

# Non-COVID-19 Claims to Watch

Presentation by: Barbara Murray: Director  
Frank Pecht: Senior Manager  
Nancy Zaharewicz: Manager  
Stella Bleikhman: Senior Associate  
Dara Green: Senior Associate

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# Agenda

## **Non-Covid Claims to Watch**

- Social Unrest
- Opioids
- Round-Up
- Molestation
- Cyber
- Telemedicine
- Active Assailant
- Intentional Environmental Coverage





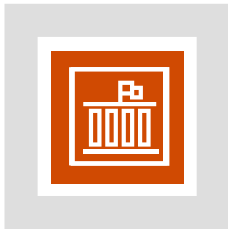


# Social Unrest

# Social Unrest

Coverages exposed: Home Owners, Auto, Commercial General Liability, Workers Compensation, Employers Liability, Property, Business Interruption, Event Coverage

Basis of coverage: Physical injury caused damage



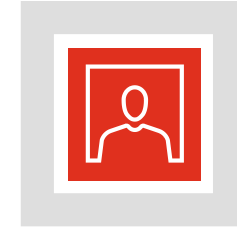
## Target Locations

- Large scale events (Sporting Events)
- Multinational/Global events (Euro 2020, Olympics)
- Well publicized and media covered (Entertainment, Political rallies)
- High rent shopping districts
- Malls/Shopping plazas/Big box
- Government buildings, Landmarks, Parks
- Metropolitan areas



## Targeted parties

- Government, Governmental Agencies
- Retailers
- Financial Institutions
- Big Industry
- Social Media



## Drivers

- Political tensions
- Political/Civil Rights movements
- Activists (e.g. global warming)
- Increased media and public awareness (social media)



