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Safeguard - Looking back and forward

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Last year we experienced increased growth in demand for Safeguard - our service-led insurance offering for Sexual Misconduct Liability (SML) risks. In this update, we review the factors driving this growth along with the external trends we saw last year. We also highlight the rising trends and issues we anticipate will grow in importance this year.

Four key drivers of growth

1. **Value of our services** – our offering includes risk management and crisis response services that sit alongside tailored liability insurance, which can be an effective tool for raising organizational awareness and responsibility, and is helping to attract and retain clients.
2. **Mandatory and contractual requirements** – an increasing number of states, municipalities, higher education institutions, and school districts are requiring contractors or organizations working on their facilities (or using them to deliver services to third parties), to have SML coverage.
3. **Professional Liability (PL) and General Liability (GL) coverage reductions** – as claims frequency and severity grows, we see increasing numbers of providers of PL and GL Liability insurance reducing or eliminating the availability of SML coverage, encouraging the purchase of standalone SML cover.
4. **Prior claims history** – we are seeing an increasingly limited appetite in the PL & GL market for clients with a claims history, which is resulting in organizations with a claims history having higher limits imposed on them and/or them seeking standalone SML cover.

Significant and impactful developments in 2023

- **Settlements & verdicts** - there were several major settlements, some involving multiple plaintiffs, and larger settlement and verdict

values, and others involving single or a small number, e.g. two plaintiffs secured a $135m jury verdict against a California school district stemming from abuse perpetrated by a teacher1; similarly, in December just one single plaintiff secured a $25m jury verdict against a California school district related to abuse by a high school coach2.

- **Media profile -** last year saw a rise in high-profile media sexual abuse cases. Allegations involving celebrities have been a major driver of this trend, with the likes of the New York Adult Survivors Act leading to many allegations and suits. There was also coverage of how Generative Artificial Intelligence (Gen AI) can exacerbate and complicate issues around sexual abuse and risk management.
- **Coverage disputes -** there was more frequent reporting of insurance coverage disputes, often involving GL policies, usually linked to knowledge and disclosure on the part of an insured.
- **New sectors**: there was an increase in claims and legal activity from newer sectors, that drove interest in SML insurance. An example is detention facilities, where there have been numerous cases of sexual abuse allegedly perpetrated by staff against inmates, most notably at facilities housing women. There were also further allegations of systemic abuse by medical professionals against patients. In fact, some of the largest abuse settlements ever, involved doctors affiliated with higher education institutions, namely, Larry Nassar3, James Heaps4, and James Anderson5. More recently, we have seen examples arising from major hospitals and health systems.
- **Limitation**: issues around civil statutes of limitation continued throughout last year, including a rush of claims as the New York Adult Survivors Act neared expiry. Additionally, Maryland eliminated its civil statute of limitations and numerous organizations in states such as California and New York entered or proposed bankruptcy as a result of claims brought under such reforms.

Significant themes and issues this year

- **Organizational vigilance and reporting of abuse** : with greater press coverage of alleged failures on the part of organizations and individuals to report on known and suspected instances of abuse, there is a greater need for prevention and response risk management procedures. Organizations will need to implement policies and procedures around abuse awareness, ensure that their reporting processes are robust, and train all relevant personnel on these processes and procedures.
- **Growing awareness of the impact of technology on sexual abuse**: as seen late last year, cases involving AI deepfake sexual abuse images are likely to rise, as will the potential of such images to exacerbate sexual abuse incidents. In fact, we are already seeing concerns expressed about whether sexual misconduct in the digital world could encourage abuse in the real world. The intersection of technology and abuse is likely to remain a major and developing concern going forward6.

- **Continued upward pressure on verdicts and settlements**: we anticipate sustained upward pressure on claim and settlement expectations this year. Jury social inflation is resulting in limited sympathy around claims of this type, which can lead to higher award and settlement levels. The SML space will not be immune to 'nuclear' verdicts.
- **Ongoing developments around limitation:** the situation around limitation at a state and federal level remains fluid, with a wide range of positions taken concerning claims linked to child and adult abuse. As well as continued pressure to extend or abolish limitation for claims of abuse perpetrated against a child, we expect to see pressure for other states to follow New York's Adult Survivor's Act.

Find out more about Safeguard

[1] Shin, Tony, "Jury awards $135M to former students molested by teacher in Moreno Valley", NBC News, Los Angeles, October 11, 2023, accessed February 20, 2024.

[2] Winton, Richard, "Jury awards $25 million to sexual abuse victim of Santa Barbara Unified high school coach", LA Times, December, 13, 2023, accessed February 20, 2024.

[3] Smith, Mitch; Hartocollis, Anemona, "Michigan State's $500 Million for Nassar Victims Dwarfs Other Settlements", NY Times, May 16, 20218, accessed February 20, 2024.

[4] Hauser, Christine, "Former U.C.L.A. Doctor Is Sentenced to 11 Years in Sexual Abuse Case", NY Times, April 27, 2023, accessed February 20. 2024.

[5] Blinder, Alan, "University of Michigan Will Pay $490 Million to Settle Abuse Cases", NY Times, January 19, 2022, accessed February 20, 2024.

[6] https://www.washingtonpost.com/technology/2024/02/04/metaverse-sexual-assault-prosecution/

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