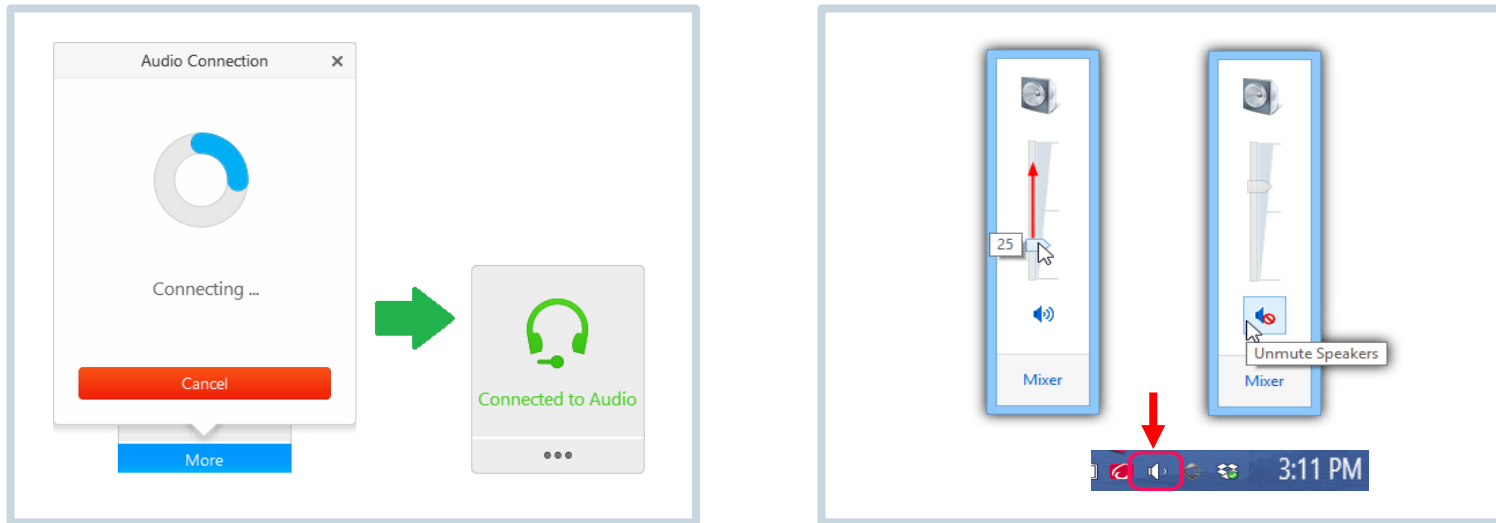


## Participant information

- Telephone audio will stream through your computer speakers. Please make sure your computer speakers are **on** and your console is **unmuted**.



- If you are having technical difficulty hearing through your computer speakers, please use the chat to troubleshoot with the event specialist.
- To submit a question, select the Q&A panel on the left side of your screen. We will leave time at the end of the presentation for questions.
- All registrants will receive a copy of today's presentation and a link to a replay of the discussion via email.

