

An aerial photograph of a triathlon swim leg. A large group of swimmers in black wetsuits and white swim caps are swimming in clear, turquoise water. A single kayaker in a bright pink kayak is positioned in the center of the group, paddling. The kayaker is wearing a yellow shirt and a white cap. The overall scene is dynamic and captures the intensity of the race.

Practical considerations for reserving for emerging mass torts

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Learning objectives

- Understand the recent developments in mass torts
- Better understand the challenges of evaluating the liability of mass torts
- Gain knowledges of some methodologies that the industry is using to estimate IBNR for these exposures

Topics for discussion

- Update on emerging mass torts
- Reserving considerations (GAAP and Stat)
- Shortcomings of traditional development methods
- Potential reserving alternatives
- Exposure-based reserving
- Booking IBNR for emerging torts

Mass torts

Emergence of mass torts in the insurance industry

Mature mass torts

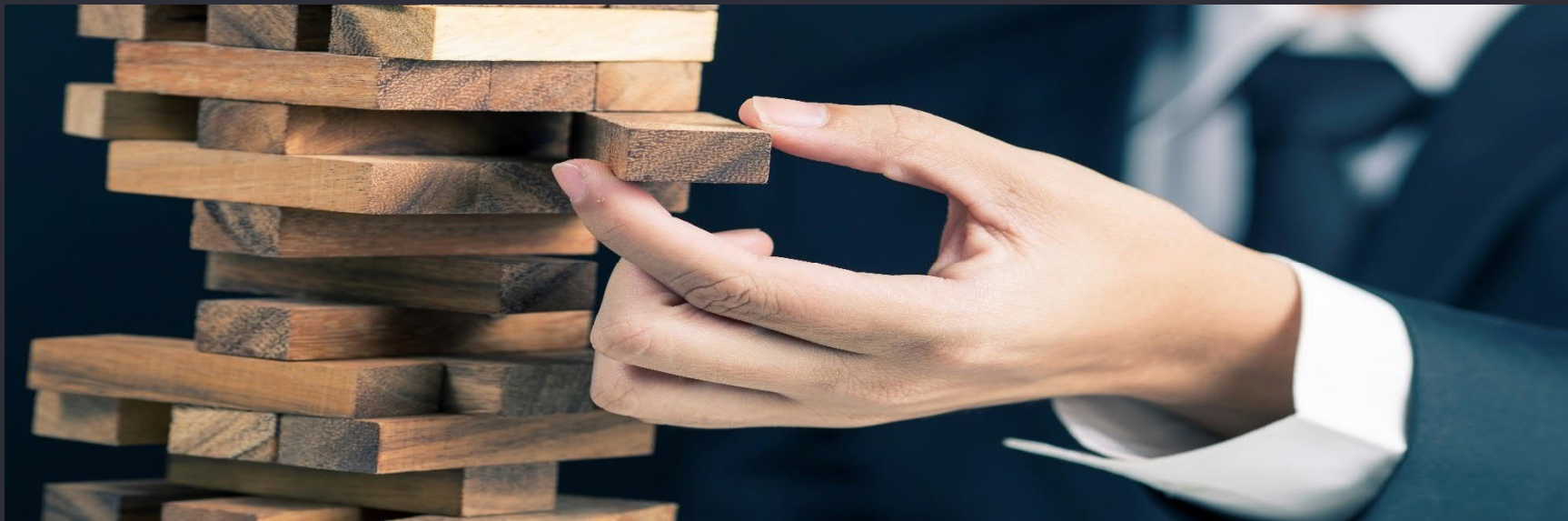
- Asbestos
- Environmental/pollution
- Construction defects
- Black lung
- Merger/acquisition litigation

Emerging mass torts

- Opioids
- Sexual abuse/misconduct
- Traumatic brain injuries
- Talcum powder litigation
- Glyphosate
- Per- and polyfluoroalkyl substances

