Marsh

Risk Insights: Senior Living & LTC

Episode 18

Navigating risk: Insurance insights for owners and operators

Welcome to the *Risk Insights: Senior Living & LTC* podcast, hosted by Tara Clayton with Marsh's Senior Living & Long-term Care Industry Practice. Tara, a former litigator and in-house attorney, speaks with industry experts about a variety of challenges and emerging risks facing the industry.

Tara Clayton:

Hello, and welcome to Risk Insights, the senior living and long-term care podcast. I'm your host, Tara Clayton. In today's episode, I'm joined by an industry expert to discuss current conditions in the environment in the insurance market for senior living providers, as well as some areas of opportunities for listeners to get prepared for their next renewal. For our discussion today, I'm joined by Mike Pokora, Managing Director and Co-Practice Leader for the Marsh Senior Living and Long-Term Care Industry Practice. Hey, Mike. Thanks for joining us today.

Mike Pokora:

Thank you, Tara. It's wonderful to be here with you this morning.

Tara Clayton:

Thanks. So, Mike, before we get into this meaty discussion about all things insurance, I know you're very well known in the industry, but we may have some new listeners, so can give us just a little bit about your background and growth in the senior living industry?

Mike Pokora:

I'd be happy to, Tara. So, I have spent really the majority of my business career in the insurance industry, which I hate to date myself, is over 35 (laughs) years now. Started in the industry with a direct writer of insurance, Liberty Mutual, which really was a great training platform. I think to this day, they continue to do a great job in training. But I quickly realized that I really wanted to work for the client and moved over to the brokerage side.

So, during those 35 years, I worked for several of the larger brokers in the space, and I think what's germane to this conversation today is really how I've spent the last 25 years of my career focused in on the senior living industry, and with my partner, John Atkinson, we've built a team of industry professionals, maybe I'm a little biased, but I think they're the best in the industry, that really focus in on risk mitigation and risk consulting for owners and operators in the senior care space.

Over the 25 years, many of those individuals are still with us today (laughs) so they've kind of grown up in this industry with us, but I would be negligent if I didn't comment on some of the new young talent that we've added to the team over the last several years. I mean, they share the same passion for clients and for the work that we do with seniors, that I'm excited about what the future looks like. In my current position, I co-lead the Senior Living & Long-Term Care Practice for the US and Canada. And I think what's worth mentioning is Marsh has an intense industry focus, and we sit with those industry leaders, and it's where the investment comes in, resource, thought leadership, education, that senior care is one of those. So we sit alongside other industry groups, like construction, real estate, and healthcare, again showing the commitment we as an organization, not just the team, have to this overall industry.

Tara Clayton:

Awesome. Thanks, Scott. I've seen you working with our clients in a variety of different ways and knowing, really, the wide range of services that these senior-care, senior-living communities offer including community outings, transportation to different medical visits. There's other off-campus activities that require using a company, either van or some type of vehicle to

transport residents to these different locations. And I know the usage of that community vehicle can raise a number of different exposures related to both the safety and threat of residents, as well as the staff who are utilizing that vehicle.

So, knowing fleet safety, that's a huge area of focus for you when you work and engage with clients. And so I wanted to talk today with you, kind of high-level, the importance of having a robust fleet safety program. So I'm going to kind of start there. Overall picture, what is a fleet safety program and why is it important?

Mike Pokora:

Well, a good fleet safety program starts, really, with a foundational policy. You need to have policies and procedures in place regarding things like everyday activities on the shuttle. How you do your pre- and post-trip inspections of the vehicle. How do you safely board residents? And then you get into more fundamental things in terms of administration of your policies and procedures, like how do you qualify your drivers?

So when you hire a driver, how do you make sure that that driver's qualified to operate that vehicle, that they're safe to operate the vehicle? And so on. So, you know, from a policy perspective, you want to make sure that you are spelling out all of the things that you should be doing, fundamentally, to make sure that your residents are safe when you're transporting them to from place to place.

Tara Clayton:

Knowing that these are important for resident safety and, and staff safety, do you see questions at renewal, when we're placing auto coverage, are we seeing questions from carriers, as well, related just having a fleet safety policy? Is that something that you see?

