LOUISIANAAGENT

DECEMBER 2020



Ask Jeff

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House Passes NDAA

What is "Vermin"?

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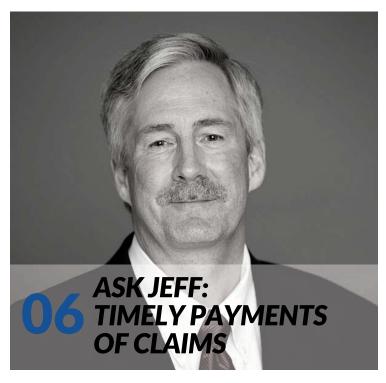
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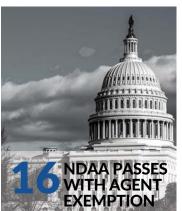




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One of the many great benefits of your IIABL membership is the outstanding staff resources that can help you with many agency issues. When you have a question or problem and don't know where to get help "Ask Jeff" or "Ask Ben!"

Jeff Albright and Ben Albright are available to assist you!

"Ask Jeff / Ask Ben" allows us to share important information that comes from the questions we receive from our member agents. This month the question is...

Hey Jeff, some of our hurricane claims are not getting paid on a timely basis, or the amount of the settlement is being disputed. What can I do to help my customer get paid?

TIMELY PAYMENT OF CLAIMS

We have been getting this question a lot lately as policyholders and agents struggle with the overwhelming number of claims resulting from five storms this year. The bad news is that insurers frequently get overwhelmed by major catastrophes and struggle to provide top quality claims service to every policyholder. The good news is that Louisiana has some statutory protections to assist policyholders in the claims process. Here are some helpful tips to get your customers' claims paid.

<u>Prepare Your Customer for the Catastrophe Claim Process</u>

Policyholders do not understand their insurance coverages and they do not understand the claims process. Educating the policyholder at the time they file the claim can eliminate much of the confusion and frustration. Some common policyholder concerns include:

- Understanding the overwhelming challenges of catastrophe adjusting
- Dealing with out of state cat adjusters
- Setting reasonable expectations for adjuster response times

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- Requirements to mitigate damages and cooperate with the insurer
- Requirements for detailed proof of loss
- Hurricane/named storm/wind deductibles
- Additional living expense
- Supplemental claims process
- Replacement cost ACV "holdback" provision until repairs are made
- Mortgage holder rights for joint payment/holding funds for repairs

Insurer Slow Paying the Claim? Remind the Company/Adjuster of Statutory Claim Requirements

LDI Bulletin 2020-07:

<u>Timely Payments of Property and Casualty</u> <u>Claims and Bad Faith Damages</u>

Bulletin 2020-07 is being issued to alert all authorized property and casualty insurers and all surplus lines insurers of the statutory provisions in Title 22 that set forth specific time frames whereby all property and casualty insurers (authorized or surplus lines) are obligated to make timely payment of claims by either first-party insureds or third-party claimants.

Bulletin 2020-07 also advises all property and casualty insurers (authorized or surplus lines) of the monetary damages that can be assessed against an insurer that fails to pay a valid claim once a satisfactory proof of loss has been submitted to the insurer. The monetary damages that can be imposed upon the insurer (authorized or surplus lines) for a breach of this duty of good faith and fair dealing in the timely payment of claims can range from 50% to 100% of the damages.

The long-standing statutory provisions cited in Bulletin 2020-07 that specify the specific time frame for the payment of property and casualty claims, as well as the monetary damages that can be imposed upon the insurer (authorized or surplus lines), are La. R.S. 22:1892 and 1973.

La. R.S. 22: 1892 provides that all insurers issuing any type of contract other than life, health or accident, or workers compensation contracts shall comply with the following in their claims handling practices:

1) Insurers shall pay the amount of any claim due any insured within thirty days after receipt of satisfactory proofs of loss from the insured or any party in interest.

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2) Insurers shall pay the amount of any third party property damage claim and of any reasonable medical expenses claim due any bona fide third party claimant within thirty days after written agreement of settlement of the claim.

3) All insurers shall make a written offer to settle any property damage claim, including a third party claim, within thirty days after receipt of satisfactory proof of loss of the claim.

View Bulletin 2020-07 HERE.