# Social Unrest

A look at the potential impact

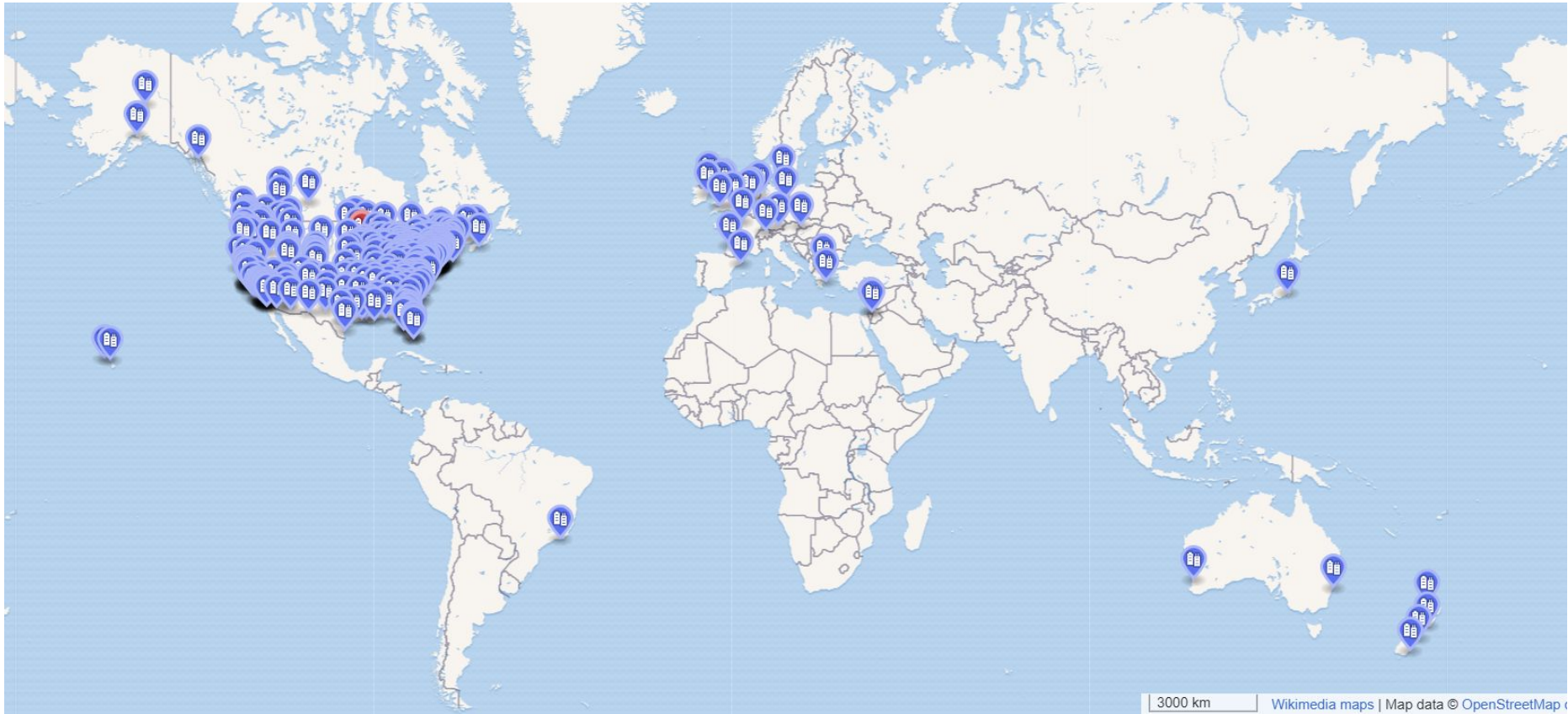


| Protests/Riots   | Insured Losses at Occurrence | Insured Losses In 2020 dollars |
|--|------------------------------|--------------------------------|
| LA “Rodney King” riots, April 26 – May 3, 1992           | \$775 million                | \$1.422 billion                |
| Baltimore “Freddy Gray” riots, April 27-28, 2015         | \$24 million                 | \$26 million                   |
| France “Yellow Vest” riots, November 17 2018 - Present   | \$208 million                | \$214 million                  |
| 2019-2020 Chilean protests, October 7, 2019 - March 2020 | \$4 billion                  | \$4 billion                    |



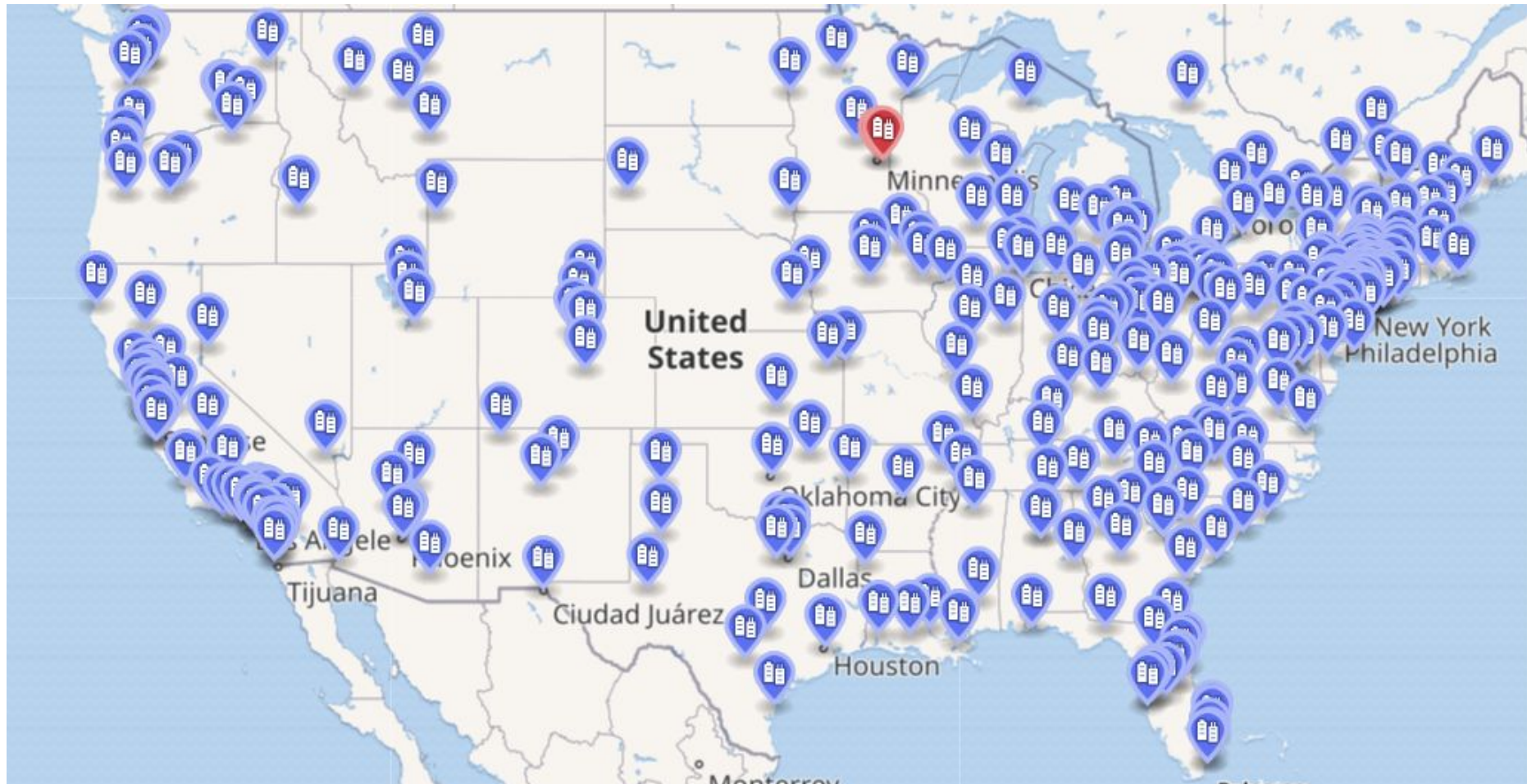
| CATs   | Insured Losses at Occurrence | Insured Losses In 2020 dollars |
|--|------------------------------|--------------------------------|
| Earthquake & Tsunami Japan, March 11, 2011                           | \$40 billion                 | \$46.1 billion                 |
| Hurricane Katrina US / Caribbean, October 24-31, 2005                | \$80 billion                 | \$106.1 billion                |
| Earthquake, Japan, January 17, 1995                                  | \$3 billion                  | \$5.1 billion                  |
| Hurricane Harvey, US / Caribbean & Latin America, August 25-31, 2017 | \$30 billion                 | \$31.7 billion                 |
| Superstorm Sandy, US / Caribbean October 29, 2012                    | \$25.85 billion.             | \$29.1 billion                 |
| Camp Fire California, 2018   | \$12.5 billion               | \$12.9 billion                 |

