

“Risk Management on a Napkin”

2020 “Virtual” Restaurant Risk Management Summit

August 20, 2020



Today's Agenda

- 1:00 – 1:05 p.m. **Welcome & Introductions**
Patrick Sterling, Texas Roadhouse & John Logan, Marsh
- 1:05 – 1:45 p.m. **Managing Risk in a COVID World**
Patrick Sterling, Texas Roadhouse; Andy Steinbach, Yum! Brands; Bob Bowman, The Wendy's Company; Shannon Gardner, Chick-fil-A
- 1:45 – 2:20 p.m. **Restaurant Risk Management Trend Report & Survey Results**
Moderator: David Olson, Marsh; Paul Beattie, Portillo's; Rob Behnke, Cracker Barrel; Cindy Drury, Panera
- 2:20 – 2:50 p.m. **Navigating A Challenging Insurance Market**
Jennifer Rowe, Marsh Casualty & Integrated Risk; Lindsay Grimes, Marsh Property; Michelle Sartain, Marsh FINPRO
- 2:50 – 3:05 p.m. **Break**
- 3:05 – 3:25 p.m. **Legal Update**
COVID Litigation; Nuclear Verdicts; Premises Liability; Dram Shop
Carrie Christie, Rutherford & Christie
- 3:25 – 3:40 p.m. **OSHA Update**
Cindy Smail, Marsh Workforce Strategies
- 3:40 – 3:45 p.m. **Closing Remarks**
Patrick Sterling, Texas Roadhouse



Patrick Sterling
Senior Director, Legendary
People and Risk, Texas
Roadhouse



John Logan
Restaurant Industry
Segment Leader, Marsh

Managing Risk In A COVID World



Bob Bowman, The Wendy's Company
Shannon Gardner, Chick-fil-A
Patrick Sterling, Texas Roadhouse
Andy Steinbach, Yum! Brands

Meet the Speakers



Andy Steinbach
Director of Global Risk
Management and co-head of
Enterprise Risk Management,
Yum! Brands, Inc.



Bob Bowman
Director Risk Management
The Wendy's Corporation



Shannon Gardner
Executive Director,
Enterprise Risk
Management
Chick-fil-A



Patrick Sterling
Senior Director, Legendary
People and Risk
Texas Roadhouse

POLLING QUESTION:

“In hind sight, on a scale from one to ten how effective was your pre-Covid risk response plan?”

Managing Risk In A COVID World

- How do you apply lessons learned during Covid to sharpen response to future crises and to strengthen your overall risk management approach?
- How has risk management changed at your company since the inception of COVID?
- How have you adjusted your business continuity / crisis management plans for COVID? For Civil Unrest?
- Has your supply chain been impacted? Do you anticipate future issues?
- How have adjustments to your business model (delivery, curbside, alcohol to go, etc.) impacted your risk profile and managing risk?
- What do you anticipate for the remainder of 2020 and next year?

Questions





Risk Management Trend Report & 2020 Claims & Best Practices

David Olson, Marsh Risk IQ
Paul Beattie, Portillo's Hot Dogs, LLC.
Rob Behnke, Cracker Barrel/Old Country Store, Inc.
Cindy Drury, Panera, LLC.

Meet the Speakers



Cindy Drury
Director, Risk
Management/Legal
Panera, LLC



Paul Beattie
Director of Risk Management
Portillo's Hot Dogs, LLC



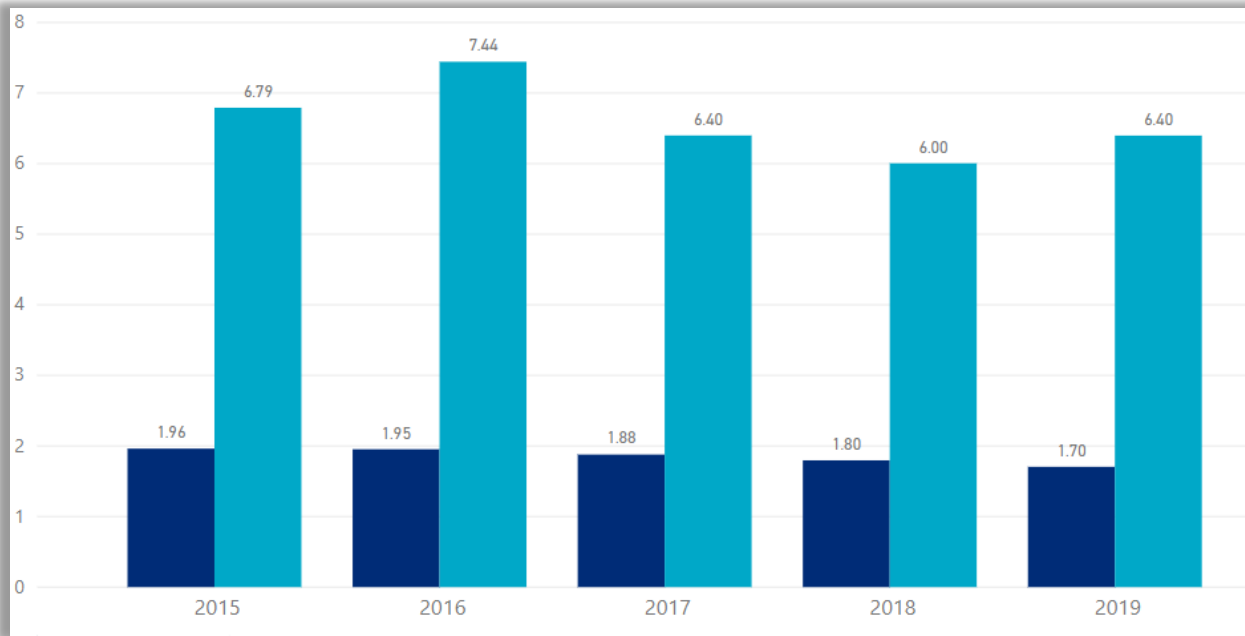
Rob Behnke
Director of Risk Management
Cracker Barrel//
Old Country Store, Inc.



David Olson
Senior Vice President
Marsh Risk IQ

Marsh Restaurant Report

WC Rate Analysis: All Claims, Each Year Valued at 12 Months



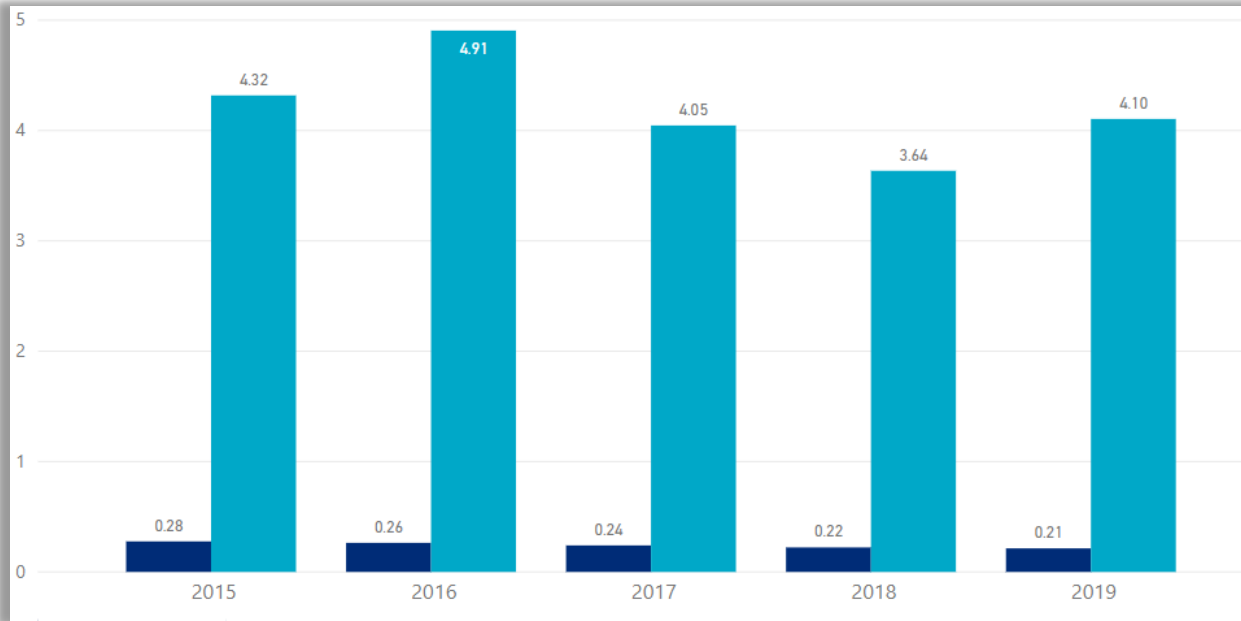
Average cost of a claim at 12 months: \$3,548 (\$3,461 in the 2017 report)

Average cost of a claim '15-'19 as of 12/31/2019: \$4,823 (\$4,747 in the 2017 report)

- WC frequency rate: claims per \$1MM of payroll.
- WC severity rate: Incurred per \$1K of payroll.