Mike Pokora:

Yes, definitely, and most of the auto carriers will want to see that there are policies and procedures in place to make sure the drivers are qualified, to make sure that the drivers are being trained for defensive driving, for making sure that the residents are safe. Operation of the wheelchair lift, operation of and securement of wheelchairs on the vehicle if they're going to have wheelchair riders. That's a huge issue, always want to make sure my operators have robust training programs, have robust policies around wheelchair securement because that's always a big, big issue with carriers. Some of the more serious and severe claims that have occurred with our clients center around that issue in particular.

Tara Clayton:

So Mike, I would agree with everything you said about our, not just our, our group, but our team, the passion that our team has, but really the support and attention that Marsh itself puts into the senior care space, and so I want to talk through with you today about the insurance market, because we know that is such a big item for providers when they're looking at business expenses and operations, and you mentioned our team, how we engage to help from a risk management, risk mitigation standpoint. We are now about halfway through the... Or we actually are over halfway through the year. We've had our 6/1s, our 7/1s, the big, big book of renewals that a lot of our clients have. And I want to just kind of talk through with you, and we can really start with any of the lines that you want to start with, but I want to talk about what are some of the trends, key areas that are important for listeners to understand that we've been seeing through 2024 up to this point?

Mike Pokora:

Yeah, it's a great question. Maybe I just step back and give a little context, because, you know, this is an industry that even pre-COVID, was hit pretty hard with some of the market cycles that we have in insurance. If you really think about the marketplace, owner and operators right now are having a real difficult time kind of navigating through the current environment that we have. They have outside of just the insurance pressure, you know, on premiums and retentions, they've got staffing challenges, wage pressure. We're in a deteriorating litigation environment. And yeah, throw on top of that some of the significant Cat losses that we've had. People, seniors like to retire in these areas that are Cat prone.

So, the overall market is a little bit different than I've seen in my 30+ years in this space, and the 25 in senior care. We've had soft market cycles where you get markets coming in, there's intense pressure on pricing, and it suppresses pricing in the marketplace. Like, night follows day. Then you have new capital that comes into the market, and all of a sudden you see pricing relief, and we get into that soft market cycle. So, right now, what's been interesting is you have a lot of capital that's

continuing just to sit on the sidelines. You're seeing some retrenchment in lines like general and professional liability, and I think with the pace of these large natural disasters, capital's putting their money elsewhere for a more conservative return.

We've seen some positive impacts. I'm getting to get into market-specific commentary. We've seen some positive impact on the property market, so we have seen some new capacity come in. If I had to just define what I think this market looks like, I would probably, and I'm putting up air quotes, say it's "tender" or "fragile." Because I really do think that it can turn on a dime. I mean, you look at Beryl, Hurricane Beryl that hit early this year. It wasn't a remarkable event. It was... You know, it's probably going to be somewhere around a billion dollars, but what really has the reinsurers and the insurers concerned about this one is it was a Cat 5 storm, and it was the earliest Cat 5 storm that we've seen. So that's, that's having markets take a little bit of pause. Like, what is next? What is this really going to look like as we enter into this hurricane season?

And then you've got what they're calling the Park Fire that's burning right now. You've got 4,000 firefighters. Think of the resource that are fighting that right now. They're saying that that claim could be bigger than the Camp Fire, which was in 2018. And as I recall, that, you know, 11,000 homes. There were, you almost 100 deaths related to that. So again, these are lasting a news cycle. We're having them with pace. The Minnesota floods, another really good example. So, just to, to give some context to these large events that we're having. Over the last five years, we've had 20 weather-related events that have been in excess of a billion dollars. The last 43 years, we've averaged eight-and-a-half events. Year to date, we've had 15 events in excess of a billion. So back to my earlier comment that we're seeing these with pace, and with frequency. You know, that's why I think we're in a really tender spot, and it could in fact change on a dime. Make sense?

Tara Clayton:

A lot of sense, and I think that's helpful to understand, especially, I'll stick on the property side here for a minute, but understanding the impact for insurance renewal. It's not necessarily an individual portfolio that we're looking at, but these carriers are looking at broader events that are happening across the country, and that drives a lot of impact that we ultimately see, kind of to your points about capacity coming in or retrenchments. One thing I wanted to ask you, Mike. I know there was the difficulties with the property market last year. There was a lot of talk around reinsurance renewal treaties and what impact that was going to have, and I thought that recently, there was some renewal treaty information that happened around 7/1. Are you seeing any impact from that side of it?