# Restoring Stability: Dealing with a Difficult Umbrella Market

Willis Towers Watson Webcast

July 9, 2020

## Today's speakers



**Jon  
Drummond**

Head of  
Casualty  
Broking, North  
America



**Edward  
McNenney**

Excess Liability  
Leader, North  
America



**Jeff  
Harvey**

Excess Liability  
Leader,  
Northeast

**Will  
Eustace**

Casualty  
Coverage Officer

## Today's agenda



**Causes of the Hard Market**



**Capacity Considerations**



**Attachment Point Challenges and the Interplay of Primary and Excess Casualty Programs**

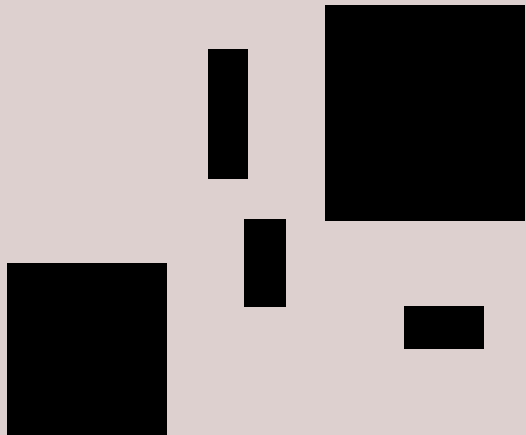


**Important Coverage Considerations**



**Questions and answers**

## Causes of the Hard Market



# State of the Casualty Market

Volatility abound

## Hot Take on Q2 Renewal Rates

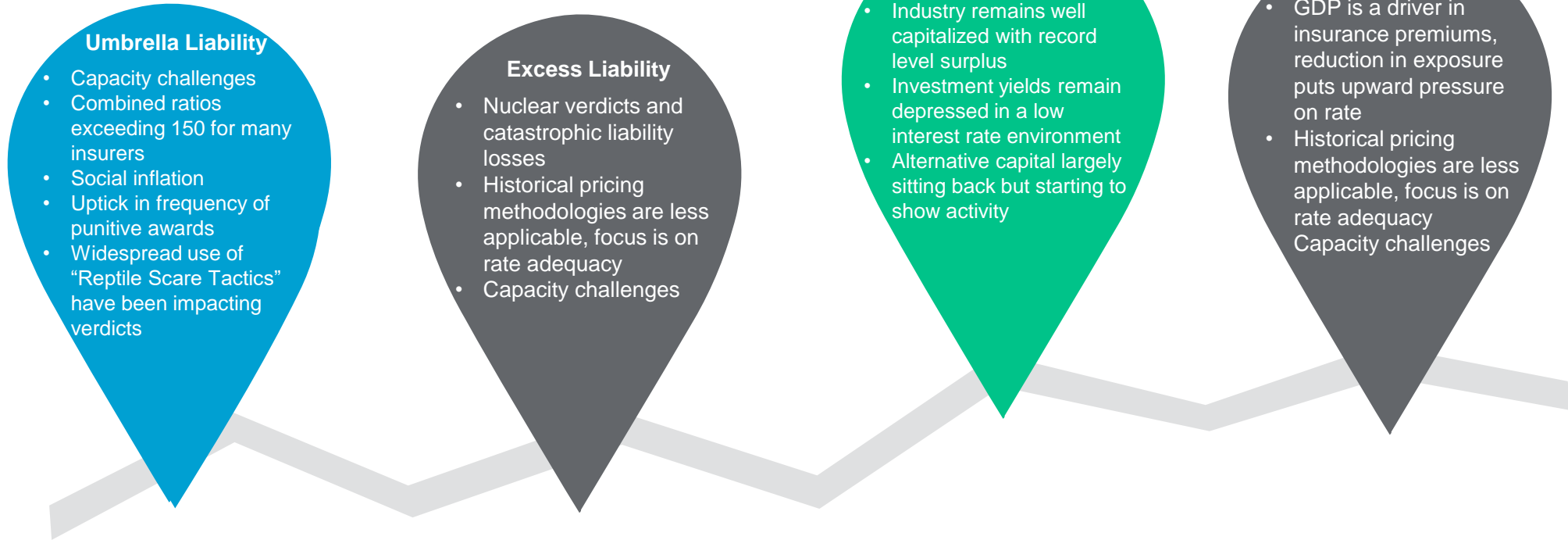
- 92.7% of our Q2 renewals experienced a rate increase on their UE program, the highest % we've ever recorded
- Less than 16% of our portfolio has a \$25M lead umbrella limit, in 2017 over 70% of our portfolio had at least a \$25M lead umbrella limit
- Q1 2020 started a new trend where excess rate outpaced umbrella rate.
- In 2018 it took an average of 4.2 carriers to build a \$100M tower, now the average is 7.4 carriers

### Mean Rate Change

	2019 Q3	2019 Q4	2020 Q1	2020 Q2
General Liability	3.9%	4.1%	1.5%	<b>16.4%</b>
Automobile Liability	8.9%	9.2%	14.6%	<b>12.6%</b>
Workers' Compensation	-4.0%	-3.2%	-1.3%	<b>0.2%</b>
Excess Workers' Compensation	-1.6%	-0.7%	0.4%	<b>4.9%</b>
Lead Umbrella	10.7%	23.8%	22.4%	<b>42.9%</b>
Excess Liability	9.7%	22.2%	38.6%	<b>92.4%</b>

# State of the Casualty Market

## Factors impacting rate



## State of the Casualty Market – Factors Impacting Rate

### Rate Prediction



**Prognosis:**

We expect to experience a challenged casualty environment through 2020. Umbrella / Excess carriers will seek material rate increases and higher attachment points while restricting coverage terms & conditions for the next several quarters. In addition, carriers are actively seeking to add Communicable Disease and COVID-19 Exclusions.