# George Floyd Protest Locations



[https://en.wikipedia.org/wiki/George\\_Floyd\\_protests#/map/0](https://en.wikipedia.org/wiki/George_Floyd_protests#/map/0)

# George Floyd protest locations in the contiguous US



[https://en.wikipedia.org/wiki/George\\_Floyd\\_protests#/map/0](https://en.wikipedia.org/wiki/George_Floyd_protests#/map/0)

# Social Unrest

## Comparison of 1992 LA Riots, 2019 Chile and to 2020 National Rioting

### 1992 Los Angeles riots

- April 29 to May 3, 1992
- Began when 4 LAPD officers were acquitted for the vicious beating of Rodney King, despite widely televised, graphic video evidence of the attack
- There was widespread looting, assault, arson, and murder
- Several law enforcement agencies intervened
- 63 people were killed, 2,383 people injured, 12,000+ arrested
- More than 1,000 properties were damaged
- Approximately 6,000 BI claims
- \$1.4B (adjusted to 2020) insured damages
- Direct carriers went bankrupt as a result of reinsurance disputes over the number of occurrences. In the end, it was determined to be a one occurrence event, but by the time the ruling came down direct carriers were in liquidation

### Santiago Chile, 2019

- October 7 - December 16, 2019
- Protests began after a 4 cent transit fare increase in the capital and escalated into a countrywide revolt against social inequities and lack
- At least 26 people were killed, 4,900 injured and 28,000 detained
- Members of the Chilean Dockworkers Union conducted a 48-hour strike, paralyzing operations at 24 ports to protest human rights violations and inequality. Other organizations joined in.
- Walmart's Chilean subsidiaries reportedly suffered approximately \$500 million in damage, when more than 128 of its 400 supermarkets were looted, with 35 set on fire and 18 destroyed.
- 7,500 claims worth up \$4B (adjusted to 2020) insured damages, with reinsurers bearing the brunt of the charges
- Premiums for civil unrest have doubled and in some cases tripled in Chile

