

**May
2015**



highlights

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IIABL Legislative Update

The record low number of insurance bills are making their way through the legislative process quickly this year as the legislature focuses attention on the state budget crisis.

Following is an update on the most important insurance bills of 2015. Click on the bill number for detailed information about the bill.

[HB 160](#) Huval, Mike(R)
Provides that there shall be no cause of action against insurance producers for the issuance of certificates of insurance. IIABL strongly supports HB 160.

Bill History: 04-30-15 H Set on the House Orders.

In light of significant opposition from lenders, Rep. Huval plans to turn HB 160 into a study resolution requesting that LDI study the issue and make recommendations for legislation in 2016.

[HB 337](#) Cromer, Greg(R)
Provides for the prohibition of the use of non-original equipment manufacturer aftermarket parts at the direction of an insurer when such parts affect the safe operation of vehicles.

Bill History: 05-06-15 H Voluntarily Deferred in Committee House Insurance.

Insurers and others opposed HB 337 because the requirement to use original equipment would greatly increase the cost of auto repairs and auto insurance. In addition, there are problems with defining parts that affect safety. HB 337 will be turned into a study resolution.

[HB 673](#) Huval, Mike(R)
Provides relative to the licensing of consultants.

Bill History: 04-20-15 H Removed from hearing 04/21/15 - House Insurance.

Rep. Huval decided not to move forward with HB 673, and plans to work with LDI to address this issue next year.

[SB 172](#) Morrish, Dan "Blade" (R)
Provides with respect to the Transportation Network Company Motor Vehicle Responsibility Law. Bill History: 05-04-15 S Returned to the calendar - subject to call. The so called "Uber Bill" would require the TNC to provide insurance coverage for all three phases of TNC operations: app on, ride requested, and passenger on board. The bill

IIABL Legislative Update (continued)

will be amended on the Senate floor to complete a compromise between the insurance and TNC industries.

SB 195 Brown, Troy(D)

Provides for an Insurance Mediation Program.

Bill History: 04-29-15 S Voluntarily Deferred in Committee Senate Insurance.

SB 195 would have created a voluntary mediation program for first party property insurance claim settlement disputes between policyholders and insurers. Both the insurance industry and trial lawyers have concerns about different aspects of the bill. The bill was voluntarily deferred, but may not move out of the Senate Insurance Committee.

Welcome!

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Big "I" Applauds Introduction of Bill to Repeal "Cadillac" Tax

IIABA today expressed support for the "Middle Class Health Benefits Tax Repeal Act," introduced by Rep. Joe Courtney (D-Connecticut).

The legislation would repeal the excise or so-called "Cadillac" tax, a provision in the Affordable Care Act that will impose a 40% tax on health benefits that exceed an established annual cost starting in 2018.

"The Big I supports the 'Middle Class Health Benefits Tax Repeal Act' and other legislative efforts to repeal or delay the excise tax or 'Cadillac' tax in the ACA which, without further action, will have a huge negative impact on middle income Americans," says Charles

Symington, Big "I" senior vice president of external and government affairs. "The independent agent and broker community, which provides thousands of small businesses and families across the country with professional, licensed guidance on their insurance needs, is greatly concerned that if this provision in the ACA isn't changed, it will have a devastating snowball effect over time."

In 2018, health plans exceeding \$10,200 a year in value for individuals or \$27,500 a year for families will be subject to this 40% tax. The levels are indexed for inflation but over time this tax will impact more and more individuals because

Congress tied the threshold to a slow measure of inflation that will not keep up with the rising cost of health care.

"The excise or 'Cadillac' tax will potentially cause an increase in health insurance costs for both employers and employees while also causing many employees to see a significant decrease in the quality of their health insurance coverage as employers are forced to reduce benefits to avoid this tax increase," says Wyatt Stewart, Big "I" director of federal government affairs. "We applaud Rep. Courtney for his efforts to repeal this burdensome provision and protect middle income Americans and small businesses."



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Mobilegeddon

Google has recently implemented some changes in how its search engine returns and ranks mobile websites. "Starting April 21, 2015, we will be expanding our use of mobile-friendliness as a ranking signal. This change will affect mobile searches in all languages worldwide and will have a significant impact in our search results."

If your agency has a website you can test your website to see if it is mobile-friendly. [Click here](#) for the test.

Google has a great website regarding mobile-friendly websites. Besides the ability to test your website they are offering guidance on helping you to achieve mobile-friendliness on your website if it does not pass the google test.