Potential future torts

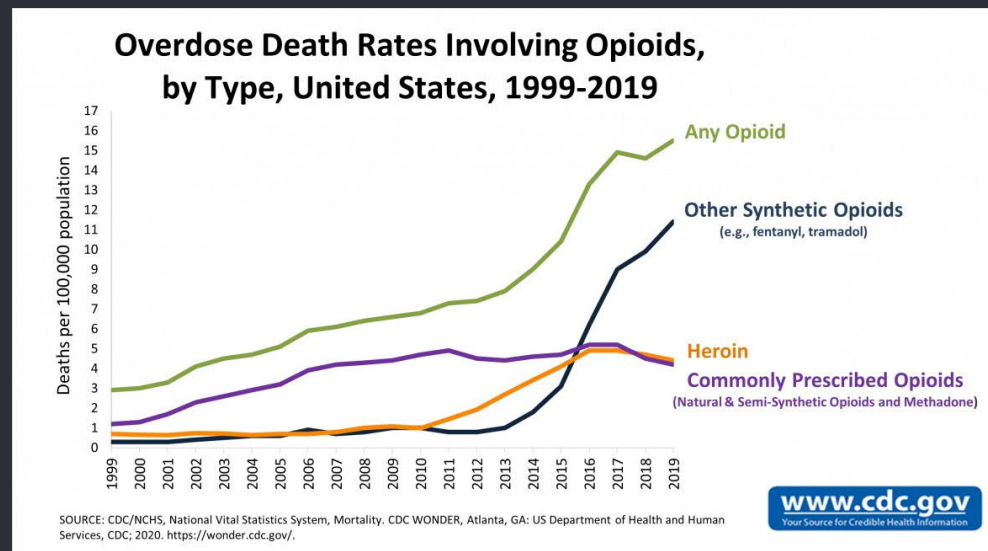
- Vaping and e-cigarettes
- Mass shooting/active shooter
- Climate change
- COVID-19?



Emerging mass torts

Opioids

- Insurance coverage implications
 - Policies most commonly implicated with opioid claims
 - Likely sources of exposure
 - Opioids and workers' compensation
- Claim trends
 - According to the CDC, deaths involving synthetic opioids increased by over 15% between 2018 and 2019
 - Impacts of COVID-19



Emerging mass torts

Sexual abuse

- Insurance coverage implications:
 - Policies most commonly implicated with sexual abuse claims
 - Coverage disputes
 - Likely sources of exposure
- Claim trends
 - #metoo
 - Social and regulatory pressure
- Statute of limitations
 - Impacts of COVID-19

Emerging mass torts

Traumatic brain injuries (TBIs)

- Insurance coverage implications
 - Policies most commonly implicated with TBI claims
- Claim trends
 - Non-sports-related incidence
 - Institutions/organizations involved in TBI/chronic traumatic encephalopathy (CTE) claims
 - Impacts of COVID-19

Other emerging mass torts

- Talcum powder
 - Asbestos
 - Non-asbestos
- Glyphosate/Round Up
- Per- and polyfluoroalkyl substances

Potential emerging mass torts

- Vaping and e-cigarettes
- Mass shooting/active shooter
- Climate change
- COVID-19

Industry response to emerging mass torts

Accounting considerations – statutory

- On a statutory basis, according to SSAP 5R paragraph 8, an estimated loss from a loss contingency shall be recorded by a charge to operations if both of the following conditions are met:
 - 8.a. Information available prior to issuance of the statutory financial statements indicates it is probable that a liability has been incurred.
 - 8.b. The amount of loss can be reasonably estimated.
- When the condition in paragraph 8.a. is met with respect to a particular loss contingency, and the reasonable estimate of the loss is a range, which meets the condition in paragraph 8.b., an amount shall be accrued for the loss.
- If a loss contingency or impairment of an asset is not recorded because only one of the conditions in paragraph 8.a. or 8.b. is met, disclosure of the loss contingency or impairment of the asset shall be made in the financial statements when there is at least a reasonable possibility that a loss or an additional loss may have been incurred.
 - The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made.

For these emerging mass torts, is there currently enough information available to “reasonably” estimate exposure?

Industry response to emerging mass torts

Accounting considerations – GAAP

- Under GAAP accounting, loss contingencies are categorized using three terms based on the likelihood of occurrence:
 - Probable – the future event or events are likely to occur.
 - Reasonably possible – the chance of the future event or events occurring is more than remote but less than likely.
 - Remote – the chance of the future event or events occurring is slight.
- If it is probable that a loss will result from a contingency and the amount of the loss can be reasonably estimated, the estimated loss is accrued by a charge to income.
- A reasonably possible contingency falls short of one but not both of the parameters requiring an accrual for a probable liability. These contingent liabilities must be disclosed, similar to requirements under SSAP 5R, paragraph 27.
- While there are disclosure requirements for remote contingent liabilities with certain characteristics (e.g., guarantees), potential claims from emerging mass torts deemed to be remote likely do not possess any of the characteristics that would trigger mandatory disclosure requirements.

