

# Louisiana Agent

# The Trusted Choice®



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Ask Mike-Subject: Personally-owned trailer painted with company logo and parked in company's parking

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Young Agents 19 **Upcoming Events** 

**IIABL** Calendar of events

#### Google / Amazon / Walmart Insurance Is Wake-Up Call for Independent Agents

In recent weeks, Google and Amazon both announced that they have created online insurance agencies. Google is already licensed in 26 states...including Louisiana.

How will your agency compete with Google and Amazon (and a host of other nontraditional online insurance agencies)?

But wait just one minute! Our agency is well recognized in our community, and we sell insurance based on our personal relationships and good customer service! These online insurance agencies are no threat to my agency! Right?

#### **WRONG!**

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These market disrupter insurance competitors present independent agents with a wake-up call: prove that we are still relevant in the rapidly changing world of digital services, marketing and sales... or go the way of the travel agent. (Remember travel agents?)

Small local retail stores thought they would continue to succeed based on their local community

reputation, personal relationships and good service. Walmart put them out of business (Walmart is now selling insurance too). Now Amazon (the world's largest online seller) is putting a big dent in Walmart's retail business as more and more consumers move to online shopping. Imagine the power of Google (who knows EVERYTHING about our browsing habits) to market insurance every time someone opens a web browser.

We need to stop kidding ourselves. More and more people are buying insurance online. These online insurance agencies are direct competitors to our independent agencies and many of them use the independent agency model with choice of alternative markets and comparison shopping.

Many (most?) of our independent agent insurance companies have already shown that they will use alternative distribution models to sell their insurance products. The truth is that most consumers will soon be able to get the coverages they need from the same insurance

#### Google / Amazon / Walmart Insurance

#### Is Wake-Up Call for Independent Agents (continued)

companies we represent with a few clicks of a mouse 24/7/365 from the comfort of their home.

#### How are we going to compete with that?

Independent agents must meet the challenges from Google, Amazon, Walmart, and other new insurance distribution channels in three different areas.

First, we must embrace and develop world class digital information systems and technology solutions for communications, marketing, sales and service. We are already way behind this technology curve, and we are still slow to see the need, let alone embrace the technologies of the future. We must use social media and other digital communications to reach consumers. We must have websites which are not simply a digital marketing brochure, but allow consumers to quote, bind and print policies, make changes, file claims and take care of business 24/7/365.

The vast majority of independent agents cannot meet these technology challenges on their own. The Big I created TrustedChoice. com to assist our members with some of these digital marketing challenges, but Big I member agencies have been slow to embrace TrustedChoice.com. By joining together as cobranded TrustedChoice.com agents we can establish an internet consumer agent portal that gives us a meaningful presence on line. IIABL will also help our member agencies by sending you a check for \$250 when you sign up for a TrustedChoice.com subscription.

Second, we must become more effective marketing and sales organizations. We must become more adept at hiring and developing successful producers. We must create effective digital marketing strategies that appeal to consumers wherever they are in digital time and space. We must never forget that while providing good customer

service is important...but our primary purpose is to sell insurance.

Third, we must prove to consumers that independent agents provide valuable professional services which are important...in a world where insurance is a mouse click away... we must prove that we are NOT a commodity. We must differentiate ourselves as professional advisors who provide more than just an insurance policy, but instead provide counsel and customization and advocacy and peace of mind.

Independent agents who meet these challenges and find effective ways to compete with Google and Amazon and Walmart have a bright future. But we must meet these challenges head-on.

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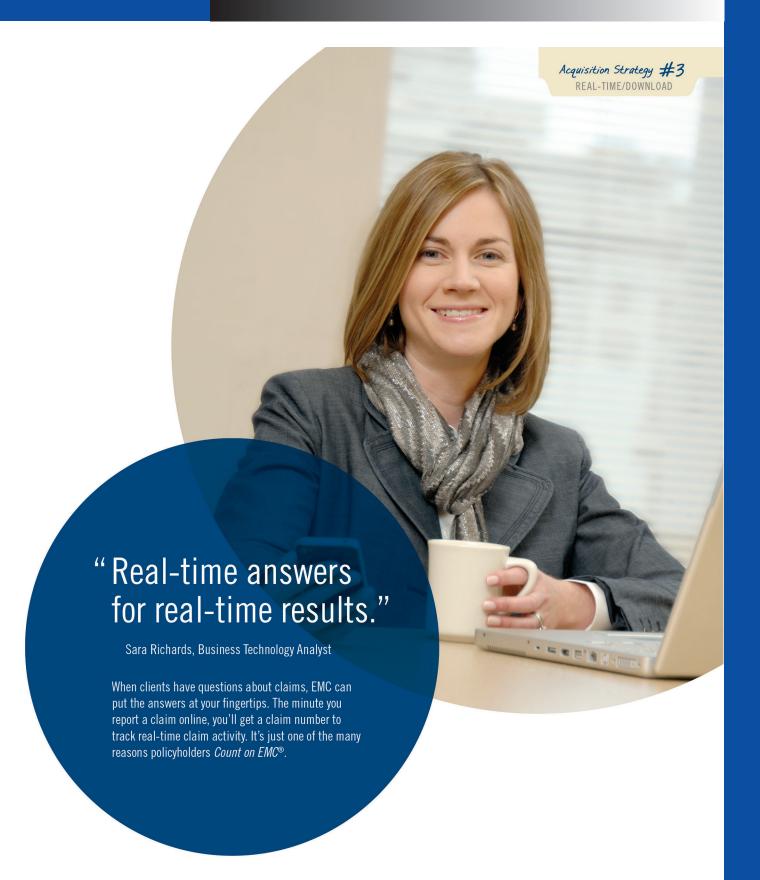
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# **Search Engine Optimization For Insurance Agents**

Would you like 2015 to be the year your insurance agency finally starts showing up in local search results?