View R.S. 22:1892 HERE.

View R.S. 22:1973 HERE.

For further information, please contact Warren Bryd Deputy Commissioner of the Office of Property and Casualty Warren.Byrd@ldi.la.gov 225-342-5203

<u>Insurer and Policyholder Can't Agree on Settlement Amount?</u>

Invoke the Policy Appraisal Provision

Appraisal clauses have been a common provision of insurance policies for more than a century. Usually appearing in the conditions sections of policies, these provisions are designed to provide a nonjudicial means for resolving disputes between insurers and insureds when the two parties are unable to agree on the amount of money an insurer should pay to setting a claim.

The ISO Homeowners Appraisal Clause reads:

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

- 1) Pay its own appraiser; and
- 2) Bear the other expenses of the appraisal and umpire equally.

Still Can't Get the Claim Paid?

<u>File a Complaint with the Louisiana</u> <u>Department of Insurance</u>

The Louisiana Department of Insurance receives, on average, more than 3,600 insurance-related complaints every year. That means that every year LDI helps thousands of Louisiana residents get the insurance payments and other benefits and services due to them. Each year, millions of dollars are received by policyholders across the state who have requested assistance from the LDI.

LDI provides a step-by-step explanation of how to get a complaint form, how to file a complaint, and what help consumers can expect from LDI once a complaint has been filed. PAGE 10 LOUISIANAAGENT

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Information about how to file a complaint can be found <u>HERE</u>.

File a complaint with the Louisiana Department of Insurance <u>HERE</u>.

Complaints are handled by the LDI Office of Consumer Services.

For assistance, please contact: Jeffrey Zewe, Deputy Commissioner Jeffrey.Zewe@ldi.la.gov 225-342-0819

Robert Barnes, Insurance Manager Consumer Complaints Robert.Barnes@ldi.la.gov 225-219-7813

When All Else Fails... Hire an Attorney

Unfortunately, sometimes claims cannot be settled without legal action. Unlike claims, Louisiana allows legal action against an insurer for first-party property insurance claims for up to two years from the date of the loss.

View R.S. 22:868 HERE.



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5 ESSENTIAL SLACK CHANNELS FOR Working remote can mean that motivation levels across your team may be lower. So, it's **EVERY TEAM**

By: ePayPolicy

As many of us have transitioned to a hybrid remote workforce, we are adopting new technologies and organizational tools to keep us all connected and working efficiently. If you're like the team at ePayPolicy, Slack is your main and often only - form of communication across the company. With this being the new norm, it's important to make sure you're tapping into the full potential of the communication platforms your team is using.

A great way to start is be creating custom channels to replace communications that would normally happen around the office. These custom channels replace internal communications that email, phone calls, or texting just doesn't work well with.

Here are the 5 company-wide channels every workspace needs:

#WaterCooler

Want to talk about last night's game? Or invite your term to an outdoor meditation session? This is the channel for that. Any conversations unrelated to work can happen in this channel. Separating these topics from your work-related discussions will keep your workplace organized and easy to navigate.

happen in this channel. Separating these topics from your work-related discussions will keep your workplace organized and easy to navigate.

#ClientChatter

Working remote can mean that motivation important to keep morale up - did someone write a good review for the company? Did a client give someone on the team a shoutout? Repose it on this channel and reassure your team of the payoff for their hard work.

#Management

Every company needs on easy and fast form of communication between leadership and the rest of the team. Breaking news? A new product update? A partnership announcement? Post them in this channel and 1) make sure every employee has their notifications turned on for the channel, 2) restrict posting abilities to management only.

#Events

Events - both in-person and virtual ones - can be hard to keep track of. Hosting, attending or sponsoring an event? Post the event details and logistics in this channel. If someone has a question, they can easily ask it here.

#IdeasAndInspo

Did a creative ad catch your eye? Or come across an article with the newest industry tech? or even see a competitor's new offering or update? Share it in this channel to collaborate with your team on how your organization can reimagine it, learn from it, or even build off of it to make it your own!

There are so many ways to get creative with your Slack channels, but we hope that these 5 gave you some inspiration to start off with! Want more tips and tricks for your agency? Follow ePayPolicy on Facebook!



At LWCC, our business is Louisiana's business. As we continue to champion our great state, our agents are our first partner in preparing for the future of workers' comp.

