

August 2015

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Escape to Opportunities 113th IIABL Annual Convention

2015 marked one of the largest conventions over the last 10 years! Thank you to our [sponsors](#), [exhibitors](#) & registrants for an outstanding convention!

Our convention theme this year outlined the program perfectly. Opportunities were plentiful starting with the Exhibit Exposition & Opening Reception. Attendees packed the exhibit hall to visit with the 58 exhibitors and enjoyed this great networking opportunity.

Kicking off the opening session on Monday was Commissioner of Insurance Jim Donelon with his state of the union address followed by A.J. Hebert with the Property Insurance Association of Louisiana. Exciting news from Jeff Albright, IIABL CEO and Jeff Mohr, IASC President with the announcement of the IIABL Independent Market Solutions program. IMS is a multi-state Big I markets access program designed to provide personal lines insurance markets to IIABL member agencies. For additional information on IMS [click here](#).

Beautiful weather along the

emerald coast provided fun for golfers, fishing and all of the great outdoor activities associated with the convention.

Attendees could earn up to 12 hours of CE by attending the 2 business sessions and 2 CE seminars. John Eubank presented the CE seminars on ride sharing & insurance as a commodity.

Topping off the convention was a fun night of dancing and shenanigans with "Bag of Donuts"!

[Click here for a photo recap of this year's convention.](#)



**Escape
to
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Main Street America Begins Writing Commercial Bonds in Louisiana

The Main Street America Group announced it has received regulatory approval from the State of Louisiana's Department of Insurance to write commercial surety and fidelity bonds in the state which will be underwritten through the super-regional carrier's NGM Insurance Company. This marks Main Street America's entry into the Louisiana insurance marketplace.

"We are very excited to have earned approval to issue and service our suite of competitively priced surety products in Louisiana," said Brian Beggs, vice president

and head of Main Street America's bonds operation. "This new market continues the expansion of our surety footprint in the Southern U.S. Following our recent approval to write bonds in Mississippi, our surety products are now available via independent insurance agents in 47 states and the District of Columbia."

Main Street America's appointed Louisiana independent agents will be able to issue a wide variety of surety products through the company's proprietary Main Street Station bonds processing system. This

intuitive quoting and issuing platform, which automates underwriting for most surety products and allows bonds to be written nearly instantaneously can issue miscellaneous surety as well as license, permit, probate, court and ERISA bonds.

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Speed Caused 27% of Louisiana Traffic Deaths in 2013

A new report finds speeding was a factor in at least 27 percent of Louisiana traffic fatalities in 2013.

A National Highway Traffic Safety Administration study says the state had 703 traffic fatalities two years ago and 193 stemmed in part from speeding.

More than 9,600 people nationally died from speeding-related crashes, down 7 percent from the previous year.

John LeBlanc, executive director of the Louisiana Highway Safety Commission, tells The Advocate the state's highway fatality rates have declined significantly since 2007, but speed continues to be a major factor in fatal crashes.

The state had 997 traffic fatalities in 2007.

Article provided by Claims Journal, <http://www.claimsjournal.com/>.



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LABI Hosts Panel Discussion to Alert Employers to New Tax Legislation

Around 100 employers and business leaders gathered at the Louisiana Association of Business and Industry (LABI) to hear from a panel of tax experts about the significant revenue and tax legislation approved during the 2015 Regular Session of the Louisiana State Legislature.

Jim Patterson, director of LABI's Taxation Council, said the purpose of the discussion was to inform employers of the technical details and impact of the new tax laws. Patterson said, "LABI members and attendees learned the details of the bills that passed and how these measures could affect

their business so they can adjust their tax planning accordingly."

The expert panelists walked through the details of each major tax law passed this year, explained the differences from prior Louisiana law, shared their perspectives as tax experts on how employers should adapt their tax planning and responded to specific questions and issues raised by the audience.

"Louisiana's economy is growing and diversifying, and changes in the tax laws can affect our competitiveness in a global economy," Stephen Waguespack, president of LABI, said. "At LABI, we strive

to ensure that Louisiana's tax policy is working to foster a competitive business tax climate that facilitates investment and job creation in Louisiana, and push back against initiatives that make Louisiana less competitive in comparison to other states."

For an overview of the impact of new Louisiana tax laws opposed by LABI in the 2015 legislative session, see a new LABI report released today, ["The Cost of the New Tax Burdens on Employers."](#) To view a more in-depth document prepared by the expert panelists at the LABI forum with technical details on each new tax law, see ["LABI's Seminar on 2015 Tax Changes."](#)

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ACT Members,

We're excited to share an agent resource we have been working on since early this year. Thanks to the work of the ACT 'Security Issues' Work Group led by Steve Aronson, we have created both a high-level '[Pocket Guide](#)' and a companion reference [Summary Guide](#) addressing the top security issues agents and brokers need to address.

These resources were created by the Work Group, and vetted by industry leaders, legal staff, and the IIABA Communications department.

The [Pocket Guide](#):

- Intended to be a high-level tool in strategic discussions to develop or extend an agency's security roadmap, the guide can be printed as a double-sided, tri-fold brochure, or sent/viewed as an electronic file.
- Designed to be printed and shared with agents, the Pocket Guide does not contain any 'live' hyperlinks, however, the Pocket Guide does list a shortened reference link, [IndependentAgent.com/ACTSecure](#), which will take readers to the full summary and all the resource links.
- Encourage carrier partners marketing managers, and sales staff to bring these to agency visits. Likewise, user groups, associations, technology providers are encouraged to share this with agents through their distribution channels.