The <u>Complete 2015 Guide to Local SEO for Insurance Agents</u> is the resource that contains both the activities and tactics your agency should implement to maximize local SEO in 2015.

Local SEO should be a foundational piece of your insurance marketing strategy. The following guide will help you dominate Local SEO in 2015!

Local SEO for Insurance Agents

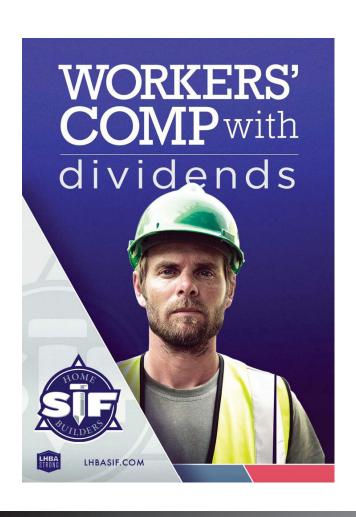
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On-Site Indicators Internal Linking Google Plus / Google Local

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The IIABL Board of Directors met in New Orleans on January 16, 2015. All 23 board members from around Louisiana attended the meeting. The board reviewed the finances, management and other routine business of IIABL.

The IIABL Board also discussed plans for the 2015 Regular Session of the Louisiana Legislature. IIABL has been preparing to introduce legislation to require the licensing and regulation of insurance consultants, and a bill to clarify the application of the producer of record statute to surplus lines insurers. However, as IIABL lobbyists Jeff Albright and David Tatman discussed these legislative proposals with legislators and leadership, they were advised to lay low this session and bring legislation in 2016. The Legislature faces a bloody budget battle and fights on education policy. All the legislators really want to do is get home and start working on reelection. Discretion being the better part of valor...the IIABL Board of Directors decided

to play defense in the 2015 Legislative Session, and wait until 2016 to bring legislation.

The board also had the following strategic discussions which we hope will be of interest to IIABL members. In the fall of 2013, IIABL did two extensive member surveys to determine what member agencies needed and wanted from their association. From those surveys, the IIABL Board of Directors developed the current 2014-2017 Strategic Plan. In addition to the normal ongoing operations of the association, the Plan calls for IIABL to meet the following three needs of our member agencies:

- Improved access to markets for small agents.
- 2. Resources to help member agencies hire and train new employees.
- Member involvement, branding, networking & communications.

The IIABL Board discussed current and future efforts to deliver these benefits to our

members.

## Improved access to markets for small agents.

Access to markets was the overwhelming need expressed by a significant majority of IIABL members who are smaller agencies and have difficulty attracting insurance companies and meeting minimum premium volume requirements. IIABL is working on two broad initiatives to improve market access for small member agents.

First, IIABL will continue our longstanding work to attract new market capacity to Louisiana through our work on regulatory reforms with the Louisiana Department of Insurance, statutory reforms with the Louisiana Legislature, and industry reforms with insurance companies and wholesale brokers.

Second, IIABL is exploring ways to help small agents gain access to insurance company contracts and meet minimum volume requirements by bringing agencies together in new and creative ways. This

is a significant challenge, and the IIABL Board is discussing and exploring a variety of different options to try to help small agents gain access to more markets.

#### Resources to help member agencies hire and train new employees

Developing adequate staff talent has been a challenge for independent agents for many years, but the problem is growing worse as the Baby Boom generation starts to retire. Our members identified this as their second most important need in our survey. We estimate that half of the current agency workforce will retire in the next 10 years. Replacing

and growing the next generation of talent is a significant challenge.

To assist our members, IIABL has developed the IIABL Agency Resource Guide which provides valuable information on how to recruit, hire and train new employees. We also provide the Caliper Profile to help agency managers make good hiring decisions. Last year, IIABL added the WAHVE CSR Leasing Program which a number of IIABL member agencies are using with great success to help them with temporary or long term staffing challenges.

The IIABL Board discussed the recent development of the Louisiana Insurance

Academy which trained and graduated 11 new people at Delgado Community College in New Orleans in the Accredited Customer Service Representative (ACSR) Program. This first program was very successful, but the board discussed at length how the program could be improved and developed at other community colleges around the state. The challenges of operating the Louisiana Insurance Academy statewide are daunting, but the IIABL Board is exploring ways to try to help train new talent for IIABL members around the state.