[Click here](#) for the Google Mobile-Friendly website.





FEMA

Fact Sheet

National Flood Insurance Program (NFIP)

The HFIAA Surcharge

As of April 1, 2015, every National Flood Insurance Program (NFIP) policy includes an annual surcharge required by the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). The amount of the surcharge depends on the use of the insured building and the type of policy form insuring the building, regardless of its flood zone designation.

Policies for owner-occupied single-family detached buildings and individual condominium units that are the primary residence of a policyholder insured under the Dwelling Policy form will include a \$25 surcharge. Additionally, contents-only policies insured under the Dwelling Form and held by a tenant in the tenant's primary residence will include the \$25 surcharge.

Policies for all other buildings will include a \$250 surcharge, which also applies to policies insured under the Residential Condominium Building Association Policy form, regardless of the number of units, attached and detached, or use of the building. In fact, even if the condominium association is being surcharged \$250 for the entire building, a unit-owner with an individual policy that includes building coverage, can also be surcharged appropriately; based on the use. Lastly, all buildings insured under the General Property form will include a \$250 surcharge. Policies covering buildings designed for use by more than one family will be charged a \$250 surcharge, even if the landlord uses the building as a primary residence, or the building is owned by a condominium association.

What to Expect

It's important to know the annual amount due to your insurer for flood insurance at the time of application or renewal includes this surcharge. You do not need to make a separate payment. In addition, upon renewal of a policy, insurers will be sending out a notice to verify that the building is being used as a primary residence. The documentation must be provided to the insurer prior to the policy expiration date in order for the appropriate surcharge to be included in the renewal notice.

If a policyholder does not send back the documentation to their insurance agent that verifies the policy is for a primary residence, a \$250 surcharge will be applied. Working with their agent, if an incorrect surcharge was used for renewal, policyholders are able to correct the surcharge during the current policy year. The correction will be made once the documentation is provided to the insurance agent.

Why A Surcharge

The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters) mandated that the Federal Emergency Management Agency (FEMA) eliminate certain subsidized rates that did not reflect the true risk available for structures that were built in high-risk areas before their communities entered the NFIP. To maintain the affordability of flood insurance for the policyholders eligible for subsidized rates, the most recent legislation –HFIAA– slowed the elimination of the subsidies. To support the financial stability of the NFIP, Congressionally-mandated surcharges are required for all policyholders to offset the slow-down of the elimination of current subsidized rates, and will continue until all subsidy is eliminated. The surcharge is paid at the time of application or renewal each year until the subsidies are eliminated. The surcharge revenue will go into the NFIP Reserve Fund that is used to help cover the cost of future claims in a catastrophic event and may also be used to pay the program's debt to the U.S. Treasury from previous catastrophic events.

Premium Caps Do Not Apply to the Surcharge

HFIAA placed limits on the percentage that NFIP premiums can increase each year. However, the HFIAA surcharge is not considered premium and is not included when calculating limits on insurance rate increases. So, for example, while total premium will not increase more than the 18 percent premium increases allowed for most individual policies, the total percentage increase in the cost of the policy may exceed 18 percent once the appropriate surcharge is added.

Learn More

Call your insurance agent for more information about your policy, the surcharge included in your premium, and the documentation needed to verify your primary residence. Visit www.fema.gov/flood-insurance-reform to learn more about legislative changes to the NFIP.

Where You Reside': ISO Files Most Significant HO Change in 40 Years

Fourteen years ago, the March 16, 2001 edition of the [Big "I" Virtual University](#) (VU) VUpoint newsletter published the first article on what would later become known as the "Where You Reside" homeowners insurance issue.

Followed by several more related articles, the piece emphasized the importance of a potentially catastrophic coverage gap in most homeowners policies. The VU pushed the issue into the spotlight with a whitepaper in October 2009 and a nationwide webinar in early December of the same year—both of which are available on the "[Where You Reside](#)" page in the "[Featured Resources](#)" area of the VU.

In the meantime, the VU's national Technical Affairs Committee presented this issue to ISO at its annual meeting in 2005. For 10 years, the committee pursued a

remedy for ISO HO forms in this forum and at the Mid-America Insurance Conference through a series of points and counterpoints—and finally reached a negotiated agreement on changes to the program in November 2014.

Neither viewpoint "won" per se, but the resolution is workable and presents a starting point for further evolution and tempering of this homeowners issue. To take effect in most states October 1, 2015, the nationwide ISO filings will include a new mandatory endorsement, an optional broadening endorsement and a non-filed notice/questionnaire form.