**Forecast:**

- General Liability: 7.5% to 15%+
- Automobile Liability: 8% to 15%
- Workers' Compensation: Flat to +4%
- Umbrella:
  - High Hazard / Challenged Class: 60%+ Low / Moderate Hazard: 30%+
  - Excess Liability:
    - High Hazard / Challenged Class: 200%+ Low / Moderate Hazard: 75%+

# Spotlight on COVID-19

What are the headlines?

## Macro feedback from industry executives...

- COVID-19 will be the largest single catastrophe to impact the P&C Industry even **without** legislative or judicial “curveballs.”
  - AIG and Chubb 1st Qtr. earnings cite it as the largest single event
  - VJ Dowling April 22nd estimates: \$40 - \$80 billion
  - WTW ICT May 1st estimates: \$32 - \$140 billion with a moderate estimate of \$80 billion.
  - Lloyds of London May 14th forecasts industry losses at \$107 billion

- Many lines of Insurance are impacted:
  - Travel
  - Trade Credit
  - Workers Compensation [presumptive legislation expected – losses could exceed \$30 billion]
  - D&O, EPLI, Cyber
  - General Liability
  - Environmental... etc....
- Economic disruption also impacting balance sheet assets and future investment income streams for P&C insurers.
- This will be a “long tail” event.
- ***We are now in the midst of the most challenging market conditions in decades. The hard market is impacting most lines of insurance, most client segments and most industries***





## Spotlight on COVID-19

### How is COVID-19 impacting umbrella and excess programs?

#### Liability Lines



Establishing liabilities resulting from COVID-19 could prove difficult considering the community exposure, however insurers are concerned with exposure.



Exclusions that look to preclude coverage are becoming commonplace. They include: Communicable Disease, specific COVID-19 language, Fungus & Mold (including Fungi / Mildew / Yeast / Microbe, etc.), “Expected or Intended” injury, pollution.



Carriers are inconsistent with their wording and approach. Very limited support for any ALAE coverage, but willing to hear a case for indemnification.

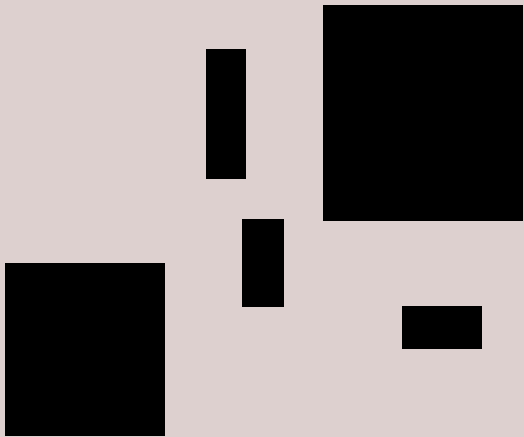


Those who are able to quantify their risk and showcase defined risk control initiatives are the ones who are securing the best outcomes.

