Risk Insights: Senior Living & LTC

Episode 10

Creating solutions to help the industry thrive

Welcome to the *Risk Insights: Senior Living & LTC* podcast, hosted by Tara Clayton with Marsh's Senior Living & Long-term Care Industry Practice. Each month, 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: Senior Living and Long-Term Care*. I'm your host, Tara Clayton. In today's episode, I'm sitting down with one of my favorite industry leaders to discuss the trends and opportunities for senior living providers that we've seen so far, and what we're anticipating through the remainder of 2023. It's John Atkinson, the co-leader of the Marsh Senior Living and Long-Term Care industry practice. Hey John, thanks for joining today.

John Atkinson:

Hi, Tara. Thanks for having me.

Tara Clayton:

Well, I'm super excited to have you today, John. It would be great to hear from you how you and Mike Pokora looked at the need for specialization for senior living and long-term care from a practice standpoint.

John Atkinson:

Well thanks, and I've listened to all your podcasts, and I've gotten some great feedback from clients and people in the industry.

Mike and I have been partners in this space for almost twenty years, and we originally started it because I had a client in the senior living space that was actually spun out of a real estate entity. I had focused most of my career specializing in construction and real estate development, and this client was doing some real estate development in the senior living space. And right about that time, around 2000, 2001, the industry underwent a significant challenge from a liability standpoint. The litigation environment in a lot of states really started targeting senior living. When I say senior living, I'm thinking in this context independent living, memory care, assisted living. They had been feasting on the skilled nursing side of the space for a long time, and I think they just kind of discovered assisted living, and liability insurance costs dramatically increased very abruptly in the span of about six months.

And we had clients that we had —— this particular client was paying $30 to $40 a door for general and professional liability insurance and overnight it went to like $600 a door, and we couldn't buy it in Florida and a couple of other states. So we worked really hard to solve the problem for that client, but it was our only client in the senior living space. And when we looked sort of forward from a business perspective, we realized the demographic tailwinds, the opportunity for growing a business, and the senior living space was right for specialization and for a broker that was willing to invest as a risk advisor and really help clients solve problems.

And so I convinced the team that we should make some investments, and we brought on board very quickly a well, very well regarded clinical risk person with senior living background. And we brought somebody on board that had experience with underwriting on the healthcare side, and we decided to really focus in on engaging with the senior leaders of long-term care organizations, senior living organizations at the association level. So we joined the American Senior Housing Association. We joined ALFA which is now called Argentum, and that was the Assisted Living Federation of America, and those two represent a significant part of the industry and back in 2001, 2002, the industry was fairly young.

And so we had an opportunity to join these associations at a time when we didn't really have other competitors coming in, and we started working with the leaders of the industry to try to help figure out solutions. And it took us two years before we got our second account, and then those investments started paying off in word of mouth and really delivering good results helped us grow in the succeeding years.

Tara Clayton:

The proof is in the pudding, right? And I've had the privilege of seeing for the last almost five years now the work that the team puts in and really how it's benefited the industry as a whole. I think it's interesting, you know, you started kind of pivoting and seeing the need for specialization and because of the general and professional liability trends that were happening so I want to kind of go from there. I opened with looking at we're about halfway through 2023, right at halfway.

John Atkinson:

Right.

Tara Clayton:

And I know you've been working very closely with clients on a number of different renewals, and we're going to talk about a couple of different lines. But looking at general and professional liability, what are you seeing right now from a market standpoint as you're entering that with clients?

John Atkinson:

So, I think great question. And I also want to add that as we started the practice and we started focusing in on things that were driving costs and driving claims, driving resident injuries, the clinical risk component of what we did became really, really valuable because the industry, as I mentioned, was young, and they didn't typically come from a clinical or healthcare background. A lot of the leaders came from a hospitality/hotel background. So I feel like very quickly, we developed a sense of purpose in what we do and that became something that helped Mike and I really get out of bed in the morning because we knew that if we were successful in this vision, we could help not only grow the business but really have an impact on the industry by helping operators to learn more about best practices and to help drive better results for residents, and in reducing falls and in resident lifting and handling, and we feel like we've been able to really do that, and that's been very rewarding.

