommended to be updated at least annually. This is especially true for insurance providers servicing high net worth individuals or larger corporations.

An inventory and equipment audit not only helps during a claims process, but it becomes extremely valuable when entering the next stage of the crisis management plan – the business contingency plan. This



It is important that businesses prepare like true emergency responders.

plan will vary based on the company and industry, but typically includes factors such as alternative locations in case the company needs to relocate operations, the data recovery process, and how to source any needed equipment.

### Recovering after an emergency

Essentially, if a brick and mortar business is impacted by a disaster, what happens next? Do you know where to go and how to get the assets needed to get the business back up and running? If so, how quickly can you do it?

Fundamental components of contingency plans need not only identify employee roles, but also individuals to take over certain areas in situations such as the sudden death of a company president or chief financial officer. Who is going to temporarily fill the role and the duties to keep the company moving forward? Will one individual be able to do so, or should it include a team completing the different tasks?

A contingency plan should also answer questions such as: What do we do

if our IT system crashes, our company data is hacked, or one of our locations is burned to the ground? All of these are extreme and difficult circumstances, but far too often in news headlines companies say, “We didn’t think this could happen to us.”

From an insurance perspective, businesses need to evaluate if they are able to self-insure or if they need to obtain insurance for different potential disasters or crises. If the need for insurance is identified, businesses should look for a policy that covers their unique needs with as few limitations as possible.

Prioritizing protection and fewer conditions will prove much more beneficial in the business recovery process than a plan with a lower upfront cost but strict coverage limitations that will either prevent or delay benefits. Securing benefit claims and receiving as much capital as possible early on is crucial in recovering from any crisis situation.

In order to be fully prepared, crisis management plans should be developed by the company’s leadership team and a full cadre of advisors. Asset managers, legal counsel and insurance providers should work hand-in-hand in developing aspects of the plan to account for all possibilities of a potential crisis. The breadth and depth of these threats are constantly evolving and new crises arise every day. With this continuous cycle, crisis management plans should be updated and tested accordingly.

Crisis come in all shapes and sizes and, although they can be forecasted to a degree, they are unpredictable. The best and only solution is to prepare accordingly with a team committed to developing and constantly evaluating the crisis management plan to ensure the business survives and continues to thrive. 🍷

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# 5 ASPECTS OF SUCCESSFUL SUBROGATION PROGRAMS

Recovery shouldn't be an after thought

By Christopher Tidball, Don Pierce and Brad Burdick

If you have cracked the subrogation nut, your results show improved recoveries and decreased expenses. To achieve this level of success, you are likely using a combination of advanced analytics and machine learning. You understand third-party carrier behaviors and have real-time decision support tools for settlement, arbitration and litigation. In real time, your global delivery system and triage lands every file with the appropriate person immediately upon subrogation referral. Your sophisticated predictive models provide customized strategies for all recovery scenarios, by line of business and with a high degree of integration.

These companies have a clear and direct understanding of what is driving recovery. The key to success has been viewing subrogation as a strategic asset and a lever for managing indemnity while controlling expenses. The subrogation organization has become the launching pad for key talent throughout the organization.

If that is not your company, then you are like most in the industry where subrogation is neither a top priority, nor viewed as a strategic asset. As organizations look for opportunities to cut expenses, they often miss the potential upside subrogation can bring. Even those who have already achieved subrogation nirvana can take steps to further optimize this strategic asset.





Carriers across the industry are using a variety of levers to achieve success. That said, continued investment in subrogation is difficult, even for the largest carriers. Expensive modifications to legacy platforms, maintenance of external vendor networks, and constantly changing reporting requirements all drive needs that most carriers struggle to satisfy. For carriers directing their investment dollars to other areas, outsourcing is an attractive alternative. Vendors who create scale across multiple organizations can also invest differently in the process through technology, analytics and various sourcing models.

### Keys to unlocking the subrogation process

Maximizing the subrogation process results in a material impact on loss ratios, which generally outweigh expense savings 3-to-1. Examining this further, we find the top-performing subrogation organizations have not only streamlined back-office processes, but have also focused on five key areas:

#### 1. LIABILITY ASSESSMENT

Subrogation identification should begin at first notice of loss (FNOL). Understanding the dynamics of the claim allows for proactive identification of potential recovery opportunities. Even beyond the initial stages of the claim, liability decisions are often inaccurate. Only 3% of all claims

with comparative negligence are actively evaluated for subrogation potential according to PropertyCasualty360.com. Considering findings from jury verdict research that shows shared liability occurs in 45% of all cases adjudicated, a lot of recovery dollars are left uncollected.