Mike Pokora:

Yeah. Actually, the January renewal treaties as well as the July renewal treaties went very well. I mean, the reinsurance... I mean, so Guy Carpenter, our sister company, recently published something where it said that as a whole, the industry, the reinsurance industry is operating at about a 20% return on equity. That creates stability. That creates a very stable marketplace. What we've seen with some of the later year renewals, we've seen some of the insurers not necessarily buying as much reinsurance.

Now, don't get me wrong. The reinsurance companies are still looking at where we are from a Cat perspective. Some of them have dipped their toe back in. They're still getting a premium for the reinsurance that they're letting out. But, we're at $50 billion of insured losses through half the year, so again, we're headed to another $100 billion dollar year. So, while the reinsurance treaties operated in an organized fashion, we could get to the year-end treaties, and have some problems again. But again, good, good situation right now. I would say that we're overall stable on the reinsurance side as well.

The property market, overall, has... well, you know what? I'm going to give a little shout-out to our Global... We just published within the last couple of days our Global Insurance Market Index, which focuses on the US. It's all good signs. It touches on the major lines of business, property, casualty, and financial lines and cyber. And overall, the commercial marketplace had a rate increase of roughly 1% for the second quarter of 2024. That was down from 3% in Q1. The way that breaks down is casualty was roughly up 4%, property was up 2%, the financial lines — being your public and private D&O, crime, employment practices — was down 3%, and cyber 5%. So you know, there's some really good macro trends that we're seeing in the US, as well as around the country.

Specifically to the property, we're still running on 30+ quarters of rate increases in the property market, but

what we're seeing in Q2, similar to what we saw in Q1, is we're seeing a deceleration of those rate increases. Some of the biggest decreases that we've seen, and germane to the senior living, since it's so real estate intensive, is we're seeing decreases in some of the Nat Cat. We're seeing capacity available, but we're seeing some decrease in the pricing.

And that's driven a fair amount of market competition. Last year at this time, when we were handling some of our bigger property renewals, we were dealing with trying to fill excess towers with capacity. We were seeing coverage carve-outs around the valuation issue. We were seeing carriers unwilling to put up significant Cat limits. Different story this year, through Q1 and Q2. We're being oversubscribed in some of those, and when we're oversubscribed, that creates competition for those layers primary and excess, which drives pricing down. So again, really, really good results there.

It's few and far between where we're seeing any of the margin clauses, where last year, the carriers were hyper-focused because of the inflationary situation we were in last year, that, were the values correct? You know, the carriers' view was, "Was I going to have a loss, and the reported value by the client was not going to cover what our…" what the carrier's financial exposure was for that overall claim. That has normalized. The valuation isn't part of the conversation now with underwriters. As long as the client has a repeatable, sustainable, and defensible methodology on how they're doing, their valuations, it's not really in that conversation anymore, which is a positive.

Now, it's not all rosy. Clients that have significant concentrations in the Gulf States, wind-prone areas, California from quake and wildfire, they're seeing higher increases than those numbers that I, I just referenced. So we're seeing some of that. And then if a client is continuing to have some attritional, heavy attritional losses, not controllable, we're seeing carriers pull levers, like increasing water damage deductibles to some pretty high multiples in some cases.

But overall, we're at a pretty good place from a market standpoint. One of the trends I would say that we're seeing on the property side as well is we're starting to see clients really bet on themselves, taking higher retentions, taking part of the risk themselves, starting to form captives in order to provide, some layer of risk in that tower. That's a trend that I think we'll continue to see, especially with some of the larger portfolios, you know, the equity, the REITs, and such.

So, overall, I like where we are today as it relates to the property. I think we're delivering really good results to our clients. One other change before we move from property is we have seen some contraction of our markets that were writing 100% of the risk. So, the Travelers, the Liberty, some of those carriers. They've either cut back capacity or we've actually had a couple that have pulled out in their entirety. And that, that's going to be problematic as it relates to an operator that might have been able to buy 100% of their limit from one carrier may see, over the long term, some rate increase, because as they move into the shared and layered market, you start dealing with carriers' minimum premiums, and as you start building that stack, it can attract a little bit more on the rate side, so we're hoping that some of those players that were in the market, if we have a good hurricane season this year, and kind of Nat Cat, will come back into the market and be aggressive as we get a little bit later in the year and past the September timeframe.