The [Summary Guide](#):

- Complete guide with links to resources is hosted and will be updated on the '[ACTSecure](#)' webpage. It can also be printed as a [PDF file](#).
- Expanded content covers 15 top security issues and addresses risks, possible solutions, and resources.

Note: We'll have printed copies of the Pocket Guide available at the Oct 2nd ACT Meeting in New Orleans. If you have not yet made your meeting & hotel reservations, we encourage you to do so NOW – [Registration Link](#).

With security and cyber issues changing and escalating so rapidly, the Work Group will need to develop a process to keep these resources updated. We welcome any comments and suggestions you may have – We believe this provides a very useful resource to the industry!

We're happy to report that the registration web page is now open for the October ACT Meeting in New Orleans. As we do every other fall, we are co-locating with the IIABA Fall Leadership Conference.

We're finalizing our ACT Meeting agenda which is posted on the ACT 'Events' web page. Our Meeting will include a number of discussions on;

- the impact of **Telematics** to our distribution channel,
 - a panel discussion on **Vendor Cyber Issues**,
 - an update from discussions on **Real Time Commercial Lines** functionality,
 - the acceleration of Google and other **Disruptors**,
- and additional industry issues.

For the ACT Meeting main web page including registration, please [CLICK HERE](#). To keep the web page as clean as possible, note that we've included separate links for 'Schedule of Events', 'Hotel and Travel', and 'Registration'.

ACT Meeting Location:

The Roosevelt New Orleans – *As a part of the IIABA Fall Leadership Conference*

ACT Attendee Hotel/Lodging:

Hilton Garden Inn French Quarter - *5 minute walk to Roosevelt New Orleans meeting space*

ACT Meeting Agenda:

Thu, Oct 1:

5:30p-7:00p FLC/ACT Welcome Reception
7:00p-10:00p ACT Dinner

Fri, Oct 2:

9:00a-12:00p Special Event – Combined ACT/Young Agent sessions
12:00p-1:00p ACT Lunch
1:00p-5:00p ACT Meeting *Detailed agenda on the ACT Events*

registration website.

More details including helpful links are located on the [Registration website](#).

Make your registration and hotel reservations now – More details coming soon!

Note that while our meetings will be held at the Roosevelt hotel, ACT attendees will be staying at the Hilton Garden Inn French Quarter.

After the Storm: Insurance Agents E & O Lessons Learned

More often than not, a second wave of claims against insurance agents by their clients follows a natural disaster. As parties find themselves without the coverage they expected after a catastrophe, it appears to be a natural reflex for them to look to their insurance agents and brokers to fill the perceived gap. Sometimes, this second wave, for whatever reason, is just a ripple. Katrina, following on the heels of a year that saw four major storms sweep through Florida, generated a veritable tsunami, as did Ike. It is too early to predict what kind of E & O activity will follow Sandy.

For the most part, the types of allegations and claims that surface after an individual loss (such as a house fire) are the same we see after a catastrophe, just on a greater scale because of the number of people

impacted—failure to procure a certain kind of coverage, failure to place coverage at all, failure to obtain adequate limits, or failure to advise certain coverage was necessary. But there are certainly best practices that can minimize the resulting exposure and enhance the likelihood of a successful defense.

To some extent, the claims following the string of hurricanes we experienced in 2004 and 2005, and particularly after Katrina, or Ike, have their own characteristics. The number, severity, and landfall of hurricanes vary from year to year, but certainly exposure exists in most eastern and Gulf coastal areas during every season. Therefore it is useful to look at the common causes of E & O claims, along with suggestions about possible ways to prevent or minimize the losses. It will be impossible to completely eradicate claims by clients who feel they lack the insurance coverage they needed to compensate them following a natural (or manmade) disaster, just because we operate in a very litigious society. The fact that a claim is made does not necessarily mean that there is liability on the part of the agent, as there are often viable defenses to such claims. Following certain “best practices” can help to eliminate some of the problems that lead to claims in the first place, enhance the prospect of a successful defense, and reduce the impact of the claims that are made.

Before we embark on a discussion of the actual claims patterns, however, we want to ask the agency force:

How Prepared Are YOU?

Agents live and work in the same communities as their customers, and are just as vulnerable to the effects of a hurricane or other natural disaster. Not surprisingly, a number of agents saw their offices seriously damaged, destroyed, or made inaccessible after Katrina, Ike and Sandy. What was a surprise following Katrina and Ike was the number of agents that completely lost all of their records, did not have them backed up, and had no plan in place to



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After the Storm: Insurance Agents E & O Lessons Learned (continued)

resume business as rapidly as possible. This made defense of claims that were made against them particularly difficult, especially as key employees dispersed and were hard to contact. So far, we have not seen the same issues post Sandy.