Providing the adjuster with sophisticated analytics increases the likelihood of success in subrogation significantly by helping the adjuster monitor changes in liability as the claim matures, collect evidence earlier in the process, and develop winning settlement strategies.

#### 2. THIRD-PARTY NEGOTIATIONS

This is one of the most critical aspects of the subrogation process. Far too often we see ineffective negotiations where liability is conceded when it clearly should not have been. This happens for several reasons, but frequently, time constraints and the push for claim disposition have the unintended consequence of adversely impacting quality. We have found that structured workflow, data collection and sharing in the early triage stages combined with effective decision support tools that expose third-party behaviors greatly improves yield per file in the subrogation process.

#### 3. DAMAGES EVALUATION

Having a clear process to properly evaluate claims is critical, particularly on in-bound demands where the other carrier

may have paid for aspects of the claim that weren't owed. To complete this efficiently, many carriers have tools to manage the damage process. Often lacking is the ability to incorporate damage evaluation directly into the subrogation process. Integrating these tools combined with knowledge management processes for negotiation can improve the efficiency of this process.

#### 4. UNINSURED MANAGEMENT.

While there are many capable vendors in the marketplace, their effectiveness is often governed by the management process. Simply hiring a vendor is not enough. During many years of managing vendors for a large carrier, we found that those who did the best job were the ones who were truly business partners with a vested interest in positive, metric-based outcomes. We have found that an ongoing process for case allocation to match the right vendor with the right files will improve outcomes. Smooth integration between the subrogation platform and vendor platforms creates efficiency, predictability and greater transparency.

#### 5. SERVICE ORIENTATION

In the age of social media, where bad reviews can be posted on any number of sites in a matter of seconds, service is paramount. As fiduciaries of the insured, adjusters are responsible for protecting their

best interests. When there is a collection opportunity, recovery often includes the insured's deductible, and they don't want 80% of a deductible back if they are entitled to 100%. While there are legitimate reasons to settle claims below the full demanded amount, the insured needs to be informed of the status and rationale for decisions. Service representatives need to be able to quickly check claims status and provide clear updates to policyholders.

### The importance of analytics and benchmarking

From the time a claim is first reported, activities related to the investigation yield important information that drive improved subrogation recognition and increase the probability of recovery. Scoring data based on the likelihood of recovery, the skillset required to settle combined with a comprehensive data set based on historical outcomes dramatically improves staff efficiencies and the net recovery dollars.

Analytics are only as effective as the technology that drives them. Workflow remains important. When adjusters are provided with dynamic data sets mapped through the right workflow, the tendency is to see better outcomes and compressed cycle times. Analytics can provide key indicators of claims ripe for straight-through processing. There is a direct correlation between cycle time and outcome.

Benchmarking is an effective tool for evaluating improvement opportunities, but the devil is in the details. The subrogation process has many levers including information about files referred, files pursued, files recovered, time to recover, escalations and those with no carrier identified, to name a few. Comparing internal operations with industry benchmarks allows management to challenge the current approach. Are we pursuing enough opportunities? Is our success ratio consistent with others? Are we using arbitration and litigation resources appropriately? The key is to continually seek to optimize outcomes and drive higher return on investment.

## THE KEY TO SUCCESS HAS BEEN VIEWING SUBROGATION AS A STRATEGIC ASSET AND A LEVER FOR MANAGING INDEMNITY WHILE CONTROLLING EXPENSES.

Cycle time is of utmost importance as recovery declines in direct proportion to time in flight. The industry average for cycle time is around 200 days, yet the average paid claim is less than 10. By focusing on straight through processing, improved triage and fast-track arbitration, this cycle time can be compressed dramatically.

### Raising the Bar

If you already have a world-class subrogation operation, then consider expanding its reach. Subrogation is truly a business, and when done correctly, is run like a profit center with its own profit and loss. The key to success is where to best align the skills to the processes. We have found that logical candidates include salvage (yes, salvage is a huge component of the most successful recovery operations), deductible recovery, premium recovery and inbound demand processing.

