

April 2014



# Louisiana Agent

## IIABL Launches New Website Member Services Improved

Last October, IIABL conducted an extensive member survey to determine how we could better serve you. We asked you, what are your needs and concerns? How can IIABL help your agency?

We took your suggestions and designed a new website to deliver the information, products and resources that you told us were important to you!

IIABL is proud to announce the launch of the new [www.IIABL.com](http://www.IIABL.com) which is designed to be the "go to" source of

information for your agency.

There is wealth of information on [www.IIABL.com](http://www.IIABL.com). It will take a little time and exploration to get used to the new site and find the resources you are looking for!

The website is organized in the five areas that you told us were most important to your needs. Many of the resources are password protected & require you to login.

See IIABL Launches New Website page 2

## IIABL Ad Campaign for Members

IIABL has launched a massive online digital advertising campaign to drive consumers to our member agents through the agent locator at [www.TrustedChoice.com](http://www.TrustedChoice.com).

In partnership with Trusted Choice, IIABL has purchased 9 million website advertisements which will appear when Louisiana consumers visit a wide variety of websites in April-May-June.

The ads will appear on YouTube, The Weather Channel and CareerBuilder just to name a few examples. The ads will highlight the new Trusted Choice Freedom Campaign which emphasizes that independent agents are "Free to do what's right for you."

IIABL and Trusted Choice have also purchased a second flight of 9 million online website advertisements which will

See IIABL Ad Campaign for Members page 2

### Inside this issue:

Louisiana Proud IIABL President, Parke Ellis	4-6
Independence: Above and Beyond 112th IIABL Convention	8-9
<b>Commissioner's Corner:</b> Update on the Homeowner Flood Insurance Affordability Act	10-13
Louisiana Young Agent, Bryan Fontenot Receives Maurice Herndon Scholarship	16-17
Of Forklifts, UM Coverage and Unasked Questions	18-31
Ask Mike: Subject: Squirrel causes \$300,000 damage to a building	24-29



Information & Membership



Advocacy



Education &  
Events



Market Access



Agency Management

Give us your feedback and let us know what you think about the new website! If you have a suggestion or comment, please email Francine Berendson at [FBerendson@IIABL.com](mailto:FBerendson@IIABL.com).

run in Louisiana in September-October-November, 2014.

March was the [www.TrustedChoice.com](http://www.TrustedChoice.com)'s 8th record-breaking month in a row. Overall, site traffic is up over 700% since the launch last July. And the leads are coming in, more and more every month.

In March, over 100,000 potential insurance buyers visited TrustedChoice.com looking for an independent insurance agent. We **expect 1.5 million visitors in 2014. That's a** lot of new business opportunities!

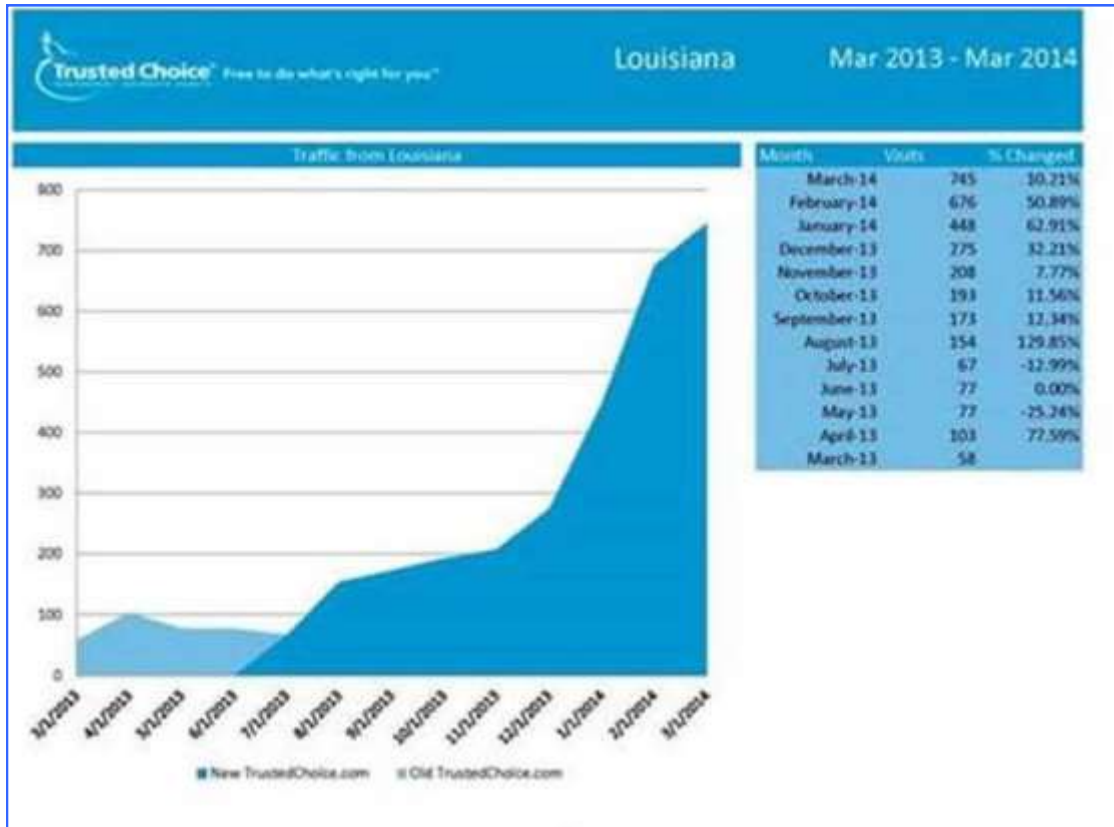
Plenty of IIABA member agencies and IA carriers are signing up to participate. Since November, over 1500 agencies have signed up for an Advantage Agency Subscription to TrustedChoice.com, along with 26 national and regional Personal

Lines IA carriers.