### US 2020 Riots

- May 25, 2020 - Present
- Triggered with the arrest of George Floyd, a black man, subject to a white officer kneeling on his neck for over 8 minutes while he died sparking protests in Minneapolis and across the world
- 4 officers fired and charged with crimes
- The George Floyd riots were categorized as a catastrophe by Verisk Property Claims Service, projecting more than \$25M in losses
- Subsequent similar incidences have occurred across the US triggering demonstrations that have turned violent with fires, looting, property damage and clashes with law enforcement throughout the summer of 2020
- Fox news, on August 15, reported damages in 5 cities of approximately:
  - Minneapolis \$500M+
  - Portland \$23M+ (80 days in)
  - Chicago \$20M+
  - NYC \$115M+



# Social Unrest

## Potential Coverage Issues

### Direct Claims



- Number of occurrences
- Does a business have a business interruption claim, if it was already closed due to COVID-19?
- Application of deductibles, retentions and aggregates
- Exposure and calculation of damages
  - Business Interruption
    - Gross v net income
    - Calculating the net
    - Indemnity Period Requirements
    - Adjustments, if business partially open due to COVID-19 restrictions
  - All property coverages
    - Indemnification periods
    - Impact of mitigation efforts
    - Inflammatory issues

### Reinsurance



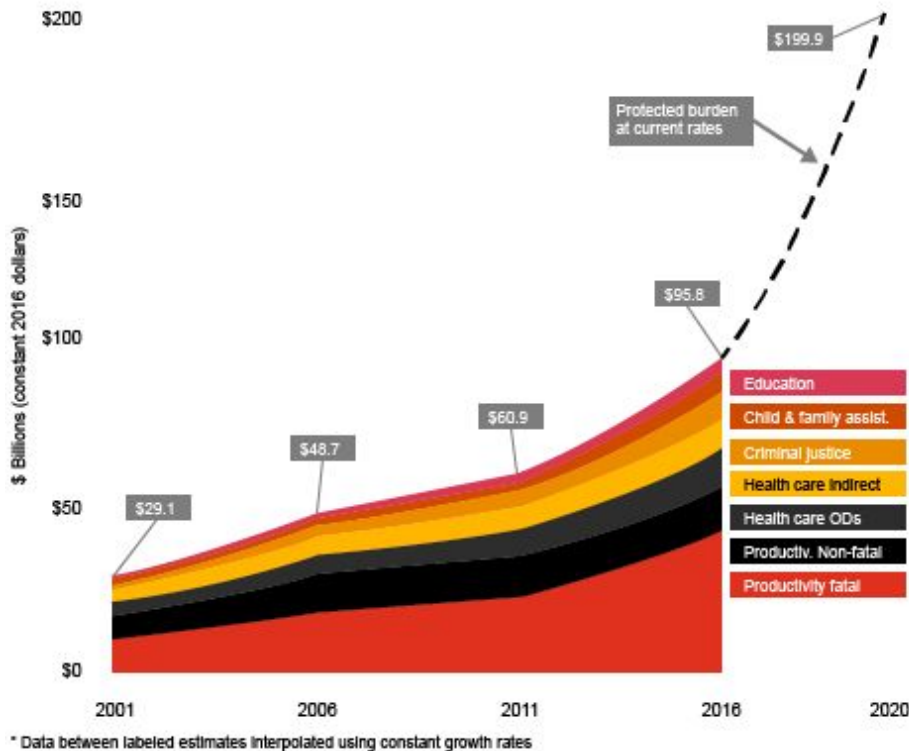
- Number of occurrences
- Aggregation
- Validation of damages & liability
- Interlocking clauses
- Hours clause

# Opioid Claims



# Opioid Claims - Costs related to opioid abuse

Costs of the opioid epidemic by year and type



Altarum - Solutions to Advance Health

<https://altarum.org/news/economic-toll-opioid-crisis-us-exceeded-1-trillion-2001>

- In 2015, the U.S. spent **2.8% or \$507.36 billion of its \$18.12 trillion GDP** on the opioid crisis (*White House Council of Economic Advisors*)
- The estimated cost of the US opioid epidemic from 2001 thru 2020 is **\$1.5 trillion**
- The 2020 annual cost of the opioid epidemic in the U.S. is projected at **\$200 billion**
  - Lost wages/productivity
  - Health care costs
  - State and local governments
- According to the Pew Charitable Trust July 2017 publication - *The High Price of the Opioid Crisis*
  - **\$28.9 billion in health care costs** each year are related to opioids
  - **\$7.6 billion** in criminal justice costs from the opioid epidemic with **96% of the costs** falling to state and local governments
  - **\$41.8 billion** in lost productivity each year due to opioids