Tara Clayton:

Thanks, Mike. This is a much better story than I think the discussion around the property market this time last year, but I think your note about, "It's a tender (laughs) market." I like that phrase. We still have the rest of the year. To your point, we are just getting into hurricane season, and we've got that concerning fire that's happening, and potentially others could pop up, right? So there's still several months of activity to see, but at least this is much better news than what, I think, you were talking with clients and talking about this time last year as it related to property. That's always one of the, the big line that I think we get a lot of questions about.

Maybe we can pivot into — I want to save you the general and professional liability for the end because that's always a favorite of mine to talk about — but do you want to get in a little bit to what we're seeing, maybe with the auto or work comp lines? Any, any big trends there that are important to note?

Mike Pokora:

The work comp continues to be a pretty stable line. I think medical inflation is on the mind of underwriters as it relates to the workers' compensation and what they're seeing in claims trends. You know, I think one of the things, the conversations around operator financial

stability comes in as we talk about work comp. Those operators that are having, that have deductible programs, and they need to secure the deductible obligation. So I would say one of the things that we're seeing is a lot more scrutiny around the operators' financials as we negotiate the collateral on renewals, and I mean, the collateral renewal negotiation is as important, if not more important (laughs) than the rate and premium.

We're having a little bit different conversations. We're getting our clients engaged earlier with the financial people at the underwriters as we start thinking about collateral needs. Overall, we're seeing flat to decreases on a rate basis. You know, assuming that the venues and the states that the operator is operating in stays pretty consistent on a year-over-year basis.

Auto's a problem. There's just not a lot of monoline auto carriers in this space, in the senior care space. Ideally, we're putting the work comp and auto together with who's writing the workers' compensation. Those are natural lines that go together, and many of our carrier partners that write work comp will write auto for senior care as well. If we're in a situation where we don't have that ability to do so, there's one or two GL/PL carriers that will write auto. We're down to less than ones I can count on one hand that'll write it on a monoline basis.

So, this line continues to see pressure. I would say on our book of business, we're not seeing a lot of increased claims activity. I think there was a lot of good work done on training, using restraints, and driver education, defensive driving. So we've seen pretty stable in the claims situation, from our clients, but to your earlier point, Tara, where sometimes we pay for the sins of the broader industry, there have been very large claims in transportation, trucking, ambulance companies that I think all industries are really paying for it. So, you know, we're seeing flat to plus 10 and 15% on the autos, depending on that individual operator's experience.

The financial lines, the D&O, EPL, all of those have been very positive from a rate perspective. We're seeing very modest increases to slight decreases. I mentioned earlier that the D&O market, as long as there's not financial concerns, D&O has been very positive, minor decreases. EPL would be one that we are seeing continued pressure on deductibles. While pricing has remained relatively flat to modest increases, we are seeing some pressure on the deductibles for concentrations in problematic states, like a California. As operators are growing, we're seeing the marketplace demand higher deductibles in those lines.

Tara Clayton:

Mike, while we were talking about EPL, one of the thoughts I have related to the trends that you're seeing with the insurance piece, the increase in deductibles. The current administration's really focused on employee rights and pushing laws and rules to kind of promulgate that, which I'm sure that's part of what underwriters are looking at. The other thing I know you and I have talked about quite a bit is activity around wage and hour class actions. How should providers be thinking about that exposure, knowing that that's traditionally not covered under the traditional EPL insurance. So what are some things they need to be thinking through from a risk transfer?

Mike Pokora:

Yeah, Tara. You're, you're right on point. You know, the Department of Labor is really enforcing these fair labor standards now. We're seeing that in this space right now. We're working with several clients through some, some pretty hairy litigation around this area. The interesting thing is where we're seeing the claims is really falling into two categories. It's around the unpaid work time and the misclassification. So, on the unpaid work time, think about the off-the-clock-type work that's being done. The activities that are required before and after a scheduled shift such as attending mandatory meetings, stand-ups. Are they happening on the clock, off the clock? Another big one is around the meals and rest breaks. Automatic deductions being taken for meal periods. Pre- and post-shift activities and on-call. Those are big ones.