**Don't miss this opportunity to win** your fair share of these new business opportunities. An Advantage subscription to TrustedChoice.com is **only \$39.00 per month. That's only \$1.33 per day!**

Click here to sign up today or paste this URL in your browser: <https://iw.trustedchoice.com/programs-consumer-portals/>

Agencies can also run their own online advertising using Freedom Campaign materials and Trusted Choice will pay part of the cost through the Marketing Reimbursement Program. If the agency agrees to spend \$2250, Trusted Choice will pay \$750. This \$3000 package will buy a minimum of 800,000 online ads for your agency. For more information, please go to: <https://cobrand.iiaba.net/link/go/125462974>



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This webinar will help Louisiana Trusted Choice agencies better understand how they can improve their visibility to consumers at Trusted Coice.com and through their own digital marketing efforts.

Date: Tuesday, May 13, 2014

Time: 11:00-11:30 AM CDT

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Louisiana Proud  
Parke Ellis  
IIABL President

I recently returned from the IIABA National Legislative Conference held in Washington D.C. This annual event draws upwards of a thousand Big I members to **the nation's capital to attend seminars on legislative and political matters that impact our industry, and to lobby our members of Congress.** I wanted to share some thoughts on our experience this year.

We had 11 representatives from Louisiana in our group this year, led by our CEO Jeff Albright and Lee Schilling our State National Director. On Wednesday afternoon we attended a Legislative Briefing. The session provided a detailed **overview of the major issues for this year's legislative gathering.** These issues would be discussed the next day with U.S. Senators and Representatives from across

the country.

At the top of the list was Terrorism. TRIA is set to expire at the end of 2014. Grasping the key elements of how TRIA works mechanically was paramount to help Congress understand not only the importance of the coverage, but how the costs are allocated between the private insurance sector and public funding of the backstop. While we were in Washington, a new bill was introduced that would reauthorize TRIA but shift more of the cost to the insurance industry side by raising the threshold from \$27.5 billion to \$37.5 billion and increasing the private carrier co-insurance from 25% to 35% thereafter.

The other major issue was NARAB II. As you probably know, NARAB II (National Association of Registered Agents &

See Louisiana Proud page 5



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Brokers) is the Big I producer licensing bill **which would streamline an agent's (and an agency's) ability to sell insurance in other states** without having to go through the cumbersome multi-state non-resident licensing process. Any producer (individual or agency) licensed in their home state could choose to join NARAB and be held to a single licensing and continuing education standard for every state in which they choose to do business. This bill has passed both the House and Senate but **never on the same legislative "vehicle"**. The Big I is working with leaders in Congress to amend NARAB II into the TRIA bill to accomplish final passage.

Other areas of discussion included tax reform, the future path of the Affordable Care Act and the agent perspective on keeping insurance under state rather than federal jurisdiction.

On Thursday morning at the breakfast session, the group heard from Kevin McCarthy, the Republican Majority Whip in the House of Representatives and Steve Israel, Chairman of the Democratic Campaign Committee. They discussed bipartisanship and the need to move beyond blame. Here is hoping they were listening to each other.

After breakfast, Big I agents took to Capitol Hill! This was the highlight of the trip. Your Louisiana delegation had face to face meetings with U.S. Senators David Vitter and Mary Landrieu as well as Representatives Bill Cassidy, Steve Scalise, and John Fleming. Additionally we had meetings with staff members for Representatives Boustany, Richmond and McAlister. The good news is that our Louisiana legislators were well versed on the issues, were engaged with us, and

See Louisiana Proud page 6

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supported our positions, particularly on NARAB and TRIA.

It was very apparent that Jeff Albright and Lee Schilling are held in high regard with their peers within IIABA and by the members of Congress that we had the pleasure of meeting. Their comments about the organization of topic content, our depth of knowledge and our thoughtful position on the issues was recognized by everyone that we met.

Friday morning we concluded the Conference with a program about population trends and the impact on the insurance industry. It was an interesting look at the growing diversity of our population and the factors that are driving demographic changes. We concluded with a very good discussion by two very


entertaining political pundits – Tucker Carlson of Fox News (with a more Republican view) and Paul Begala of CNN (Democratic perspective). Their view of the upcoming mid-term elections were insightful and humorous. They both see change on the horizon. I recommend that you read more about this and other presentations at the IIABA website or at IA Magazine.

At dinner on Thursday night I proposed a toast to our group that was along the lines of **"I am proud of Louisiana and I am proud of IIABL"**. We represented our state very well and it was clear that we have earned a high measure of respect in Washington and with our national IIABA. It was a great trip and we were proud to represent all of you.



Shown in the photo from left to right: Brenda Case, Bryan Fontenot, Andy Blumberg and Lydia Durand-Mc Morris.

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## Independence: Above and Beyond 112<sup>th</sup> IIABL Convention



The convention theme this year reflects what we do as independent agents by offering our customers choice and going above and beyond to meet their insurance needs.