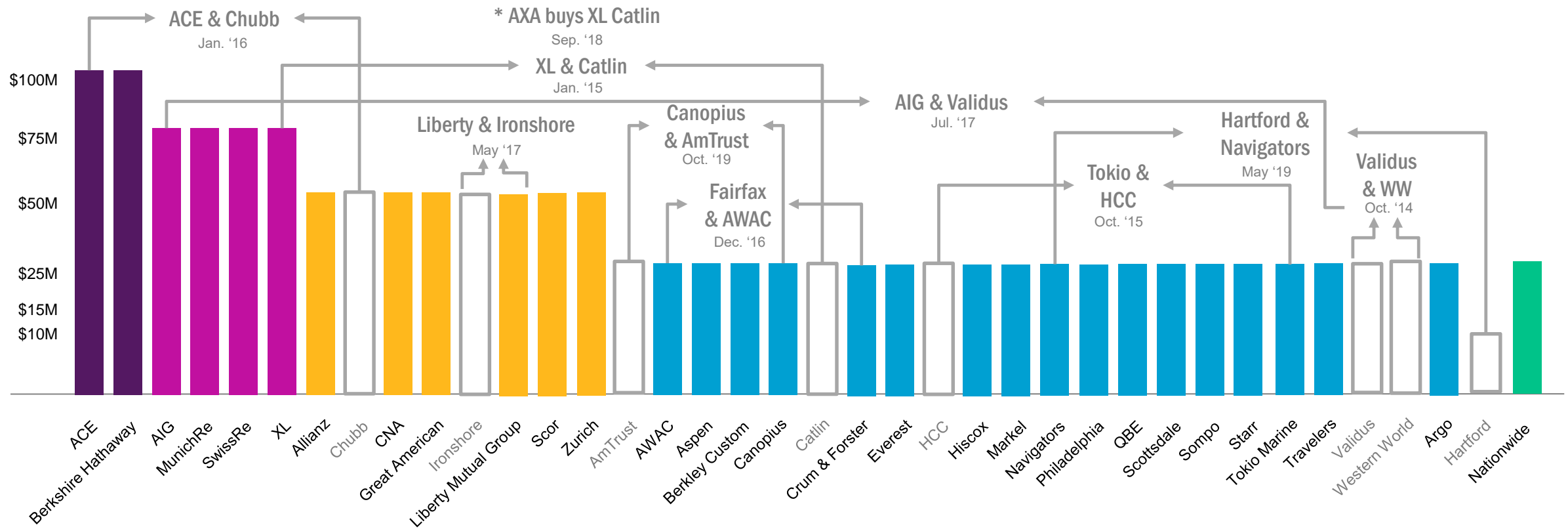


An uptick in employers liability claims are expected. State specific laws impact how suits may be brought, but an increase in claims could cause insurers to reevaluate the employers liability attachment point on an umbrella policy.

# Capacity Considerations

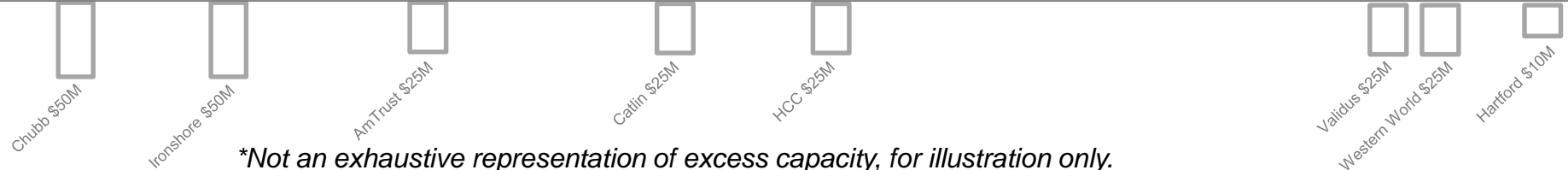


# The Impact of M&A on Excess Capacity 2014 - 2020



## Capacity Reductions

☐ **\$235M:**  
Total capacity reduced as a result of carrier consolidation



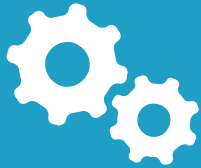
*\*Not an exhaustive representation of excess capacity, for illustration only.*

# Capacity Considerations



## Negative Underwriting Results Create Additional Capacity Reductions

- QBE withdraws from National Account Space ↓ \$25 million
- Swiss Re shuts Corporate Risk Solutions ↓ \$75 million



## New Capacity Slow to Enter Fray / New Capacity 2020

- Ascot Group-Bermuda/London
- Convex Ltd. –Bermuda/London



## Property/Casualty Insurance Industry's Surplus Sets New Record in 2019 as Stock Market Recovers from Downturn

- Private U.S. property/casualty insurers' surplus reached a new record of \$847 billion by the end of 2019, pushed up by insurers' income and unrealized capital gains, according to the American Property Casualty Insurance Association.

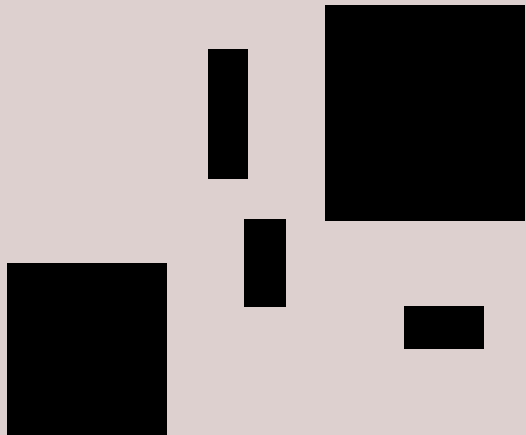
# Capacity Considerations



## Available Capacity Is Not Being Deployed

- Lead Umbrellas are demanding higher attachment points while reducing capacity - \$10 million lead is the new standard
- Excess insurers are reducing deployed capacity across their portfolios
- Typical national account excess towers are losing 30-50% of renewable capacity without losing a single participant
- Replacement Capacity entering at higher price points and rethinking minimum premiums
- Even larger limit players - AIG/Chubb/AXA XL are ventilating their capacity throughout excess towers