In the upcoming April 17, 2015 issue of the VUpoint newsletter, the VU will provide a detailed overview of the forthcoming change to ISO's Homeowners program—perhaps the single most

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Where You Reside (continued)

significant HO change in 40 years. Education efforts will include a [free national webinar](#) to further explain the significance of this change and reveal what we plan to do to further address this issue with carriers, advisory organizations such as ACORD, regulators, the media and consumers.

In the May 1, 2015 VUpoint issue, we will present an article about another ISO filing that extends coverage to insureds using their personal autos in "car sharing" programs such as Uber and Lyft. We will also address new NAIC model guidelines regarding the "sharing" economy, both car (like Uber) and home (like Airbnb).

The bi-weekly email VU newsletter is free and you do not have to be a member agency to subscribe. We strongly encourage at least one individual in your agency to [subscribe to the VUpoint](#)

[newsletter](#) for access to emerging, relevant and urgent coverage issues like this. Each issue usually features an article pertaining to personal lines, one about commercial lines and a rotating third on agency management, sales, customer service or technology. Subscribers include company underwriters, adjusters, regulators, risk managers and defense attorneys.

Bill Wilson is director of the Big "I" Virtual University.



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HOUSE MAJORITY WHIP STEVE SCALISE DISCUSSES FLOOD, ACA AND TAXES AT BIG "I" Legislative Conference

U.S. House of Representatives Majority Whip Steve Scalise (R-Louisiana) delivered a keynote address to the Independent Insurance Agents & Brokers of America (IIABA) membership at its annual Legislative Conference.

During his remarks, Majority Whip Scalise discussed numerous topics of importance to the Big "I" including the National Flood Insurance Program (NFIP), Affordable Care Act (ACA), and tax reform. He spoke to the largest annual gathering of Big "I" members, representing all 50 states and several foreign countries, just minutes before they embarked to Capitol Hill for the annual lobbying day. Louisiana faced numerous legislative battles after

Hurricane Katrina, which Rep. Scalise discussed since he was also at the forefront of the action during the NFIP debates on Capitol Hill.

"There were a lot of proposals that sounded real populist that would have depleted our insurance market in Louisiana," Rep. Scalise said. "We were able to hold back on those and bring more insurance companies to help write policies. It was critical to the rebuilding and recovery from that terrible disaster."

Now the third highest ranking Republican in the House, Rep. Scalise is using his experience to help reform the NFIP. "We were able to change [Biggert-Waters] and put real stability in place with those reforms,"

Rep. Scalise said. "We're already starting to meet with Republicans and Democrats to work on the next iteration of the renewal of the flood insurance program."

In addition to flood insurance reform, Rep. Scalise emphasized the importance of legislation to remedy some of the problems associated with the ACA, which contains provisions he said have prompted a large shift in full-time to part-time employees.

"The Cadillac tax is something that's going to ultimately make it harder for people to provide the good health care they provide for their employees," Rep. Scalise said, urging agents

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IIABL members pictured with Representative Scalise are from left to right: David Daniel, Daniel and Eustis, Brenda Case, Lowry-Dunham, Case & Vivien Group, Randy Lanoix, Lanoix Insurance Agency, Johnny Beckmann, J. Everett Eaves, Lee Schilling, Schilling & Reid Insurance Agency, "Photo Bomber", Rep. Scalise, Jeff Albright, IIABL, Lydia Morris, Regions Insurance, Andy Blumberg, Blumberg and Associates and David Dethloff, Dethloff and Associates.

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BIG "I" Legislative Conference (continued)

to pay close attention to the upcoming King v. Burwell Supreme Court decision. "If the Supreme Court does what I think they should do, in saying the federal government can't subsidize a federal exchange in the health care marketplace, it will provide a great opportunity for Congress to come back and replace what is broken with a real free market reform."

Rep. Scalise also discussed the navigator debate. "We're going to reign in this whole navigator process that's created all kinds of problems and let you be back in charge of working with people to find the best plans for them and their families—and at the best cost."


Noting that these big issues affect real people and real families, Rep. Scalise added that he hears from small businesses that their biggest challenges involve federal rules and regulations.

"As we come up with alternatives and solutions to solve problems, we want to know what the things are that we can do to help you just go do your jobs, get more clients and generate more opportunities for people," Rep. Scalise said.