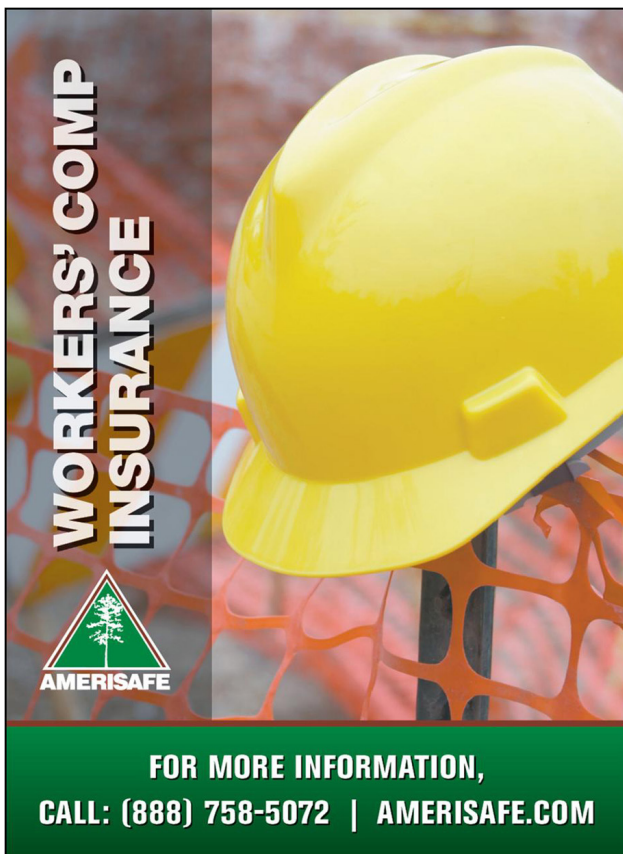
The key is planning for recovery. While many agents' clients have disaster recovery plans, those same plans may be deficient among the agents. Disaster recovery planning is not new. There are many vendors available that provide temporary staff, technology, communications, connectivity, space, and power recovery after the unthinkable happens, relatively inexpensively. However, many agents don't perceive an exposure because they "are not near a flood plain", "don't live near the coast", or "have never been sued by a client". The fact is an

agency needs a recovery plan, including off-site data storage, to cope with post-disaster losses, not just to aid in their own defense, but to keep their business running efficiently.


Wind and Flood Coverage Problems

It can't come as any shock that following a hurricane, most E & O claims arise from some problem with wind or flood coverage, especially as the standard market restricts its writings in hurricane prone areas, making it necessary to obtain coverage through special markets, wind pools and the NFIP. Let's look at some of the specific issues:

- **No coverage in place at the time of the storm--delayed submission or failure to submit paperwork.** Coverage is not effective in wind pools, the Fair Plan, or NFIP until the application AND premium payment are *received* by the Plan. Many of the claims we have seen involved instances in which the insured agent took an application and premium payment from their client, and then for some reason delayed sending it in, or simply failed to do so at all. In other instances, it appeared that the paperwork was mailed, but the Plan claimed to never have received it, and there was no proof of mailing in the agent's file, or follow up to see what had happened when the policy was not timely received. By the time the problem was detected, either a moratorium was in effect (as the storm approached the area), or the storm had hit and the damage was done. Beyond making sure that clients understand exactly when their coverage is to become effective (such as when the carrier receives and accepts the risk, when premium is paid, after any applicable waiting period, etc.), having clear written (and enforced) procedures in place for processing, placing and tracking business is essential for any agency.



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After the Storm: Insurance Agents E & O Lessons Learned (continued)

It sounds simple, but breakdowns in communication and process are a frequent cause of E & O claims. What procedure is to be followed once a producer takes an application? Is it immediately entered into a tracking system? Is it clear who is responsible for taking the next steps to get the application (and premium) to the appropriate carrier or plan? What process is in place to follow up if the policy is not received in a timely fashion from the carrier,

and transmitted to the client? Are efforts to follow up documented? Do you maintain proof of mailing when critical time-sensitive documents are transmitted? Who checks the coverage to make sure it matches what was requested, and follows up to seek corrections if there are errors? If you do not have written office procedures in place, there are vendors that provide off-the-shelf templates that provide an excellent foundation which can

be customized to fit an agency's unique requirements. Once the procedures are established, it is important that all employees within an agency clearly understand them and that full compliance is required. Many successful agencies have quality-control measures in place to track compliance with the processed applications to assure that everything is running smoothly.

➤ **Evidence of insurance provided at close of escrow**



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After the Storm: Insurance Agents E & O Lessons Learned (continued)

before premium paid and submitted.

Banks or other lenders typically require that insurance is procured to protect their collateral, and want assurance that required coverage is or will be placed before they will proceed with closing on real estate transactions. In a number of instances, agents provided binders or other evidence of flood or wind coverage at the time of closing, before the premium was paid. However, while this practice is appropriate when a

standard homeowner's policy is involved (because coverage can be bound by the agent without payment of the premium), no coverage placed with the wind pool or flood plan is effective until the premium is actually paid and submitted to the Plan. Further, the agent has no authority to bind the Plan to coverage. Thus, when the storm(s) struck just a short while later, there was no coverage in effect and the Plan(s) would not honor the unauthorized binder. The banks and property owners

claimed that the binders led them to believe that coverage was actually in place, and that they did not understand that coverage was contingent on premium payment. Had they understood this, they claimed, they would have immediately tendered payment so coverage became effective. The error made is understandable and also preventable. The agent can provide the coverage quote and other

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After the Storm: Insurance Agents E & O Lessons Learned (continued)

evidence of coverage that will be in place once the premium is paid, with clear notice that the coverage will not, in fact, become effective until that happens and the application and payment are received by the plan. If there is a waiting period that may apply, this should also be noted. Of course, when the agent receives the premium, they should promptly submit it with the request for coverage to the plan, keep a record of the transmittal, and track on diary until policies have been issued and received.