# Attachment Point Challenges and the Interplay of Primary and Excess Casualty Programs



# Attachment Point and Capacity Challenges

## Challenges

- “Soft” non-renewals
- Reductions in capacity
- Higher attachment requirements
- Limited Lead Umbrella options
- Changes to terms and conditions
- Underwriting scrutiny
- Significant rate increases

## Achieving the best result

- Pursue short limits for lead and low excess layers
- Explore options for increasing attachments
- Analytics to understand retained losses
- Thorough marketing and engagement of new carriers
- Effective presentation to marketplace
- Leverage relationships across lines of business
- Value incumbent markets
- Be willing to restructure significantly
- Ventilate capacity

# Attachment Point and Capacity Challenges

## Expiring

Excess Limit: \$25M		
Excess Limit: \$25M		
Excess Limit: \$25M		
Excess Limit: \$25M		
Umbrella Limit: \$25M		
EL Limit: \$1M	General Liability Limit \$1M	Auto Limit: \$2M

## Renewal

Excess Limit: \$25M		
Excess Limit: \$20M p/o \$40M	Excess Limit: \$20M p/o \$40M	
Excess Limit: \$15M		
Excess Limit: \$12.5M p/o \$25M	Excess Limit: \$12.5M p/o \$25M	
Excess Limit: \$10M		
Umbrella Limit: \$10M		Excess Auto Limit: \$5M
Excess GL Limit: \$4M		Excess Auto Limit: \$3M
EL Limit: \$1M	General Liability Limit \$1M	Auto Limit: \$2M



# Interplay of Primary and Excess Casualty Programs

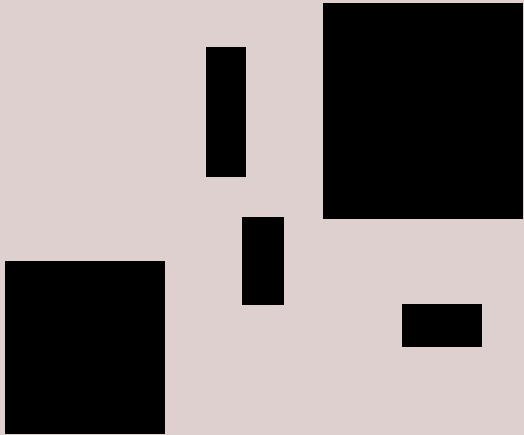
## Considerations

- Evaluate primary program in context of entire casualty program
- Higher Lead Umbrella costs will be compounded in Excess layers
- Higher attachment points will generally expand the market Umbrella
- Primary carrier may require higher retention levels
- Are we prepared to market the program?

## Achieving the best result

- Be clear on expectations
- Know your alternative markets
- Analytics to understand the impact of higher retentions
- Risk retention as competition
- Early and comprehensive submission

## Important Coverage Considerations



# Communicable Disease Exclusion – ISO

## ISO CD Exclusion

- This insurance does not apply to liability arising out of the actual or alleged transmission of a communicable disease. This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:
  1. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
  2. Testing for a communicable disease;
  3. Failure to prevent the spread of the disease; or
  4. Failure to report the disease to authorities.

## Comments

- Does not define communicable disease
- The basis of the exclusion appears to be widespread bacterial or viral disease among a large segment of the population at a particular time
- Does not mention disease consequent to physical injury to the body
- Does not attenuate the connection beyond 'arising out of'

# Communicable Disease Exclusions - Pandemic

## Epidemic/Pandemic Exclusion

- This insurance excludes and we will not reimburse the Insured in respect of any claim, loss, expense or liability of any kind whatsoever arising from, relating to or to the extent contributed to, by any bacterial, viral, microbial or biological infection causing, anticipated to cause or having been caused by, any epidemic, pandemic or similar mass infection event(s) or loss(es), including but not limited to the COVID-19 virus

## Comments

- Addresses epidemic and pandemic (and not simply any bacterial or viral infection)
- Connection isn't ideal in breadth: 'arising from, relating to or to the extent contributed to by'
- The standard is loss causing or caused by an epidemic, pandemic or similar mass infection event

# Communicable Disease Exclusions

## Broad Exclusion

- This insurance does not apply to any liability or any other loss, cost, damage, expense, injury, claim or suit, arising out of, or resulting directly or indirectly, in whole or in part from a Communicable Disease.
- As used herein, Communicable Disease means a disease which can be transmitted by any infectious or contagious substance:
  1. Including, but not limited to, a virus, bacterium, parasite or other organism or any mutation thereof, whether deemed living or not, and
  2. Regardless of the method of transmission, whether direct or indirect.