We are so excited with our program this year. Our outstanding speakers include:

Roger Sitkins with Sitkins International is a nationally known agency consultant who will bring his expertise in agency management to you. What will the independent agency of the future look like? Roger will present a one hour presentation at the Opening Session on Monday, June 30 and follow-up with a detailed 3 hour CE session on Monday afternoon. Valuable information on how to work on your agency

instead of in your agency will help propel your agency for the future.

Charles Symington is **IIABA's Senior Vice President of Government Affairs**. Charles is **IIABA's lobbyist helping to protect independent agents at the national level**. Charles will give you an update on legislative initiatives.

Tyrone Bennett with Chubb Insurance Group will provide a very entertaining and technically in-depth look at various elements of Executive Coverages – D&O, EPL, Cyber and the like.

Commissioner of Insurance Jim Donelon will speak at the Closing Session and give us an update on the insurance climate in Louisiana, initiatives that the Louisiana Department of Insurance is

See Independence: Above and Beyond page 9

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taking to help agents in Louisiana and a recap of insurance related legislation from the 2014 session.

David Thomas, CEO of Louisiana Citizens Property Insurance Corporation will round out our speakers at the Closing Session. Dave will give us an update on Louisiana Citizens that will be beneficial for agents.

In addition to the excellent business sessions and CE sessions our social events are always a big hit and give agents, carriers and vendors numerous opportunities to network. The exhibit exposition on Sunday afternoon and the Opening Reception with exhibitors give all attendees a great opportunity to visit with our insurance companies and vendors, who without their support and generosity, this convention would not be possible.

Enjoy the beautiful white sand beaches, lounge by the pool, enjoy a frozen drink on Monday afternoon or ice cream and beer on Tuesday afternoon. If a round of golf sounds good our golf tournament is scheduled at Baytowne for Tuesday morning or hit the water for fishing on Tuesday morning.

Bag of Donuts will be back again this year!! There were a big hit last year and the dance floor was jam packed. They are a high energy band that will get you moving and interact with the attendees.

If you have not attended the IIABL Convention before please plan on attending. You will not regret your decision.

[Click here to register today!](#)



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April 2014

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## The Commissioner's Corner

### Update on the Homeowner Flood Insurance Affordability Act

A year ago in this column I addressed the potentially devastating impact of the Biggert-Waters Flood Insurance Reform and Modernization Act of 2012 which reauthorized the National Flood Insurance Program (NFIP). Consumers and the business community reacted in a united front in opposition to this bill which had already begun to bring stagnation to real estate markets here in Louisiana and across the nation. A hard-fought battle resulted in a bipartisan Congressional response and passage of the Homeowner Flood Insurance Affordability Act, signed by the President on March 21. The Act aims to ensure the financial stability of the NFIP, which currently has

\$24 billion of debt, while providing property owners with continued protection.

The Act limits astronomical insurance increases that were mandated under Biggert-Waters and it is truly a triumph for our working coast - the people who work **and drive a huge part of our nation's** economy. With the passage of this Act, a reasonable level of rate increase reliability **is now in place for most of Louisiana's** 480,000 properties insured by the NFIP and some 5.5 million nationally.

Although many of the actuarial reforms of Biggert-Waters were abandoned with this Act, actuarially rated homeowners flood insurance will eventually be achieved; it will just take a little longer. The Act provides an annual flood insurance rate cap for homeowners by limiting increases in flood insurance premiums to no more than 18 percent per year.

The Act repeals the property sales trigger that required homebuyers to pay the full-risk flood insurance rate at the time of purchase. This provision was making it nearly impossible for many homeowners to **sell their homes, stalling America's real estate market.** Homeowners who purchased property after Biggert-Waters will receive a refund of the increase they would have experienced without passage of the Homeowner Flood Insurance Affordability Act just as existing homeowners who were impacted will receive.

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See **COMMISSIONER'S CORNER** page 12



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Affordability Act also repeals the new policy sales trigger which required property owners to pay full-risk rates when buying a new policy. Additionally, the Act reinstates grandfathering so that homes that complied with previous flood maps will no longer be hit with large increases when new maps show greater risk of flooding.

In order to pay for the continued subsidizing of rates, annual assessments will be implemented. Assessments of \$25 per year for primary residences and \$250 per year for businesses and vacations homes will be charged to property owners who get NFIP coverage. There is also non-mandatory language directing FEMA to "strive" to reach the goal that most policyholders have a premium of no more than 1 percent of the value of their coverage - in other words, \$2,000 for a \$200,000 policy.

The Act does not address Biggert-Waters

rate hikes for businesses, second homes, substantially damaged structures, structures with cumulative losses over the fair market value and severe repetitive loss properties that had been grandfathered into artificially lower premiums for flood insurance before flood maps were created. Such affected policyholders will see increases over the next few years of 25 percent of the actuarial cost until those policies are actuarially priced.

**The Act's provisions that restore subsidized flood insurance rates for homes that are sold and establish a refund procedure for people who bought homes under Biggert-Waters without subsidized rates are critical in getting economies going in flood-prone areas.** In mid-April FEMA announced that effective May 1, 2014, homeowners who purchased new homes after July 6, 2012 (when Biggert-Waters became law) will revert back to subsidized rates and not be charged actuarial rates.