### Expertise on Every Level

While many subrogation scenarios are simple and can benefit from straight-through processing, others cannot. Having the triage methodology to get the right case to the right person at the right time drives outcomes. Consider the case

of the defective drywall manufactured in China that impacted thousands of Florida homeowners. Having expertise on every level translates into capable adjusters who understand the nuances of difficult recoveries, such as those where American judgments are not recognized by Chinese courts, necessitating an entirely different strategy for recovery.

Across the subrogation lifecycle, there are many considerations. While some have cracked the nut, others struggle. Results vary from company to company. The most successful have embraced subrogation as a strategic asset and leverage their best adjusters to bring back the dollars they are owed.

Industry leaders recognize that a highly successful subrogation strategy requires a combination of the best people, the most efficient processes, and state-of-the-art technology. By leveraging these three key components, it is possible to take an organization from ordinary to extraordinary, resulting in a significant competitive edge in the marketplace. 🍷

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Christopher Tidball (Christopher.Tidball@exlservice.com) is the vice president of sales and claims transformation strategy at EXL. He is a former claims executive and the author of multiple books, including *Re-Adjusted: Taking Your Claims Organization from Ordinary to Extraordinary*. Don Pierce (Donald.pierce@exlservice.com) is the vice president of recovery operations at EXL and has been creating innovative solutions for insurance customers for more than 30 years. He has achieved certification as a project manager (PMP), CPCU, APA and is a co-inventor for six issued patents focusing on recovery. Brad Burdick (brad.burdick@exlservice.com) is the senior vice president of insurance platform services. For more than 30 years he married technology, analytics and operations to deliver best in class solutions for his clients, and leads a portfolio of businesses for EXL.



## Secrets to Combating Insurance Fraud with Data Analytics

Three insurance executives offer a global perspective

By Michael Skiba, Ph.D.,  
Jeffrey G. Rapattoni and Chris McKibbin

**A**s the insurance industry continues to embrace data analytics, the fraud sector is seeing increasing benefits of implementation both domestically and abroad.

Fraud is an international problem as business and manufacturing become more global. What impacts a company in Europe or Asia, will also affect companies in the U.S. and other countries. Cyber attacks such as the WannaCry virus are an excellent example of how one event can have global repercussions.

There are new tools, however, that will assist insurers and business owners in detecting and tracking the impact of fraud. Three insurance fraud professionals, one each from Germany, the U.S. and Canada, weigh in on how data analytics is changing the insurance fraud landscape. Michael Skiba, Ph.D., is vice president of counter fraud strategies for Inform and based in Germany. Jeffrey G. Rapattoni is co-chair of the insurance fraud/SIU practice group for U.S.-based Marshall Dennehey Warner Coleman & Goggin, and Chris McKibbin is a partner in the fraud investigation, recovery and enforcement practice group for Blaney McMurtry LLP, in Canada.



### What are the efficiency gains for carriers using advanced analytics?

**SKIBA:** Carriers that use analytics can maximize fraud detection and optimization with reduced efforts. One well-trained SIU analyst utilizing the power of analytics can filter and route hundreds (or even thousands) of claims; claims that would normally have to be reviewed using manual methods.

In this manner, the SIU units can focus on those claims that have the highest potential for success, making them more effective and efficient.

**RAPATTONI:** Our clients are seeing a huge return by way of “time on task” that is, the carriers are getting more done in less time. This gain allows a more detailed investigation on an inventory of claims that match a particular outlier. Because the process is now expedited, the initial spend on the fraudulent claim is significantly lower and the carrier is no longer chasing money.

**MCKIBBIN:** Efficiency gains can be measured across multiple carriers as well. For example, the Insurance Bureau of Canada (IBC) now works with Canatics, a non-profit organization funded by nine member auto insurers representing some 75% of the market. Canatics pools data from its members and applies advanced

analytics to identify suspicious activity. It then provides alerts to IBC, which investigates suspected fraudulent activity. The pooling of data from multiple carriers (not sharing, so as not to offend privacy regulations) has benefitted each individual carrier significantly.