- **No contents coverage on wind or flood policy.** In some instances, the agent in question simply misunderstood that when a carrier moved to exclude wind coverage from the homeowners' policies they wrote in hurricane-prone zones that the restriction also applied to contents coverage. While they diligently replaced dwelling coverage in the applicable wind pool, contents coverage was not included, and when Katrina struck the involved customers were consequently without wind coverage for their contents. More often than not, though, there was no record in the agent's file of a specific request for contents coverage, or no indication this had been offered and declined. When the client found themselves without contents coverage after the hurricane(s), they looked to their agent, raising a variety of allegations: that a

specific request was not acted on; that the agent should have pointed out the need for the coverage; that the agent should have understood the client wanted/needed the same coverage they had on their homeowners policy, etc. These claims are difficult. While the reality may be that the clients only procured the insurance their lender required (the dwelling coverage), they rarely will admit that is the case. Likewise, the nature of the relationship an agent has with his or her client may not place them in a position of having any duty to advise the client of the coverage they should have. However, having no documentation at all to counter the claims by the client can impair the ability to defend the agent, especially given the propensity of juries to "side" with the party they perceive to be a victim when there is an uncovered loss. Therefore, legal duty questions aside, it may be advisable for

Welcome!

IIABL New Members

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Harahan

Susan Angelica Insurance Agency, LLC
Marrero

After the Storm: Insurance Agents E & O Lessons Learned (continued)

agents to document offers of coverage, automatically provide quotes for contents coverage when dwelling coverage is requested, quote wind and flood coverage, and then maintain documentation when the client declines the coverage offered. In addition to greatly enhancing the chances of a successful defense of an E & O claim, this practice could also increase agency revenues as customers accept the additional coverage offered.

➤ **No flood coverage**

at all. This is very similar to the situation involving the lack of contents coverage. As has been highly publicized, many parties have claimed that they did not have flood coverage because their agent allegedly told them "they did not need it," either because the homeowner's coverage they had in place covered "hurricane damage" or because it was not "required." (Lenders require flood coverage to be in place typically only when property is in Flood Zone A).

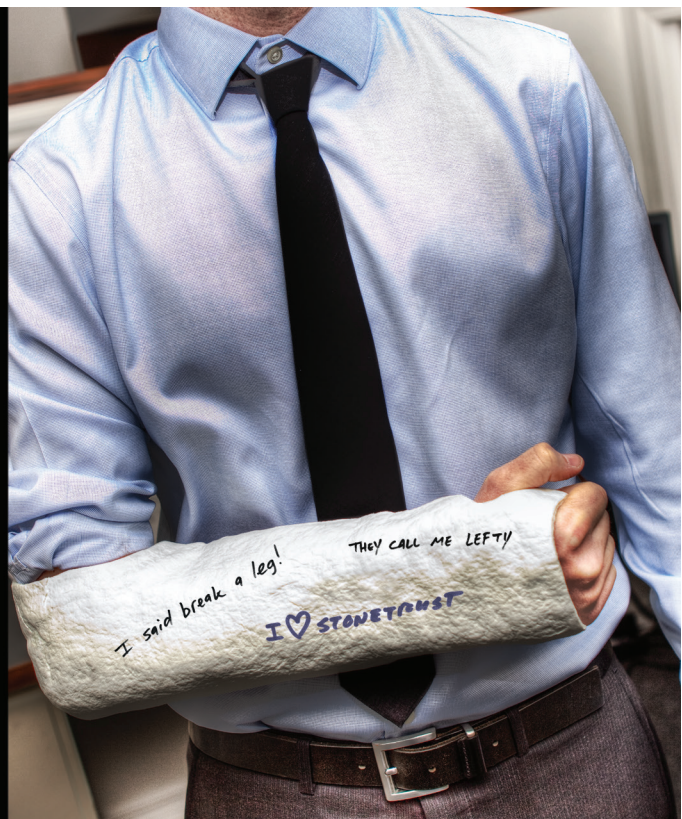
As in the case of contents coverage, the agent may not have a legal duty to offer the coverage to their client. However, if a written offer was made to every client in areas potentially subject to flooding, with the rejection of the coverage documented, it is very likely that many of the suits that arose would have been easily defended. Most parties in Mississippi and Louisiana are no doubt acutely aware of the need for flood coverage in certain areas—even

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After the Storm: Insurance Agents E & O Lessons Learned (continued)

those that rarely saw flooding in the past. What about in other areas, such as the Northeast, that have not seen a serious hurricane strike for a long time? Would now be an excellent time to remind your clients of the potential exposure and provide quotes for the coverage?

No coverage for other structures or pool

cages Louisiana Citizens, state wind pools, the Fair Plan and the NFIP have specific rules regarding how coverage applies to separate structures, docks,

or as we most commonly saw, pool enclosures. In some instances, coverage must be separately applied for the structure to be insured, or specifically requested at the time of application. It is extremely important to stay on top of each Plan's requirements and procedures, make sure that you ask the client the appropriate questions when taking an application, and document all conversations and transactions to avoid problems.