Marsh Restaurant Report

WC Rate Analysis: Lost Time Claims Only, Each Year Valued at 12 Months



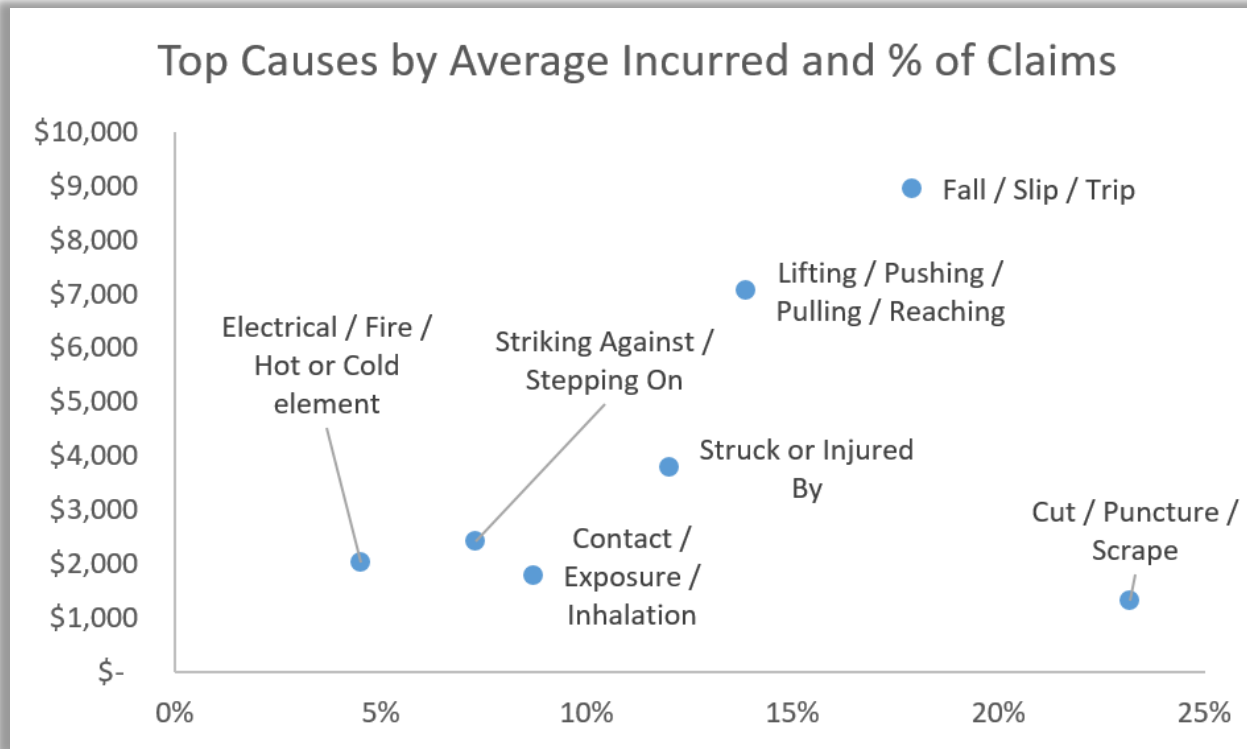
Average cost of a LT claim at 12 months: \$17,327 (\$14,998 in the 2017 report)

Average cost of a LT claim '15-'19 as of 12/31/2019: \$25,873 (\$23,365 in the 2017 report)

- WC frequency rate – LT claims only: claims per \$1MM of payroll.
- WC severity rate – LT claims only: Incurred per \$1K of payroll.

Marsh Restaurant Report

WC Cause: Cuts/Punctures/Scrapes still on the rise



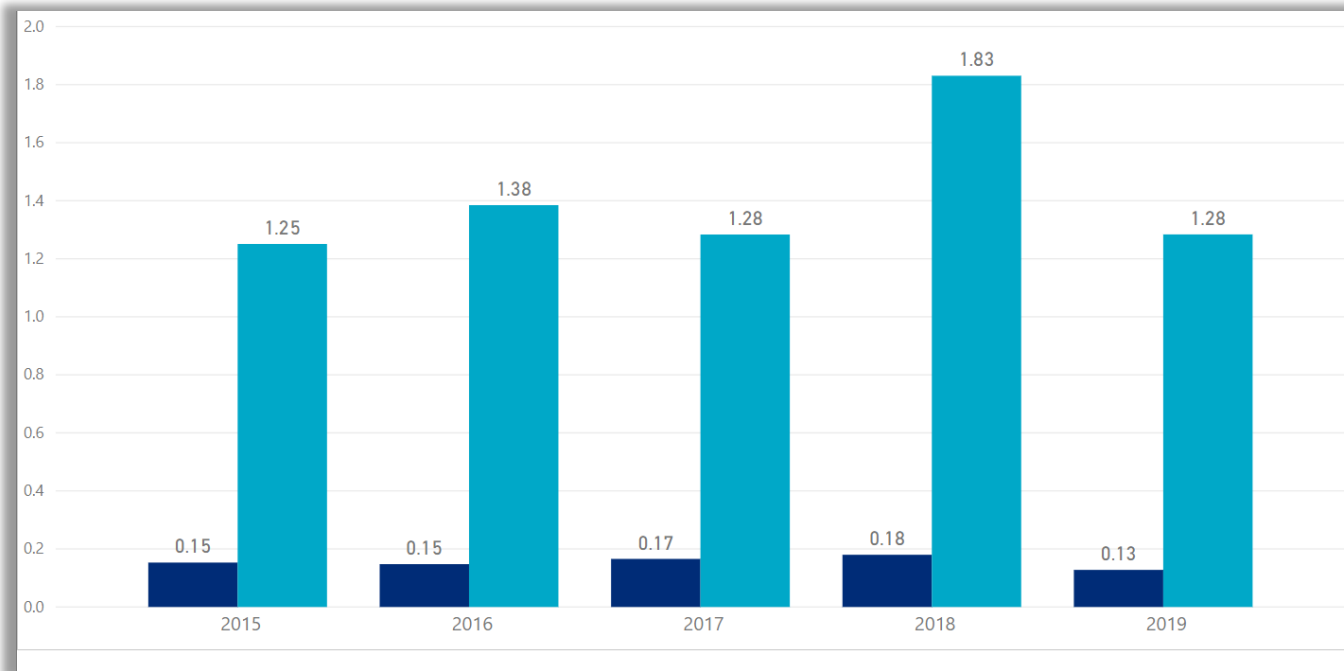
Cut/Puncture/Scrape is now the largest percent of frequency: 23%

Slip/Trip/Fall is still the largest percent of severity: 37%

2015 – 2019 Valued as of Dec. 31, 2019

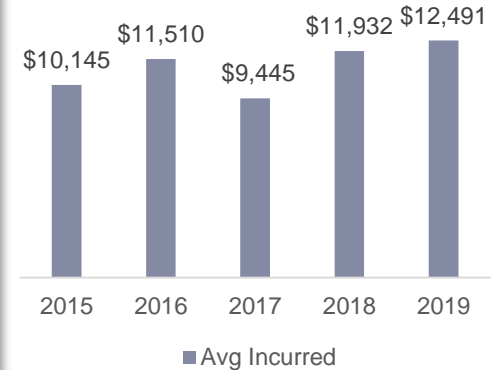
Marsh Restaurant Report

GL Rate Analysis: Litigated Claims Only, Each Year Valued at 12 Months



- GL litigated frequency rate: claims per \$10MM of revenue.
- GL litigated severity rate: Incurred per \$10K of revenue.