**See COMMISSIONER'S CORNER page 13**

**Retention Strategy #6**  
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## The Commissioner's Corner from page 10

These new FEMA guidelines were recently sent to Write Your Own companies that process flood insurance applications. FEMA has said it is ironing out the details on the process for refunding premiums to policyholders who renewed their flood insurance policies or purchased a new flood insurance policy and paid unsubsidized premiums under Biggert-Waters.

Concerns regarding the impact of FEMA flood maps on flood insurance rates as well as questions over how flood maps will impact current real estate values and future growth in the housing sector of our state have the attention of property owners, realtors and planners. **In next month's column I will address the FEMA rate mapping process and how this process in being implemented in Louisiana.**

## Big "I" Responds to HHS on Navigators

The Independent Insurance Agents & Brokers of America (IIABA or the Big "I") has submitted official written comments to the U.S. Dept. of Health and Human Services (HHS) on the recently proposed federal regulations regarding navigators and similar assisters under the Affordable Care Act (ACA).

The HHS draft regulations were released as part of a larger rule and were written largely in reaction to many states putting in place their own consumer protection laws and regulations related to navigators and similar assisters. Past HHS rules properly allowed states broad authority to oversee these entities, but the new regulations unjustifiably reverse course and restrict states regulatory power.

**See Big "I" Responds to HHS... page 14**



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"Since passage of the ACA, the Big 'I' has viewed these programs as having the potential to create serious consumer protection issues and has favored efforts to ensure navigators and similar entities will be properly licensed, trained and **overseen,"** says Charles Symington, Big "I" senior vice president for external and government affairs. "Unfortunately, the recently released draft rule would undo much of the good work done at the state level to ensure these entities are properly regulated and consumers are protected."

In its officially submitted comments, the Big "I" expresses serious concerns over many aspects of the proposed rule. The association sees the draft regulations as

chipping away at state authority to enforce consumer protection laws, and at the same time expanding the duties of navigators and similar entities.

**"If the regulations are approved without changes, it will likely prove to be a dangerous mix for many insurance consumers who could be harmed by bad advice from an individual operating within one of these programs and left with no financial recourse,"** says Ryan Young, Big "I" senior director of federal government affairs. "We will continue to advocate in defense of allowing states to enact and enforce consumer protection laws."



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## Louisiana Young Agent Receives Maurice Herndon Scholarship **Bryan Fontenot exemplifies Young Agent Committee's goals and industry's future.**



The Independent Insurance Agents & Brokers of America National Young Agents Committee (YAC) welcomes Louisiana young agent Bryan L. Fontenot, AAI, CRIS, recipient of the 2014 Maurice Herndon Scholarship award,

to Washington, D.C. this week for the Big "I" Legislative Conference. Fontenot is a corporate account executive with Brown & Brown of Baton Rouge.

The award is presented to one first-time young agent attendee of the Big "I" Legislative Conference in Washington, D.C.

"The national Young Agents Committee is proud to provide Bryan with a scholarship so he can join us this week for his first national

Big "I" Legislative Conference," says Quincy Branch, national Young Agents Committee chairman and president & CEO of Branch Benefits Consultants in Las Vegas. "Bryan's dedication and enthusiasm for the industry are infectious and we look forward to working with him at the national level."

Fontenot earned a bachelor's degree in business administration at the University of Louisiana at Lafayette. He is an active member of the Young Agents of Louisiana and the Independent Insurance Agents & Brokers of Louisiana (IIABL). Fontenot is also involved in numerous civic and business organizations in Baton Rouge and serves on several non-profit boards including the Capital Area Corporate Recycling Council, which provides refurbished computers to low-income families.

See LA Young Agent page 17





“It is wonderful to have Bryan come to Washington, D.C. with the Louisiana Big ‘I’ delegation,” says Randy Lanoix, Big “I” vice chairman and president of Lanoix Insurance Agency in Lutcher and Brusly, La. “He is an outstanding example to our young agents and we are excited to have him in our corner encouraging more young people in Louisiana to join our industry.”

The \$1,000 scholarship award is presented in honor of Maurice Herndon, who led the Big “I” Washington D.C. office in 1949.

“Young agents like Bryan are the future of our industry and their participation in the Big ‘I’ Legislative Conference in Washington, D.C. is important,” says Robert Rusbuldt, Big “I” president & CEO. “The annual legislative conference is a valuable opportunity for our young agents to network and interact with

agents from across the country, top insurance carriers, other industry leaders and their representatives in Congress.”

Founded in 1896, the Big “I” is the nation’s oldest and largest national association of independent insurance agents and brokers, representing a network of approximately a quarter of a million agents, brokers and their employees nationally. Its members are businesses that offer customers a choice of policies from a variety of insurance companies. Independent agents and brokers offer all lines of insurance—property, casualty, life, health, employee benefit plans and retirement products. Web address: [www.independentagent.com](http://www.independentagent.com).



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## Of Forklifts, UM Coverage and Unasked Questions

In perusing judicial decisions, it is not unusual to discover answers to questions one never thought to ask. One such **question is whether a forklift is a “motor vehicle” under uninsured/underinsured motorists (UM) statutes**, and, if so, would the UM statute apply to an out of state accident involving an uninsured forklift?