### How has the claims environment changed subsequent to analytic implementation?

**SKIBA:** Companies that are using analytics in the claims environment are seeing significant return on investment. Many fraud solutions are, of course, used for fraud detection, but at the same time these systems can also be used in the claims environment. There are an infinite number of areas within the claim process that can benefit from the optimization process; whether it is fast-track settlement routing, workflow management, filling informational gaps with third party data, and many more areas.

**RAPATTONI:** I think the claims environment is now faster. We are able to detect fraud quicker with technology than that of a manual read. It separates the claims inventory away from questionable claims so we can focus on process and payment to the insured.

**MCKIBBIN:** Analytics has the potential to enhance all phases of the claims environ-

ment. Carriers are better-positioned to efficiently assign claims and set reserves; identify and fast-track low-risk claims; and detect potential fraud by using predictive analytics in real time.

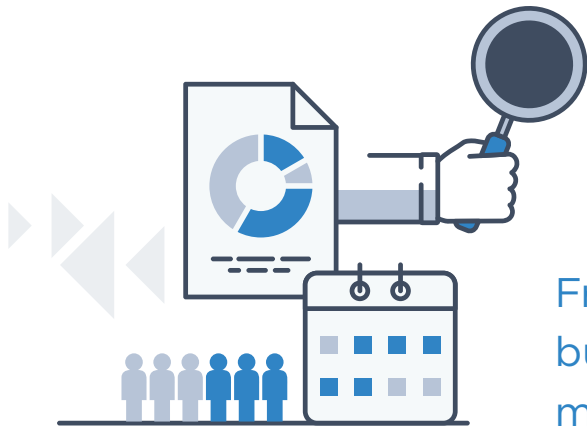
### What are the anticipated innovations/trends in the data analytics environment that insurers should be aware of for 2018?

**SKIBA:** I think many carriers are aware that the future of fighting fraud is all about data; data management, inclusion and integration, and at the core of this data is the technology that surrounds it. But we can't forget the “people” aspect of what is to come in fraud fighting. Many companies are failing to recognize that they need people who have the ability to leverage the power of this data and, furthermore, have some degree of comfort using technology to assist with fraud fighting efforts.

This is not to imply that we will never need field-based SIU investigators “door knocking” but we need to make sure all of our SIU staff is aware of the capabilities of technology and data in order to enrich their investigative skills.

**RAPATTONI:** I would expect to see the role of the data analyst continue to expand. With the influx of technology in front of





## Fraud is an international problem as business and manufacturing become more global.

us, carriers will likely create roles for data experts so as to ensure their data platforms are being maximized for a positive return on investment. With that, I would also expect the number of fraud referrals to rise given the data scrub that an analytics platform will likely provide.

**MCKIBBIN:** We anticipate that the positive lessons of analytics usage in the auto industry will more frequently be applied to other risks, such as P&C and life/disability insurance. The challenge will lie in reworking the relatively discrete set of variables in play in the auto sector for application in other market sectors.

### How do the high-performing insurance carriers use data analytics to fight fraud?

**SKIBBA:** The high-performing carriers that use data analytics do so in a manner that is more holistic and broader than customary systems. These carriers will insert a fraud detection system, but also use that program in the point of sale, underwriting or claims environment. This will bring more data into the fraud system, data that will enrich and strengthen the fraud results.

**RAPATTONI:** High-performing carriers can now identify fraud before the money is out the door. They have a more robust claims protocol that expedites the identification of fraud. With earlier detection, the carrier can choose to take a recorded

statement or examination under oath or log the event for purposes of building a recovery action against the defrauding party. Simply stated, carriers are using this tool to stop the fraud bleed before it begins.

**MCKIBBIN:** Michael's point about holistic approaches to data analytics is excellent. Underwriting and claims can each develop information useful to its counterpart for the ultimate benefit of both. It is essential that underwriting and claims consciously make an effort to avoid the "silo" approach, and realize that they can benefit each other immensely. The very best carriers will also engage in constructive self-criticism or "self-scouting," critically assessing the outputs of their data analytics systems on an ongoing basis to improve what data is collected, how it is collected, and how it is processed and weighted.