# Opioid Claims - Lawsuits - parties and damages

## Plaintiffs

- City, municipal, county, and state governments
- Hospitals and other healthcare providers
- Individual drug abusers and their families including addicted infants born to drug abusers
- Third-party payors, such as Native American Tribes and trade unions;
- Insurance consumers due to the increase in health insurance costs

## Defendants

- **Manufacturers** - Abbot, Allergan, Endo, Insys, Janssen, J & J, Pfizer, Purdue, Teva
- **Distributors** - AmerisourceBergen, Cardinal Health, Mallinckrodt, McKesson, Quest, SAJ Distributors
- **Pharmacies** - Associated Pharmacies, Costco, CVS Health, Kroger, Rite-Aid, Top Rx, Walgreens, and Wal-Mart
- **Pharmacy Benefit Managers** - CVS, Express Scripts, OptumRX
- **Individuals** - Physicians (pill mills), and pharmaceutical sales representatives

## Damages

- Restitution, injunctive and equitable relief in connection with increased costs for healthcare, treatment programs, law enforcement, social services, and lost productivity
- Recoupment of costs for unnecessary prescriptions or uninsured services;
- Property damage
- Bodily Injury
- Wrongful death
- Fines and penalties, and disgorgement of profits
- Punitive damages

In 2017, Multidistrict Litigation (MDL) was established in the U.S.D.C. for the Northern District of Ohio - **National Prescription Opiate Litigation**

# Opioid Claims - Product Liability

- Typical defendants: manufacturers, distributors, sellers, end users
- Basis of Coverage: Design defect, the product is inherently dangerous or defective, or a failure to warn that the product carries an inherently non-obvious danger which could be mitigated through adequate warnings to the user
- Limits: Subject to an aggregate limit stated in the policy, typically high layer excess coverage with SIR
- Since mid 2019, approximately **\$219 billion** in settlements verdicts as to several manufacturers and distributors
  - **\$160B** - Mallinckrodt with 47 states and US territories, and Ohio MDL, includes Ch. 11 bankruptcy to its generics unit
  - **\$10B** - Purdue Pharma with 24 states, 5 US territories, and the MDL, includes Chapter 11 reorganization
  - **\$260M** - McKesson, AmerisourceBergen, Cardinal Health and Teva with Ohio MDL bellwether counties (Cuyahoga and Summit)
  - **\$48B** - Cardinal Health, McKesson, AmerisourceBergen, Johnson & Johnson and Teva with the remaining MDL defendants
  - **\$30M** - Mallinckrodt with Ohio MDL bellwether counties (Cuyahoga and Summit)
  - **\$20.4M** - J&J with Ohio MDL bellwether counties (Cuyahoga and Summit)
  - **\$5M** - Allergan with Ohio MDL bellwether counties (Cuyahoga and Summit)
- Opioid litigation is different from tobacco litigation which helps drive down the value of the settlements:
  - Prescription opioids are beneficial treatments for those who use them as prescribed
  - Targeted opioid defendants also provide other products that are beneficial and widely used
  - Many defendants are currently working on prophylactic treatments and vaccines for COVID-19

# Opioid Claims - Directors and Officers

- Typical defendants: Corporate directors and officers sued in their capacity as such
- Basis of Coverage: Negligent oversight of operations, marketing, etc.
- Limits: Subject to per occurrence limits, may have policy aggregate
- **Derivative class action** - means of resolving disputes between shareholders and corporate management, typically relating to corporate governance and alleged mismanagement
  - The shareholders first petition management to rectify the behaviour
  - If management refuses, the shareholders must show that management's actions hurt their positions and the company's management refuses to remedy the situation
  - **\$175M** McKesson settlement in December 2019
    - Allegations: breached fiduciary duties by failing to implement and oversee controls over the operations concerning the sale and shipment of opioid drugs, exposing the company to a large civil penalty from a 2017 regulatory settlement, massive legal fees, and potential liability
    - Will be funded by insurers
  - In January 2020, in the AmerisourceBergen (distributor) case, the Judge ruled that shareholders have a right to examine the company's internal records to determine whether officers and directors violated their duties to remain in compliance with the federal Controlled Substances Act and other laws





