

COVID-19 SAFETY: High-risk industries subject to increased scrutiny - **PAGE 4**

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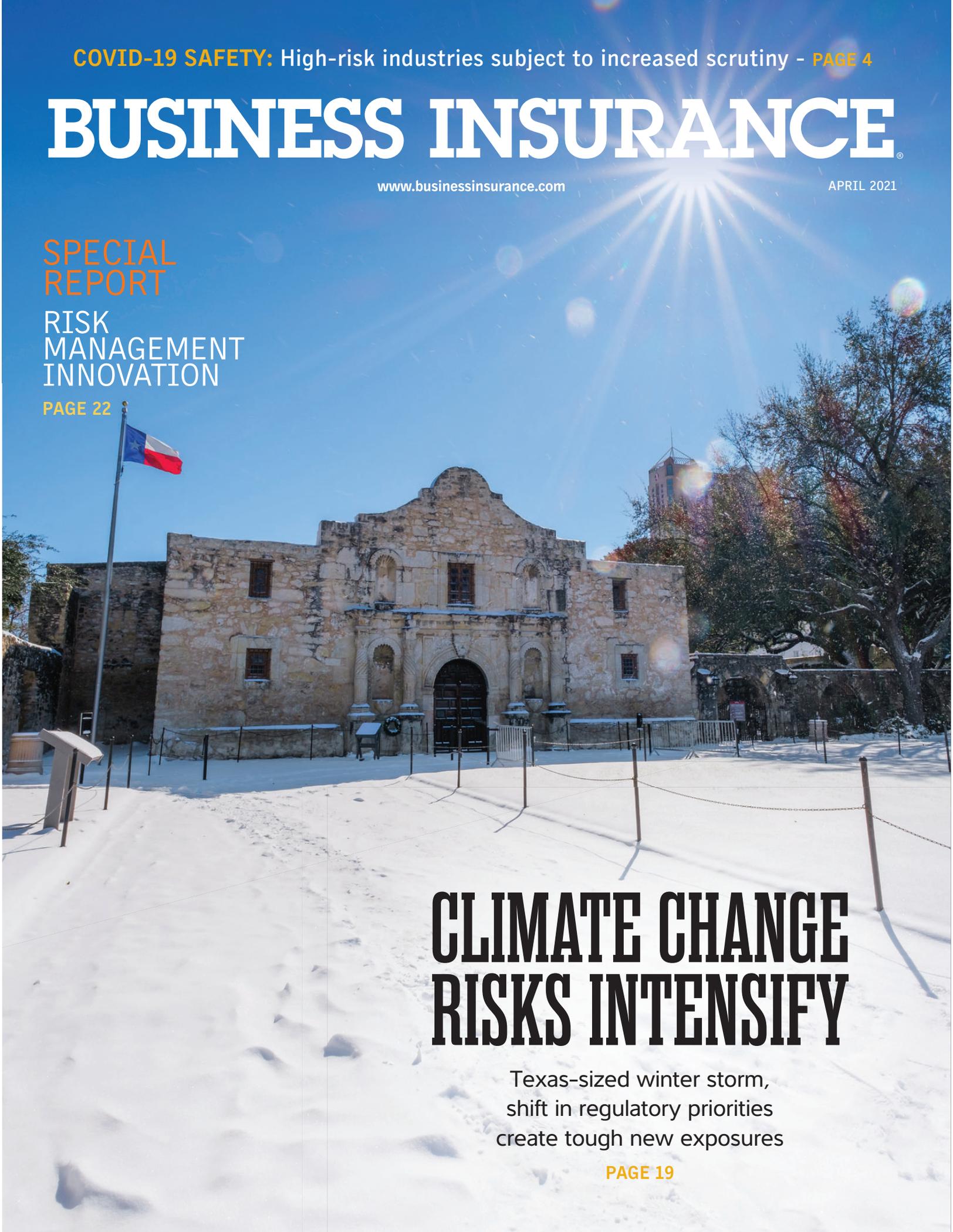
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APRIL 2021

**SPECIAL
REPORT**

**RISK
MANAGEMENT
INNOVATION**

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CLIMATE CHANGE RISKS INTENSIFY

Texas-sized winter storm,
shift in regulatory priorities
create tough new exposures

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COVER STORY

Unusual weather events, such as February's Texas freeze, and rapidly changing U.S. climate policies are creating a host of liabilities and exposures for businesses. Meanwhile, companies are also facing greater scrutiny from investors and regulators on environmental, social and governance issues. **PAGE 19**

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VIEW FROM THE TOP

MIKE KERNER

Mike Kerner joined Munich Reinsurance America Inc. in December 2018 as CEO of Munich Re Specialty Insurance. He previously served as executive vice president, risk management and strategy, at Everest Re Group Ltd. and prior to that spent 23 years at Zurich Insurance Co. Mr. Kerner discusses Munich Re's commercial insurance strategy and how the hardening market is affecting its business and policyholders. **PAGE 14**



Settling cases during the pandemic



Jeffrey Miller is a managing partner at Pillinger Miller Tarallo LLP in New York. Mr. Miller oversees the firm's litigation department. He can be reached at jmiller@pmtlawfirm.com.