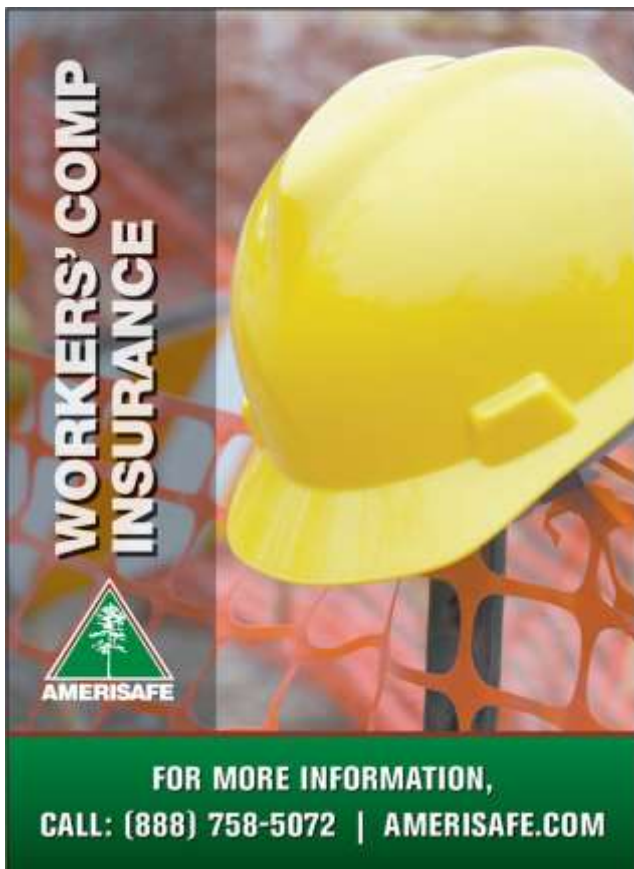
For Louisiana insurers and attorneys who never thought to ask these questions, answers have nonetheless been provided in a recent case, *Boyett v. Redland Insurance Company*.

In *Boyett*, the federal Fifth Circuit Court of Appeals was confronted with an accident involving a Louisiana company whose Louisiana employee was driving its Louisiana registered flatbed truck covered by a Louisiana issued liability insurance

policy to deliver a load of lumber to a customer in North Carolina. The flatbed truck also carried a forklift owned by the company, which was specifically excluded from coverage under the Louisiana issued liability policy.

Upon arrival in North Carolina, an employee of the North Carolina customer unloaded the lumber using the Louisiana forklift. While being unloaded, some of the lumber fell on the foot of the Louisiana employee, severely injuring him. The injured Louisiana employee claimed that he was entitled to UM benefits under the Louisiana UM statute because the forklift **was not covered by his employer’s** Louisiana liability insurance policy and there was no required waiver of statutory UM coverage as required by the UM

See Of Forklifts page 19



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statute.

To resolve this claim, the court had to answer two questions: (1) does the Louisiana UM statute apply to out of state accidents and (2) is a forklift a “motor vehicle” under the UM statute?

Neither question had been answered by the Louisiana Supreme Court. Thus, the federal court first noted that it was required to “employ Louisiana’s civilian methodology” in determining how it believed the questions would be decided by the Louisiana Supreme Court.

Unlike every other state, Louisiana law is based on a Civil Code rather than common law. One result of this difference is that while the federal court might be “guided”

by appellate court decisions, it was not “strictly bound by them.”

The Out of State Question

The purpose of the Louisiana UM statute is to provide coverage to a victim for damages caused by a person who has no or inadequate liability insurance coverage. To achieve this goal, UM coverage is read into all Louisiana automobile liability insurance policies unless validly rejected, in writing, by the insured.

Because there was no written rejection of **UM coverage by Boyett’s employer, the Louisiana insured, the only question was whether the statutorily imposed UM coverage applied to out of state accidents.**

In arguing against imposing UM coverage on out of state accidents, **Boyett’s employer’s insurer pointed to Section 1295(1)(a)(iii) of the UM statute, which provides that the “requirements for uninsured motorist coverage shall apply to any liability insurance covering any accident which occurs in this state and involves a resident of this state,” and argued that this section created a geographic limitation, i.e., an accident occurring in Louisiana, on the imposition of UM coverage.**

The federal court disagreed. Rather than creating a geographic limitation, the court noted that Section 1295(1)(a)(iii) was added by the legislature to overrule a decision by the Louisiana Supreme Court, Snider v. Murray, which held that the Louisiana UM statute applied only to policies

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See Of Forklifts page 20

delivered or issued for delivery in Louisiana and did not apply to policies issued in other states. Thus, the purpose of **Section 1295(1)(a)(iii)** was to “expand the reach of Louisiana statutory UM coverage to out of state policies when the accident occurs in Louisiana and involves a **Louisiana resident.**”

The court also pointed out that Section 1295(1)(a)(iii) does not address Louisiana issued policies, such as the one in the case before it; rather, Louisiana issued policies were subject to Section 1295(1)(a)(i), which does not address whether UM coverage applied to accidents occurring outside of Louisiana.

The court, however, found nothing in

Section 1295(1)(a)(i) limiting its geographic reach and observed that the Louisiana Supreme Court had recognized **in several decisions that a foreign state’s UM law could apply to an accident occurring within Louisiana.** The court **reasoned that if a foreign state’s UM law could apply to a Louisiana accident then Louisiana’s UM statute should be applicable to out of state accidents.** It also noted that the UM statute, as a whole, **embodied a “strong public policy” which was to be “liberally construed.”**

For these reasons, the federal court **determined that Louisiana’s interest in an automobile accident was not vitiated merely because it occurred outside of Louisiana and, accordingly, the UM statute did apply to an out of state accident involving a Louisiana insured and Louisiana issued policy.**

#### **A ‘Motor Vehicle,’ or Not?**

On the second issue, two of the three judges decided that the forklift involved in **the accident was a “motor vehicle”** covered by the UM statute, but the third judge dissented.