Inadequate Limits

Insurance limits that are insufficient to cover the clients' damage has long

been one of the top causes of E & O claims, whether following on the heels of a catastrophe or not, but are magnified following a disaster because of the spike in construction costs that typically follows an event involving damage to many parties. There are a number of problems that commonly arise.

➤ **Inadequate dwelling or contents limits overall**

For the most part, we would like to say that it is the client's obligation to assure that the coverage they purchase is

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After the Storm: Insurance Agents E & O Lessons Learned (continued)


adequate to meet their needs. When the client specifies the limits to be obtained, there is *generally* no responsibility on the part of the agent to confirm that the amount procured is inadequate. It is when the agent supplies the limits or assists in their calculation that problems can arise. Then, the agent will likely be held to a standard of using reasonable care to assure that the limits selected are "correct." When they turn out to be insufficient, they are

subject to attack by the client. Here are some of the more common problems we have seen in the limits arena:

- Agents estimate the square footage used to calculate replacement cost without verifying the correct amount.
- Agents calculate replacement cost using a replacement cost estimating system, and do not adequately account for upgrades in the client's property, or using the short form calculator instead of

the more detailed format.

- We have had clients say they asked for higher limits, and instead of turning the request into the carrier, the agent has told them that the amount generated by the "cost estimating" system is the maximum the carrier in question would offer, without referring the request to the carrier.
- Agents set limits based on purchase price, or ask for a real estate appraisal.



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The problem with this approach is that the cost to rebuild is not the same as appraised value, and the purchase price can be higher or lower than that cost. (This could also lead to limits that are too high, in that appraisals typically include the value of the land on which the property sits.)

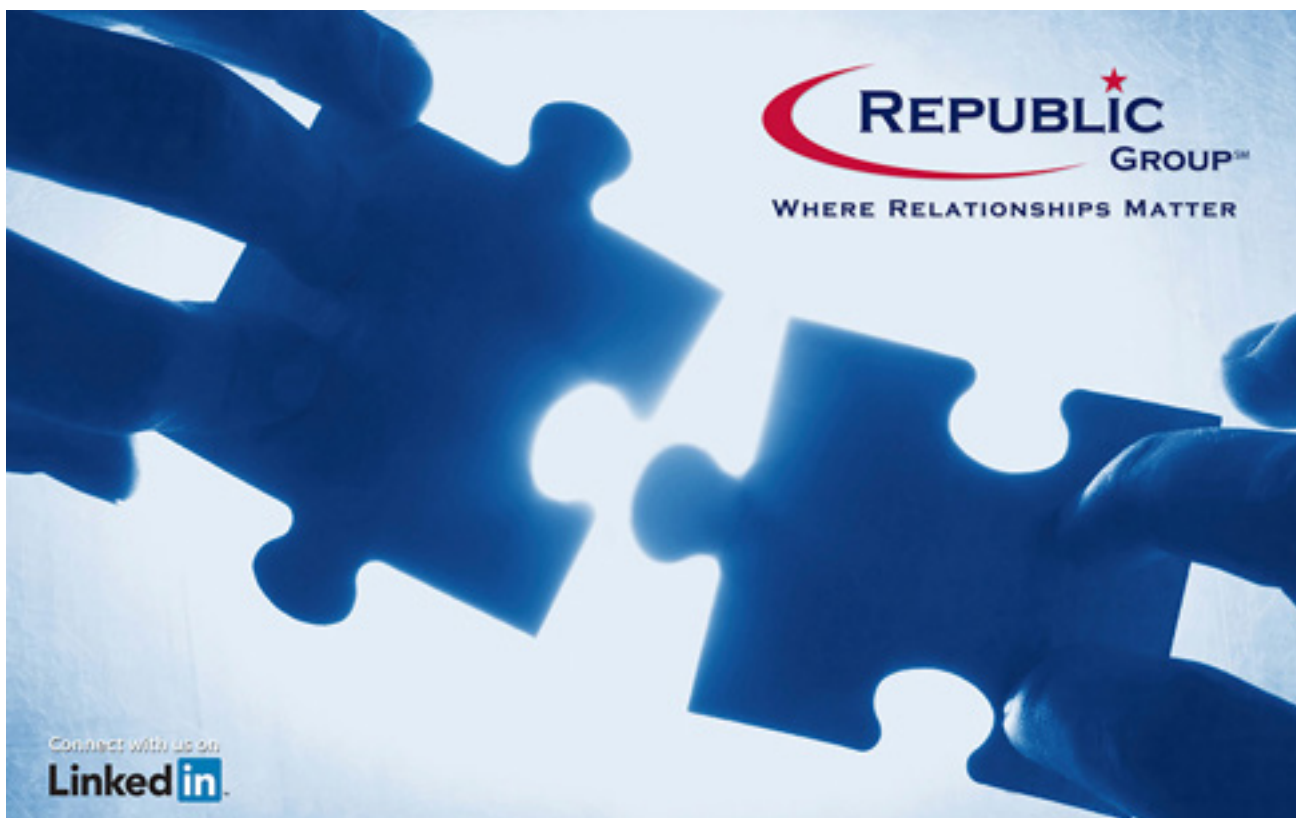
- Owners advise the agent that they have engaged in property renovations, but this information is not forwarded to the carrier, and

the limits are not reviewed for the adjustment that may be necessary because of upgrades.