LWCC remains dedicated to helping both our agents and our state thrive, and together we will continue to better Louisiana one business and one worker at a time.



Learn more about our commitment to both our agent partners and our state at louisianaloyal.com

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CERTIFICATES OF INSURANCE: WHAT LIMITS TO SHOW?

By: Bill Wilson, Founder of InsuranceCommentary.com Oct. 24, 2020

Recently, a question came up in the CPCU member forum about the ACORD 25 Certificate of Liability Insurance. It's the same question I've been getting for the last 20 years and the answer hasn't changed during those two decades or more.

Pretty much the same question was posed a few days later to Tim Dodge, AU, ARM, CPCU, Assistant VP of Research and Information for the Big "I" of New York:

"I have a commercial lines client who has a \$5,000,000 umbrella policy with us. The insured does not want to show on certificates that he has \$5,000,000 of excess coverage. He would like us to show on the requested certificates a \$2,000,000 umbrella policy. The insured just bumped up his umbrella for one client. The umbrella policy has always been \$2,000,000 and he will be changing the coverage back to \$2,000,000 at renewal. Is this something that I can do?

If you have 4 minutes and 25 seconds to spare, here is Tim's video response:

"A Few Minutes With Tim: Certificates of Insurance What Limits Should You Show?"

Tim is exactly right. The ACORD Forms Instruction Guide says that the limits shown on the ACORD 25 should be the POLICY limits. A certificate of insurance "certifies" the broad terms fo the POLICY, not the insurance requirements in a third-part contact.

Most states today have COI-specific laws or regulations that make it illegal to misrepresent the terms of an insurance policy. Arguably, showing limits less than the actual policy limits is a misrepresentation. If an insured doesn't want to share the full policy limits with a certificate holder, in most states you can advise your customer that you can't legally do this.

The following is a state-by-state listing of the statutes, regulations and DOI directives regarding certificates of insurance:

"Certificates of Insurance Laws & Regulations"

For more articles on COIs:

"Certificates of Insurance Resources"

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Finally, here is a related story from *Coverageer*:

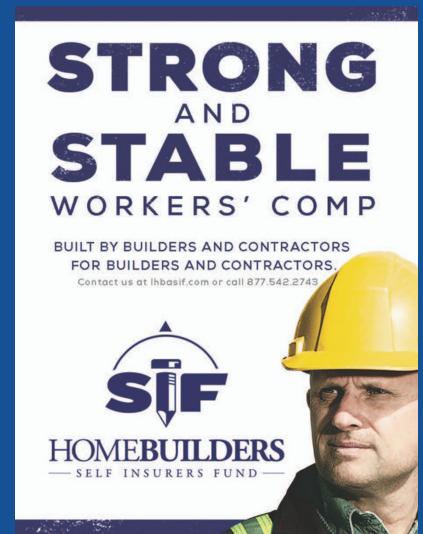
"Nexsys Technologies introduces Clear HOI"

If this can be done for the mortgage companies for homeowners insurance verification, why can't it be done for certificates of insurance in general??? Imagine the literally billions of dollars this could save overtime vs. the manual issuance of COIs:

"Certificates of Insurance... How Much Do They Really Cost?"

Bill Wilson Founder at <u>InsuranceCommentary.com</u>

One of the premier insurance educators in America on form, coverage, and technical issues; Founder and director of the Big "I" Virtual University; Retired Assoc. VP of Education and Research from Independent Insurance Agents & Brokers of America.



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House passes NDAA with Agent Exemption from Additional Federal Reporting Requirements

Big 'I' advocated to shield agents and brokers from new reporting requirements

WASHINGTON, DC, December 8, 2020 - The Independent Insurance Agents & Brokers of America (the Big "I") thanks the U.S. House of Representatives for exempting agents and brokers from new federal reporting requirements that were included in the National Defense Authorization Act (NDAA).