Shortcomings of traditional development methods

- Traditional reserve development methods
 - Chain ladder, expected loss ratio or loss cost, Bornhuetter-Ferguson, etc.
- Fundamental assumptions of traditional reserving methods
 - Historical development is reliable proxy for future development expectations
 - Development history and historical experience is available and credible
- Emerging mass torts fail to conform to the fundamental assumptions underlying traditional reserving methods
 - No clear allocation of claims to accident or report year
 - Lack of observable, steady development on claims as they age
 - May lack any past history for projection purposes
 - Inclusion with non-tort data may distort traditional projections

Potential reserving approaches

- Driving question: how will companies estimate the unpaid liability associated with these exposures for which traditional reserving methods are insufficient?
 - Potential estimation approaches
 - Bulk reserving: allocate industry estimate/settlement agreements based on market share (if applicable)
 - Survival ratio/IBNR to case benchmarking or assuming decay rate on payments (works better for higher frequency latent events like asbestos)
 - Similarity to other, more mature mass torts
 - Frequency/severity considerations

Traditional frequency/severity approach

Ultimate = total exposure * frequency * severity

Modified frequency/severity approach

Ultimate = $\sum_{\text{exposed accounts}}$ (probability of claim * severity)

Assessing exposure and applying probabilistic estimates

- Step 1: Identify all exposed accounts
 - Reliable projections likely require companies to assess exposures for each emerging tort to determine all coverages, policies and potential (sub)limits that could be impacted
- Step 2: Estimate probability of claim
- Step 3: Estimate associated cost for claim
 - For simplicity, steps 2 and 3 can be combined
 - Consider analyzing loss and loss adjustment expense separately
- Step 4: Multiply the probability of each claim with the associated cost and sum across all exposed accounts
- An **iterative process** will likely be needed as more information on each tort becomes known.

Reserving considerations

Risk management watchlists

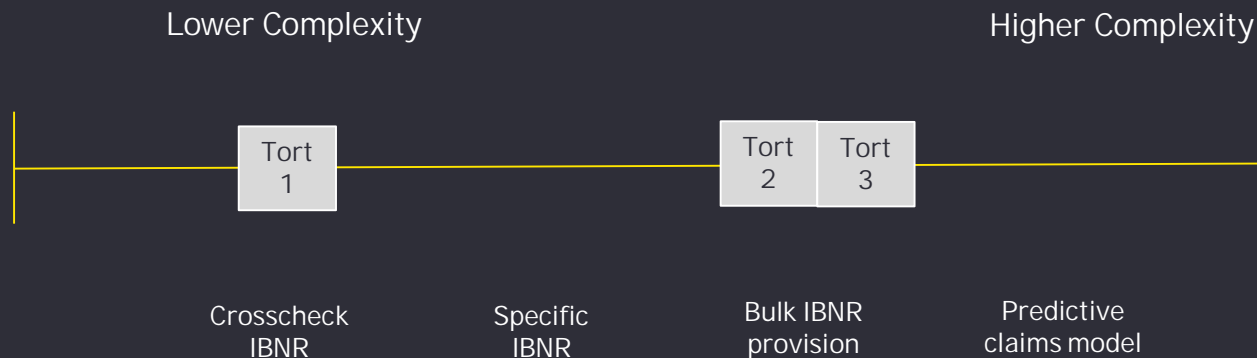
- Multiple benefits
 - Capture key data related to emerging mass torts that can be used in ultimate projections as previously described
 - Facilitate risk management conversations across the company
- Trade-off between ultimate (not just current) needs and work effort
- Commonly collected fields include (among others)
 - Limits, sublimits, attachments and defense cost treatment
 - Paid and incurred values
 - Legal department estimates of probability and severity
- Hindsight testing can be valuable for assessing accuracy of prior assumptions and calibrating projections

Reserving considerations

Establishing IBNR for emerging torts

- As more claim-specific information develops, the credibility of tort-specific projections generally increases. As the credibility of the projections increases, the incorporation of the tort-specific estimates into the total IBNR likely increases in complexity.

Reliance on tort-specific estimates in total IBNR estimation depends on credibility of method



- Avoid “double-counting” of IBNR by incorporating a tort specific estimate that is also partially accounted for in the projection of non-tort liabilities.

Summary

- Tort environment is still evolving, and data is sparse.
- Traditional actuarial methods are inadequate for projecting reserves for emerging mass torts.
- Projecting liabilities for these events requires a holistic view of the company's exposure and interaction across various departments, and methods will need to evolve as the torts mature.

Questions?

- If you have any questions, please feel free to reach out to us at dawn.fowle@ey.com and eric.pince@ey.com

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