- In other instances, the agent maintains higher limits were suggested, but were declined by the customer, yet there is no written documentation in the agent's file of either the offer or the rejection.
- **The limits on the wind or flood policy are lower than those on the Homeowners**

policy We understand that the limits on the policies obtained are often the amounts the client requests, or are the minimum amount the client is required to carry by their lender. We also realize that while the homeowners' limits may be automatically increased by the carrier over time, this is not the case with the wind or flood policy. We are not suggesting that there is necessarily

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After the Storm: Insurance Agents E & O Lessons Learned (continued)

a legal duty on the part of the agent to assure the limits are consistent; however a “prevention” best practice would be to have clear documentation regarding how the limits were established, sending a letter to the client that they should let you know if they desire higher limits at any time, asking whether an adjustment is desired on the wind or flood policy when adjustments are made to the HO limit, and documenting the response.

The main point to keep

in mind when it comes to assisting a client with the establishment of limits is that if they end up being inadequate, you will be the first party they turn to for recovery of the difference. Attention to detail, accuracy, and documentation are all critical, as well as employing the assistance of the carrier. These practices will help minimize the impact of the E & O claims that will inevitably follow.

Coverage bound outside of carrier guidelines

Because carriers tend to limit their exposure in catastrophe prone areas, it is very important that agents with binding authority be very familiar with their carriers’

guidelines and appetite to assure there is no violation of requirements. A fair number of the claims we have received over time are those by the carriers seeking recovery from the agent for the losses they sustained when the agent bound them to a risk that was ineligible for coverage and they were consequently required to respond to a claim.

Confusion regarding how off premises power failure and sewer/water backup coverages apply.

Commercial Claims:

The majority of claims we see after a catastrophe have been generated by personal lines accounts, but



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After the Storm: Insurance Agents E & O Lessons Learned (continued)

commercial account claims are on the rise. Many of the same issues present in the personal lines arena appear in commercial claims. Some of the more common additional problems leading to claims:

- No limited or inadequate business interruption coverage
- No coverage for off premises power failure (and confusion regarding how the coverage applies, as well as the various endorsements/levels of coverage available in the marketplace). For example, some forms exclude coverage for loss due to damaged overhead power lines

and many forms also contain flood exclusions. There are separate endorsements available for direct damage/food spoilage, etc.

- Lack of flood coverage at a particular location
- Application of a coinsurance penalty because limits were inadequate
- Inadequate limits because a policy has been changed from a blanket limit to a specified location limit, and the specific location limit is inadequate.

Do you employ the use of a written exposure checklist to

aid you with identifying the coverage a commercial risk may require? Do you put all quotes and proposals in writing, and document any time the coverage is rejected by the client? Are all of the binders you issue authorized by the carrier, and if they are issued by an intermediary broker or the carrier, are they consistent with the coverage requested? Do you review applicable forms, and compare the policies issued with the coverage requested? These are all practices that may help minimize any E & O claim you may face.

This is a very broad overview of the claims made against

continued on page 21



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After the Storm: Insurance Agents E & O Lessons Learned (continued)

insurance agents after the hurricanes of the last decade. As we head into another hurricane "season" now is a good time to review your procedures to see what you can do to help you avoid the next "second wave."

About Sally Combs

Sally Combs is technical director, professional liability claims, at Fireman's Fund Insurance Company.

This publication provides general information and recommendations that may apply to many different situations or operations. Any recommendations described in this publication are not intended to be specific to your unique situation or operation. Consult with your staff and specialists to determine how and whether the information in this publication might guide you in developing specific plans or procedures for your situation or operations. This publication does not substitute for legal advice, which should come from your own counsel.



IIABL Upcoming CALENDAR OF EVENTS

August 18, 2015	Make the Wholesaler your BFF 2 Hours CE	Webcast
August 19, 2015	National Flood Insurance Program: Basic Course- Updated through 2014 3 Hours CE	Webcast 9am – 12pm
August 20, 2015	Certificates of Insurance 3 Hours CE	Webcast
August 20, 2015	E&O Risk Management 6 Hour 6 Hours CE including 3 Hours Ethics	Webcast
August 20, 2015	E&O Risk Management Part 1 3 Hours CE including 3 Hours Ethics	Webcast
August 20, 2015	E&O Risk Management Part 2 3 Hours CE including 3 Hours Ethics	Webcast
August 20, 2015	Insurance and the Property Lease	Webcast 12pm – 2pm
August 21, 2015	IIAGNO Town Hall Meeting 1 Hour CE Speaker: Jeff Albright	Southern Yacht Club 11:30am – 1:00pm
August 26, 2015	Beyond the Basics: Emerging Personal Lines Issues 3 Hours CE	Webinar 12pm - 3pm
August 27, 2015	Policy Provision Potpourri 3 Hours CE	Webcast 1pm – 3pm



COMMISSIONER JIM DONELON

State of Insurance 10 Years Post Hurricanes Katrina and Rita

I am amazed by the stunning progress we have made in the ten years since Hurricane Katrina. Our citizenry is revitalized, our tourism industry is booming and our real estate market is going strong. As Insurance Commissioner, I am equally proud of the way our homeowners insurance market has not only rebounded but flourished in the decade since the costliest natural disaster in American history.