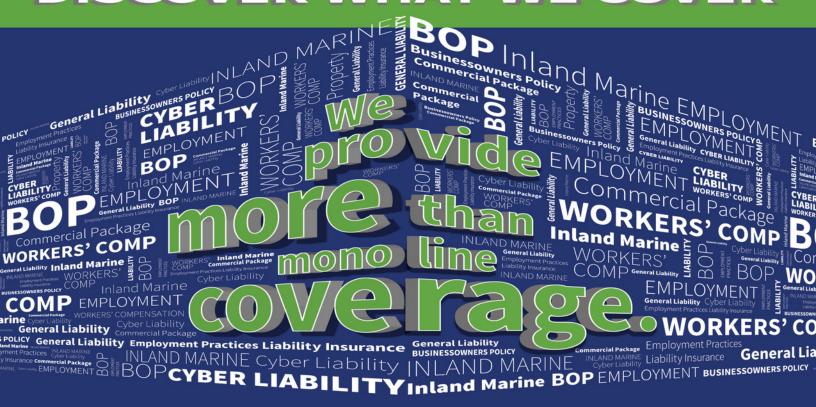
The Big 'I' argued to include a full exemption for agents and brokers in the House legislation by showing that insurance producers already provide beneficial ownership information to

state regulators and that the additional burden of providing it to the federal government would be duplicative and unnecessary.

The Big 'I' argued to include a full exemption for agents and brokers in the House legislation by showing that insurance producers already provide beneficial ownership information to state regulators and that the additional burden of providing it to the federal government would be duplicative and unnecessary.

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DISCOVER WHAT WE COVER



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"The Big 'I' is grateful that the House of Representative voted to pass a version of the NDAA which includes an exemption for insurance agents and brokers from new federal reporting requirements regarding small business beneficial ownership information," says Charles Symington, Big "I" Senior Vice President of External, Industry Governmental Affairs. "Throughout the legislative process, the Big 'I' was the only producer group that advocated on behalf of agents and brokers to ensure they would be excluded from this burdensome requirement."

This provision within the NDAA would require nearly every small business with fewer than 20 employees to file new reports on its beneficial ownership with the U.S. Department of the Treasury's Fincnail Crimes Enforcement Network (FinCEN). Businesses would have to comply with the new requirement annually starting within two years of the law's enactment for existing business or upon the incorporation of a new business. The penalties for failure to comply with these reporting requirements are severe, with civil penalties of up to \$10,000 and criminal penalties of up to two years in prison.

"The Big 'I' would especially like to thank Rep. Carolyn Maloney (D-NY) for her tireless work on this beneficial ownership provision," says Joseph Cortina, Big "I" Director of Federal Government Affairs. "Throughout the process, Rep. Maloney worked to make significant improvements to this legislation that helped insurance agents and brokers avoid unnecessary reporting burdens while still ensuring that bad actors are prevented from using anonymous shell companies to thwart law enforcement and hide their illicit activities.



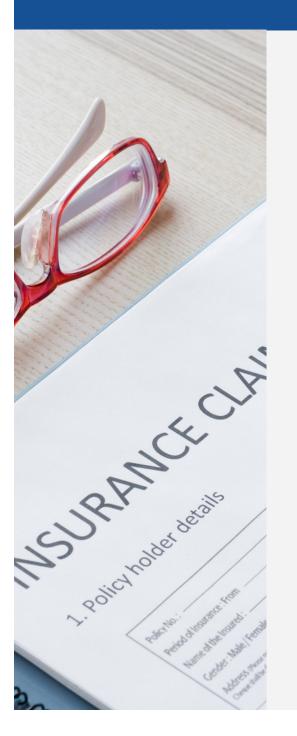
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FOR IMMEDIATE RELEASE: December 9, 2020

LOUISIANA POLICYHOLDERS HAVE EXTENDED DEADLINES TO FILE PROOF OF LOSS FOR HURRICANE CLAIMS



Commissioner of Insurance Jim Donelon wants Louisiana policyholders who need to file hurricane damage claims to know that they still have time to do so under Louisiana law.

Louisiana law (R.S. 22:1264) states that when a catastrophic event occurs and civil officials declare a state of disaster or emergency pursuant to law, owners of property within the declaration area shall have not less than 180 days from the date of the event to submit a proof of loss with their insurer.