The impact of that work on the general and professional liability marketplace has been dramatic because that marketplace started to stabilize in the mid-2000s and became a pretty competitive marketplace.

If you fast forward to 2015, 2016, 2017, we started to see in in mid ‘17 and early ‘18 that the loss development from prior years was significantly higher as an industry than what we had anticipated and what insurance carriers had been pricing for. The litigation environment started to deteriorate. And so when the carriers in mid ‘17 and ‘18 were looking at the policies that they wrote in 2015 and 2016, they started to see significantly greater claim activity with higher loss costs per claim, higher severity than they had expected. And so we started to see in 2018, 2019 where rates were starting to go up, retentions were starting to go up, and then COVID hit and it kind of froze everything. You and I worked very closely with the industry association leaders and driving tort reform and executive orders and protections for the industry around COVID, but at the same time, the industry, the marketplace side of things on the insurance carrier side was really trying to figure out what that all meant. And you fast forward to now, we're past COVID. We've not seen the level of claim activity that was anticipated by some of the industry. I give the insurance carriers credit because they did not overreact. They stuck with our clients, and we managed through that crisis together.

But now we look forward, and we see a generally competitive marketplace. Better venues and lower loss experience accounts are getting discounts, and we're seeing rate reductions. When we have clients that are in difficult venues like California or Florida, as long as that client has got strong risk management programs in place and we're able to help carriers understand that through our due diligence and our reviews and looking at the claim history, we're able to get pretty competitive renewals on the GL/PL side of the coin right now. And we see it as a pretty stable marketplace where carriers feel like they have rate adequacy, where there's a flight to quality but very stable going forward.

Tara Clayton:

You mentioned this flight to quality. You know, we know some venues are perceived better than others from a litigation standpoint. What are some of those either questions or areas that underwriters seem to be more heavily focused on when looking at that quality of an insured?

John Atkinson:

I think a lot of the underwriters are looking for partnerships, and they want to know that the operator that is managing the assets — whether on their own account or on behalf of third-party equity organizations — have got their arms around the staffing challenges that have been facing the industry, that they're able to recruit and retain talent. And it's been great because our colleagues on the Mercer side, as you know, we've been collaborating closely with them to deliver solutions for clients on the total reward side and on the talent side, to help our clients attract and retain talent. That's a big issue for the industry, and liability underwriters are really focused on making sure people have their act together and turnover is managed and the agency usage in these organizations has impacted quality and what's the plan going forward. And I think most of our clients are seeing some relief in that area so that's good news.

They're also looking for infection control protocols, understanding what is your emergency preparedness plan when something bad happens whether it's like a pandemic, or whether it's significant weather events that have been increasingly impacting our clients' businesses. And they're also looking at where the accountability is within an organization. So for example, we know that from our own Oliver Wyman/Marsh liability long-term care benchmarking report that falls in senior living represent around 70% of the frequency of claims, and so if an organization can focus in on driving falls management and really focusing on that and showing data to demonstrate that they've got their arms around falls and they've got interventions in place, those are the kinds of things underwriters are focused on right now.

And of course, the increase in technology and telehealth and other emerging risks or opportunities are on their radar as well.

Tara Clayton:

Great. John, I said I wanted to start with the easier market line with the general/professional liability, but I would be completely remiss if I didn't spend some time talking with you about the property market and what you all have seen through this time period. Can you talk to us about what you're seeing right now in the property market space?