Today, to understand how far we've come, we must take a look at where we were just ten years ago. Hurricane Katrina caused more than \$25 billion in insured losses resulting from more than 725,000 claims in Louisiana. Following Hurricane Rita, insurers paid out \$3.4 billion more in insured losses resulting from more than 200,000 claims. These are staggering payouts that would scare off insurers with even the deepest of pockets as is evidenced by the retreat of many of the larger companies from areas all along the Gulf and Atlantic Coasts following the storms.

But what is most interesting is what transpired afterward. As those larger companies reduced their coastal exposure, we saw a new breed of company move in. Although these smaller, regional companies may not be household names – they are financially sound, reputable insurers that are writing policies for homeowners and businesses across our state backed by the international

reinsurance market. The Legislature also passed legislation tripling the safety net of the Louisiana Insurance Guaranty Association by increasing the coverage provided homeowners from \$150,000 to \$500,000 per claim, allowing for consumers to be confident when purchasing coverage from a company that is not a household name.

Today Louisiana has 22 new insurers operating that were not here in 2005, giving homeowners a broader range of options. This is the result of active recruitment of companies not previously writing in Louisiana coupled with the passage of a statewide building code, as well as strategies such as the Citizens Property

Today Louisiana has 22 new insurers operating that were not here in 2005, giving homeowners a broader range of options.

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Insurance Depopulation program.

As you would expect, Citizens saw a significant rise in its size in the aftermath of Hurricanes Katrina and Rita. Its overall policy count spiked to 174,000 in 2008, ranking it the third largest homeowners group in Louisiana at that time. The Depopulation Program has afforded traditional companies the opportunity to assume Citizens policies and today Citizens' policy count has been slashed by 50 percent to below 88,000 policies. That is fewer than Citizens' book of 105,000 policies in 2004. By the end of 2014, Citizens had dropped to the state's ninth largest insurer, having reduced its share of the market from 9.8 percent to 1.9 percent.

This trend also places Louisiana on the national stage as a model for insurance market recovery. As recognized in a national Insurance Journal article titled, *In Louisiana, Private Insurers Come Marching in*, "[W]hile similar state-run insurance entities in Florida and Texas continue to grow at unsustainable paces, Louisiana Citizens Property Insurance Corp. has managed to reduce its policy count...Now, if only Texas and Florida would follow Louisiana's lead." Since then, Florida has undertaken an aggressive depopulation program as well.

The successes we've had are due in no small part to the grassroots efforts of many including the Coalition to Insure Louisiana, comprised of professional and consumer organizations dedicated to maintaining the availability and affordability of insurance, which lobbied vigorously for a private sector recovery. Then Governor Blanco and the Legislature created the Insure Louisiana Incentive Program which attracted private insurers to come write coverage in Louisiana and adopted our first statewide building code which also encouraged insurers to write policies in coastal areas.

The additional competition within Louisiana's property and casualty markets following the

largest insured loss event the U.S. has ever seen has brought stability to our property insurance marketplace. The increased competition we are currently experiencing is a win-win scenario for all Louisiana property owners.

Note: For more information and statistics on the insurance market recovery, please visit www.lds.la.gov/katrinassummit.

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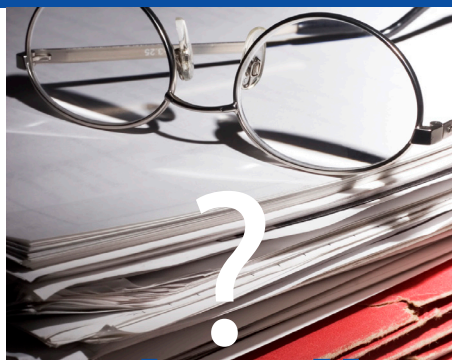
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Q. I am working on a renewal for a very nice account, but in meeting with my insured yesterday, I ran into a situation I'd like your opinion on. The account is a senior center, which is very well run, and popular with many seniors in our area.

Here's the situation. A few of the seniors who are regulars at the center don't like to ride the shuttles that the senior center uses to take clients on local day trips, or to appointments, etc. Mostly they complain about the noise and uncomfortable seats. But one lady has something of a phobia about the shuttles, because two years ago, she and her husband were on a church tour, and the church van was involved in a bad accident. Her husband was severely injured, and both were pinned in the van for almost an hour.

My insured said that this particular lady asked one of the employees if he would drive her to her appointments in her Mercedes. I haven't quite wrapped my head around the interplay between my insured's BAP, and the PAP of the client, and of the employee. For example, who is covered under which policy (or policies)? Which is primary? Are any endorsements needed? What big coverage gaps do you see?



Ask Mike

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 or call (678) 513-4390.

Subject: Employee transports client in client's own personal vehicle

A. Whoever says that insurance is boring has never worked insurance.

Some days, complex situations like this arise, and give you the feeling of wandering around in a Halloween corn maze.