# Member involvement, branding, networking & communications

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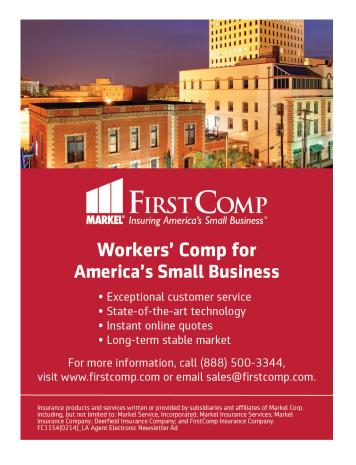
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#### Where are Potential E&O Claims Lurking in your Agency?

On the average 1 in 12 agencies will report a potential E&O incident to their E&O carrier in a given year. You talk with agency owners that over the years may have never experienced an E&O claim and you hear them say with an air of confidence in their voice, "it will never happen to me." I'm sorry to say but even the best run agencies in the country with the most thorough and consistent agency procedures can be involved in an E&O claim. It is, however, your agency practices and procedures that can extricate you from a claim or mitigate its impact with a solid defense. Looking at common errors we see in the Big "I" Professional Liability Program, the largest writer of agents E&O in the country, can help you discover some potential E&O claims lurking within your agency.

In most cases in order for there to be an E&O claim brought against an agent there must be an uncovered loss for which the client or a third party suffered damages generated from a breach of the agents duties. So, the leading E&O claim made against agents is for "failure to procure" coverage. When there is an uncovered claim often times the agents E&O carrier becomes the insurance backstop. A more recent trend is that even if the clients claim is paid by the primary carrier, that carrier is turning around and suing the agency for damages the carrier incurred from the agent's negligent error. On a macro level, "failure to procure" types of claims can be broken down in two different but very interrelated

categories: knowledge and procedural based errors. In general, knowledge- based errors occur because of inadequate staff training or familiarity with the coverage being offered or an inability to appropriately analyze the risk exposures to be insured. Procedural based errors on the other hand are those that are generated from a lack of timely action or follow-up. Avoiding both knowledge-based and procedural types of errors should be the overall goal for the E&O risk management of the agency. A few high level things your agency can do to create a solid foundation within the agency for avoiding E&O claims are:

- 1. Understand your state's specific standard of care.
- 2. Hire qualified employees and provide adequate training.
- 3. Implement employee education programs (both agency E&O and coverage lines in general).

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#### Where are Potential E&O Claims Lurking in your Agency? (Continued)

- 4. Implement and monitor an agency workflow procedures manual. Periodically allow comments from staff on enhancements to the workflow process.
- 5. Use exposure analysis checklists on new business and renewal accounts.
- 6. Thoroughly document your client file with offers and declinations of coverage and other vital client dialog that would provide a defense in the event of a claim.
- 7. Have an on-going dialog with agency staff

throughout the year about the importance of avoiding E&O claims.

Now, let's take a look at the general demographics of the claims made against agents. Agency producers are the ones in the agency most frequently named in E&O claims, followed by CSR's. This is not surprising because they are the ones who most frequent-Iv touch accounts. E&O claims are most frequently made on new business transactions and commercial lines policies drive both claims frequency and severity. Commercial general liability is the most common underlying

coverage in which claims are made.

Below are the most common types of E&O claims made against agents. These examples can provide your agency with direction on where you may find existing E&O claims lurking, just waiting to rear their ugly head, and where to focus on preventing new ones.

1. Failing to recommend a specific coverage type or adequate limits – This is the most frequent claim made against agencies and these types of errors can be considered both knowledge

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#### Where are Potential E&O Claims Lurking in your Agency? (continued)

and procedural based errors. Producers need to be aware of the potential for these types of E&O claims.

Risk management prevention tip: Using risk analysis checklists and questionnaires can help uncover areas of exposure to the client. This is an excellent opportunity to increase revenue for the agency by offering needed products to your customer. Also, let the client select the limits but do offer higher limits to avoid the claim of offering inadequate limits. E&O claims revolve around documentation so make sure the client file.

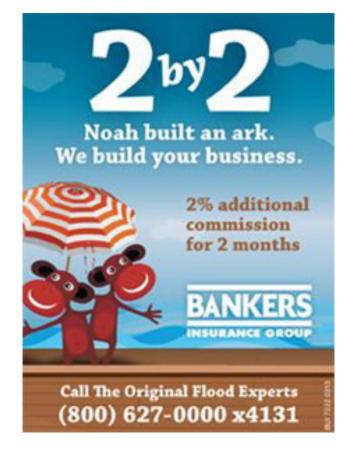
includes solid documentation including offerings and declinations of coverage and higher limits. Review the policy when it comes in to make sure that the policy is reflective of the information included in the proposal. In those states where the policyholder has duty to read their policy it is especially important to deliver the policy in a timely fashion as this could be a defense strategy in a claim.

2. Failure to provide timely notice of a claim to the carrier – This is a procedural driven error that would seem to be easily addressed within the workflow procedures of

the agency.