"House Majority Whip Scalise's leadership has been instrumental in ushering important insurance legislation through Congress including an extension of TRIA, creation of NARAB II and a


bill of particular importance to the state of Louisiana: the Homeowner's Flood Insurance Affordability Act (HFIAA) which made important changes to the Biggert-Waters flood insurance law," says Charles Symington, Big "I" senior vice president for external and government affairs. "His commitment to small business and insurance consumers has been exemplary throughout his public service."

Every year, agents and brokers visit Capitol Hill offices to educate members of the Senate, House and their staff on issues that directly impact independent insurance agents, brokers and the consumers they serve. The Big "I" Legislative Conference is the insurance industry's best-attended, most effective legislative meeting.



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Don't Store Client Payment Information by Steve Anderson, The Steve Anderson Network Inc.

One of my more [popular workshops](#) is "Managing Errors and Omissions in a 24-7 World." In this program, I highlight emerging technology solutions and the advantages and benefits, as well as the pitfalls, these solutions bring to managing errors and omissions within your agency organization.

One item I talk about is agency staff storing customer electronic payment information within the agency management system. This information could include credit and/or debit card numbers, card expiration date, and the CVC code (the 3 or 4 digit number on the back of the

card). It also includes bank routing numbers and bank account numbers used to process ACH transactions.

Before you think "we do not do that" and delete this email, please don't assume that your staff does not capture this information. Very often, agency owners have no idea what happens at the desktop.

I have been in multiple agencies over the last six months where I observed staff on the phone with clients making electronic payments on their behalf on the insurance company website. In many cases, they were writing down the credit card information

on a yellow pad and then entering it into the insurance company payment processing page.

Some CSRs have told me that they capture this information as part of the client notes so they do not have to keep asking for the payment information.

While many agencies understand that they should not be capturing credit card information, it is a more common practice to scan and store checks received in payment for insurance premiums as part of the client file. These scanned checks are then attached to an activity note to verify the payment was received.



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Don't Store Client Payment Information (continued)

Your agency should not capture any client electronic payment information within your systems.

Period.

Forty-seven states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have all enacted legislation that requires private entities to notify individuals of security breaches of information involving personally identifiable information (PII).

While there are slight variations within each state, most statutes identify personal information that

requires notification if breached as:

"An individual's first name or first initial and last name in conjunction with any one or more of the following data elements, 1) Social Security number; 2) driver's license number; 3) or account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account."

Electronic payment information falls under this definition regardless of whether it is credit card/debit card information or bank account information. The bank routing number

and bank account number contained on a check will be considered as part of the definition of "personal information" and be subject to the state data breach notification requirement.

The liability your agency is incurring as a result of this practice is substantial.

But Isn't It Required...?

A common reason the agency is storing this payment information is that the "carriers require us to keep that information."

Another common reason I've heard to keep copies of client checks is for EFT payment setups on carrier

continued on page 14



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Don't Store Client Payment Information (continued)

websites. The carriers say they don't want customer banking information sent to them, so agencies are keeping a copy of the check in an activity in case there are questions down the road or the EFT doesn't get set up properly by the carrier.

If this is your procedure, it appears the insurance companies have successfully transferred the additional liability because of a data breach from themselves to you their agencies.

My recommendations:

Make sure your staff understands that they should not be capturing in any form — in the

management system or written down on yellow pads — any type of electronic payment information.

Do not scan checks and attach them to the client file. There is no need for any agency to keep this payment information.

Verify with every insurance company their actual requirements regarding retention of electronic payment information (including checks). Make sure to ask for this verification in writing from an officer of the insurance company.

Push back hard against any insurance company that says you are required to keep electronic payment information.

Storing client electronic information is simply bad business practice. Your organization cannot and should not take on the additional liability exposure if this personal information is breached.

How does your organization verify that staff does not store client electronic information? **Let me know.**

Steve Anderson, Editor,
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COMMISSIONER JIM DONELON

Managing Cybersecurity Risks

Cyberattacks, or crimes that try to damage, tamper or take data from a computer, system or network without approval, are a hazard of today's electronic information world. Attacks may come by way of internet sites and email and when a data breach occurs, reputational, legal, financial, and at times, regulatory risks are top concerns.

The recent cyberattack on Anthem, Inc. was the latest wake-up call to the corporate and regulatory world. Over the last 12 months, we have witnessed security data breaches of major U.S. corporations including Sony Pictures, Home Depot, Target and J.P. Morgan. But it is not only large corporations that are at risk. According to the U.S. Small Business Administration, nearly 20 percent of small businesses become victims of cybercrime and many of those businesses never fully recover from the attack.