For the discussion below, assume the following: (1) Your insured is Senior Activity Center, Inc. ("SAC"); (2) SAC is a named insured on a Business Auto Policy (BAP); (3) Jack is an employee of SAC; and (4) Miss Jill is a client of SAC. Note that all excerpts and commentary are based on ISO forms. Proprietary forms may be different. Here are my thoughts.

Situation: Jack is driving Miss Jill's Mercedes, transporting her from the SAC to a doctor's appointment, and he has an at-fault accident, injuring two people.

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Personal Auto Coverage

PP 00 01 01 05

– Personal Auto Policy (PAP)

Part A – Liability Coverage

Insuring Agree- ment

B. "Insured" as used in this Part means:

- 1.** You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
- 2.** Any person using "your covered auto".
- 3.** For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
- 4.** For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer".

Ask Mike

continued

Other Insurance

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any

other collectible insurance.

Part D – Coverage for Damage to Your Auto

Other Sources of Recovery

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" shall be excess over any other collectible source of recovery.

continued on page 26



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Ask Mike

continued

RE: Jill's PAP

Comments:

- (1) Jill is an insured under **B.1.**
- (2) Jack is an insured under **B.2.**
- (3) SAC is an insured under **B.3.**, for vicarious liability caused by Jill or Jack.
- (4) Jill's policy is primary for liability under the Other Insurance provision.
- (5) Jill's Part D – Physical Damage is primary (Other Sources of Recovery provision).

RE: Jack's PAP

Comments:

- (1) Jack is an insured under **B.1.**
- (2) SAC is an insured under **B.4.** for vicarious

- liability caused by Jack.
- (3) Jill is not an insured under **B.4.**, since she is the owner of the Mercedes.
- (4) Jack's policy is excess for liability under the Other Insurance provision in his policy.
- (5) Jack's Part D – Physical Damage covers "non-owned autos," and is excess under the Other Sources of Recovery provision.
- (6) The PAP exclusion for "public or livery conveyance" would not apply, in my opinion, since it is performed as a service to a client, and not on a public-hire basis by Jack.
- (7) Likewise, the PAP

exclusion for "business use" does not apply if the vehicle is a private passenger auto, pickup, or van.

Business Auto Coverage

CA 00 01 10 13

– Business Auto Coverage Form (BAP)

Section II – Covered Autos Liability Coverage

A.1. Who Is An Insured

The following are "insureds":

a. *You for any covered "auto".*

b. *Anyone else while using with your permission a covered "auto" you own, hire*



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or borrow except:

(1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

(2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the

Ask Mike

continued

extent of that liability.

Section IV – Business Auto Conditions

B. General Conditions

5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance.

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

RE: SAC's BAP

Comments:

(1) SAC is an insured under **A.1.a.**, if either symbol 1(any auto) or 9(non-owned autos) is used.

continued on page 28



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Ask Mike

continued

(2) Permissive users are covered as insureds under **A.1.b.**, if the auto is *owned, hired, or borrowed* by SAC. Most authorities, as well as the case law that I have read, maintain that SAC has not "borrowed" Jill's Mercedes.

In that case, Jack would not be an insured in SAC's BAP while driving Jill's Mercedes.

(3) However, if **CA 99 33 10 13 – Employees As Insureds** is attached, Jack is an insured "*while using a covered 'auto' you don't own, hire or borrow in your business or your personal affairs.*" Another advantage of making Jack an insured under CA 99 33 is that insurers (SAC's BAP insurer) are generally barred from subrogating against an insured.

(4) Jill is an insured **A.1.c.**, for her vicarious liability.

(5) SAC's BAP is excess, under the Other Insurance provision in **Section IV, B.5.a.**

(6) Under the ISO BAP rules, neither symbol 1 nor symbol 9 can be used for physical damage coverage to non-owned autos (to Jill's Mercedes, caused by Jack's negligence). (Coverage can be provided for *hired* autos, using symbol 8 for physical damage.)

(7) SAC's BAP insurer *might* attach the Garagekeepers Coverage CA 99 37 endorsement, although under ISO Commercial Auto Rule 54, as well as the coverage

provision, the endorsement only applies when the insured is "*attending, servicing, repairing, parking or storing*" a customer's auto. The only other option would be to manuscript symbol 10, but coverage would be excess over Jill's PAP.

General comments

(1) Stepping back from the technical coverage "corn maze" here, a larger issue for your insured is how prudent is this practice? I can foresee all sorts of gnarly problems that could arise when an employee drives a customer's auto. Some of these are small nuisance items, no different than when one loans their personal auto to a friend. Afterwards, there may be scratches,



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scrapes and dents, scuffed tires from parking too close to the curb, etc. But from a customer satisfaction standpoint, they can be huge, especially for the owner of a Mercedes. Needless to say, there is also the potentially huge exposure of an at-fault auto accident.

(2) In my view, one significant factor that your insured has no control over is the condition of the auto, such a brakes, tires, lights, windshield washers, etc. In addition, the employee is likely to be driving an auto with which he is unfamiliar. Anyone who regularly rents cars knows this problem all too well. One additional complication with newer autos is the presence of

Ask Mike

continued

often-confusing digital technology for so many functions of the auto.

(3) Since your insured already provides transportation for clients, one option would be to purchase or lease one or more private passenger autos for this purpose.

(4) One of the fundamental steps in Risk Management is Avoidance, and I think this is one of those situations where that is appropriate.

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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