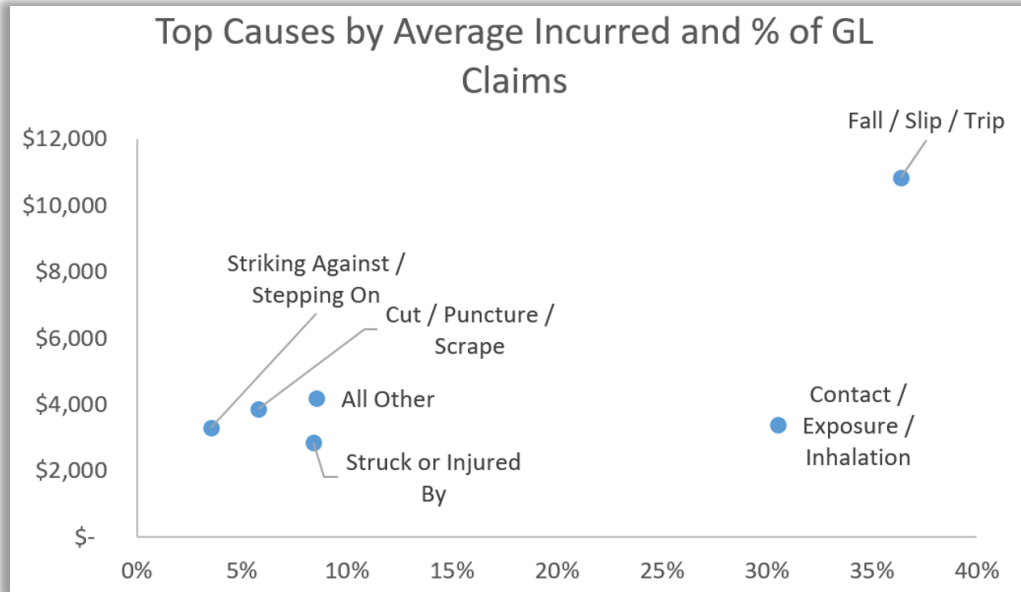
Average Cost of GL Litigated Claim at 12 Months



Average % of expense for litigated claim: 39%

Marsh Restaurant Report

GL Causes – Most Significant



2015 – 2019 Valued as of Dec. 31, 2019

Fall/Slip/Trip still driving cost: 61% of Total Inc.

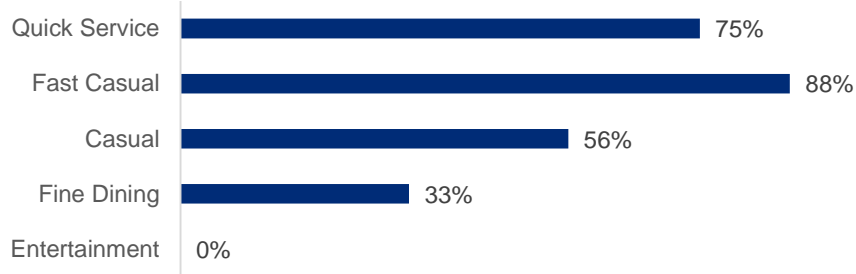
Average cost of Fall/Slip/Trip \$11K

New Cause Categories	Average Cost
Liquor Liability	\$97,151
Product/Completed Operations	\$3,362

Marsh Restaurant Report

Best Practices Survey – Delivery and Drivers

Percent of Companies offering some delivery option



Delivery continues to be a operational priority (The 2020 Survey was primarily collected prior to COVID-19)

Use of corporate vehicles as delivery method was down in the recent survey

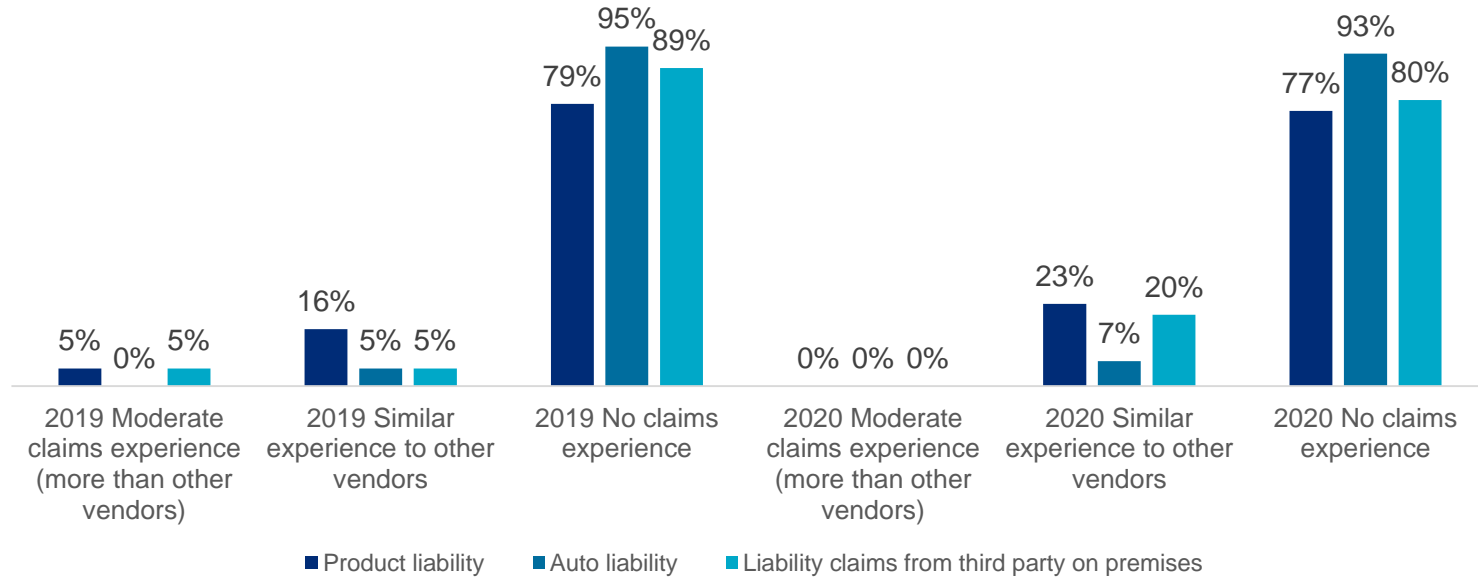
Use of 3rd party delivery or employee's personal vehicle saw a rise in the past year

What Methods are used in your delivery service?	2020	2019	Change
<i>Third party delivery service (examples: Grub Hub, Uber Eats)</i>	94%	70%	+24%
<i>Employees in personal vehicles</i>	60%	48%	+12%
<i>Employees in corporate vehicles</i>	28%	33%	-5%

Marsh Restaurant Report

Best Practices Survey – Delivery and Drivers

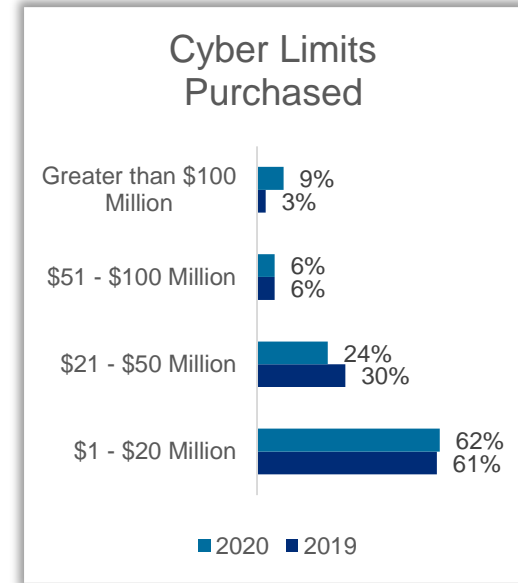
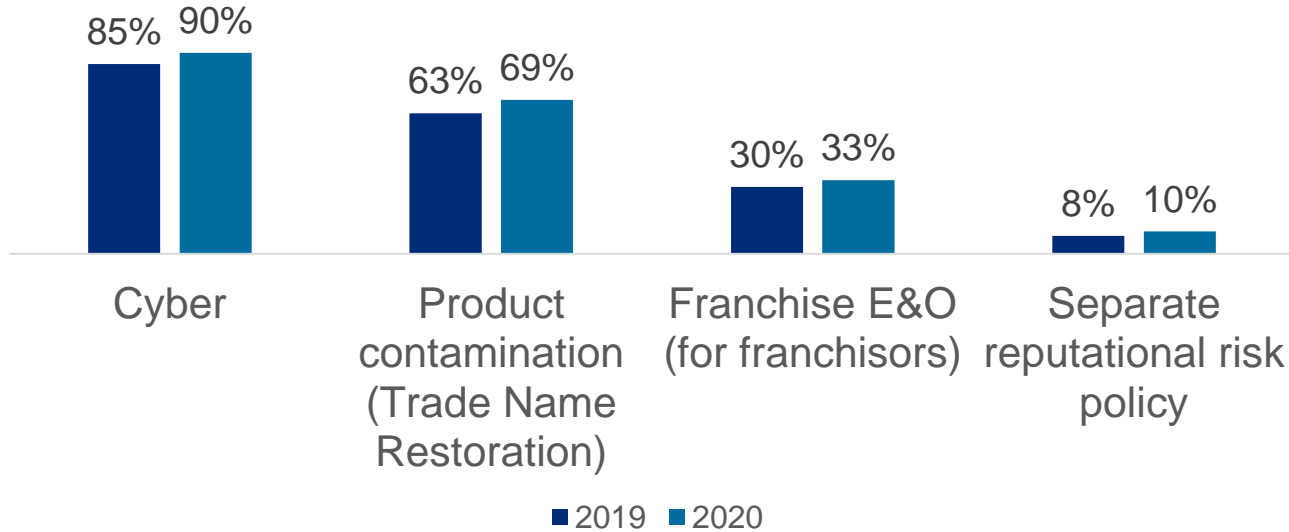
Claims from third party delivery 2019 vs 2020