### How should global counter-fraud strategies utilizing data analytics differ from smaller scale "domestic" approaches?

**SKIBBA:** Carriers that have successful counter-fraud programs on a global level are ones that have realized the benefit of getting all of their systems "talking" to one another. It is vital for companies to refrain from a silo approach to their data; that is, not allowing information to leave certain areas. Carriers that can bridge the

informational gap and analyze policy data, claims data and third-party data across global lines have seen incredible returns on this effort.

**RAPATTONI:** Domestic approaches are more limited and oftentimes miss the big picture. The data is limited so the final product is limited. Carriers that take the global approach are always going to see the bigger picture because they are not focusing on limited sects. Taking a broader approach allows the carrier to consider fraud over multiple lines of business. Likewise, that approach allows the company to look beyond its own backyard and peer into different regions and countries. Bottom line; globalization of data detects more fraud.

**MCKIBBIN:** The lessons of effective scalability play out in an even broader context in data pooling efforts across multiple carriers, such as that utilized by IBC and Canatics. Getting carriers in non-auto sectors to collect and record data with a view toward pooling of such data may represent the next frontier in this area. 🍷

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# Moving on After the Big Freeze – Part II



Editor's Note: This is part two of a two-part series.

Last month this column cited a Smithsonian article about a 13th century village in Greenland that was abandoned when the village's primary source of trade, walrus tusks, lost market value to African elephant tusks. The same situation is now happening in the Appalachian coal country as alternate forms of energy replace much of the world's need for coal.

A few, as cited in J.D. Vance's *Hillbilly Elogy*, moved to the industrial north, but then foreign steel and other cheap labor products from Asia and Latin America made those jobs obsolete. What were the former coal miners to do? Unfortunately, the answer was to turn to opioids, and the Midwest is now bogged down in an opium/heroin epidemic.

So where do unemployable drug addicts go? Some avoided that problem and learned new trades, often in the growing technology arena. But for every 10 new tech start-ups, eight or nine fail and go bankrupt. Farming, another skill the miners may have had, is also a dead-end, as farming is now a corporate industry.

The family farm died in the last century. Hence the move to welfare and homelessness – and drugs. Narcotics is a booming business, whether or not Mexico pays for building a \$25 billion wall.

There is, to a very minor degree, still some coal mining, some for U.S. power plants and some for foreign export, but it is a shadow industry. Oil is booming, but after the wells are drilled and the pumping becomes mechanized, there is not much call for "roustabouts." There are plenty of jobs for migrant agricultural or domestic workers, but Americans won't take those jobs. Hence unemployment is stuck somewhere between four and five percent. (The actual numbers are greater than in the Great Depression!)

## An iconoclastic prediction

In mid-2017, a chunk of Antarctic ice the size of Delaware broke off and floated in the South Atlantic as an iceberg. As 80% of any iceberg is below the surface and full of air bubbles, this alone won't add much to the oceanic sea levels. But

what is melting from Antarctica's glaciers, as well as those glaciers on Greenland, Alaska, Canada, and even Glacier National Park, add to the sea level – and it may rise by 13 feet or more by the end of the current century.

How are these factors connected and how do they relate to claim adjusting? The answer is already evident as property adjusters are writing checks for total losses of homes burned by wildfires across the American West. As sea levels rise, they'll also be writing checks (at least to those who purchased federal flood insurance, if it is still available,) to residents of the Gulf and Atlantic Coast as their homes wash away in the rising surf.

But what about the unemployed? The global warming that even skeptics now seem to accept as reality has a lining, perhaps not silver, but we'll have to do with brass or tin for a while. Technology is not going to provide a solution for the forest fires or the rising ocean, but there may still be opportunity in those areas for others besides adjusters.

If a young person were to ask what field they should enter, I would suggest hydrology. Water is scarce and precious, and needs to be controlled. Hydrology could provide employment for hundreds of thousands of workers, building levees or dams, laying pipeline to transport excess fresh water from where it isn't wanted to where it is needed, providing home restoration for flood victims who, like the characters in Vance's *Elogy*, won't move, or trimming brush in potential wildfire areas before some careless smoker starts another blaze.

There is no end to the number of new fields of endeavor (including claims adjusting) that the new reality of global warming will bring. Unlike the 13th century Greenlanders who just picked up their valuables and moved, we don't all need to become migrants. 🍷

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