Often small businesses don't realize their exposure to such risks. Not only is the business being attacked vulnerable to great harm, so are the businesses and individuals with which that company interacts. Small businesses are targeted by scammers not solely to steal the business' electronic data, but also to access larger sets of data held by those with whom the company conducts business. This snowball effect has the potential of causing even more widespread damage.

Protecting Your Business from Attack

When addressing cybersecurity concerns, experts recommend two primary strategies. The first focuses on prevention. Common practices include frequent back-ups of your important data as well as having antivirus protection. Small businesses may also incorporate layers of protection which can be recommended for their particular business needs by security experts.

Secondly, since cyber risk is not 100 percent eliminated through preventative security measures an important method of managing cyber risk is the purchase of a cyber liability insurance policy. Such a policy is in addition to a commercial general liability policy.

Federal and state governments, along with the private sector, are taking seriously the urgency to prioritize cybersecurity and follow best practices to prevent possible breaches in their data systems. I encourage you to join in the efforts by protecting yourself and educating your clients about the risks and solutions regarding this matter.

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A cyber liability policy protects both the business and its consumers when a data breach occurs.

Cyber liability insurance is not broadly purchased in the small business sector. It has been difficult to sell since small business owners are often not fully aware of the potential for loss in revenue, reputation and customer base they can face with just one cybersecurity failure. Insurance agents are critical in this discussion since they can change the level of preparedness for small businesses in their local areas.

The goal of the agent is two-fold. First they can educate small business owners on cybersecurity and make them aware of their options when it comes to cybersecurity insurance. Secondly, they are responsible to protect their own place of business and business data. Agents face significant risks and liabilities since they handle a large amount of personal data. Protecting such data is just as urgent and important for insurance agents as it is for the small businesses with which they work.

Getting Out the Message

At the state level, agents may gain a strong knowledge base on cybersecurity when attending continuing education classes required for their license renewal. Such sessions are conducted as part of our annual Filing and Compliance Seminar and may also be found through other CE opportunities.

I am, along with the National Association of Insurance Commissioners (NAIC), committed to addressing cybersecurity in the insurance sector. The NAIC website is a robust source of information on cybersecurity and serves as a great resource. It includes a new section for small businesses called *Insure U for Small Businesses* which contains useful information for agents and consumers alike.

The NAIC is closely monitoring the Anthem cybersecurity breach. Indiana Commissioner Stephen Robertson is meeting with Anthem executives regularly and has ensured that

the best possible identity protection services have been provided to those impacted by the security breach. The Louisiana Department of Insurance has joined all insurance commissioners, directors and superintendents in a weekly NAIC conference call for updates on Anthem progress in mitigating damage. Regulators are also conducting a multi-state financial and market conduct examination. The NAIC Cybersecurity (EX) Task Force will monitor these efforts, update best practices and determine whether regulatory action is warranted.

In addition, in mid-March the NAIC released two draft documents on cybersecurity for comment. The first, *Principles for Effective Cybersecurity Insurance Regulatory Guidance*, outlines the process for regulators to identify cyber risks and will help state insurance departments identify uniform standards. The second draft document, *Annual Statement Supplement for Cybersecurity*

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COMMISSIONER JIM DONELON

Managing Cybersecurity Risks (continued)

policies, is a form for companies providing cybersecurity coverage to provide comments about their exposures.

The National Conference of Insurance Legislators (NCOIL) has also indicated a high level of concern on cybersecurity measures needed in the business sector, particularly the insurance sector. Over at their 2015 Spring Meeting, NCOIL and regulators expressed their concern over how the insurance market as a whole can be impacted by a significant cyberattack. A panel of insurance regulators suggested that new tools are necessary to prepare for such an attack, giving regulators monitoring capabilities over insurers' current level of preparedness.

Additional Measures to Protect Yourself Against Fraud


Other practical measures one may take to protect against fraud include regular reviews of your credit reports as well as bank and credit card account statements for signs of suspicious or fraudulent activity. If an incident of identity theft is suspected, report it to your bank or credit card company immediately. Also report it to your local law enforcement, the Federal Trade Commission (FTC) or your state attorney general.

Federal and state governments, along with the private sector, are taking seriously the urgency to prioritize cybersecurity and follow best practices to prevent possible breaches in their data systems. I encourage you to join in the efforts by protecting yourself and educating your clients about the risks and solutions regarding this matter.