The majority based its decision on a rather fine distinction within Section 1295(1)(a)(i) of the UM Statute. Specifically, the majority noted that Section 1295(1)(a)(i) does not define the **term “motor vehicle”, but appeared to draw a distinction between an insured motor vehicle and an uninsured motor vehicle.** The majority found this distinction in the fact that in its first few



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lines, the statute included the phrase “**designed for use on public highways and required to be registered in this state**” immediately following the reference to an insured motor vehicle, but did not included this same phrase several lines later when referring to an uninsured motor vehicle.

Although not specifically discussed, the court appeared to accept as a given that forklifts were not designed for use on public highways and required to be registered in Louisiana.

The majority believed that the statute purposely drew this distinction between motor vehicles which were insured and motor vehicles which were uninsured.

Applying the statutory maxim that all words of a statute should be given effect and none rendered superfluous, the

majority concluded that when referring to uninsured motor vehicles, which were the reason for requiring UM coverage under the **UM statute, the term the “motor vehicle”** included all vehicles with a motor, even those not designed for use on public highways and required to be registered. Thus, the majority concluded that the forklift at issue, which was a motorized vehicle and was uninsured, fell within the requirement of the UM statute.

**In the dissenting judge’s view, the statute** did not intend to draw a distinction between an insured motor vehicle and an uninsured vehicle as found by the majority, but, rather, simply found it unnecessary to **repeat the phrase “designed for use on public highways and required to be registered in this state” each and every time the term “motor vehicle” was used** within Section 1295(1)(a)(i) since the term **“motor vehicle” included this limitation at the beginning of Section 1295(1)(a)(i)** and, thus, should be understood to include this limitation whenever used within the statute.

The dissenting judge noted that his reading of the statute was consistent with the purpose of UM coverage, which was to fill a coverage gap in the event that the driver of an insured vehicle failed to obtain adequate liability insurance coverage. Of course, this reading of the statute did not prevail.

In a last attempt to avoid coverage, the insurer argued that if the court did interpret the UM statute to cover the

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## Ask Mike Edwards

IIABL Director of Education, Mike Edwards is available to answer technical questions from IIABL members. To submit a technical question, contact Mike Edwards, CPCU, AAI, at [medwards65@aol.com](mailto:medwards65@aol.com) or call (678) 513-4390.

Subject: Squirrel causes \$300,000 damage to a building

**Q.** I saw a brief news story yesterday about a squirrel causing major damage to a commercial building somewhere in another state, maybe Indiana or Ohio, I can't remember. The report said the claim was going to be paid by the building owner's insurance. This caught my attention, because one of my insureds had a similar claim just last week, and the adjuster's initial indication was to deny the claim,



based on the exclusion for vermin. Do you have any idea why their claim was paid, **and my insured's claim might be denied?**

**A.** I think I saw the same story in one of the daily insurance newsletters I subscribe to. It piqued my interest, too, so I checked the Internet and got some additional details. The building was at a large city park in Ft. Wayne, Indiana. According to **the park's website, the park has pavilions, playgrounds, tennis courts, athletic fields for various sports, a golf course, a heated swimming pool with water slide, and a large indoor community center.**

The community center building had just undergone a \$2 million renovation (it was formerly the ice arena). Somehow the squirrel got inside, and apparently either gnawed some wiring, or otherwise came in contact with the electrical system, causing a major power surge. Three newly installed HVAC systems were severely damaged, along with parts of the boiler system. Estimated damage was \$300,000.

The Park Director is quoted as saying that their insurer will cover the loss. However, I could not find any details on exactly what type of policy covered the damaged equipment. That kind of insurance minutia is generally not reported, unless there is litigation over coverage, which apparently is not the case here.

However, I do have some thoughts on coverage that probably applied to the



equipment, as well as on your insured's loss.

I do not know what type of coverage the park, or your insured, had in place, but here are my comments on coverage in ISO forms. Below are two exclusions in the ISO Causes of Loss – Special Form (CP10 30), which is customarily used with the Building and Personal Property Coverage Form (CP 00 10).

First, damage caused by the squirrel may or may not be covered. Here is the pertinent excerpt from the ISO Causes of Loss – Special Form:

*CP 10 30 06 07*

*B. Exclusions*

*2. We will not pay for loss or damage caused by or resulting from any of the following:*

*d. (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.*

*But if an excluded cause of loss that is listed in 2.d. (1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.*

Note that the exclusion applies to damage caused by nesting, infestation, excretion, or secretion. I don't think gnawing is

See ASK MIKE page 26

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within the exclusion. In addition, even where damage is caused by nesting, infestation, excretion, or secretion, there is still coverage for certain ensuing losses **that are within the definition of "specified causes of loss."** Excerpt from the Definitions section:

*G. Definitions*

*2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.*

Therefore, direct damage to the building done by nesting, infestation, excretion, or secretion is excluded, but damage done by an ensuing fire (or any other of the **"specified causes of loss"**) is covered. But based on news reports and comments made by park officials, it appears that the damage to the three HVAC systems and the boiler was caused by a power surge that resulted from some (unknown) activity of the squirrel.