Marsh Restaurant Report

Best Practices Survey – Specialty Financing

Specialty coverages with increasing uptake 2019 vs 2020



Questions



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Navigating a Challenging Insurance Market



Jennifer Rowe, Marsh Casualty & Integrated Risk
Lindsay Grimes, Marsh Property Practice
Michelle Sartain, Marsh FINPRO Practice

Meet the Speakers



Jennifer Rowe
Casualty Placement Leader
Marsh



Lindsay Grimes
Southeast Property Placement
Hub Leader, Marsh



Michelle Sartain
FINPRO Practice Leader
Marsh US/Canada

Primary Casualty

General Market Environment

- Overall rates continue to shift towards firming within the marketplace:
 - WC Flat to +5%
 - GL +2% to +5%
 - Auto +5% to +15%
- **Despite the rate shift** - capacity remains available with competition amongst markets happening across good performing risks.
- **Strategic** - some markets have utilized their ability to provide lead umbrella capacity to help win the primary program on combined basis.
- **Limits** - requests for higher GL and Auto limits have continued, driven primarily by attachment point increases required by lead umbrella carriers.
- **Delivery** – carriers are not inclined to provide on a GC program and depending on amount of exposure, will consider on a loss sensitive program.



Jennifer Rowe
Marsh Casualty &
Integrated Risk

General Market Environment

- **Covid issues (GL)** - we have only seen one carrier add Communicable Disease exclusionary wording for our restaurant clients – thus far. All carriers now wanting to see employee/guest safety protocols and social distancing guidelines in place.
- **Collateral** - Restaurant industry financials will be more closely reviewed with carriers taking a much more conservative approach on new business collateral requirements and a review of current paid loss credits offered to current customers.
- **Moving forward** - anticipate capacity will remain available in the primary market place with program structure being key. WC rates may continue to shift, expect GL rates will continue to rise, and Auto will continue to be the most challenged line.

Excess Casualty Update

Market Brief

Pricing

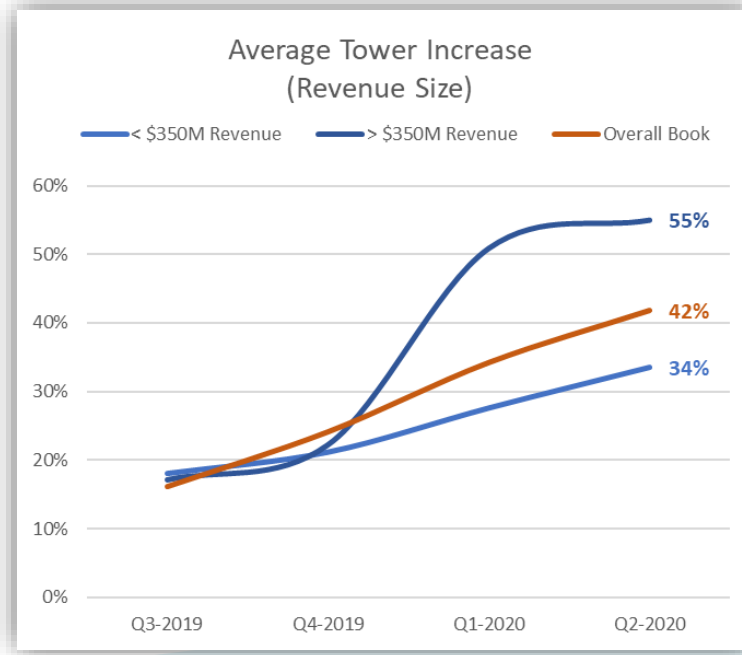
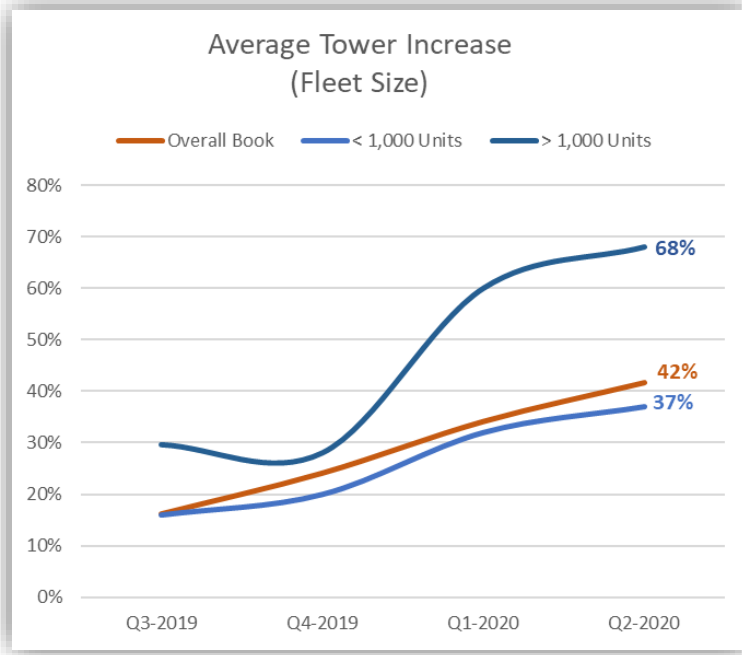
- Anticipate increases to continue with account to account differentiation driven by the need to replace or relocate capacity in addition to other account and/or industry drivers, such as fleet size as well as overall account size.
- Much higher % increases in upper layers, particularly when dealing with London and Bermuda (insurers retrenching on minimum premiums and looking for increased relativity to underlying layers).

Capacity - Contraction is expected to continue throughout the balance of 2020... more account to account vs. book moves.

Client Limit Purchase - Insured's are buying less, largely due to increases rather than pure availability.

Reinsurance Market - This could begin to have a greater impact on insurer pricing and availability.

Umbrella Excess Market Exposure Metrics



Property Market Conditions - Q1 - Pre-COVID

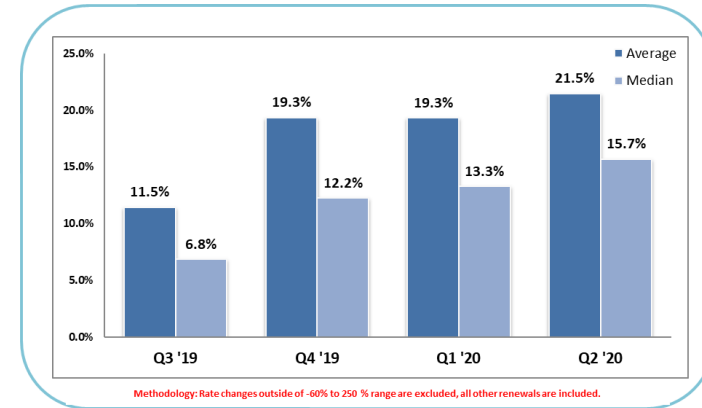
- 10 straight quarters of rate increases, with the highest being Q1 2020.
- Q1 2020 average rate change on Marsh's overall portfolio was +19.3%.
- Underwriter bandwidth challenges caused by increased submission activity, optional requests, and limited staffing.
- Increasing data requirements and expected adherence to engineering recommendations.
- Scrutiny on terms and conditions.
 - Significant pressure on deductible adequacy.
 - Focus on cyber exclusions and ensuing loss clarification.