## Comments

- Defines communicable disease so broadly that it includes almost any transmissible disease
- Except for congenital and lifestyle diseases, most disease arises from viruses or bacteria
- Could even reach post-operative infection after traditionally covered physical bodily injury
- Attenuated connection: arising out of, or resulting directly or indirectly, in whole or in part

## FE-MA Enterprises v. James River Insurance (S.D. Texas 2009)



- Plaintiff was sued by individuals infected with typhus, the result of its failure to manage an infestation of typhus-infected rodents on its premises
- Policy does not apply to any claim or suits based on, or directly or indirectly arising out of, or resulting from:
  - Any form of communicable disease; or
  - Failure by an insured to perform services which were either intended to or assumed to prevent communicable diseases or their transmission to others.



- Plaintiff argued that the exclusion didn't apply because the case was essentially about negligent garbage collection. The Court disagreed. The case was about typhus, a communicable disease
- Plaintiff cannot say that picking up garbage is not 'intended to or assumed to prevent' communicable disease. If plaintiff failed to properly collect and dispose of garbage, fostering an infestation of typhus-infected rodents, the CD exclusion applied
- Court rejected the notion that exclusion for failure to perform services intended to prevent CD or its transmission only applied to flu shots on the premises

## Colony Insurance Company v. Nicholson (S.D. Florida 2010)



- Manicure from Fancy Nails caused an infection and scarring
- Exclusion: BI or PD arising from the transmission of a CD or failure to perform services which were intended to prevent CD or their transmission to others.
- CD = a contagious disease or illness arising out of or in any manner related to an infectious or biological virus or agent or its toxic products transmitted or spread, directly or indirectly, to a person from an infected person, plant, animal or anthropoid, or through the agency of an intermediate animal, host or vector of the inanimate environment or transmitted or spread by instrument or any other method of transmission.



- The Court is not convinced on the present factual record that the CD exclusion is relevant. Plaintiff Colony submitted an affidavit indicating that Nicholson had contracted a bacterial infection. The definition of CD in the exclusion appears to exclude bacterial infections, particularly when read in light of a separate bacteria and fungi exclusion.
- Bacteria exclusion doesn't apply either. Since the allegations lacks temporal and geographical specificity, it's possible that Nicholson contracted the infection after leaving the nail salon, exposed to that risk by virtue of the salon having, as the complaint alleges, damaged the skin around the base of the nail.

## Insurance is a Creature of State Law

- Pollution in one state (FL) isn't pollution in another (AZ)
- Communicable Disease will arguably follow a similar pattern
- There may be input from state legislatures
- Empathetic facts could yield odd results in the face of seemingly absolute CD exclusions
- And there will be public sentiment:
  - *Should victims be compensated?*
  - *Through insurance or via a fund?*





## Questions



### Past events:

**June 5:** Re-imagining your Property Insurance During COVID-19 and Afterward

**June 16:** Re-imagining your Casualty Insurance During COVID-19 and Afterward

**June 24:** Re-imagining your FINEX Insurance During COVID-19 and Afterward

**June 30:** Distressed Organizations

[Access past recordings on willistowerswatson.com](https://www.willistowerswatson.com)



# Restoring Stability: Dealing with a Difficult Umbrella Market

Willis Towers Watson Webcast

July 9, 2020

*Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for COVID-19. Coverage may vary depending on the jurisdiction and circumstances. For global client programs it is critical to consider all local operations and how policies may or may not include COVID-19 coverage. The information contained herein is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal and/or other professional advisors. Some of the information in this publication may be compiled by third party sources we consider to be reliable, however we do not guarantee and are not responsible for the accuracy of such information. We assume no duty in contract, tort, or otherwise in connection with this publication and expressly disclaim, to the fullest extent permitted by law, any liability in connection with this publication. Willis Towers Watson offers insurance-related services through its appropriately licensed entities in each jurisdiction in which it operates. Willis Towers Watson does not undertake to update the information included herein after the date of publication. Accordingly, readers should be aware that certain content may have changed since the date of this publication. Please reach out to the presenters or your Willis Towers Watson contact for more information.*