Risk management prevention tip: First, don't affirm or deny coverage, that is the carrier's job. Second, clients need to understand the process they should follow if a claim occurs. During the policy delivery process, reference the provisions within the policy that should be followed should a claim occur. If the policyholder is responsible for reporting claims directly to the carrier let them know that and document your file. If claims are submitted to the agency, endeavor to submit them to the carrier within a predetermined timeframe and set a reminder in





#### Where are Potential E&O Claims Lurking in your Agency? (continued)

the agency management system to follow-up with the carrier to be sure it is being taken care of. The client file should be documented accordingly. Finally, be sure to put on notice any carriers who might provide a defense or coverage. This is especially important in areas of liability and where excess coverage may be involved.

3. Failure to process applications in an accurate or timely manner – Commonly seen, this is an error more procedural in nature.

# Risk management prevention tip:

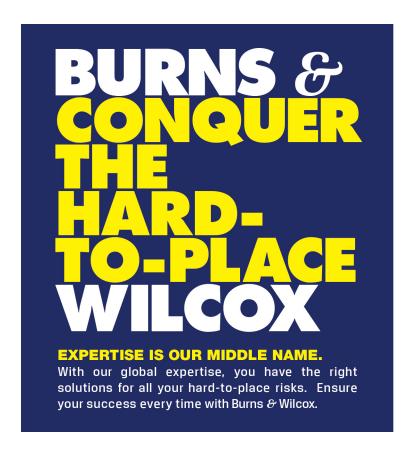
Communications between

the agency team responsible for the new business process is key with these types of claims. The person gathering the client information for the application, in most cases the producer, needs to communicate effectively with the person entering the information and marketing it to the carriers, the CSR. The agency procedures manual needs to outline the process and make certain that an appropriate system for follow-up is in place. Also, if the application can not be processed then confirm in writing to the insured any time and notify them of the required information to proceed.

4. Failure to duplicate coverage upon renewal – This error is another that straddles the line of procedural and knowledge based errors. It can involve not only the renewal within your agency but also when an account is taken over via Agent of Record (AOR).

Risk management prevention tip: Don't get complacent in the renewal process. Offering additional coverages and cross selling products upon renewal is an excellent way to counteract the most common claims against agents of failure to offer coverage. For accounts taken over on AOR look at these in the same way you would new business

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#### Where are Potential E&O Claims Lurking in your Agency? (continued)

accounts including using risk analysis exposure checklist.

5. Failure to make policy changes requested by the client – In the claims that we see producers are often involved in these types of claims in a process that should more likely be handled by the CSR. Improper implementation or following of workflow procedures are the causes of these types of errors.

**Risk management prevention tip:** Policy changes come in three shapes and sizes: increasing, reducing, or modifying coverage. The key ingredient to avoiding these types of policy change errors lies in the follow-up process to

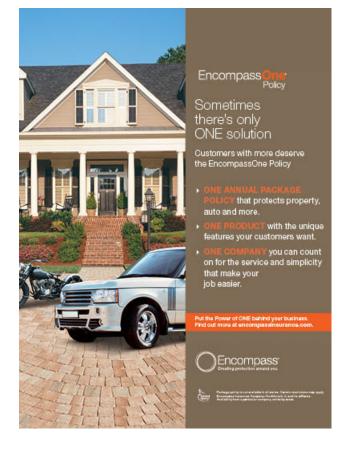
be certain that changes are made in a timely fashion and do not fall through the cracks. Policy changes should be confirmed in writing and only accepted from the named insured. If the insured asked for a reduction in coverage, advise them of the consequences and document the file accordingly. Finally, make sure that when adding additional insureds to the policy you confirm this with the company. We often see CSR's attempting to add additional insureds to the policy via a certificate of insurance which can lead to the failure to procure coverage claim.

Many of the above common E&O claims can be prevented

by having a knowledgeable agency staff that constantly follows agency workflow procedures. As an agency principal, monitoring compliance of agency procedures is paramount to uncovering E&O claims that may be lurking in your agency. The most important element to any E&O claim is documentation. So many E&O claims are "he said, she said" situations. Your agency may have acted appropriately but if you did not document your actions using invariable practices you will lose in court.

This article is written as value-added service of the Risk Management department of the Big "I" Professional Liability Program.





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Kiescha Cherry (703)706-5443 kiescha.cherry@iiaba.net

#### **COMMISSIONER JIM DONELON**

# Insurance Legislation on Capitol Hill Year in Review

I am grateful the House and Senate agreed with our various insurance concerns and we look forward to working with members of Congress once again this year to preserve the authority of state regulators to protect consumers.

2014 marked another busy year for federal insurance legislation with Congress going down to the wire with several critical insurance bills during the last week of the 113th Congress. One of the most widely reported issues has been the renewal of the national Terrorism Risk Insurance Act, commonly referred to as TRIA. This program expired on December 31 when the U.S. Senate failed to concur with House amendments to the Senate bill. Fortunately, the new Congress took up TRIA as one of their first orders of business upon returning to Washington in January and swiftly passed the bill.