Lindsay Grimes
Marsh Property

Property Market Conditions

- 11 straight quarters of rate increases on Marsh's portfolio with Q2 2020 being the highest.
- Q2 2020 average rate increase was 21.5%.
 - Accounts with premium >\$1M or shared & layered, the Q2 average rate increase was +28.4%.
 - Accounts with premium <\$1M or single carrier, the Q2 average rate increase was +17.1%.
 - Since 2018, Q2 placements have seen a cumulative increase of +56.3%.
- In Q2, 14% of Marsh's clients increased their AOP deductibles and 20% reduced their policy limit.
- Global property losses YTD are estimated at \$26 billion, excluding COVID-19.
 - H1 losses driven by convective storm, civil unrest, flooding and severe weather events.
 - COVID claim estimates still vary significantly between \$40 and \$100+ billion depending on the source.



Coverage Considerations

- Significantly greater focus on terms and conditions
 - Reduction of non-physical damage coverages (i.e. Attraction Properties, Ingress / Egress, Civil or Military Authority, Tenant Relocation, Evacuation Expenses, Protection and Preservation of Property, Cancellation of Bookings, Crisis Management)
 - Several carriers looking to exclude strikes, riots & civil commotion (SRCC)
 - Contingent Time Element limit requirements continue to be a limiting factor for many carriers
- AIG, AxaXL, Chubb, Zurich, Swiss Re reducing the use of manuscript forms
- Continued pressure on deductibles in an effort to eliminate attritional loss activity
 - Often no material premium credit for mandated higher deductible
- More carriers seeking higher severe convective storm/hail deductibles
- Greater scrutiny of valuation adequacy
 - How are Business Interruption being calculated and what is the impact of COVID 19 on your business?
 - Following several large loss discrepancies in reported Property Damage values compared to actual values at the time of loss, some markets looking to attach occurrence limit of liability endorsements which limit the amount recoverable to the values reported.
- Greater scrutiny on data accuracy and completeness
 - Detailed and complete COPE information for every location.
 - Engineering reports and adherence to engineering recommendations.

Market Drivers – Global Loss Activity

Significant Global Insured Losses – 2012 to Q2 2020

SOURCE: PRESS RELEASES, PCS, PERILS, GC EMEA BUSINESS INTELLIGENCE

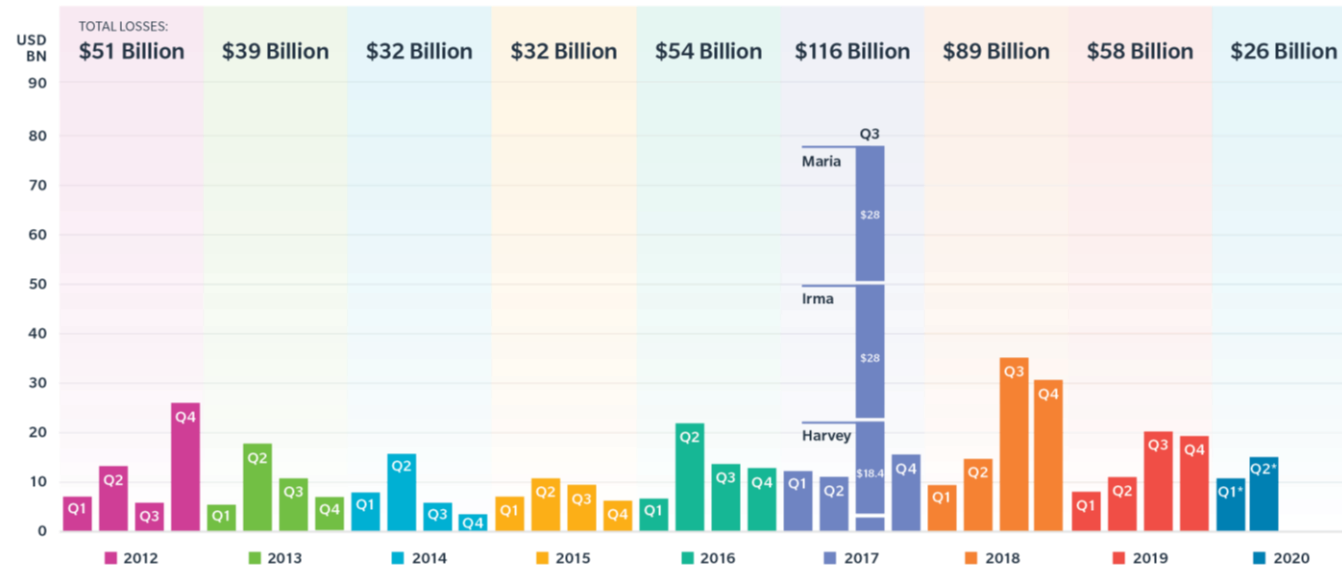
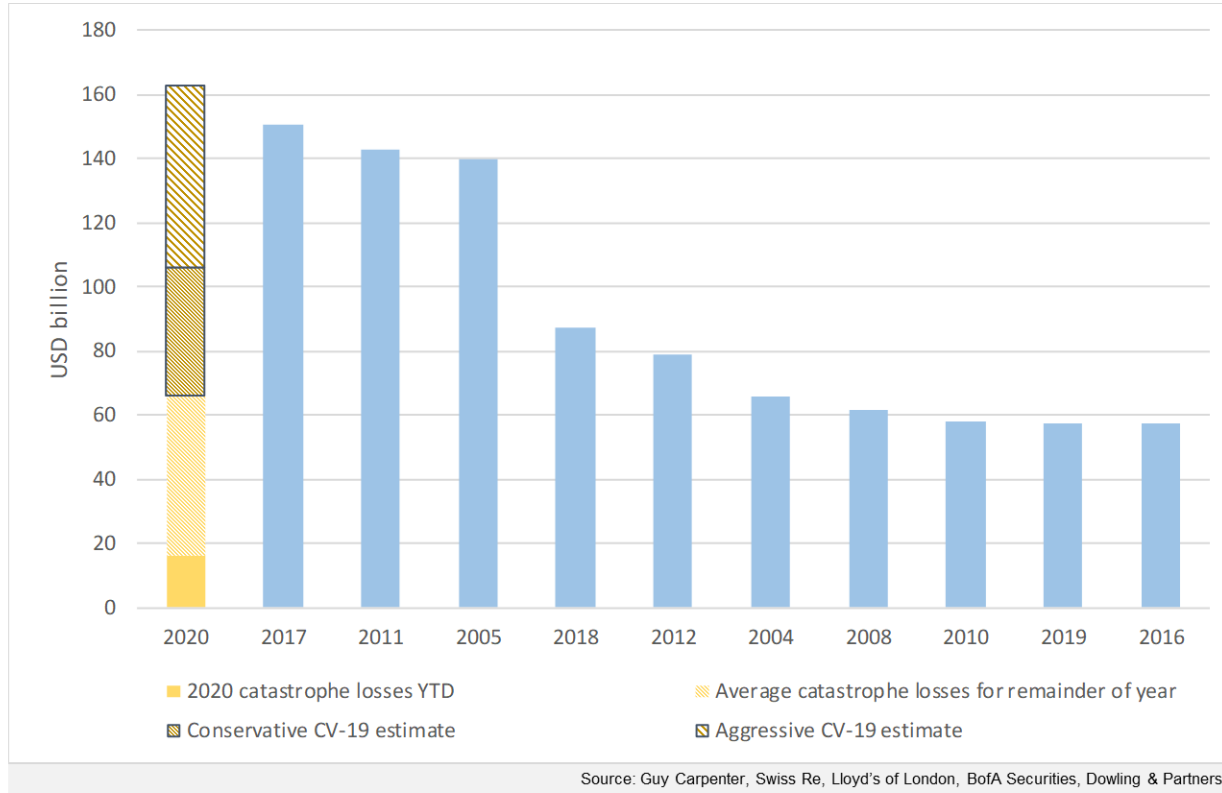


FIGURE: SIGNIFICANT INSURED LOSSES (EST. LOSSES > \$100M – 2012 TO Q2 2020)