And healthcare and senior care right now, we're seeing this with some frequency. We're seeing it East Coast and West Coast, so it's working its way into the center of the country as well. I think we've just recently had one with an operator in the Midwest as well. It's an insurance coverage that has (laughs) a really kind of interesting evolution. You know, we... You look back 10 years ago, and we had minor sub-limits that were built into some EPL policies. Well, that's been carved and stripped out.

The marketplace as it exists for this is pretty small. I mean, it's really the Bermuda marketplace that is leading this coverage. And, the capacity that they're

putting out of this is relatively limited as well. Marsh just did a study on this not too long ago, and if we think about the claims and the coverage that's being placed, the policy count for these carriers are not in the hundreds. They're pretty limited, and I think one of the reasons behind that is the retentions on these are significant. There are anywhere from a half a million to several million dollars from a retention standpoint.

So, I'm not sure if this is going to be something that we're going to see more carriers get into, but right now, if you think about the coverage itself, rate online is pretty expensive, retentions are pretty high. But again, with the increase in frequency of claims, as an industry we need to focus in on finding some insurable solutions for this as well. From an underwriter perspective, they're really looking at, what's the employee mix? What states are they in? The big states that are driving this litigation right now are California, New York, New Jersey. They're looking at independent contractors. How are you using independent contractors? How are you contracting with them? How are you bifurcating them from the rest of the workforce?

And then, the underwriters that have looked, that are looking at this really want to focus in on your internal policies and procedures, HR and legal team reporting structure. Who has responsibility for wage and hour compliance? How is that being monitored? What does the policy look like, the handbook and the policies, including meals? How are you training supervisors? How are you training the employees? What are your timekeeping methods? What are your pay practices?

So they're getting into the weeds on a lot of this, and our advice is to really work with employment counsel in these areas, in those states where we're seeing some of the litigation, to best position yourself, again, whether you're going to buy risk transfer or you're assuming the risk. Because I think we've seen almost a 30% year-over-year increase in litigation around wage and hour from '22 to '23. I haven't seen any '24 data. So, again, probably worth a, a separate podcast in and (laughs) of itself on this topic.

Tara Clayton:

Yeah. No, and those are great tips, Mike. It does feel like these claims... I haven't seen specific data around it. I know wage and hour and discrimination are always the two, as of right now, two leading EEOC complaints, and then those class actions continue to plague our industry. And then California, with their Private Attorney General's Act, I know there was some new legislation that was recently passed to help provide some relief, some reform. I think it remains to be seen what exactly that impact will have, but still those best practices you were outlining, working with counsel, really stressing how important that is to be doing right now, because we are seeing activity move away from the coasts and start to move into the Midwest area as well.

While we're in the FINPRO line, the other thing I wanted to kind of talk through with you is around cyber and cyber insurance, I frequently see articles about different ransomware or other cyber-type incidents that are happening, not specific to senior living. You see it in the healthcare space. Really, you see it across all industries. So, you know, thinking about this fragile, tender environment that we're in, what impact are you seeing as it relates to cyber?

Mike Pokora:

I would say that the cyber market continues to be in transition as carriers will analyze the loss development, and the mitigation efforts our clients are taking. The CrowdStrike, that one's going to be an interesting one on how it, how it plays out. I think it opened, I'll speak for myself. I think it opened my eyes to something that I was probably avoiding and, or compartmentalizing, about how impactful something a software update could be on, you know, on the entire country, airlines, banks, hospitals. I think it, it definitely made me think about it a little bit differently, and I assume it's going to make underwriters look at it (laughs) a little bit differently too.

Ransomware attacks continue to increase. We've got a geopolitical environment right now that is going to continue to drive some of these ransomware attacks, without question. Marsh reported that we saw a 64% increase in ransomware attacks 2022 to 2023. And again, that's just going to continue to increase. And we're seeing changes in privacy laws on a state-by-state basis, which again, is going to create more responsibility as it relates to our client base, around customer residence, associate data. So it's, it's definitely evolving.

What's interesting is, as we sit here today, the rates have been pretty stable. I mean, we're seeing decreases. We're seeing capacity that's out there. We're not seeing significant movement in retention. What we are seeing different, though, is what the

underwriters want to know, and it's, it's... the ante around insurability is really, you know, having MFA, and endpoint detection, backup systems, privileged access management. The conversation is changing now. The level of assessment that the underwriters are looking for, for them to offer new customers terms and/or renewal terms. They're going a lot deeper. They want to see the cyber incident response plan and how you're testing. They want to see your training and your phishing testing. They want to see how the organization is logging on and monitoring all the network protections. They want to understand end of life systems, and how are they being replaced, and how are you protecting them?