Settling personal injury cases has been dramatically affected by the COVID-19 pandemic. Instead of the usual routine of cases going to court and eventually settling during pre-trial conferences or on the eve of trial, cases have stalled at the proverbial courthouse steps as courts have been closed or operating at a significantly reduced capacity over the past 12 months. Also, a reduction in judges and court personnel and jury trial limitations because of COVID-19 protocols have considerably slowed personal injury settlements. The filing of new cases last year in New York, for example, was approximately 25% less than the year before. Increasing caseloads for insurance adjusters are not driving settlements because the pending cases are relatively stable.

The insurance company perspective

The experience of insurers has been mixed. Anecdotal evidence suggests that some insurers are not upset or uncomfortable with fewer cases settling because it allows them to continue to delay paying claims and using the money for reserve purposes.

On the one hand, insurers may be comfortable with fewer active cases because it delays claims payments allowing them to use the money for reserve purposes. But our experience suggests this is not always the case.

One insurer who is a client of our firm, Greater New York Mutual Insurance Co., has found that the number of cases settled before and during the pandemic has been about the same. GNY has made a concerted effort to settle cases on the trial calendar using private mediation and dedicated adjusters for settlement. Once an offer has been made, they re-initiate contact with the plaintiffs attorney at a specified point in the future to further push the case for settlement. According to GNY, without the aggressive end-stage settlement, they would have settled fewer cases during the pandemic.

Another regional insurer used the pandemic as an opportunity to settle more cases earlier because plaintiffs needed money during the recession and their attorneys knew that it could be years before they could resolve cases in court.

Insurers often crave settlements because they reduce the number of pending cases and save defense costs, court fees and medical examination costs.

Defense law firm perspective

There is a commonly held misconception that defense attorneys don't want to settle cases. After all, every settled case represents a lost chance to bill and reduces



the number of pending cases a firm has.

There has been some truth to that notion over the years, and plaintiffs attorneys have long accused defense lawyers of not relaying their interest in resolving the insurers' cases. Our firm's perspective has been quite different. We worked with several of our insurer clients to settle a record number of cases last year, representing a 38% increase from 2019.

In one instance, for example, we chose 25 slip and fall and ceiling collapse cases from one habitation program, which involved back, neck and knee injuries, and settled 24 of 25 cases on the mediation days, and the last case settled later. Settlements were all within the insurer-extended authority.

Experience teaches there is a long way between the initial demand by a plaintiff and an ultimate resolution. Like a ritual dance, there is a process to a successful mediation.

Here's my list of "Six Things You Must Know — Resolving Cases During the Pandemic," highlighting points to help close cases that have been on dockets for too long:

1. Insurers are craving settlements.
2. Cavalry coming? Not a chance.
3. DIY — You need to get this done.
4. Too early to settle? Never!
5. Too late to settle? Never!
6. Case closed — music to everyone's ears.

In today's legal climate, we recognize that the cavalry is not coming. In previous times a judge may have spent time trying to settle individual cases, but due to the reduction in judges and court personnel, those days are long gone. We know that the emphasis is on individual attorneys, both plaintiffs and defense, to focus on resolving their cases.

Plaintiffs law firm perspective

The other group of stakeholders, plaintiffs attorneys, have also not been clamoring to resolve cases because they feel that they will not get the best offer

from an insurer until a trial looms. Many plaintiffs lawyers think that insurers are cutting significantly harder deals now that they know the courts are essentially closed. Plaintiffs attorneys are not getting pressured by their clients because they understand that the courts are in a dormant state.

Jeffrey Block, a well-respected plaintiffs attorney from the firm Block O'Toole & Murphy, offers his perspective about settling cases during the pandemic. He told me his firm has settled the same number of cases as before the pandemic and that 2021 may well turn out to be a record year for settlements. He has found some insurers are more receptive to settling, while others seek discounts based on the pandemic and lack of access to courts. Mr. Block has said that his firm will not settle cases for less than 100% of the case's value and that there is no settling with insurers that want discounts to take advantage of the current economic distress. He recognizes it is in the insurer's interest to settle cases to free up reserve money for more expensive new policies.

Case closed

Experience teaches there is a long way between the initial demand by a plaintiff and an ultimate resolution. Like a ritual dance, there is a process to a successful mediation. Insurers are always looking for low-hanging fruit, that is, cases that can be resolved before defense costs mount. If you want a case settled, you must DIY it — do it yourself and push to get it done. No one will push to get it settled other than you. In my experience and my practice, clients want resolution. It is never too early to settle a case, especially when you know the facts of a case and can assess its value from multiple perspectives. It is also never too late to settle as injuries can lead to more surgeries, and defense costs can escalate.

I have often heard from adjusters, "This is the oldest pending case that I have." I hold the position that we are all in the resolution business. If you settle one case, two more will come along, and if you want to make a friend in this business, settle your case. The phrase "case closed" is music to everyone's ears.