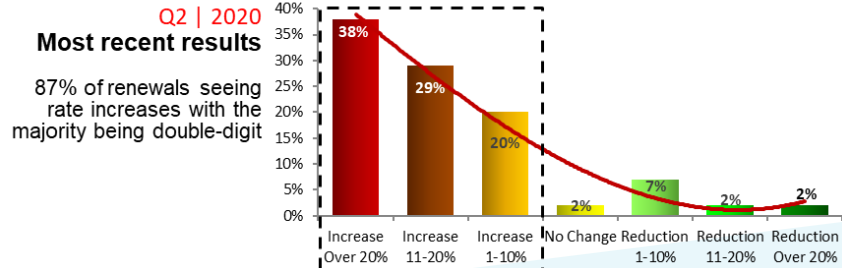
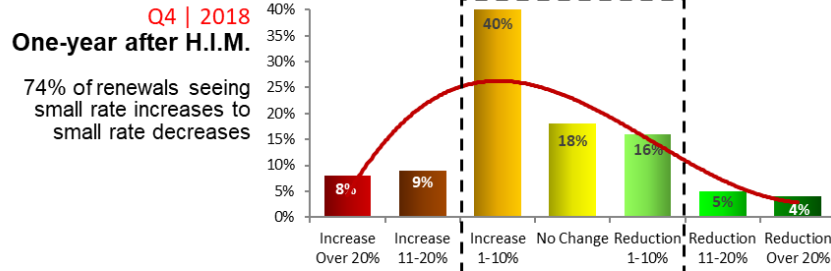
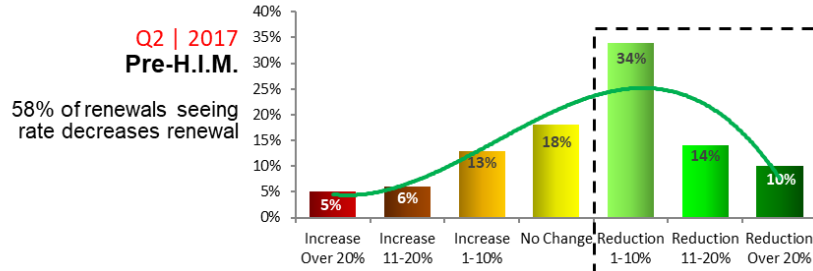
* Q1 AND Q2 2020 RESULTS EXCLUDE ANY POTENTIAL COVID-19 LOSSES.

Market Drivers – Top 10 Loss Years



Losses for Full Year 2020 look set, at a minimum, to approach USD \$100 billion for only the fourth time ever.

Market Shift Q2 2017 to Q2 2018



D&O Liability and COVID-19: An Overview

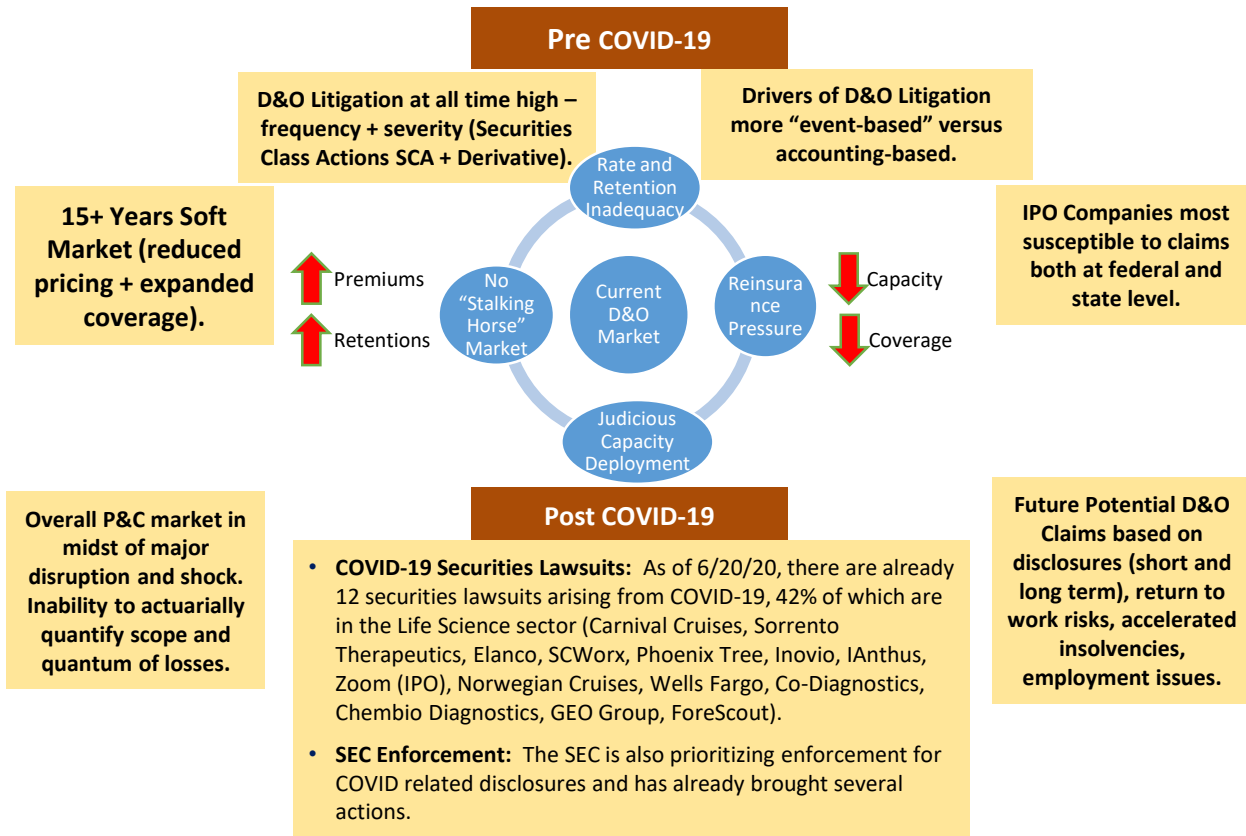
- What do D&O policies cover and what don't they cover?
 - No coverage for bodily injury type claims involving COVID-19
- Securities suits arising out of COVID-19 issues have been filed
 - At least 12 at this point
 - Targets thus far:
 - Cruise ship lines (Norwegian Cruise Lines, Carnival Corporation)
 - Life Sciences (Inovio Pharmaceuticals, SCWorx, Sorrento Therapeutics)
 - Privacy concerns (Zoom Video Telecommunications)
 - Business impact of the pandemic on a companies' financial performance or business operations (iAnthus Capital Holdings, Elanco Animal Health, Forescout Technologies)
 - With economic issues, more cases will come



Michelle Sartain
Marsh FINPRO Practice

D&O – Navigating the Turbulent D&O Market

Continued Macro Challenges



D&O Liability – COVID-19

Sample Questions from Underwriters



SEC Reporting

- Has the company requested an extension from the SEC to file audited financials?
- Has the company amended its insider trading policies?
- Will corporate guidance be impacted?



Resilience

- Does the company have an Enterprise Risk Management process? Is it cross departmental?
- Has the ERM team completed an analysis of the exposure of the virus? If so, what was the analysis?
- If the company's supply sources are expected to be impacted, what is the assessment of the current inventory levels available and your ability to meet demand?



Financial Health

- How much cash does the company have and how long will it last?
- Does the company have access to additional liquidity through credit facilities or other sources?
- What percentage of revenues have been impacted by the crisis? What additional revenue impacts are expected over the next 90-120 days?
- What is the company doing to preserve capital while meeting short term obligations?
- Did the company have money earmarked for long term capital investment that they are able to use to help weather the crisis?
- Is the Company in jeopardy of breaching any debt covenants?
- What is the company doing to preserve cash?

D&O Liability – Quarterly D&O Rate Change

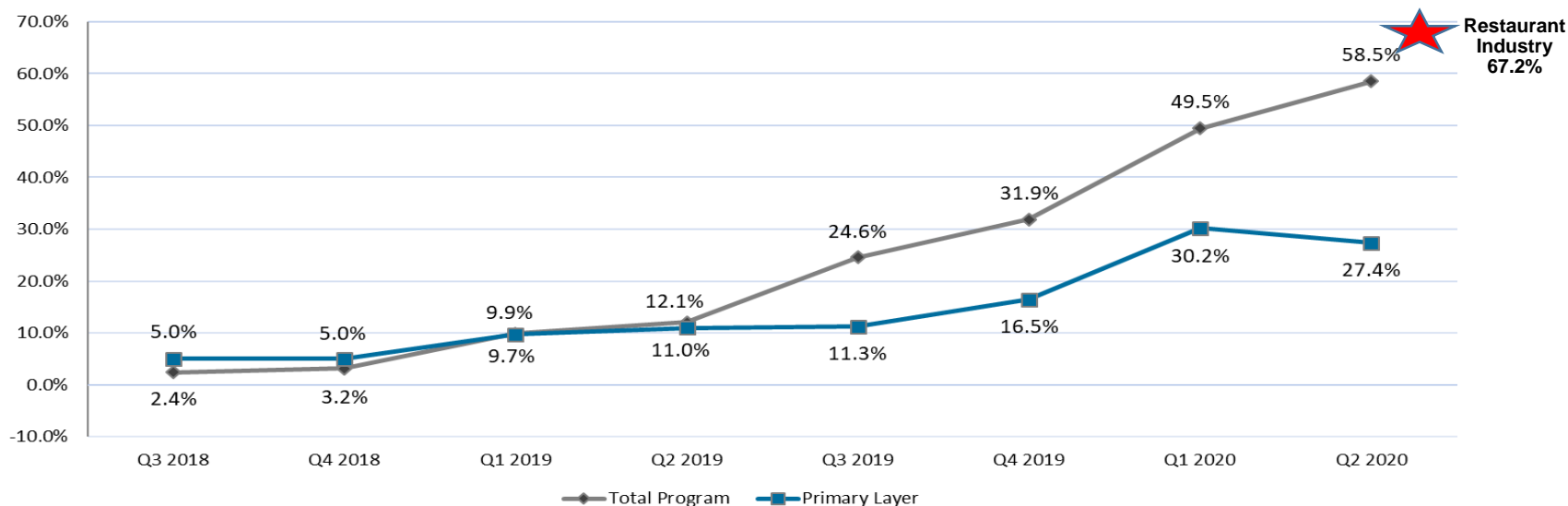
Public Company D&O Rate Trends (All Industries)