So again, it's a different conversation, and last but not least in that area is really what is your supply chain management? How are you holding them accountable? How deep into their process and systems are you? So, you know, I'd say we're in transition. This is (laughs) another one that I would say is tender, could move quickly, because it's not typically — and I'm talking about our space, in the senior care space — it's not a real expensive cover. Retentions continue to be manageable. If we start seeing a lot more claims activity, and this is probably another line of coverage (laughs) that could move relatively quickly.

Tara Clayton:

Yeah, that's helpful, Mike. One thing that you made me think about in talking about going through the CrowdStrike experience and giving you a new lens of thinking about what happens, especially when I think about our communities and our owners and operators that we work with, if they would experience something like that. It makes me think about something that our clinical consultants on our team always talk about when they're working with clients, "Is this is part of your preparedness plan? What if you have a cyber event? Do you have downtime procedures ready to go and roll out?" I can just, I can hear Doris and JoAnne talking in the back of my head about that.

Mike Pokora:

Right (laughs).

Tara Clayton:

So, going to pivot now, Mike, to my favorite line of insurance, the general and professional liability. I think big picture, what are we, what are we seeing right now in the marketplace?

Mike Pokora:

Yeah, we're in a good place. I would say that, just because we still have to talk about COVID because we didn't really know what the impact would be. I would say that the markets — and it's a finite group of markets that write general and professional liability for the senior living and long-term care business —stayed with it. There was pricing reaction during COVID. There was coverage term reaction during COVID. But they all basically stood next to their operating partners, and to us as an industry, and remained consistent and competitive.

What has happened post-COVID is we have seen pricing come back down to pre-COVID levels, and we're, you know, we're delivering flat and decreases for our clients that have good claims experience, are in decent venues. If an account is running a little bit hot, then we're seeing underwriters kind of take their rate in those scenarios. But overall, I think we're in a really good place. There still continues to be some cutback of excess capacity. We're seeing some of the markets that pre-COVID were putting up $10 million as a typical tranche in the excess sitting over their primary million, really cutting that back to preferred five million. In some cases, long relationship, good venue mix, good claims experience, we're still getting $10 million tranches.

Not seeing a lot of new capacity necessarily coming into place, but we're seeing Bermuda come out of their slumber a little bit, and they are — looking again at the senior care business — so we've had some good recent successes building towers, bringing in the Bermuda marketplace. London continues to be very supportive of the space. So, capacity not really been a big problem. We did have one major departure from the marketplace this year, that was Church Mutual. That business has been absorbed by a number of the carriers that are out there. There was a fair amount of occurrence-based business. I know that some of that has transitioned to more of the market norm, which is claims-made coverage.

Overall, I would say market behaving pretty well. I'm not seeing a lot of change in some of those retentions that clients were taking, forced to take during the COVID years, and as a way to mitigate some of the pricing increase. Those retentions that moved up are pretty

much staying where they were, which I think is always a good scenario. I'd rather see a client that's heavily invested in good, solid risk management and clinical practices bet on themself and not trade dollars with an insurer. So we're seeing those kind of hold the line on where those deductibles were.

Tara Clayton:

The trends with the excess kind of dropping down from the traditional limits they were providing, I know there are some exceptions with, as you said, venues and client relationships, what are some of the reasons why we're seeing some of that activity?

Mike Pokora:

It's the claim activity. We are seeing significant large dollar claims, high awards, some of them in the courts, some of them in settlements. The frequency of some of those severe claims is happening with some pace, so kind of similar to my comments on the property side. But, but it's also that run-of-the-mill claim, that several years ago was in the low six-digit. Now we're seeing those claims starting initial demands at policy limits or more. So the higher frequency of larger, more high-profile-type claims, large settlements, policy limit settlements, through multiple layers of the excess tower, and then those smaller claims really starting at a plaintiff counsel demanded policy limits for that primary layer.

It's accumulation of a lot of different things that we're seeing. We've got a very organized and sophisticated plaintiff's bar. They know each other's playbook. They're sharing that playbook, and they have been successful with that playbook. We're seeing jurisdictional creep, you know? We're seeing counties around those known hot button counties start to have, behave similar to the problematic counties. When you look at awards and you start looking at the claims data, it looks very similar to settlements that we're seeing in Cook County. And I can go through same examples in Florida and California.