John Atkinson:

What we're seeing now in terms of the property insurance marketplace is the most difficult, most challenging market that I've seen in my entire career. The industry that we operate in, in senior living, is a subset of a larger real estate industry, and so if you think about the kinds of asset classes that get insured on property insurance programs, they're anywhere from industrial — that are concrete stood up buildings — to commercial office — meal and glass — to senior living — which is a combination of stick built, so frame construction, and/or masonry noncombustible so a little bit tighter construction. If they're high rise, they're going to be better construction, but a lot of the senior living inventory in the marketplace today is on frame construction. They're generally always sprinklered, but the quality and the level of the sprinkler systems varies, and so right now this asset class fits the category of your sort of frame-built multifamily. And that marketplace is very constrained. The whole marketplace is really tough right now, but this particular subset has some significant challenges and so what carriers are modeling now, they're modeling for wildfire which they never did before. They're modeling for convective storm. They're modeling for flood.

And what they have realized over the last several years is that when you look at the amount of losses that the property marketplace has insured over the last three to four years, with 2022 being $132 billion in a single year, the trajectory is getting worse year after year. And so these unusual weather events, whether they're big winter freeze storm events, polar vortex, atmospheric rivers, these are things we never even heard about five or six years ago. And so it's impacting the industry because losses are happening and insurance carriers are having a difficult time getting reinsurance because the reinsurance carriers that are providing capacity for earthquake, tier one hurricane, rainstorm hurricane coverage, these big CAT covers — all of that's tied together with these other winter CAT events and large freeze claim events, and so the reinsurance industry has constricted dramatically. The January 1 reinsurance renewals were dramatically worse than what people anticipated even in Q3 of 2022. So what all that means is there is a supply and demand disconnect right now where the capacity in the marketplace is not near what the demand is for this CAT coverage, and carriers are aggressively managing how much limit they're going to put out, and it's causing carriers to cut back significantly, and our clients exist in all places.

We know that in the retirement community space, people like to move and live in areas where the wind blows — Florida, Texas, South Carolina — and where the earth moves — California. Now that's not exclusively where our clients have assets because a lot of our senior living population want to live in these communities close to the home where their relatives are, so the Midwest and all the major metropolitan areas have great inventories of senior living communities. But those are now impacted by these unusual weather events that are happening that never were part of the equation before.

We are seeing renewals go down to the wire. We're seeing significant rate increases and retentions going up, and I can tell you that January was worse than December. February of '23 was worse than January. March worse than February and so on. June 1s, we just got through with them. They were more difficult than 5/1 renewals, and we don't see the macro dynamics changing in the foreseeable future. So what we're trying to do is solve some problems for our clients in a difficult environment.

Tara Clayton:

Hearing issues with capacity, rate is increasing, and I'm not hearing great hope on the immediate horizon, right? So how are you working with clients to help them deal with this type of marketplace but also building resiliency because as you mentioned, these wind and climate conditions are only continuing to get more challenging from an industry standpoint.

John Atkinson:

We're doing a lot of creative things. Fortunately, at Marsh we have a lot of capabilities and a lot of creative minds working on the problem. So Marsh is actually the only broker in the marketplace that has actually gone in and created capacity with London trading partners and using Guy Carpenter, our reinsurance company, to provide capacity in the marketplace so we have direct access to reinsurance. We're able to bring that to our clients and get that fronted at a very low cost. So that's capacity that we're able to bring in. We're doing very unique structures called alternative risk transfer vehicles that have become, frankly, a lifesaver for a number of our clients where they're willing to take on some additional risk. We're able to solve for some lender compliance issues with this kind of a structure, and it allows them to get more capacity into their program to help drive cost down as low as possible.

More recently, in the last couple of renewals that we've done, we've created a captive insurance vehicle where we're able to allow our clients to utilize a rent-a-captive solution with very little upfront cost that will allow them to use a combination of reinsurance and taking their own portion of a particular layer of insurance, so they can become a coinsurer. And we've got it fully fronted with paper that passes Freddie and Fannie guidelines so that we're able to deliver a lower cost solution for clients that have the wherewithal to be able to take on additional risk.

We're also working, we're seeing a significant increase in demand for Marsh Advisory services on the property risk control side, and so we're working with a couple of different clients on projects that are assessing their building management systems — how they respond internally when a disaster happens, measuring whether what they believe is happening in terms of "out in the field" is actually happening. We're sending engineers into communities and buildings to do real deep-dive risk assessments. What are the kinds of things from a CapEx budget should our clients be thinking about for '23, the rest of '23, '24 and '25 in terms of the investments they're making in their buildings.