Approximate proof of loss filing deadlines are as follows:

| EVENT DATE | 180-DAY DEADLINE |
|-----------------|------------------|
| Laura - Aug. 27 | Feb. 23, 2021 |
| Delta - Oct. 9 | April 7, 2021 |
| Zeta - Oct. 28 | April 26, 2021 |

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"Although I encourage policyholders to file their claims with their insurers as soon as possible to begin the recovery process, I know the level of damage caused by the 2020 hurricanes makes it very difficult for people to gather all of the information and documentation they need to file a detailed proof of loss to support their claim," said Commissioner Donelon.

Those needing to file a claim should review their policy and contact their agent for guidance on the exact proof of loss deadline per their policy and what is required in filing their proof of loss. The same Louisiana law extends the 180-day

deadline when the policyholders are denied access to their properties by civil authorities during a state of disaster or emergency.

Filing a sufficient proof of loss with an insurer can include not only filing the initial damage claim. but also documentation such photos. as contractor estimates. receipts for temporary repairs, and any other documentation required by the company.

Anyone with questions or concerns about the claim filing process of how their specific claim is being handled by their insurer can contact the Louisiana Department of Insurance at 1-800-259-5300 or submit a formal complaint at ldi.la.gov/complaints.



ANYTHING BUT BASIC



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WHAT IS A "VERMIN"

By: Bill Wilson, Founder at InsuranceCommentary.com Oct. 24, 2020

Note: The following article was written around 2001 and was updated for the 2011 edition of ISO's HO-3 policy form, so the information in this article is largely up to date, though it is provided primarily as a historical analysis of the subject matter and an exercise in determining the meaning of words when there is semantic ambiguity in insurance contract language.

What is a "Vermin"?

Mice, roaches, snakes, turtles, bats, pigeons, raccons, skunks, carpet beetles, squirrels. What do these critters have in common? They have all been cited as "vermin" in claim denials. In this article, we'll look at

these varmints, examining a number of court cases, in an effort to determine what's a vermin.

Here's a question received by the Big "I" Virtual University's "Ask an Expert" service from a state insurance department investigator:

"The wind blew out a 'plug' at the end of a roof vent and bats got inside causing considerable damage to the insulation. The insureds did not hear or see anything, however, eventually noticed a small and finally found the cause. No

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one has a clue as to why the 'plug' blew out and the insurance company is not disputing that part of the claim.

"The insuring policy has an exclusion for losses caused by birds, vermin, rodents, insects of domestic animals. The company has made the determination that bats fall under the definition of vermin.

"In checking with a standard dictionary, vermin is defined as: '(1) any of various small animals or insects that are destructive, annoying, or injurious to health, such as cockroaches or rats. (2) Any of various animals that prey on game, as the fox or weasel.'

"Additional, the same dictionary defines a bat as an animal. We think the company has made the right call, but were wondering if your experts could offer more to go on, either in support of claim payment or the denial. Thanks for your time."

Thanks for the question, it's a good one... and one we've all heard dozens of times. Our "Ask an Expert" service must get a vermin question at least once a month like this one just received after the initial publication of this article:

"Most policies exclude damage caused by 'vermin' but I haven't found a policy that contains a definition of 'vermin.' One of my companies takes the position that the definition of 'vermin' would include, amongst other things, rats, foxes, otters, badgers, weasels, minks, ferrets, muskrats, and skunks. Is there any place I can go to get scientific, or at least informed, the definition of the word 'vermin'? Something better than a dictionary definition."

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To make a long story short, the unanimous (which is somewhat unusual) opinion of the VU faculty is that a bat is NOT a vermin. We've had this question come up many times in claims denied due to damage by raccoons, skunks, snakes, turtles, and other critters... each time on the basis of the exclusion for "vermin." We've yet to find a court case (with one minor exception discussed below) that sided with the insurer.

Not all animals are vermin. In fact, since the policy excludes "domestic animals," damage caused by any non-domestic animal is covered... unless that animal is a bird, rodent, insect, or "vermin." [Note: Unline this older or proprietary HO policy, the current ISO HO-3 policy excludes "animals owned or kept by an 'insured'," not "domestic animals."] So, the issue is, what is a "vermin?" Since the term is not defined in the policy, we must look to other sources such as dictionary definition and court cases.

Of all the court cases I've seen, with one exception (Christ Episcopol Chruch of Bastrop, LA v. Church Insurance Company, 731 So. 2d 1071, Louisiana Court of Appeals, 1999), EVERY court that has reviewed this term has found it to be ambiguous. In the one case cited above (and below) where the exclusion was permitted, the damage was caused by mice and rats, which are conceded to be "vermin" by just about any accepted dictionary definition)in addition, the policy expressly excludes rodents). The

same can't be said for other animals such as bats.