**Power surge is not a "specified causes of loss," but is specifically excluded:**

*CP 10 30 06 07*

*B. Exclusions*

*2. We will not pay for loss or damage caused by or resulting from any of the following:*

*a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:*

*(1) Electrical or electronic wire, device, appliance, system or network; or*

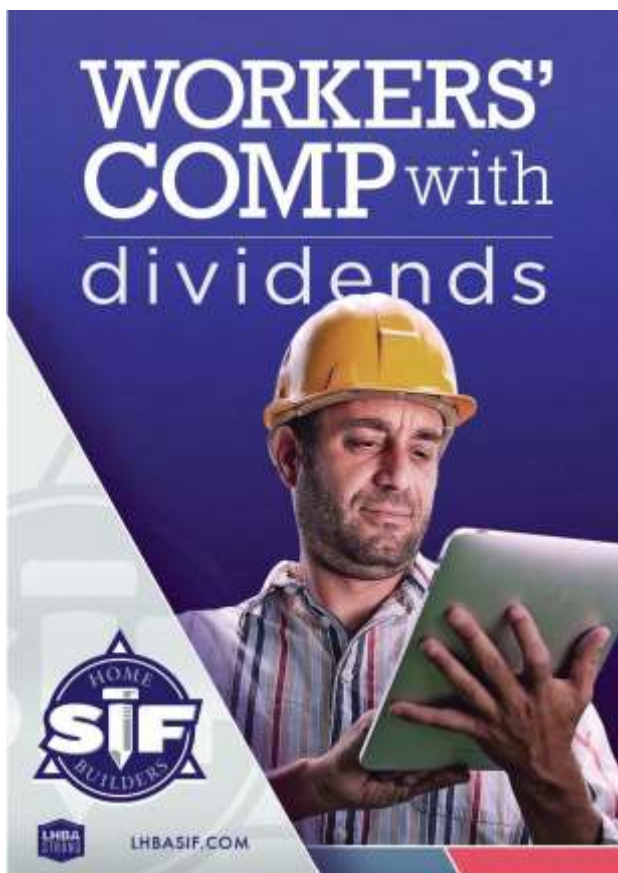
*(2) Device, appliance, system or network utilizing cellular or satellite technology.*

*For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:*

*(a) Electrical current, including arcing;*

*(b) Electrical charge produced or conducted by a magnetic or electromagnetic field;*

See ASK MIKE page 27



(c) *Pulse of electromagnetic energy; or*

(d) *Electromagnetic waves or microwaves.*

*But if fire results, we will pay for the loss or damage caused by that fire.*

I think the fact that the insurer plans on paying the claim indicates that the park had some sort of equipment breakdown coverage, which typically cover losses such as power surge. As electronics, automated systems, and computers play an increasingly greater role in our high-tech world, equipment breakdown coverage and /or electronic data processing (EDP) coverage should be recommended.



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Regarding the initial indication by the adjuster for your insured's loss, I am somewhat puzzled by the reference to **"vermin" as an exclusion.** The language in exclusion B.2.d.(5) above has been in every edition of the ISO CP 10 30 going back at least as far as the 1995 edition. The 1991 edition excluded damage caused by *"Insects, birds, rodents or other animals,"* with the 1995 edition adding references to nesting, infestation, excretion, or secretion, which arguably restricted the scope of the exclusion to specifics **"acts" by insects, birds, rodents, or other animals.** If your insured's coverage form actually includes **"vermin"** as an exclusion, it is a proprietary form.

On the other hand, various editions of the ISO Homeowners forms have listed **"vermin"** (*"Birds, vermin, rodents, or insects"*) as an exclusion, including the 1984, 1991, and 2000 editions. In the current 2011 edition, however, the exclusion was amended to more closely track the commercial property language. It now reads:

*HO 00 03 05 11*

*Section I – Perils Insured Against*

*Coverage A – Dwelling and Coverage B – Other Structures*

*2. We do not insure, however, for loss:*

*c. Caused by:*

*(g) Birds, rodents or insects;*



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*(h) Nesting or infestation, or discharge or release of waste products or secretions, by any animals;*

Also, a recent edition of "Ask Mike" dealt with some of these same issues:

[Damage Done by Animals, Insects & Assorted Critters](#)

For both commercial property and homeowners coverage, the industry has had mixed results in court over the use of certain terms like "vermin," "rodent," etc. See these interesting articles on the IIABA's Virtual University:

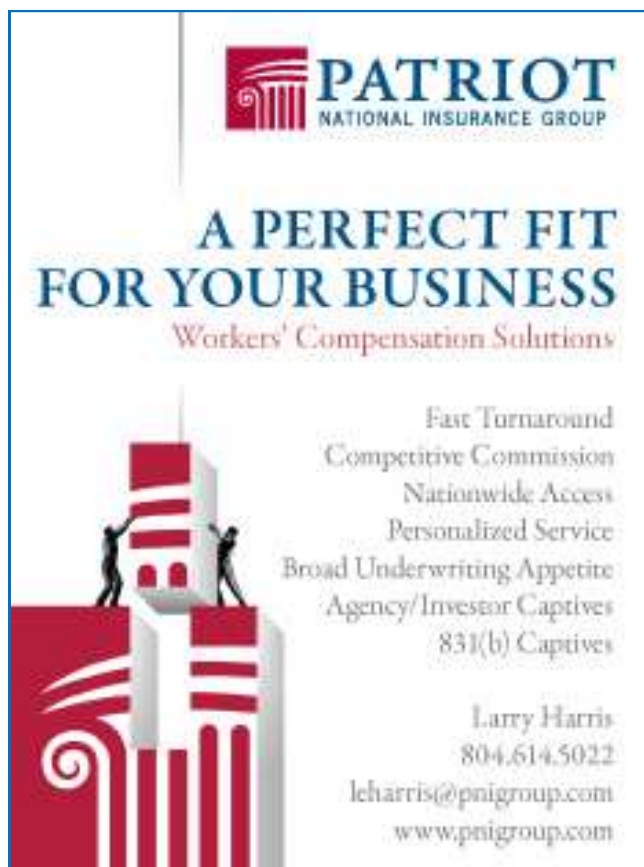
[What Is A Vermin?](#)