The mindset is shifting because we know that if we can help clients build resilience, whether it's through improved roof tie downs or better windows or other enhancements to sprinkler systems, if we could help them with a cost benefit analysis to determine, "Hey if you make these investments in resiliency, you will be front in line for capacity, and we'll be able to drive the best cost for you." And if you're going to take on your own risks, you want to be able to have the best buildings in terms of being able to help you manage those risks that is available. So that's those are the kinds of things we're working on.

Tara Clayton:

Yeah, that makes complete sense, especially if just from a resiliency standpoint. When I think about property exposures in, you know, the types of storms and in catastrophic events we're seeing, like you said we did not see these things five years ago, and I think it's unrealistic to think that we're not going to continue to see I hate to say unprecedented, but unprecedented changes in climate events going forward. So I think the steps that you guys are working on with clients to build that resiliency is critical which also leads me to another question.

Early on, we were talking about GL/PL. Falls, I think for as long as I've known, has been the number one claim driver that we see in the GL/PL space. You talked about on the property side some different technology to address climate changes. I think when we talk about falls, can't but not talk about new technology that's coming out or is existing and in the space. That takes me to another line that I know we saw some movement in last year, and I'm curious what you're seeing this year, and that's cyber. What are you seeing right now in the cyber market?

John Atkinson:

Well, that's a little bit of good news. So in the cyber marketplace, we saw significant reaction by that market in 2020, 2021, 2022 where rates were going up dramatically. Doubling in some cases or more, and carriers were getting very, very focused on the risk profile of the client and, you know, what is their cyber hygiene, for lack of a better term. Are they resilient in terms of their cyber protections? And are they doing all the things that they can to thwart threat actors that are out there, every day, really focused in on American businesses across the spectrum? But we are seeing a higher level of activity in the healthcare space. And so the market reacted, rates went up, coverages became a little bit more difficult to place. Limits being put out there were less, and so our cyber team, we've invested, Marsh has invested a significant amount of resources in cyber protection tools working with our clients on the prevention side but also working with our clients on if an event happens, we have a cyber advocate that will help and coach our clients through that process.

So the market has stabilized; the threats haven't gone away. We will see, I think, a reduction in potential some areas of coverage like ransomware if the trends continue to create these attacks where ransom is becoming the only way you can get your data back or you get your system back online. And there's a school of thought that some underwriters feel like, “But maybe the ransomware coverage itself is an incentive for some of these attacks,” and I think right now we're able to get ransomware coverage. We had a client recently go through a breach. It's not fun, and I can tell you that it creates significant challenges for leaders in an organization when it happens. So it's really important for our clients to focus on this.

We're doing webinars. We're doing a lot of things to help educate clients. If you've ever had a phishing test done and you’ve failed it, you feel horrible. But I think those kinds of experiences will help everybody have their guard up to protect against these kinds of attacks.

Tara Clayton:

I know it seems like at least once a week, if it's not more frequent, I see some type of ransomware or cyber attack that's happened in the healthcare space itself, and obviously our clients are not immune. I think it's great advice, especially knowing that you see the potential for some limitations or coverage retrenchment as to what's available, how important it is for providers to really understand who are your vendors that you're working with, understand your own internal IT and doing those trainings, and I know Marsh has the scorecard that's ten, fifteen minutes of time to take that will walk you through some risk.

John, the next thing I want to close on with you, because I feel like I can't have a conversation with you if we don't talk about some advocacy. I know how involved you are with various associations that we work with from an advocacy standpoint. Where do you see opportunities for providers to get engaged, get involved, and really advocate for themselves?

John Atkinson:

That's a great question, and I think to answer sort of the last part of it is, you gotta get involved, and there's a variety of ways of doing so. So Argentum and ASHA, we support both organizations’ advocacy efforts very aggressively. They both do an excellent job of advocating on behalf of the industry, and so we're investing, and our colleagues on the team are investing, in the political action committees of both organizations because we know that it takes resources to be able to have an impact on Capitol Hill.