PUBLIC COMPANY QUARTERLY D&O Rate Trends — JUNE 2020

D&O and Side A-Only programs

US PUBLICLY TRADED CLIENTS - AVERAGE HISTORICAL RATE (PRICE PER MILLION) CHANGES

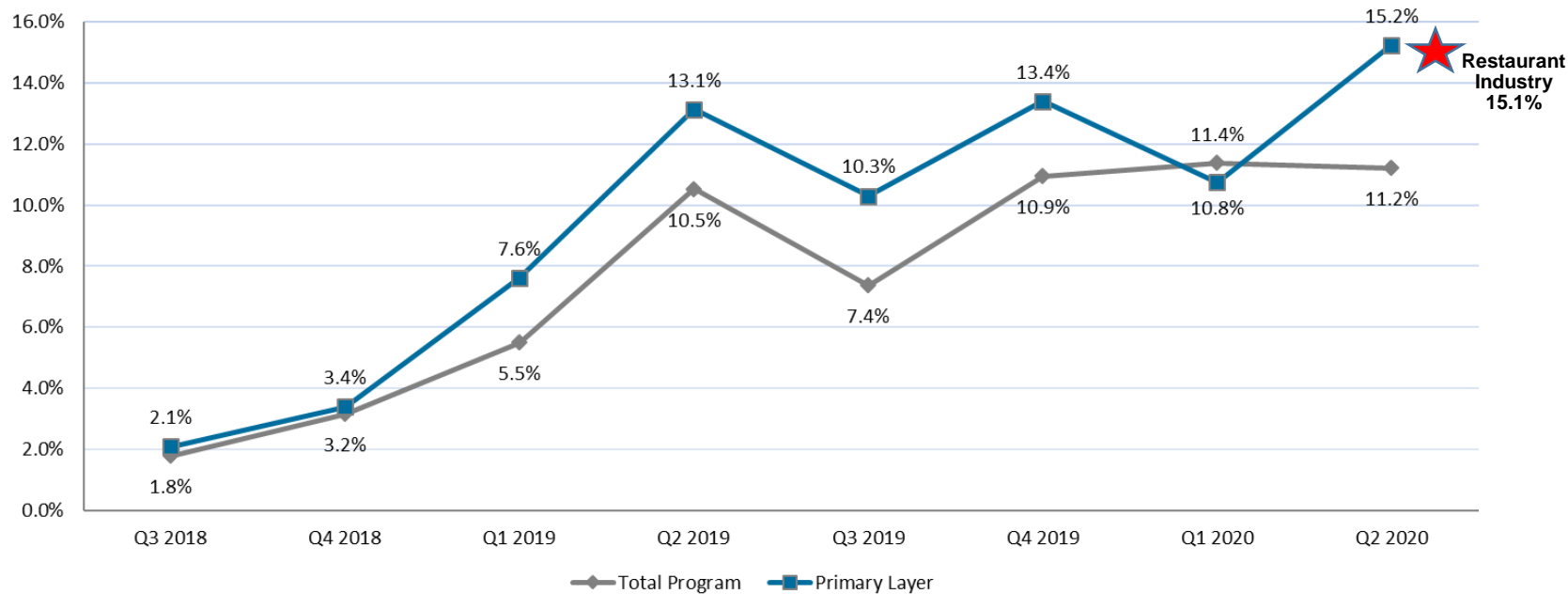
D&O and Side A-Only programs



D&O Liability – June 2020

Private Company - D&O Rate Trends

US PRIVATELY HELD & NOT-FOR-PROFIT CLIENTS - AVERAGE HISTORICAL RATE (PRICE PER MILLION) CHANGES
D&O, D&O including EPL, and Side A-Only programs



What Now?

Preparing for a Challenging Renewal

1



Start Early

2



Educate yourself on what's happening

3



Know your priorities

4



Prepare for your underwriter meetings in advance;
be prepared to answer COVID-19 related questions
and differentiate your risk.

Questions



Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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BREAK

(Please return at 3:05 p.m. EDT)



POLLING QUESTION:

1) *“Have you had/filed any of the following COVID related claims?”*

- a) First party property (business interruption)?
- b) Worker’s Compensation?
- c) General Liability (guest claim)?
- Employment Practices Liability claim?

2) *“Of those who have filed WC claims, have any claims been deemed compensable?”*

3) *Are any of the companies which serve alcohol training differently in UT, now that the state BAC limit has been reduced from .08 to .05?*

4) *If you are training differently in UT, are you preparing for the trends in other states (NY, HI, DE) which may follow suit?*



Legal Update

COVID Litigation; Nuclear Verdicts; Premises Liability & Dram Shop

Carrie Christie, Rutherford & Christie

COVID-19 LITIGATION

Defending Against Employment Related Claims

- Employer took **reasonable measures**,
- Based on **then-existing guidance**,
- To do its best to **prevent the spread** of COVID-19 in workplace

COVID-19 LITIGATION

Defending Against Employment Related Claims

- Best Practices:
 - Follow [CDC's Interim Guidance for Businesses:](#)
 - best practices for social distancing
 - [Guidelines for Cleaning and Disinfecting](#) the workplace
 - Quarantine employees with exposure to confirmed COVID-19 case
 - [CDC's Public Health Recommendations for Community Exposure](#)
 - Send symptomatic employees home until released by a medical professional or until they meet the guidelines for discontinuing self-isolation

COVID-19 LITIGATION

Defending Against Employment Related Claims

- Utilize OSHA's recent non-mandatory [guidelines](#) as resource to create return to work plans and policies
- OSHA:
 - An organization's good faith efforts to comply with its recommended guidance will be taken into "strong consideration" when determining whether to cite
 - The General Duty Clause may be basis for violations if employers do not engage good faith efforts
 - Citations could be evidence of an employer's failure in a civil lawsuit

COVID-19 LITIGATION

Defending Against Employment Related

- Educate employees and engage them
- Make sure employees know what measures you are taking to protect them
- Stay aware of their health, but respect privacy/confidentiality
- Constantly remind employees of COVID-19 symptoms and urge them to seek medical attention if symptoms appear
- Check in with isolated sick employees at least once a day to ask about their health
 - Such employees will be less likely to seek litigation against employer
 - If a COVID-19 death does occur, consider how you can assist the family (some workers' compensation laws provide for funeral expenses if the illness is work-related)

COVID-19 LITIGATION

Defending Against Employment Related Claims

- Inform employees of confirmed cases of COVID-19 in the workplace
 - CDC recommends employers notify potentially exposed co-workers of confirmed cases
 - Err on the side of transparency:
 - OSHA may ultimately determine that a failure to notify of a confirmed COVID-19 case is violation of OSHA's General Duty Clause
 - Employers should still maintain the privacy of the confirmed employee

COVID-19 LITIGATION

Defending Against Employment Related Claims

- Stay on top of current and evolving guidelines:
 - Center for Disease Control (CDC)
 - Department of Labor (DOL)
 - Occupational Safety and Health Administration (OSHA)
 - State and local Executive Orders
 - Assign individuals to keep up with changes and share them with management

COVID-19 LITIGATION

Nuclear Verdicts: Premises Security & Liability

- **Top 100 verdict is US in 2019: \$22 Million to \$4.6 Billion**
- **\$45,175,500.00:** Premises liability; Woman injured when cart thrown off the upper level of a parking deck by teens
 - Prior items being thrown from the deck prevented shopping center owner and security company from MSJ
- **\$81,000,000.00** – Premises liability; Navy veteran robbed and shot at a Kroger
 - Jury apportioned 86% to Kroger and 14% to shooters
- **\$72,960,000.00** – Premises liability – gas line exploded in apartment
- **\$45,000,000.00** – Premises security – Man was robbed and shot at CVS
 - 95% to CVS and 5% to Plaintiff. Nothing apportioned to shooter.