# Round-Up

## Product Liability

**Allegations:** Exposure to Roundup allegedly causes non-Hodgkin's lymphoma, an immune system cancer

- To date \$80B in US jury awards in three trials, reduced to \$190.5M
- Additional \$10.9B agreed June 24, 2020 for 125,000 plaintiffs
- Coverage issues: Number of occurrences, annualization of limits, allocation

## D&O

**Allegations:** Bayer's negligence in the purchase of Monsanto prohibited recognition of the Round-Up risk

- Bayer's stock price fell as much as 47% since the 2018, \$63 b purchase
- The claims cost has outweighed any gain Bayer was expecting as a result of its purchase of Monsanto
- The purchase took place at the same time the Merck deal was causing Bayer to have massive write downs and lay off staff
- In March, 2020 a shareholder filed a claim in NY State court
- Coverage issues: Intentional Acts

# Molestation Claims



# Molestation

General Liability, Professional Liability, Employers Liability , Educators Liability, Sexual Misconduct coverages

Every **73**

seconds, an American is sexually assaulted

Every **9** minutes,

that victim is a child

***Allegations: negligent hiring/oversight, failure to warn***

- Through March 2020: 22% rise in sexual assaults reported to the National Sexual Assault hotline
- 2009-2013, CPS agencies estimate 63,000 children a year were victims of sexual abuse, with 1/3 occurring away from home/relative
- Reviver statutes either permit victims to bring a lawsuit up to age 53 or there is no age restriction, but a 1-4 year window to file from when the claimant became aware of the act
- August 2019: NY expecting 2,000 to 3,000 new claims
- February 2020, BSA filed for bankruptcy citing an influx of childhood sexual abuse lawsuits
- 2017 - 2018, BSA identified 12,254 victims and revoked registrations of 7,819 people from 1944 - 2016 on the belief that they were involved in sexually abusing a child
- Impact of MeToo is also driving claims
- Coverage issues: Duty to defend broader than the duty to indemnify, number of occurrences, annualized limits, allocation