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IIABL Upcoming CALENDAR OF EVENTS

May 15, 2015	LA WC & CGL Issues On or About the Water 3 hrs CE Instructor: Patrick Deem	Kenner 9am – 12pm
May 15, 2015	10 Questions about the Business Auto Policy 3 hrs CE Instructor: Patrick Deem	Kenner 1pm – 4pm
May 19, 2015	Commercial Property Endorsements That Can Make You Money – 2 hours CE credit	Webinar 1pm – 3pm
May 20, 2015	NFIP Course Updated thru 2014 3 hrs Flood CE	Webinar 9am – 12pm
May 21, 2015	E&O Risk Management – 6 Hours CE including 3 Hours of Ethics	Webinar 8am – 2:30pm
May 21, 2015	E&O Risk Management Part 1 3 hours CE including 3 hours ethics	Webinar 9am – 12pm
May 21, 2015	E&O Risk Management Part 2 3 hours CE including 3 hours ethics	Webinar 1pm – 4pm
May 26, 2015	Certificates of Insurance 2 hrs CE	Webinar 9am – 12pm
June 2, 2015	E&O Risk Management – 6 Hours CE including 3 Hours of Ethics	Webinar 9am – 3:30pm
June 8, 2015	Data Privacy Insurance 2 Hours CE	Webinar 12pm – 2pm
June 9, 2015	E&O Risk Management Part 1 3 hours CE including 3 hours ethics	Webinar 12pm – 3pm
June 9, 2015	E&O Risk Management Part 2 3 hours CE including 3 hours ethics	Webinar 8am – 11am
June 11, 2015	Business Income - Beyond the Basics 3 Hours CE	Webinar 12pm – 3pm
June 11, 2015	Certificates of Insurance 3 Hours CE	Webinar 9am – 12pm
June 11, 2015	Workers Compensation Beyond the Basics 3 Hours CE	Webinar 8am – 11am

Q. I have a situation I've run into that I need your advice on. I am just beginning to work on a proposal for a piece of new business, and yesterday, the owner allowed me to review her current insurance coverages. She is a sole proprietor who does consulting work in the areas of marketing, branding, advertising, and promotions.

The question I have is on the Business Auto Policy. She and the d/b/a are shown as the named insured. There are two private passenger autos, both titled to her. She drives one, and her husband, who is retired, drives the other. They have no Personal Auto Policy.

Her current BAP has symbols 7, 8 & 9 for liability, but no Drive Other Car (DOC) endorsement. Physical damage is symbols 7+8. When I asked her why there is no DOC on the BAP, she said her current agent told her that symbol 7 covered the two owned autos, symbol 8 covered hired autos, and symbol 9 covered non-owned autos, which he said gave her "full coverage" for every situation. (Ugh!) Do you think she needs the DOC or not, and why?

A. First, being Old School, I am not a fan of combing personal and business exposures on the same



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: If BAP Has Symbols 8+9, Is a DOC Needed?

policy. But as so often is the case, the insurance producer is the caboose on the train, so you have to do the best you can with the situation.

For the discussion which follows, assume that your insured is Jill Smith (sole proprietor), and the Business Auto Policy (BAP) shows the named

insured as "Jill Smith, d/b/a JS Marketing & Promotions." The BAP has two declared autos, both titled to Jill: a Lincoln MKX, which she drives, and a Ford Explorer, which her husband Jack drives. As you indicated, the BAP has symbols 7+8+9 for liability. There are no other autos in the household, and therefore no Personal Auto Policy (PAP). Lastly, the coverage excerpts and commentary below are based on Insurance Services Office (ISO) forms and rules. Proprietary forms may be different.

Regarding coverage and potential gaps using symbols 8+9 for non-owned autos, here are what each symbol covers in the BAP:

**CA 00 01 10 13
Business Auto
Coverage Form
Section I – Covered
Autos
Symbol 8 – Hired
Autos Only: Only
those "autos" you
lease, hire, rent or**



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borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

Symbol 9 – Non Owned Autos

Only: Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership),

Ask Mike

continued

members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

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 or borrow except:

As the BAP is currently written, here are some exposures which are not covered (despite the assurances of Jill's current agent that she has "full coverage").

Situation #1: Jack flies to Panama City, Florida, to attend his 50th high school reunion, and rents a car.

Comments:

(1) Symbol 8 does not apply, since the car wasn't rented by "you" (named insured).

(2) Symbol 9 does not apply, since the car isn't "used in connection with your business."

(3) Jack has no liability

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Ask Mike

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coverage or physical damage coverage on the rented auto, since the Who Is An Insured provision only applies to permissive users of an auto "you [Jill] own, hire, or borrow."