[Skunk Claim Denials - Something or Somebody Stinks](#)

[The Rodent Exclusion](#)

Thanks for an interesting question. After you review your insured's policy in detail, I hope you'll find that he has coverage after all.

These materials are intended for educational purposes only and should not be relied upon as legal advice. Please consult a qualified attorney for legal advice.



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USAA General Indemnity Company	4 - Homeowners	10.0 \$812041	5308	New: 10/18/2014 Renewal: 10/18/2014
Chubb Indemnity Insurance Company Chubb National Insurance Company Federal Insurance Company Great Northern Insurance Company Pacific Indemnity Company Vigilant Insurance Company	16 - Workers Com- pensation	-5.4 \$-231560	736	New: 07/01/2014 Renewal: 07/01/2014
Argonaut Midwest Insurance Company Argonaut Southwest Insurance Company Argonaut Great Central Insurance Co. Argonaut Insurance Company	16 - Workers Com- pensation	-6.9 \$-403771	475	New: 07/01/2014 Renewal: 07/01/2014
Arch Insurance Company	19 - Commercial Auto- mobile	4.3 \$285223	3254	New: 07/01/2014 Renewal: 07/01/2014
Charter Oak Fire Insurance Company Phoenix Insurance Company Travelers Indemnity Company Travelers Indemnity Company of America Travelers Indemnity Company of Conn. Travelers Casualty Insurance Co. of Ameri- ca Travelers Property Casualty Company of America	19 - Commercial Auto- mobile	8.800 \$2376003	1891	New: 11/01/2014 Renewal: 11/01/2014
Farmington Casualty Company Fidelity & Guaranty Insurance Company Fidelity & Guaranty Insurance Underwriters NIPPONKOA Insurance Company Charter Oak Fire Insurance Company Phoenix Insurance Company Travelers Indemnity Company Travelers Indemnity Company of America Travelers Indemnity Company of Conn. Travelers Casualty Insurance Co. of Ameri- ca Travelers Property Casualty Company of America United States Fidelity & Guaranty Company	16 - Workers Com- pensation	-2.7 \$-1098850	6450	New: 06/01/2014 Renewal: 06/01/2014
Ohio Casualty Insurance Company Ohio Security Insurance Company West American Insurance Company American Fire and Casualty Company	1 - Property	15.9 \$483689	909	New: 10/01/2014 Renewal: 10/01/2014
Progressive Paolverde Insurance Company	19 - Commercial Auto- mobile	0.100 \$37552	7729	New: 05/15/2014 Renewal: 06/18/2014
Peerless Indemnity Insurance Company Peerless Insurance Company Netherlands Insurance Company America First Insurance Company	16 - Workers Com- pensation	5.5 \$213404	626	New: 08/01/2014 Renewal: 08/01/2014
RLI Insurance Company	17 - Other Liability	2.3 \$34277	1954	New: 09/01/2014 Renewal: 11/01/2014

Company	Coverage Type	% of Impact \$ of Impact	# of Policy- holders	Requested Effective Date
Sompo Japan Insurance Company of America	16 - Workers Compensation	18.0 \$-91,388	46	New: 08/01/2014 Renewal: 08/01/2014
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American Alternative Insurance Corp. American Family Home Insurance Co. American Southern Home Insurance Co.	9 - Inland Marine	12.1 \$-141,338	734	New: 08/01/2014 Renewal: 08/01/2014

**Additional rate filing information can be found on the Louisiana Department of Insurance website by [clicking here](#).** If you have questions, you may contact the Office of Property and Casualty Insurance Rating and Policy Forms Division at: (800) 259-5300 Toll free or (225) 342-5203 Louisiana.

## Of Forklifts, UM Coverage and Unasked Questions —from page 22

forklift, it would effectively reform the insurance policy with the Louisiana insured, and, accordingly, the policy should be reformed to the minimum extent necessary. The insurer argued that since the insurance policy specifically excluded the forklift from liability coverage, any UM coverage read into the policy should likewise exclude coverage of **the forklift based on the policy's exclusion.**

The majority brushed aside this argument, finding "no logical reason" why its interpretation of the UM statute to require coverage should be restricted by an exclusion in the liability portion of the underlying policy, particularly since the UM statute expressly imposes UM coverage

without regard to any policy language, the intentions of the parties or even whether a premium has been paid for UM coverage.

### ***And the Answer Is ...***

So, the answer to the unasked question is that the Louisiana UM statute applies to accidents occurring out of state, at least when a Louisiana issued policy is involved, and includes coverage of forklifts and any other motorized vehicle even though it is not intended for use on public highways and required to be registered in Louisiana.

Next unasked question?

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