We're seeing somewhat of a desensitization around these large verdicts. We had a recent situation, that you and I sat and listened to the exit interviews of the jury and were just amazed at how simple and basic fundamental issues of law were not really being even considered as they started talking about what they felt the award could be. So things like that seem to be happening a little bit more frequently. We've got third-party, litigation funding driving up some of the cost of it. I think there's a general distrust that's happening around corporations and institutions, that is having an impact on this overall. Let me throw it back to you. What would you add to that as some of the reason we're seeing some of this trend increase?

Tara Clayton:

Yeah. I think you've hit a lot of them. Another one, and actually, I'm going to spin it into a question coming back at you. Along with this overall feelings of corporate distrust,right? That the individuals in the jury box... And that's been around... to me, that existed when I was in private practice as a litigator. That was something you had to overcome, was this implied bias that individuals were coming in about corporations. I think it's much worse, part of it with COVID, a lot of social movements that we've had over the years, this stronger feeling of righting wrongs that individuals have now, than they've had historically, which all plays into this really strong corporate distrust notion.

I think another component of that is the attention that the industry is getting from the media. We've seen a number of articles come out, series, expose' articles, last year as well as this year, in a couple of prominent national outlets, as well as in certain states, were running different pieces and on TV as well, I think that plays into that the general public who sits inside the jury box. They're seeing these same articles that we're seeing.

But Congress is seeing it too, and that's the question I wanted to throw back at you, Mike, is there's been a lot of attention, on healthcare as, by itself, but also the senior living and long-term care industry has been the subject of some of the recent calls for data, requests to respond to letters, some of the proposed legislation we're seeing coming out, big focus right now around private equity and the role of that in healthcare, which also includes senior living in some of these. Are you seeing impact of that from an underwriter's perspective? It's not just our juries that are looking at all this and listening to what's going on, but the underwriters are looking at it too. Are you seeing any of this starting to play out in the insurance market?

Mike Pokora:

I'm sure you saw that in that bill that Senator Edward Markey from Massachusetts, that, Health Over Wealth Act, that sounds like, at least in this pass of it, we've

been able to get assisted living out of that definition of a healthcare entity. Now, doesn't mean it's not going to get reintroduced with a new Congress post-election, but at least there was some progress, and I know there's been a ton of work that is being done by Argentum, ASHA, and the mass assisted living, to really educate on what assisted living is versus some of these other healthcare entities. Now, there, in other industries, healthcare-related industries, there have been some bad events. We can't point to it in senior care right now, so hopefully we'll be successful on a longer-term basis.

But to answer your specific question, the underwriters are aware. But you know, they've seen private equity and the REITs behave very differently than how they're being painted right now. They lived through COVID. Earlier, I've talked about these industry partners. They lived through COVID. They saw how the REITs during COVID sourced PPE tests, vaccine, how they added staffing, how they offered rent deferrals and abatement to residents during this national pandemic. So, they really, in my view, see the REITs and private equity as their operator, potentially their first named insured, as partners to them. The underwriters are seeing the REITs invest in fall prevention, EMR systems, other technology to improve and enhance the resident's experience and safety.

So, I think this industry, if we're just laser focused on this, is seeing a much more positive impact from them. And candidly, if we didn't have them, we're going to have, we're going to have an affordability crisis and we're going to have an availability crisis, so we need them in this space and committed to it. I would say at this point, underwriters are probably aware, but they're not feeling similar to how Congress is painting in this, at this point in time.

Tara Clayton:

Great statements about really just how im- the important role our rate and private equity partners have played specific to senior living, and to your point about the education that Argentum, ASHA, some of the other national trade associations, and the state associations, have been playing, in educating members of Congress about that difference, and about how important their partnership is. Makes me think of one last question I wanted to ask you. What can owners and operators do, one to combat a lot of these macro trends that we're seeing from an industry standpoint, and that's telling your story, I think it’s the Argent campaign, and ASHA has their campaign as well about getting out there, the word of what really is senior living, and what truly happens day in and day out inside of these communities versus, some of the misrepresentation that happens in some of these news articles.