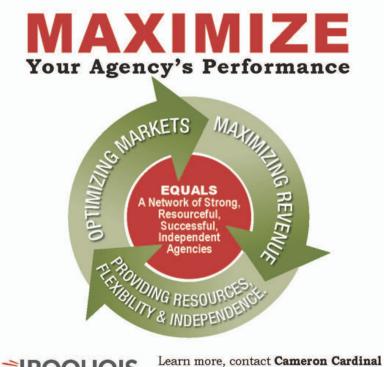
Here are some dictionary definitions that demonstrate the diversity of what "vermin" means:

The American Heritage Dictionary of the English Language, Fourth Edition, 2000:

Vermin... Various small animals or insects, such as rats or cockroaches, that are destructive, annoying, or injurious to health.

In the case of Sincoff v Liberty Mut. Fire Ins. Co., 11 NY2d 386, 390 (NY Court of Appeals, 1962), the court cites the following definitions.

Webster's New International Dictionary (2d ed., Unabridged, 1956) defines the word vermin as "[noun]... 1. Any noxious Continued on page 23.



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mischievous, or disgusting animal... 2. Specif.: Such an animal, or esp. such animals collectively, when of small size, of common occurrence, and difficult to control. Various insects as flies, lice, bedbugs, fleas, etc., various mammals, as rats, mice, weasels, etc., and sometimes such birds as hawks and owls, are classed as vermin."

Funk and Wagnall's New Standard Dictionary, at page 2644, defines vermin as "(1) Obnoxious insects, especially parasitic ones, as lice, fleas, or bedbugs. (2) [Eng.] Animals destructive to game, as weasels, polecats, badgers, otters, hawks, or owls. (3) [Austral.] Animals injurious to vegetation or to domestic animals."

In England, the word "vermin" has been defined by statute as follows: "'vermin' includes bugs [bedbugs], fleas, lice and itch mites and their eggs, larvae and pupae". (Public Health [London] Act, 1936, 26 Geo. 5 & 1 Edw. 8, ch. 50, S 304, subd. [1]; 15 Halsbury's Statutes of England [2d ed.], p. 1034). These creatures, constituting "vermin" under the English definition, all are parasitic in nature.

The Encyclopedia Americana (Vol. 28 [1955 ed.], pp. 16-17) defines "vermin" as: "A term comparable to 'weed' signifying small animals obnoxious in some way to human plans and operations. It has been applied to rats, mice, gophers, weasels, and other mammals; such insects as fleas and lice and at times to hawks, owls and other birds."

In the case of <u>North British & Mercantile Insurance</u> <u>Company v. Mercer</u>, 211 Ga. 161; 84 S.E.2d 570; (Georgia Supreme Court 1954) the court says:

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The smaller dictionaries define vermin to mean "noxious, mischievous or mean animals or insects." The larger New International Webster's Dictionary (2d ed.), after giving in substance the above meaning, proceeds to specify or particularize by namin the class of animals and insects to which it refers "as flies, lice, bedbugs, fleas, etc., various mammals, as rats, mice, weasels, etc."

In the case of <u>Stafford L. & Doris Jones v. American</u> <u>Economy Insurance Co.</u>, 672 S.W.2d 879; (Texas Court of Appeals, 1984), the court cites the following definition:

Webster's New Collegiate Dictionary, 1301 (1974) defines "vermin" as "small common harmful or objectionable animals (as lice or fleas) that are difficult to control... birds and mammals that prey on game... and offensive person."

In the case of <u>Christ Episcopol Church of Bastrop</u>, <u>LA v. Church Insurance Company</u>, 731 So. 2d 1071; (Louisiana Court of Appeals, 1999), the court cites these definitions:

Webster's Revised Unabridged Dictionary (G. & C. Merriam Co., 1913) defines vermin as: "[Pg 5] 2. A noxious or mischievous animal; especially, noxious little animals or insects, collectively, as squirrels, rats, mice, flies, lice, bugs, etc."

The American Dictionary of the English Language (Webster, 1828) also listed rats and mice as being "vermin."