Renewal of TRIA will contribute to stability in the commercial insurance market and business sector for the next six years by lowering investment risk and concerns over terrorist attacks on commercial locations. The federal backstop is now designed to help reimburse businesses for catastrophic losses above \$200 million (up

from \$100 million). The measure also increases the percentage that insurers must pay above that threshold from 15 percent to 20 percent. Failing to renew TRIA would have impacted not only the insurance industry but also the real estate, mortgage lending, construction and other markets, nationally. Another market area that would have been severely impacted by the expiration of TRIA is workers compensation. We could see a reduction in underwriters' willingness to write workers comp insurance in large metropolitan areas thought to be terrorism targets. Workers' compensation writers are forbidden by law from excluding terrorism coverage in their policies, so they would be forced to drop coverage in areas where risks are unacceptable. The legislation also creates the new National Association of Registered Agents and Brokers (NARAB II) which aims to streamline the licensing process for non-resident insurance

producers. A 13-member board of insurance commissioners and industry leaders will be established to develop guidelines for national licensing. Producers will not be required to get licensed through NARAB and non-residents may still obtain their licenses state-by-state. We also had good news in 2014 with some relief from the drastic flood insurance rate increases of Biggert-Waters of 2012 with the passage of the Homeowner Flood Insurance Affordability Act. The bill's provision that restores subsidized flood insurance rates is critical in keeping Louisiana's economy moving in flood-prone areas. The Act removes time-of-sale increases for homeowners and businesses who acquired an NFIPinsured property after July 6, 2012 (the date of enactment of Biggert-Waters) and enables them to pay the same rates as the previous owners of the property. It also restores grandfathering meaning that homes and businesses that were

built to NFIP standards will not be subjected to higher premiums as a result of FEMA remapping. For properties that are non-grandfathered, when updated flood maps result in increased risk premium, flood insurance rates will continue to increase, but increases will not be as large or as fast as they would have been under Biggert-Waters. Increases will be phased in over a five-year period at a rate of up to 18 percent per year beginning on April 1 for new and renewal policies. The bill ensures the financial stability of the National Flood Insurance Program (NFIP) while providing property owners with continued protection. Another significant topic for 2014 is the ongoing

implementation of the Affordable Care Act, or Obamacare. Many components of the law are now effective with a few left for implementation in 2015. As a result of the law, we have seen more people obtaining health insurance but at higher premiums in Louisiana. Open enrollment for the 2015 plan year, whether on or off the marketplace, runs through February 15. Beginning with the 2014 federal tax filings due in April, we will see the impact of penalties for nonparticipation for the first year which will be even higher for 2015 and 2016. A critical Obamacare case will be heard by the Supreme Court with oral arguments in March and a final decision expected

by the end of June. The plaintiffs in King v. Burwell challenge the authority of the Internal Revenue Service to grant tax credits for health coverage purchased through insurance exchanges run by the federal government. The issue is how much discretion the IRS and administration have to interpret the meaning of an exchange "established by the state." With 36 states, including Louisiana, opting not to run exchanges, a decision supporting the specific wording with no latitude for interpretation will strike at the heart of the program which has the goal of providing affordable health insurance through tax subsidies for those with qualifying incomes. The subject of state-based



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#### **COMMISSIONER JIM DONELON**

# Insurance Legislation on Capitol Hill Year in Review (continued)

insurance regulation versus federal regulation is always a topic brewing at the nation's capital. During 2014, a debate arose over Section 171 of the Dodd-Frank Act, which contained an ambiguity that subjected insurers' capital standards requirements to the same generally accepted accounting principles used in banking. The Federal Reserve Board. most lawmakers and the insurance industry agreed this was not intended. They agreed that when determining insurance industry capital standards, reliance should remain

on statutory accounting principles used by state regulators. This was corrected in the Insurance Capital Standards Clarification Act, which was passed just before the Congressional Christmas break. Signed by President Obama on December 18, the bill prevents the use of bank-centered capital standards for insurance companies subject to federal oversight under Dodd-Frank. The National Association of Insurance Commissioners (NAIC) meets with congressional representatives throughout

the year to push back against such encroaching regulatory issues. The NAIC also rallies support for state-based insurance regulation where the many needs of individuals may be better addressed. I am grateful the House and Senate agreed with our various insurance concerns and we look forward to working with members of Congress once again this year to preserve the authority of state regulators to protect consumers.



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# Upcoming Young Agents Events

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Sam's Town Hotel & Casino
Young Agents CE & Mixer



Lakeside Daiquiri Baton Rouge





#### Agent-Broker Profitability Reaches record 21% for 2014

Agent-Broker Profitability Reaches Record 21% for 2014

Survey
Measures
Large &
Mid-Size
Private
Agencies &
Brokerage
Firms

Agent-broker profitability reached 21 percent for 2014 in the Reagan Consulting Organic Growth and Profitability (OGP) survey, a new record for the survey that began in 2008.

That median profitability for EBITDA (earnings before interest, taxes, depreciation and amortization) for 2014 was up appreciably from 19.3 percent in 2013 and 18.4 percent in 2012, according to the survey.

Reagan Consulting's study also found:

 Median organic growth for 2014 was 6.2 percent, matching 2013 and 2012.

- The fastest growing segment of business was once again commercial lines, with an organic growth rate of 7.0 percent. Group benefits grew at a 5.7 percent clip.
- The median Rule of 20 score was 16.9, up from 16.5 in the prior year.

