Insurance Buyers' News

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How Reviver Laws Turn Back the Clock

Reviver laws, which establish a period for bringing lawsuits that would otherwise be barred by a statute of limitations, have become popular for permitting victims of sexual abuse to bring claims for incidents that occurred many years ago.

Twenty-four states and the District of Columbia have already enacted reviver laws. Some permit claims only against perpetrators, but some, like those in Maine and Vermont, allow claims against other types of defendants, including churches, sports camps and schools. In addition, 35 states and the fed-

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This Just In…

The surplus lines market — the place insurance brokers go to find insurance for clients when standard insurance carriers don't want to provide it — has grown 20 percent in the last year, according to a report from A.M. Best.

While premiums are up, profitability, with a combined ratio of 99.7 percent overall, has been "elusive in recent years due to losses driven by secondary perils such as wildfires and convective storms."

What's interesting is that while total premiums are up in surplus lines, sales and payrolls have been down because of pandemic closures, lockdowns and quarantines. The A.M. Best report gives three reasons why premiums have grown nevertheless:

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eral government have additional reviver laws pending which aim to extend or eliminate statutes of limitation.

Now that states have "moved the goalposts, … the window is opened for [claimants] to bring claims now," noted John Glomb, CEO of Philadelphia Insurance Co. at a recent insurance industry virtual conference.

More Goalposts on the Move

In addition to sexual abuse claims, the window may also be opening for other types of reviver suites, as illustrated by the condo collapse in Surfside, Fla., this summer. "The law and the zoning requirements were that every 40 years a condo has to be updated and made sure that they're up to code. This collapse happened, and they were on the verge of getting ready to prepare for the renovations to ensure that everything was stable…And then overnight the goalposts were moved to 30 years instead of 40 years," said Glomb, predicting an emerging "cottage industry of litigation plaintiffs" to take advantage of the building code change in Florida.

Rate Adequacy

The question of rate adequacy deriving from these situations was certainly on the minds of insurance company executives at the conference — that is, how can they adjust their rates now to account for these unanticipated exposures? What really troubled them wasn't policies currently in effect. They can increase rates at renewal. Rather what concerned them were policies that had been issued in the past years, often long past years. In other words, occurrence policies.

Occurrence vs. Claims-made Policies

An occurrence-based policy provides coverage for events alleged to have happened during the policy period — and it applies even if a lawsuit is brought many years after the policy period ended. This is the best type of protection to get because it continues providing coverage even after a significant amount of time has lapsed between the time of the alleged incident and the claim, which is often the case with child sexual abuse claims.

This is the opposite of a claims-made policy, which protects the business only during the policy period. Of course, because of lengthy statutes of limitation, such as with malpractice lawsuits and toxic waste legislation — and now reviver laws — fewer insurance companies are willing to offer occurrence coverage.

If your business has the potential to incur long tail liability, you can probably only buy claims-made coverage. Then, the solution is to purchase "tail coverage" which extends the current policy period into past periods with a "retroactive date."

Legal Defense and Reputation Management Coverage

If your business has any exposure to these types of lawsuits, you should also consider buying insurance that includes legal defense costs and crisis management services to restore your reputation, goodwill and confidence in your organization. These can be especially important features if your business is faced with a sexual molestation or misconduct accusation. Please call us if you have questions about your liability insurance coverage.

This Just In

- **"Market dislocation" which in this situation refers to how investors have been identifying surplus lines (or wholesale) insurance companies as attractive businesses to invest in, thus creating more capacity to write this type of business.**
- **"Insurers maintaining rate adequacy discipline." In other words, higher rates.**
- **"Renewal carriers [who] looked to get out of the business or risk class entirely." So, these would be standard insurance companies that decided they no longer wanted to write insurance for, say, churches or day camps, which have become less popular categories lately.**

"A decline in capacity owing to changes in company risk appetites, along with hardening rates for many commercial lines of coverage, creates an environment with an acute need for creative market and product-oriented solutions — the hallmarks of the surplus lines carriers," said AM Best.

The Future of Insurance Underwriting

Insurance companies are relying more and more on technology for claims handling and underwriting.

Two companies, Praedicat and Verisk, recently announced new risk analysis products that your insurance companies may be using soon.

Preadicat's Company Risk Score (CRS) evaluates how risky a company is to underwrite, based on "how exposed a company is to emerging risks that could drive litigation involving the company as a defendant." In other words, a company's CRS is an expression of its potential for getting sued.

The CRS is especially useful when evaluating a company's directors and officers insurance exposure, as it examines the potential for securities class action litigation risk.

"After simulating … how harmful a companies' products and business activities are, we estimate the likelihood that litigation will emerge, targeting those product and business activities that scientists think cause bodily injury or environmental damage. We use the model results to distill a company's products and business activities risk into a single 100-point Company Risk Score," says Julia Fuller, Senior Vice President, Account Management at Preadicat.

"Based on peer-reviewed science and objective third-party data, our evaluation is used by companies to better understand the impacts of their products and business activities, and by insurers to underwrite the liability risk of those same companies. As emerging risks get more and more complex, innovations like the Company Risk Score are helping make underwriting these risks a whole lot easier," said Fuller.

While Preadicat's Company Risk Score helps underwriters evaluate a company externally, gaining perspective on the litigation climate it operates in, another company, Verisk, helps underwriters look within the company. Verisk uses artificial intelligence to analyze data and ratings in Yelp reviews "to provide insurers with a more holistic assessment of businesses."

