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**TECHNICAL ADVISORY**

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**SUBJECT:** LA Supreme Court Agent E&O Case – Duty of Agent

**BACKGROUND:** The Louisiana Supreme Court recently issued a major ruling outlining the duty of an insurance producer to recommend types and amount of coverages to clients. The case involved Isidore Newman School who brought suit against J. Everett Eaves insurance agency for failure to properly explain business income coverage and recommend adequate limits to coverage major losses caused by Hurricane Katrina. The decision is very favorable for insurance agents and is worthy of review.

The trial court and appeals court both held that the agency had an affirmative duty to adequately explain and recommend the types and amounts of coverage, and held in favor of the plaintiff. IIABL E&O insurer, Westport Insurance Company appealed to the Louisiana Supreme Court. IIABL filed an amicus brief on behalf of all our members who would have been adversely affected by the decision. The Louisiana Supreme Court took writs on the case, and issued the attached opinion on July 6, 2010.

**MAIN POINTS:** The Louisiana Supreme Court granted writs to determine whether the lower courts erred in finding that an insurance broker or agent has an affirmative duty to advise a client as to amounts of insurance coverage. The Fourth Circuit's plurality affirmed the trial court's ruling that J. Everett Eaves, Inc., breached its duty to properly explain the components of the Business Income and Extra Expense ("BI&EE") insurance coverage, and by failing to do so, the client was unable to make an informed choice regarding coverage. *Isidore Newman School v. J. Everett Eaves, Inc.*, 08-1368 (La. App. 4 Cir. 8/5/09), 17 So. 3d 465. For the reasons that follow, the

Louisiana Supreme Court held that the insurance agent/broker had no duty to recommend coverage amounts or to determine whether the client is underinsured; rather the client had a duty to determine the amounts of coverage needed and to review the policy upon receipt to determine that those needs are met.

After considering the record and jurisprudence, the Louisiana Supreme Court concluded that the lower courts erred in holding that the insurance broker or agent owed a duty to advise the client as to the amount of insurance coverage to obtain. They determined that an agent has a duty of "reasonable diligence" to advise the client, but this duty has not been expanded to include the obligation to advise whether the client has procured the correct amount or type of insurance coverage. The court further held that it is the insured's responsibility to request the type of insurance coverage, and the amount of coverage needed. It is not the agent's obligation to spontaneously or affirmatively identify the scope or the amount of insurance coverage the client needs. The court noted that it is also well settled that it is the insured's obligation to read the policy when received, since the insured is deemed to know the policy contents.

**NECESSARY  
ACTION:**

Please see the attached decision for details on this important court case that will affect all Louisiana agents.