# Cyber Claims



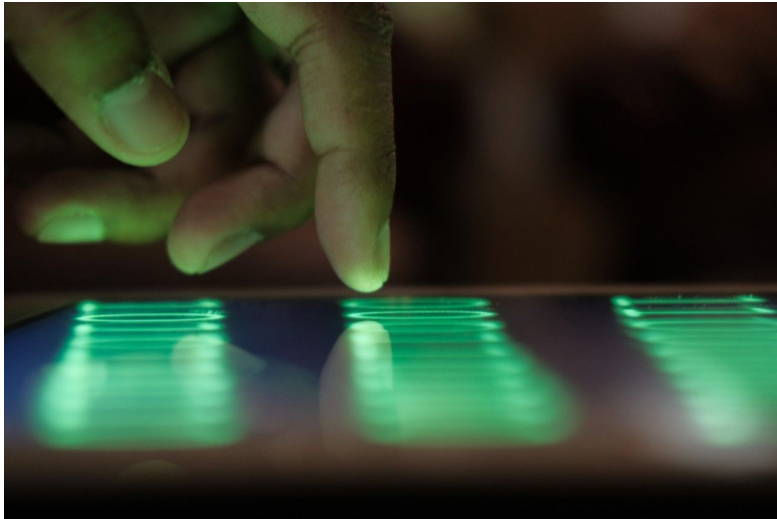
# Cyber - Types of coverage offered

|  |   |
|--|---|
| <b>Network Security</b>                    | Insurance against cyber and hacking attacks.  |
| <b>Theft and fraud</b>                     | Covers destruction or loss of the policyholder's data as the result of a criminal or fraudulent cyber event, including theft and transfer of funds  |
| <b>Forensic investigation</b>              | Covers the legal, technical or forensic services necessary to assess whether a cyber attack has occurred, to assess the impact of the attack and to stop an attack.   |
| <b>Business interruption</b>               | Covers lost income and related costs where a policyholder is unable to conduct business due to a cyber event or data loss   |
| <b>Extortion.</b>                          | Provides coverage for the costs associated with the investigation of threats to commit cyber attacks against the policyholder's systems and for payments to extortionists who threaten to obtain and disclose sensitive information.  |
| <b>Reputation Insurance</b>                | Insurance against reputation attacks and cyber defamation.  |
| <b>Computer data loss and restoration.</b> | Covers physical damage to, or loss of use of, computer-related assets, including the costs of retrieving and restoring data, hardware, software or other information destroyed or damaged as the result of a cyber attack.  |
| <b>Information Privacy</b>                 | Covers organizational liability(ies) arising from actual or alleged non-compliance with any worldwide cyber, information privacy, or identity related regulation, statute, or law. For example, this coverage part would cover an organization's legal defense, and ultimate monetary settlement, resulting from a regulatory claim alleging such organization was non-compliant with any covered privacy regulation, such as the "right to (personal information) erasure" governed within the European Union's <a href="#">General Data Protection Regulation</a> . |

# Cyber

## Cyber Liability

**Allegations:** Failure for the technology to perform as intended resulting in data loss, data breaches, slow down in performance, errors in processing, etc.



### Targets

- Healthcare organizations
- Financial Services Institutions
- Online market
- Providers of goods and services
- Small to midsize businesses