Winning the Race to Zero Questions

According to its press release, Verisk is leveraging artificial intelligence (AI) and image analytics to generate insights from more than 200 million reviews on Yelp, the company that connects people with great local businesses.

Using AI, Verisk analyzes unstructured data in Yelp reviews, including images that might indicate how a business has evolved. Insurers can use these insights to inform discussions about coverage with potential customers, see how employees are mitigating risks and make

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underwriting decisions with greater speed and precision.

"Finding current and robust information online to underwrite small commercial insurance can take significant time and effort," said Tracey Waller, director of small commercial underwriting at Verisk. "By working directly with Yelp, Verisk is augmenting its high-quality and consistent analytics on millions of small businesses with information that is up-to-date, organized and easy to digest."

Through Yelp, Verisk says it can seamlessly integrate millions of data points, including "Yelp's trusted reviews and images in real-time, which supports Verisk's ongoing effort to help insurers accelerate their digital transformations" and "win the race to zero questions on insurance applications." Yelp's platform, which enables consumers to discover, connect, and transact with millions of local businesses of all sizes, provides a powerful source of data for insurers that's constantly being updated.

The Long-Term Effects of Covid-19 On Insurance

The pandemic has forced us to adapt how we do business and many of these adaptations have made a permanent impact on our world.

The tremendous growth in Work from Home (WFH), restaurant food delivery services and virtual meetings mark some of the major changes we've seen. In the insurance industry, the focus has been on using technology to get around the necessity of having to make in person contact whenever possible. For example, claims are handled remotely with smart phones and underwriting data, such as property inspections, is

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gathered using drones. Underwriters are also entering into partnerships with companies like Verisk which packages Yelp information to perform underwriting analyses, as we discuss in another article in this edition of *Insurance Buyer's News.*

A couple less obvious effects of the pandemic on insurance have involved dogs and traffic accidents.

Dog Days of the Pandemic

According to The American Veterinary Medical Association, dog ownership during the pandemic is up significantly. They say the number of new pets, dogs being the most popular, seen by veterinary practices on average increased from 25 per week in late March to 39 in early July—an increase of more than 50% since COVID started.

Insurance industry experts predict more dog insurance sales, but also more dog bites. In 2019 dog bite and dog-related injuries resulted in nearly $800 million in losses for homeowners' insurers, with more losses expected in 2020 and 2021.

Speed in the Time of Pandemics

A recent study examining vehicle traffic during the pandemic in one Ohio county while stay home orders were in effect found that even though fewer people were driving, more drivers than usual were speeding and getting involved in deadly car crashes. Twice the number of crashes that occurred involved speeding

"More of the crashes that did occur were severe, not just because of less congestion, but also because of drivers who were speeding, and driving under the influence of alcohol or drugs," said Jonathan Stiles, lead author of the study and a postdoctoral researcher in geography at Ohio State.

The study reveals that "our streets are designed for speed, not safety," said co-author of the study Harvey Miller, a professor of geography at Ohio State. "What is keeping crashes from being more severe during normal times is higher volumes of traffic, and once traffic goes away, people speed up and crashes have more serious consequences."

The authors of the study say that if traffic volume decreases permanently because of more people working from home, roads may be wider than they need to be, thus encouraging more traffic accidents. "We need to redesign streets and roads with safety in mind and not just speed," Miller said.

Don't Forget Your Telemedicine

Probably the most significant impact of the pandemic on insurance, especially health and workers compensation insurance, has been the increased use of video over devices such as laptops or mobile phones to access medical help remotely — telemedicine

A survey conducted by risk-technology consultant Redhand Advisors of 1,100 risk professionals found that 38% of the respondents have increased their use of risk technology during this time.

Of 100 workers' compensation professionals surveyed by San Diego-based comp technology company Mitchell International, Inc., 35% said telemedicine and predictive analytics are the technologies that will have the biggest impact on the industry within the next five to 10 years, followed by mobile technology coming in at a distant third place at 8.5%.

"I've seen a renewed interest in risk management, or focus in general, but also specific to work comp," said Steve Paulin, Orion Risk Management. "I'm seeing companies now, because of their forced adoption of technology, specifically Zoom, they're now a little more willing to look at other technology and outside resources with different groups."

The Fine Line Between Public and Private Data

As underwriters and others use data sets such as those provided and analyzed by Praedicat and Verisk and others to make underwriting decisions (see our story, "The Future of Underwriting"), there is often a fine line between what is public and what is private information. Where does one draw that line?

A recent incident reported in Insurance Journal illustrates the situation.

> When night fell, a clerk at a bustling 24-hour MotoMart flipped a switch from behind the counter.
>
> Electromagnetic locks sealed the doorway. A window sign, now illuminated in red, warned "facial recognition technology in use" and directed customers to "look up at the camera."
>
> A woman who wanted cigarettes was locked out. Confused at first, she quickly realized that she needed to remove her medical mask. After her unobstructed facial image was scanned into a store computer, then screened against the company's photo archives of previous customers convicted of store-related crimes, the doors clicked open.

The woman was in Missouri. If she had been a few miles away, in Illinois, what happened to her would be illegal. In Illinois, private sector companies and institutions are prohibited from collecting biometric data from unsuspecting citizens under any circumstances.

Is social media data that much different from biometric data such a photograph? Should businesses and individuals be protected from underwriters using social media to make evaluations? Should individuals at least be entitled to give their permission first? Or is the incident at the MotoMart something altogether different? What do you think?

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