Situation #2: Jack borrows a neighbor's pickup truck, to buy some bags of mulch for his rose beds.

Comments:

(1) Symbol 9 does not apply, since the pickup isn't "*used in connection with your business.*"

(2) Jack has no liability coverage or physical damage coverage on the pickup truck, since the Who Is An Insured provision only applies to permissive users of an auto "you [Jill]

own, hire, or borrow."

Situation #3: Jack and Jill's daughter Jillette turns 16, and Jack buys her a car, titling it in his name.

Comments: Under symbol 7, coverage for newly acquired autos only applies to autos acquired by "you" (named insured).

Individual Named Insured (INI)

endorsement. As to the DOC, I think the Individual Named Insured (INI) endorsement (CA 99 17) is the correct way to address the coverage issues for a sole proprietor, rather than the DOC endorsement.

See excerpt from the Insurance Services Office (ISO) Commercial Auto Manual:

Rule 91. Individual As The Named Insured.

A policy issued to an individual named insured may be endorsed with the appropriate individual named insured endorsement.

A. Family drive other car coverage may be provided at no additional charge if the policy covers:

1. A private passenger auto not used for public transportation or rented to others



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without a driver.

3. Use Individual Named Insured Endorsement CA 99 17.

Comments:

(1) Attachment of the endorsement is done at no charge.

(2) Requires that the named insured on the BAP be an individual (vs. corporation, etc.), although there is no place on the INI endorsement itself to show a named insured.

(3) At least one private passenger auto is declared on the BAP. (There can be additional types of autos also on the policy as well.)

(4) The endorsement amends liability and physical damage coverage in the BAP to provide

Ask Mike

continued

similar coverage to the drive other car provisions of a Personal Auto Policy (PAP). Family members are added as insureds. The endorsement does not address medical payments or uninsured motorists coverages.

(5) If the BAP includes Medical Payments endorsement (CA 99 03), and Uninsured Motorists endorsement (CA 21 48 or similar), coverage automatically applies to "family members."

(6) In "Situation #1" above, the Individual Named Insured endorsement provides coverage.

(7) In "Situation #2" above, the Individual Named Insured endorsement provides coverage.

(8) In "Situation #3" above, the Individual Named Insured endorsement does not provide coverage, since the endorsement excludes "autos owned by a family member."

(9) In "Situation #3" above, the BAP under symbol 7 for liability does not provide coverage, since "newly acquired autos" are covered only if acquired by "you" (named insured).

Drive Other Car (DOC)

endorsement. Use of the Drive Other Car endorsement (CA 99 10 10

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13) is governed by Rule 88 in the ISO Commercial Auto Manual:

Rule 88. Drive Other Car.

A. Eligibility

1. Use one of the following endorsements to provide coverage for named individuals while using autos the insured does not own, hire or borrow.

b. For an individual named insured who owns a private passenger auto and is not an auto dealer, refer to Rule **91**. Use Individual Named Insured Endorsement **CA 99 17**.

c. In all other circumstances, use Drive

Ask Mike

continued

Other Car Coverage – Broadened Coverage For Named Individuals Endorsement CA 99 10. Use Class Code 6679.

2. In all cases, Drive Other Car Coverage includes coverage for the spouse (or equivalent) for no additional charge.

Comments:

(1) The DOC offers coverages similar to the Individual Named Insured (INI) endorsement, but with some notable differences.
(2) The DOC can be written with any or all of these coverages: liability, medical

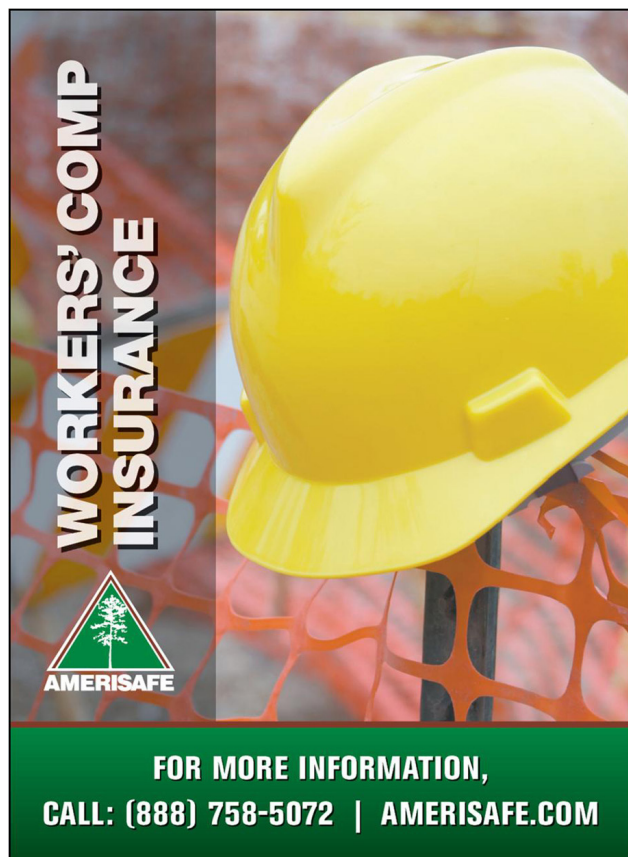
payments, uninsured motorists, and physical damage.