I think about what we do with clients to help them. We play a small role, but I think it's a very important role, and we're all very missioned and purpose-driven in what we do with our clients. What are some takeaways, understanding this “tender” market that we're in? To me, there's things clients need to be doing to kind of be getting ready for, prepping for, and I can't help but think about how important data is. You know, we think about how creative AI, and the new technology that providers are using. How are we looking at that and working with clients, and just some recommendations about how they need to be thinking about that next renewal that they have?

Mike Pokora:

It's an iterative process. It really... It really is. It's about communication. It's about differentiation, of differentiating that client, your business, from the rest of the pack. So we are big proponents of developing those personal relationships with those underwriters, and that those communications don't happen one time a year in a real strategy conversation. Now, periodic updates with the underwriting partners, whether it's the property or the general and professional liability, on what's going on with CapEx budgets? What are we doing to make our buildings more resilient and a better risk? So updating the underwriters on that on a periodic basis.

Talk about investments that you're making in technology, and where you are in that implementation timeline. Anything that's going to make you a better risk. Be intentional about those touchpoints with the underwriting community during the year. It could be in the form of a formal stewardship meeting. It could be a lunch meeting. It could be a Teams call. Whatever it is, but don't let it be just one time a year.

The other thing that I would promote would be really starting the process early. As I mentioned, a renewal process just doesn't sit with risk and finance. It really touches all parts of the organization. It touches operations, plan ops, clinical, legal. So the things that are happening with the organization, being able to get that together in a concise story by way of these periodic updates, or if from a timing perspective you can only do

it in that pre-renewal strategy meeting, engage the whole company to tell that story and provide where we are.

The other thing I would say is seek early feedback from your incumbent carriers. Know what they're thinking about that renewal for you is going to look like. As I mentioned throughout this conversation, the market's in a pretty good place today. If you can get to fair terms with the incumbent carriers based on where we are, you know what? Negotiate the renewal. If you're at an impasse and you can't, give yourself enough time to create that alternative strategy, that go-to-market strategy, and what you want to accomplish.

As it relates to the data piece of it, data's everything right now. There's all kinds of data that's out there. From benchmarking perspective, we engage with our clients to benchmark their general and professional liability, their workers' compensation, and property rates. Use that data that's out there to show how you're trending against yourself, how you're trending against industry peers. What we want to do is we want to differentiate, create that distance from the pack.

Most of our clients have established KPIs around risk metrics that they're doing. Don't be shy to report those to the underwriting community, on what you guys are measuring, what you're measuring against, and how you're doing on that lifecycle of continuous improvement. Underwriters want to see that. They want to understand what's important to you. There's a lot of acquisition activity that's going on in this space, so we're going to continue to see this.

If the operator is one that is growing, being able in this underwriting meeting to talk about how we're optimizing the policies and procedures amongst these two companies. The one that we're integrating, where are we on that timeline? What decisions are being made on our infrastructure from a clinical and/or an operational perspective? None of that is too detailed and too granular to get in front of the underwriters, so they understand this client understands integration, they have a clear plan, and here's how they're doing against that plan.

Tara Clayton:

Thanks, Mike. This has been a great interview. I mean, lots of great insightful information, not just as it relates to the current market trends, but important takeaways that listeners need to be thinking about, considering, implementing to be looking around those corners, because as you said, somewhat of a tender — I'm going to be using this all the time now — somewhat of a tender market so I really appreciate you coming on and spending this time with us today. Thanks for joining.

Mike Pokora:

It was my pleasure. I always enjoy sitting and having these kind of conversations with you, Tara. Thank you.

Tara Clayton:

Thanks, Mike. For our listeners, Mike mentioned a lot of the work we do around benchmarking, so I wanted to make sure and flag that pre-orders for our Marsh/Oliver Wyman *General and Professional Liability Benchmark Report* is now available. You can find the link to pre-order a copy of this report in our show notes.

Also, our registration is now open for our annual Risk Smit, which will take place on October 9th and 10th in Chicago. You can find a link to register, as well as the full agenda in the link that will be listed in our show notes. Be sure you're subscribed so you don't miss any future episodes, and as always, I would love to hear from you. If you have any topics you'd like to have addressed on the podcast, send me an email at the email address listed in the show notes, and then lastly, thank you so much for tuning in, and I hope you'll join us next time for our next *Risk Insight*.

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