I think getting the policymakers educated on what senior living really is, how important it is to seniors across this country, and that it's not necessarily what they thought it was, so we invite policymakers into local communities. If you have a building or two in, for example, the suburbs of Chicago. There's three or four congress people that represent that area. Make sure that there's an invitation and that you're able to get your congressperson into your community so you can give them a tour and explain the business and explain how important a role we play as an industry in in the continuum of care.

A lot of people don't realize this but the for-profit senior living industry, so just the segment of the independent living/memory care/assisted living represents and takes care of about 2 million seniors in this country and through COVID these people were like MacGyver trying to figure out solutions to build barriers between their residents and the pandemic and there was conflicting guidance. The regulatory guidance was you know, spotty state by state, county by county and even at the federal level. We didn't know about an asymptomatic spread early on. We didn't have PPE. We didn't have adequate testing early on and so when the industry needed the dollars from the federal government to be able to help support continuing to deliver care to residents, they were fairly, pretty much left out. The skilled nursing segment got a fair amount of money, the hospital segment got a fair amount of the money, but the for-profit assisted living industry got some but not enough.

And so you saw capital providers, you know the big REITs and the private equity firms and a lot of organizations that own these assets, they were funding out of their pocket all these additional expenses. So, it's really important for several reasons. Policymakers really need to understand what our industry does and how we take care of seniors. They need to understand the business so that they can get their hands around the stuff we're advocating for in DC, but also at the state level. And we really want to make sure they understand that the impact of a bad tort environment doesn't help residents; it only hurts the people that are taking care of residents. And so that's why we advocate for reasonable tort reforms in different states, and it's really, really important because if our clients are not able to afford the insurance cost to be able to operate, they're going to have to either go out of business or charge a lot more money to seniors who are on fixed incomes, and it's just a bad environment so we need to be able to help them.

Not take our eye off of quality but really improve the environment because we're seeing just a lot of spurious lawsuits that really are not based in fact. It's the plaintiff's bar really getting aggressive and trying to frankly fill their pockets while the residents in our communities are the ones that really are impacted by an environment where you know the operators are under such pressure.

Tara Clayton:

I just want to emphasize, I think everything you said about the advocacy is critically important, especially the education to policymakers about who we are as an industry and how we're different and what we bring to the table that's very different from others that are in this space is really going to be important as we look to work with policymakers to make sure we have those affordable housing options.

John Atkinson:

Totally, totally agree, and that's a big focus of what Argentum is doing on the public policy side as well as ASHA. I'm privileged to chair the advocacy fund at Argentum and help work with industry partners like Marsh, like other brokers, insurance carriers, to help support the advocacy efforts of Argentum because we're all in this together, and we've got to be able to fight so that, to your point, the gray wave that's coming will be able to live in dignity in an affordable environment where they're able to enjoy these important years of their life.

Tara Clayton:

Well John, I'd love to spend even more time with you but I know you're a very busy person. So I thank you so much for joining on the podcast today. This was super insightful.

John Atkinson:

Well thank you, Tara. Appreciate the work that you're doing. I love the topics that you've covered, and I love the people that you've brought on. You've been very inclusive.

Tara Clayton:

Well thank you again, John. This, as I said, very insightful discussion understanding where the market landscape is right now and where really providers need to be thinking about focusing their efforts going forward to finish up 2023.

For our listeners, you can find more information about several of the different tools that John referenced including our *General and Professional Liability Benchmark Report* that we put out with Oliver Wyman as well as some of the cyber tools and property tools that John referenced, in our show notes. Also, I'd love to hear from you. If there's any topics you'd love to hear covered on any of these future episodes, please send me an email at the email address listed in the show notes as well. And lastly, be sure to hit subscribe so you don't miss any future episodes. Thank you so much for tuning in, and I hope you'll join us for our next *Risk Insight*.