The Rule of 20 is the sum of an agency's organic growth rate and one-half of its EBITDA margin; if the sum equals or exceeds 20, an agency is driving strong shareholder returns. Reagan Consulting uses the Rule of 20 to

measure agency value creation.

"The agent/broker world grew in profitability for the fifth straight year -- while sustaining positive revenue growth for a third straight year," commented Kevin Stipe, president of Reagan Consulting, a management consulting and merger-andacquisition advisory firm for the insurance distribution system. "These two metrics drive valuation, largely determine operating health, and are imperative to a firm's ability to successfully perpetuate."



#### **Agent-Broker Profitability (continued)**

#### Q4 Organic Growth & Profitability: 2009-2014



EBITDA: Earnings Before Interest, Taxes, Depreciation & Amortization Source: Reagan Consulting Organic Growth and Profitability Survey (<a href="https://www.ReaganConsulting.com">www.ReaganConsulting.com</a>)

Reagan Consulting has conducted its quarterly survey of agency growth and profitability since 2008, using confidential submissions from approximately 140 mid-size and large agencies and brokerage firms. Roughly half of the industry's 100 largest firms participated in the most recent survey. Median revenue of the firms completing the survey is more than \$17 million, making it the industry's preeminent survey of mid-size and large privately held brokers.

Brokers surveyed forecast a median organic growth rate of 6.0 percent in 2015, the fourth consecutive year for a forecast in that range. Brokers are projecting a "pullback" in profitability for 2015 to 20.0 percent, Stipe reported.



#### Report on January IIABL Board Meeting (continued)

Member involvement and communications with our members are the cornerstones of IIABL. The problem is that everyone is so busy and so overwhelmed with activities and communications that it is difficult to stay connected.

In an effort to remain relevant to our members, IIABL will conduct periodic "Town Hall Meetings" in various locations around the state and IIABL Board Members will also conduct periodic "Lunch & Learn Programs" where members will be able to tell board members how IIABL can best serve them.

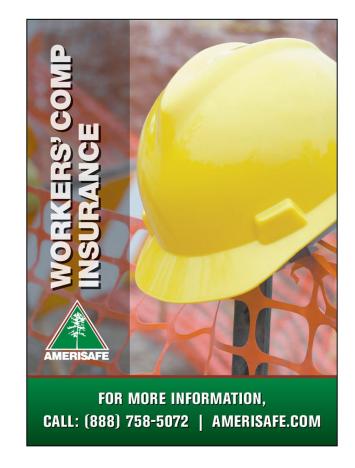
The Big I on a national and state level continue to try to help our member agencies compete against GEICO, State Farm, Farm Bureau, etc. by promoting the value of our TRUSTED insurance advisor independent agents with a CHOICE of markets through our consumer brand...TRUSTED CHOICE. In addition, we have provided a consumer agent internet portal for member agents at www. TrustedChoice.com. IIABL continues to help members who want to subscribe to www.TrustedChoice.com by sending new subscribers a check for \$250 when they sign up, which is half of the

cost to subscribe.

At the last board meeting, the IIABL Board also approved a \$75,000 digital advertising program which will buy over 20,000,000 website banner ads in 2015 promoting independent insurance agents. The ads will only appear to Louisiana consumers when they visit various websites, and will direct them to www. TrustedChoice.com where they can search and find our local IIABL member agencies.

The next IIABL Board meeting will be held on March 20, 2015 in Shreveport.







### THESE AGENTS HAVE MADE THEIR MARK

Congratulations to these 6 Louisiana independent agents who've qualified for the Progressive Signature Agent® program\*.

All Premier Insurance Agency Denham Springs

Arnold Insurance Group Benton

A Victory Agency, Inc. Bogalusa

**Bubrig Insurance Agency** Belle Chasse

Jones Insurance Services Thibodaux

Raymond M. Fondel Jr. Ins. Agency Lake Charles



They join these 49 agents who have already earned Signature Agent status.

A Victory Insurance Agency Mandeville

> ABC Agency Network Houma

ABC Agency Network Alexandria

ABC Insurance Agency Lafayette

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Q. I am currently working on a quote for a small commercial account, and have uncovered an exposure that I'd like your opinion on. The business is a hobby shop, with two locations. When I drove into their parking lot yesterday, I noticed a large, doubleaxle cargo trailer, painted with stunning graphics highlighting some of the hobbies they specialize in. When I asked the owner about the trailer, he said he owns it in his personal name. And since he is a radio-controlled (RC) aircraft enthusiast, he pulls it to all the events he attends, figuring it would be good advertising.

The hobby shop owns no autos, and carries no hired/non-owned coverage in their CGL. He said his current agent told him that when he is pulling the trailer, his PAP provides coverage for him as well as the hobby shop. Is this correct, and do you think this is sufficient? I'm not sure it is, but I can't put my finger on exactly what the gap might be.