(3) The Schedule on the DOC has places to indicate limits of coverage and premiums for each of the coverages selected, as well as for the Name of the Individual.

(4) For liability and physical damage, coverage for the resident spouse is automatically included. Resident kids must be added, with additional premium.

(5) For medical payments and uninsured motorists coverages, resident family members are automatically included.

(6) As in the INI, the DOC excludes any auto owned by the Named Individual or any resident family member.



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Other issues.

(1) The INI and DOC are imperfect solutions for both the business exposures and family exposures being combined into the BAP.

(2) In My Perfect Insurance World (MPIW), Jill's auto insurance would be written on a Personal Auto Policy (PAP).

(3) In MPIW, symbol 7 would never be used.

(4) In MPIW, Jill should consult with her attorney about incorporating. This could create a possible E&O for the agent, as was the situation in an E&O case I read about. A sole proprietor decided to incorporate. However, he neglected to change the title on the personally-owned vehicles to the corporate

Ask Mike

continued

name. The insured's attorney advised the agent to change the named insured on the BAP to the corporate name. The agent did so without considering how the vehicles were currently titled, and since the BAP had symbol 2 for liability and physical damage, there was no coverage.

Additional reading. Here are links to some very informative article on the IIABA's Virtual University. ["Is DOC Needed If The BAP Has Symbol 1?"](#) ["PAP vs. BAP...Which Is The](#)

[Best?"](#)

["Triggering Coverage Under the Individual Named Insured Endorsement"](#) ["Does A Sole Proprietor Need Symbols 8 & 9 AND Driver Other Car Coverage?"](#)

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.

An archive of all of the Ask Mike articles dating back to 2004 can be found on the IIABL website, [Ask Mike Index 2015](#).

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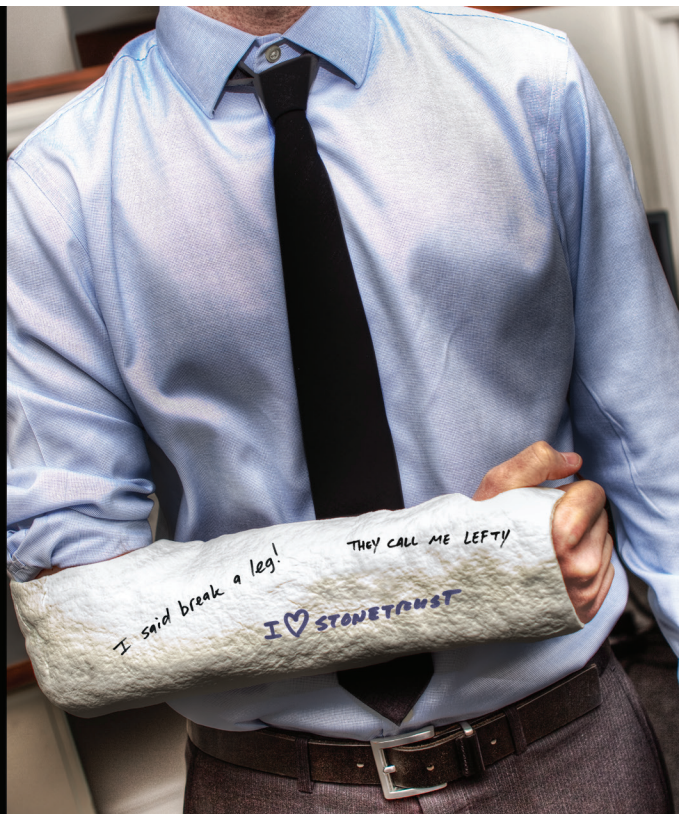
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