### Drivers

- Weaknesses in technology

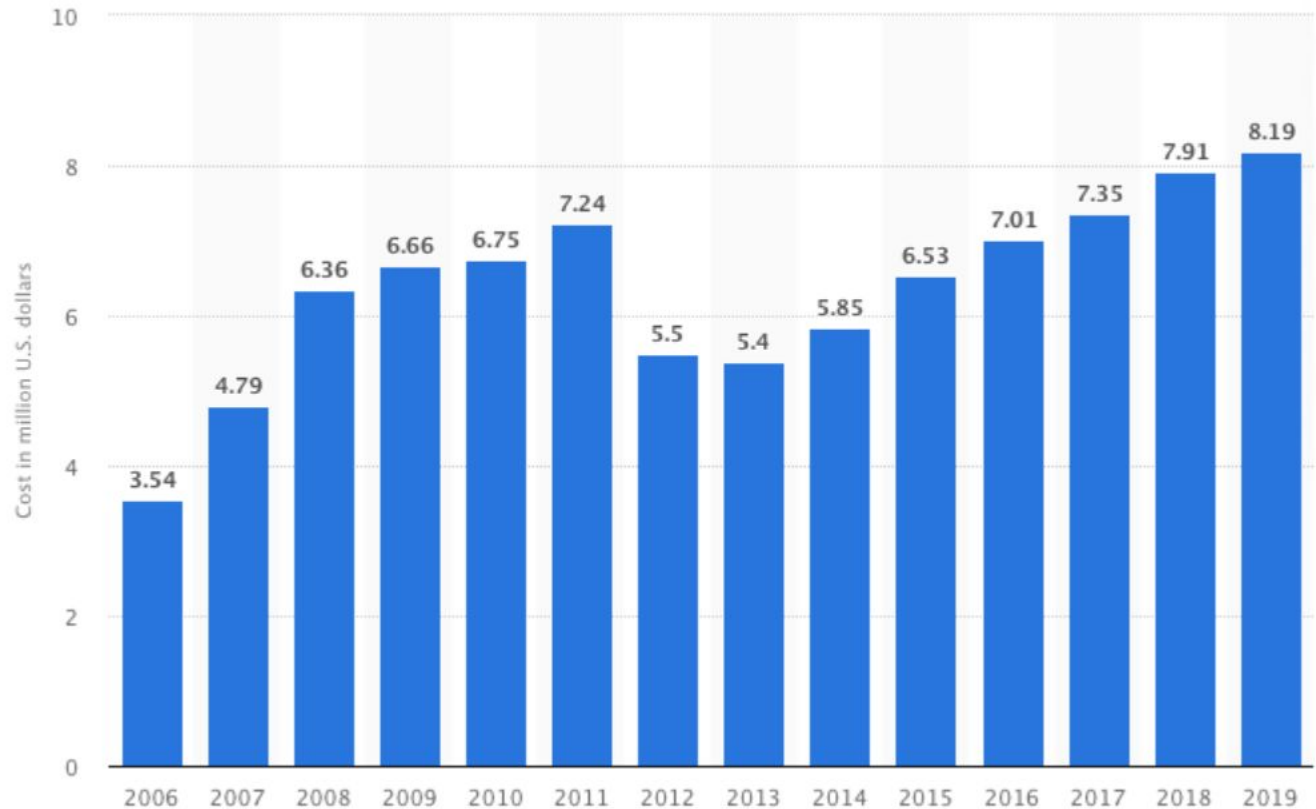
### Key issues

- Premium growth to **\$20B by 2025**.
- 2018 - 60% of breaches affected companies with fewer than 500 employees
- 70% of data breaches are the result of criminal activity, insurers reluctant to insure
- Average cost to a US company of **\$230 per compromised record**



# Cyber

The average cost of a cyber claim worldwide continues to rise



<https://foundersshield.com/cyber-insurance-trends-2020/>

## Key Issues (continued)

- Cyber risk management now includes focusing on cyber resiliency
  - Prepare an organization to resume normal business operations in an ever-shortening time frame.
  - The more resilient your organization is, the less time, money, and customers a data breach will cost
- Buyers are leveraging layering options as well as other coverages in designing their program
- New entrants are making the market place more competitive



# Telemedicine



# Telemedicine

## Medical Malpractice, Cyber and D&O

**Allegations:** Negligent care/failure to diagnose/treat, failure of technology to work as intended, negligent planning/oversight



### Targets

- Medical Service Providers
- Technology/Network/Communications service providers
- Executives and BoDs establishing policy and procedures

### Drivers

- Shift towards remote consultations
- Increased reliance on technology
- Increased potential for misdiagnosis

### Key issues

- Telehealth services increased by 624% from 2014 to 2018. and 65% of users are between 31- 40 years old
- Increases med mal exposures in lines of business previously not exposed (e.g. Cyber)
- Increase cost in medical malpractice insurance costs
- Will it increase misdiagnosis - can the relationship be only telemedicine based?
- Which jurisdiction applies if the patient participates in the call from a different state than the medical provider?
- What can be done to mitigate risks - waivers, recording session, changes to note taking?



# Active Assailant



# Active Shooter

## General Liability, Event, Active Assailant / Workplace Violence policies

*Allegations: Failure to maintain a secure/safe environment*



### Targets

- Institutions (Schools, Churches)
- Events
- Malls
- Entertainment venues

### Drivers

- Mental health issues

### Key issues

- [MGM Agrees to Pay Las Vegas Shooting Victims Up to \\$800 Million](#), insurers willing to contribute \$751 million
- [417 mass shootings in 2019, making it the worst year on record for this type of attack, according to the Gun Violence Archive](#)
- In 2019, nearly 2 million Americans fell victim to abuse, injury, trauma or death
- Active Assailant/Workplace violence policies were developed to respond specifically to these types of events. The number of new policies has increased tenfold in just two years, spurred on by the shooting at Marjory Stoneman Douglas high school in Parkland, Florida in February 2018. At one specialty insurer, the number of new policies rose 270% last year
- Active assailant policies for school districts are markedly different from those underwritten for commercial clients, whose risks extend to business disruption, loss of consumer attraction and damage to brand and reputation, in addition to death benefits, legal liability and funeral expenses

# Environmental Impairment Liability



# Environmental (Pollution Coverage)

## Coverage exposed: Environmental Liability

**Allegations:** Unexpected release of pollutants contaminated the environment



### Targets

- Oil and gas and other extractive industries
- Product Manufacturers
- Construction Companies

### Drivers

- Regulatory reform
- Use of chemicals and hazardous substances
- Installation of building products containing hazardous substances

### Key issues

- Estimate \$2 billion in annual premiums with double-digit growth, outpacing the annual growth rate of the general property and casualty marketplace
- Buyers seek access to additional limit capacity, brokers are employing inventive solutions, such as layered, quota-share and captive programs, to address the demand
- To mitigate the risk of multiple claims from a single incident, environmental carriers are relying on other insurance provisions and multiple deductibles to share risk among other lines of coverage (GL, property) and insureds, respectively
- Disputed issues tend to center on the cost and extent of required clean up
- Inflammatory issues drive higher damages

# Thank you

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