A. First, a tip of my hat to you for noticing the trailer, and inquiring about it. Some producers have gotten into the unfortunate habit of simply quoting against the incumbent agent's current or renewal quote, with little or no



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#### Subject: Personallyowned trailer painted with company logo and parked in company's parking lot.

thought to really examining the risk. I prefer your approach, of first getting the big picture about the risk.

For the following discussion about the trailer, assume Jack Smith is the owner of Happy Jack's Hobby Shack, Inc. He owns a double-axle cargo trailer in his personal name, which is painted with graphic designs and logo of his hobby shop. Jack has a Personal Auto Policy, Homeowners Policy, and his hobby shop has a Commercial General Liability Policy (CGL). The hobby shop owns to automobiles. Excerpts and related commentary are based on ISO forms. Proprietary forms may be different.

## Coverage under Jack's PAP.

Here are pertinent excerpts from Jack's PAP:

#### PP 00 01 01 05 Part A - Liability Coverage

- 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.

#### **Comments:**

- (1) Under B.1., Jack is an insured for the ownership, maintenance or use of the trailer. This applies whether or not the trailer is declared. But for physical damage coverage, the trailer must added by endorsement.
- (2) The hobby shop in an insured under B.3., for their vicarious liability arising out of Jack's "your covered auto," (the definition of YCA includes owned trailers).
- (3) Whether or not the hobby shop could be legally liable for an injury arising out of the trailer

owned by Jack depends on the situation. But in cases where there was a connection (nexus) established in court between the trailer and the hobby shop, clearly the hobby shop would be an insured in Jack's PAP. (4) However, if the hobby shop had no other coverage available, the hobby shop and Jack would have to share the liability limits on his PAP. And that portends a possible limits gap.

# Hobby shop's exposures arising from Jack's trailer.

I can foresee several situations that pose an exposure for the hobby shop.

(1) While the trailer is parked in the parking lot,

## **Ask Mike**

continued

an injury could arise if it rolled down an incline and struck someone (or their vehicle), or if kids were climbing on it and fell off, etc. I think the plaintiff would argue that by allowing the trailer to be parked in its parking lot, the hobby shop has some responsibility for the safety of the public.

(2) Since Jack takes the trailer to weekend events where RC airplanes are being flown, and the hobby shop sells such items, plus the fact that the hobby shop's logo is painted on the trailer, I think a person injured by the trailer would likely bring the hobby shop

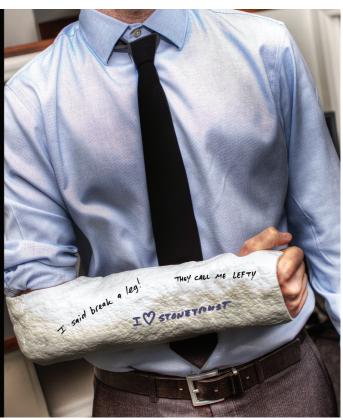
into a lawsuit.

- (3) It is possible that Jack has the maintenance work on the trailer paid for by the hobby shop. Therefore, any accident which occurs while the trailer is being towed, due to faulty maintenance, could bring the hobby shop into a lawsuit.
- (4) I'm not an attorney, but it seems to me that plastering the hobby shop's logo all over the trailer just paints a target on the hobby shop. That might be a factor in any lawsuit.

Therefore, a quick review of the coverage for the trailer in the CGL would be important. (Coverage for the trailer under the ISO Businessowners Policy (BOP) is the same as in the

continued on page 26





CGL.)

CG 00 01 04 13
Section I
Coverage A –
Bodily Injury and
Property Damage
2. Exclusions

#### g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

## **Ask Mike**

continued

#### Section II – Who Is An Insured

- 2. Each of the following is also an insured:
- a. Your ""employees", but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

#### Section V - Definitions

- 2. "Auto" means:
- a. A land motor vehicle, trailer or semitrailer designed for travel on public

roads, including any attached machinery or equipment

#### **Comments:**

- (1) A trailer is included in the definition of "auto" (Section V. above).
- (2) Exclusion 2.g. (Section I above) could apply to any of the three scenarios described above. Consider this excerpted version of the exclusion: "Bodily injury or property damage arising out of the ownership, maintenance or use of a trailer which is owned by an insured." One key to this is that in the CGL, employees are insureds (see Section II above), and thus the trailer is owned by "an insured." One could also argue that in some situations, the



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\* - Liability coverage associated with these features excluded.



hobby shop is "using" the trailer, especially when Jack takes it to RC airplane events.

(3) This exposure is essentially a hired & non-owned auto (H/NO) exposure, and is solvable with the H/NO endorsement.

# Other possible exposures for Jack and the hobby shop.

Jack's interest in RC airplanes, to the point of owning a large trailer painted with the company's logo, suggests that several related exposures need to be examined, from both Jack's perspective, as well as the hobby shop's exposures.

For example, radio

# **Ask Mike**

continued

controlled aircraft can be very large. I've seen pictures and videos from RC hobbyists' website of huge airplanes, one of which was a 4-engine, B-17 WWII bomber with a 19ft. wingspan. In addition, hobby rocketry is very popular, with surprisingly large rockets. One website showed a picture of a 500 lb. rocket that flew 50 miles high. And the record is reportedly held by a hobby rocket launched in Nevada that went 72 miles high.