COVID-19 LITIGATION

Dram Shop Verdicts and Pre-suit Investigations

- **\$75 million** verdict in PA against bar/guest for auto fatality—testimony that bar served 1 ½ beers
- **\$37.5 million** verdict in IL against bar/guest for auto fatality/injuries (couple)
- **\$27 million** verdict in GA against bar that served underage guest in auto fatality
- **\$20 million** settlement with insurer of bar, which refused to resolve underlying suit
- **\$7 million** settlement PA against bar: 23 year old beaten by intoxicated guests

COVID-19 LITIGATION

Dram Shop Verdicts and Pre-suit Investigations

- **Investigate immediately:**
 - Preserve:
 - Video
 - Guest check/report
 - Credit card report
 - Employee training/videos/portal documents
 - Employee schedule

COVID-19 LITIGATION

Dram Shop Verdicts and Pre-suit Investigations

- **Meet with Employees:**
 - Obtain sworn statements
 - Refrain from discussions/postings
- **Coordinate with Licensing Investigation**
 - Avoid interviews of managers/employees
- **Coordinate with police investigation**
 - Avoid interviews of managers/employees

COVID-19 LITIGATION

Dram Shop Verdicts and Pre-suit Investigations

- **Determine other potential bars/restaurants involved**
 - Serve with Request to Preserve Video/Guest checks
 - Joint/Several liability?
 - Notice of Non-party fault
- **Track Criminal Case Against Driver/Guest**
 - Driver usually cooperates with PLA to obtain negotiated reduced sentence
 - Guilty plea is admissible in civil case

COVID-19 LITIGATION

Dram Shop Verdicts and Pre-suit Investigations

- **Know Your State Law:**

- Joint and Several Liability with Driver?
- Punitive Damages allowed against social hosts?

- **Trends in BAC levels:**

- Initially .15
- Lowered to .10
- Lowered to .08
- Utah lowered to .05 in Dec. 2019; NY, DC and HI proposed similar bills

Questions



OSHA Update

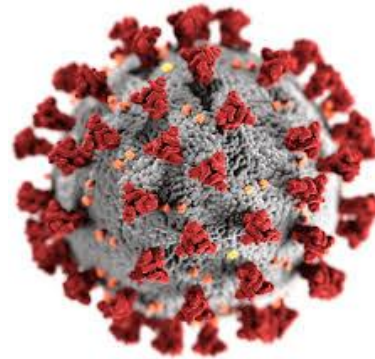


Cindy Smail, Senior Vice President
Workforce Strategies
Marsh/JLT Specialty



**Occupational Safety
and Health Administration**

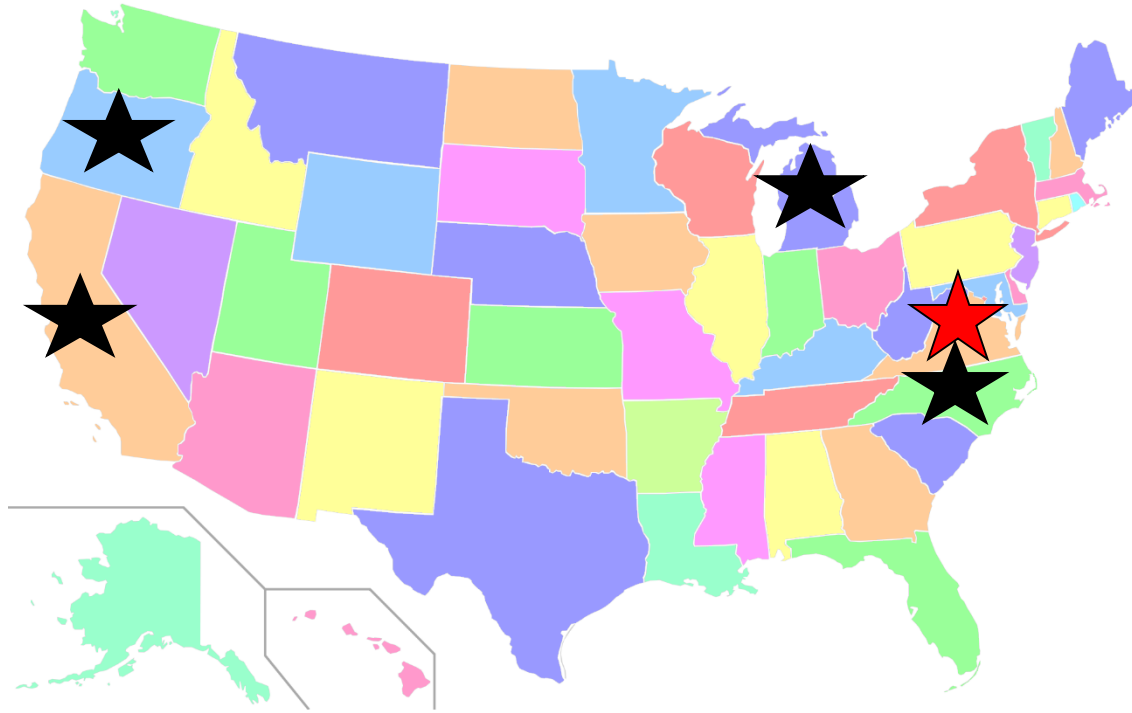
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Reasons for Complaints

1. Doesn't enforce CDC recommendations for team members or customers, like maintaining social distance and wearing masks (properly).
2. Not **providing PPE** needed.
3. Inadequate sanitation.
4. Doesn't **train employees**.
5. Employee thinks they could be exposed when one of their co-workers returns to work after **traveling to a hot spot**.
6. Want to work at home/not travel.

States Taking the Lead on Coronavirus Regulations



States Taking the Lead on Coronavirus Regulations



<http://www.doli.virginia.gov>

"Workers should not have to sacrifice their health and safety to earn a living—especially not during a pandemic," Gov. Ralph Northam, Twitter

- Health screenings
- Written programs
- Employee training
- Physical distancing when possible
- Handwashing and sanitizer available
- Disinfecting
- Providing and requiring face coverings
- Employees medical records access
- Not discriminate against employees who raise concerns or who feel unsafe at work
- Complete a COVID-19 hazard assessment
- Notifications of positive tests – exposed employees, Health Department, building owner
- Designated person to coordinate implementation at each site
- RTW policies and procedures for known/suspected infected employees
- Air-handling system maintained and to minimum ANSI Standards

OSHA Inspections – Workplace Violence

“OSHA seems to have an increased role investigating workplace violence, but the investigation depth appears to vary by OSHA representative. Is there any guidance in this area?”

OSHA Workplace Violence Page

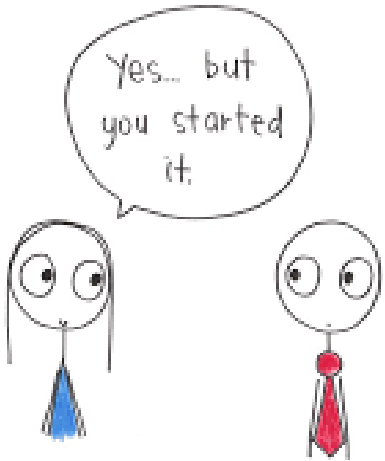
<https://www.osha.gov/workplace-violence>

The screenshot displays the OSHA Workplace Violence page layout, which is organized into a 2x2 grid of content blocks. Each block has a title, a descriptive paragraph, and a 'More »' button.

- Risk Factors**
Provides information on risk factors and scope of violence in the workplace to increase awareness of workplace violence.
[More »](#)
- Prevention Programs**
Provides guidance for evaluating and controlling violence in the workplace.
[More »](#)
- Training and Other Resources**
Provides online training and other resource information.
[More »](#)
- Enforcement**
There are currently no specific OSHA standards for workplace violence. Also provides links to enforcement letters of interpretation.
[More »](#)

OSHA Inspections – Workplace Violence

On inspections, how deep is too deep? How much investigation is too much, and can we push back at any point?”



Questions



Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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