But the real excitement now is drones. Add cameras, and the fun begins! Post certain videos onto your website, and you're probably looking at a lawsuit! For hobbyists, these airplanes, rockets and drones are fun. For us insurance nerds, they are just something else to worry about. But from a liability standpoint, the ISO Homeowners Policy seems to provide broad coverage, due to the exception to the aircraft exclusion.

HO 00 03 05 11
Section II Exclusions
C. "Aircraft
Liability."
This policy does
not cover "aircraft
liability".
For the purpose
of this definition,
Aircraft means any
contrivance used or
designed for flight
except model or

continued on page 28



hobby aircraft not used or designed to carry people or cargo

#### **Comments:**

- (1) While these RC airplanes, rockets and drones are "model or hobby aircraft," and therefore exempt from the "Aircraft Liability" exclusion, one concern is the issue of what falls within the meaning of "cargo." Drones, in particular, seem universally equipped with cameras, which raises the issue of a distinction between "cargo" and normal operating equipment.
- (2) Some proprietary Homeowners Policies do not include an exception for hobby aircraft in their liability exclusion.
- (3) Cameras on drones introduce the possibility of "invasion of privacy" lawsuits,

# **Ask Mike**

#### continued

and the unendorsed ISO Homeowners Policy only applies to bodily injury and property damage.

- (4) The ISO CGL makes has no exception for hobby aircraft in Exclusion **2.g.** (above). Some CGL markets have already begun offering drone coverage. ISO recently filed new endorsements for CGL and Commercial Umbrellas, dealing with drones (ISO uses the term "unmanned aircraft"). The forms have an edition date of June 2015.
- (5) Physical damage for Jack's trailer can be added to his PAP with endorsement PP 03 07 Trailer/Camper Body Coverage.
- (6) If the graphics on Jack's trailer are of sufficient value

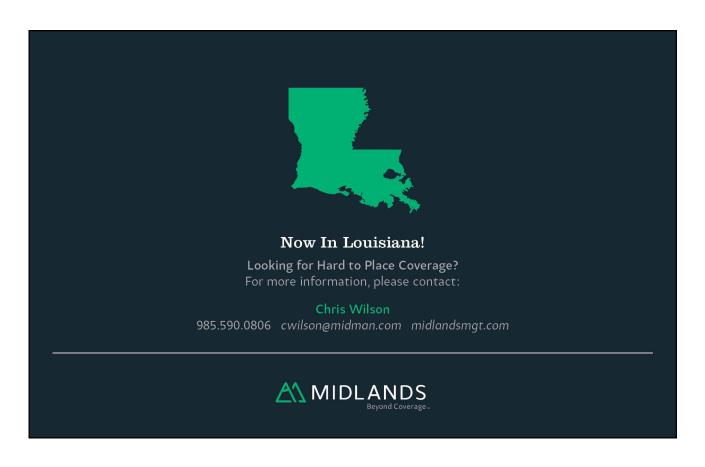
that insuring them would be appropriate, coverage can be provided by endorsement PP 03 18 Excess Customizing Equipment Coverage.

(7) Although you indicated that you were quoting on the commercial insurance, since you've already inquired about the trailer, you might ask Jack if his PAP has those two endorsements. If not, offer to quote his PAP coverage, or at least get the X-date!

#### For reference:

Drones and the Homeowners
Policy
Drones and the CGL Policy
The CGL and Trailers

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.





# **IIABL Upcoming CALENDAR OF EVENTS**

Feb 24, 2015	E&O Risk Management (approved for 6 hrs CE and 3 hrs Ethics) Instructor: Ted Kinney	9am – 4pm Monroe
Feb 25, 2015	E&O Risk Management (approved for 6 hrs CE and 3 hrs Ethics) Instructor: Ted Kinney	9am – 4pm Lafayette
Feb 26, 2015	E&O Risk Management (approved for 6 hrs CE and 3 hrs Ethics) Instructor: Ted Kinney	9am – 4pm Baton Rouge
Feb 27, 2015	E&O Risk Management (approved for 6 hrs CE and 3 hrs Ethics) Instructor: Ted Kinney	9am – 4pm New Orleans
March 11, 2015	Education Conference & Trade Show Instructor: Chris Burand	Crowne Plaza Baton Rouge
March 17, 2015	Flood Seminar (filed for 3 hrs CE) 8am - 11am	Bossier City
March 17, 2015	Flood Seminar (filed for 3 hrs CE) 2pm - 5pm	Monroe
March 18, 2015	Flood Seminar (filed for 3 hrs CE) 1pm - 4pm	Lafayette
March 19, 2015	Young Agents CE & Mixer	Shreveport
March 19, 2015	Flood Seminar (filed for 3 hrs CE) 8am - 11am	Metairie
March 19, 2015	Flood Seminar (filed for 3 hrs CE) 2pm - 5pm	Covington
March 20, 2015	Flood Seminar (filed for 3 hrs CE) 9am - 12pm	Baton Rouge
March 27, 2015	<u>Young Agents Crawfish Boil</u> 4pm - 7pm	Baton Rouge Lakeside Daiquiris



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