American Heritage Dictionary of the English Language (Houghton Mifflin Co., 2d college ed. 1976), defines vermin as: "1. Any of various small animals or insects that are destructive.

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annoying, or injurious to health, cockroaches or rats."

The Random House Dictionary of the English Language, Unabridged (Random House, 2d ed. 1987), defines vermin as: "1. Noxious, objectionable or disgusting animals collectively, esp. those of small size that appear commonly and are difficult to control, as flies, lice, bedbugs, cockroaches, mice, and rats."

So, as you can see, the dictionary definitions vary widely, depending on what dictionary you're looking at. For that reason, most courts have found that there is no universally accepted definition of "vermin," so, therefore, the term is ambiguous.

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The only common definition we can find is that vermin are, primarily and collectively, very small, noxious creatures such as bugs, lice, etc., or mice, rats, and similar rodents. Oxford English Dictionary (Oxford Univ. Press, 2d ed. 1991) shows that the term "vermin" as it has been used regularly over the centuries, starting at least in 1513, has been accepted to include rats and mice.

The word "vermin" comes from the Latin vermis, which means "worm. That would imply that the origins of the word "vermin," dating to at least the early 16th century principally involve small, insect-like animals. Over the centuries, with scourges of mice and rats in Europe, that class of animals has been added to the definition.

In addition to the dictionary definitions above, below is a real quick analysis of the logic used in several court cases, including links to more detailed versions:

North British & Mercantile Insurance Company v. Mercer, 211 Ga. 161, 84 S.E.2d 570 (Georgia Supreme Court 1954)

In this case, damage was caused by squirrels. Although squirrels, like rats and mice, ar in the order of rodentia, the court felt, citing a dictionary definition, that not all rodents are "vermin," implying that, while rats and mice probably are, a squirrel is not. [Note: Under the current HO policy exclusion, since a squirrel IS a rodent, that portion of the exclusion would preclude coverage. -Ed.]

<u>Sincoff v. Liberty Mut. Fire Ins. Co.</u>, 11 N.Y.2d 386, 183 N.E.2d 899, 230 N.y.s.2d 13 (NY Court of Appeals, 1962)

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This case involved damage caused by carpet beetles. The court held that because the parties' experts disagreed over the meaning of the term vermin, and because the dictionaries had varying meanings, the term was capable of more than one meaning and the doubt was therefore resolved in favor of plaintiffs. One of the experts acknowledged that "vermin" is not a scientific term, but rather that it is a popular colloquial expression with loose and varied popular and dictionary definitions.

In this case, as it is in any case involving "all risk" coverage, the court put the burden of proof on the defendant to conclusively demonstrate that a carpet beetle was a vermin. The court said, "It was not sufficient

for the defendant to demonstrate that a purchaser of the policy involved herein might have construed 'vermin' to include carpet beetles. Defendant, to derive any benefit from the exclusory clause, was obliged to show: (1) that it would be unreasonable for the average man reading the policy to conclude that nonparasitic carpet beetles were not vermin, and (2) that its own construction was the only one that fairly could be placed on the policy. This the defendant was unable to do."

<u>Umanoff v. Nationwide Mutual Fire Insurance,</u> 110 Misc. 2d 474, 442 N.Y.S.2d 892 (NY Civil Court, 1981):

This case involved damage by raccoons where the court opined that, "A claim for damage to the structure of plaintiff's home following an invasion of raccoons is not barred by the exclusionary clause of the insurance policy,

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which specifically omits coverage for 'vermin', but does not define the term; the term "vermin" is capable of more than one meaning and, since ambiguities are construed against the insurer, the burden was on the insurer to establish that the term not only was susceptible of being defined by the average man so as to include raccoons, but that such definition was the only one that could fairly be placed thereon; moreover, including domestic animals as one of the excluded perils implies that nondomestic animals such as raccoons are covered."

<u>Jones v. American Economy Insurance Co.</u>, 672 S.W.2d 879 (Texas Court of Appeals, 1984):

This case, like <u>Mercer</u> above, involved damage by squirrels and the court opined, "'Vermin' is not a particular class of animals, such as rodents, to which squirrels belong. It is apparent that the definition of 'vermin' is very broad, covering entities as diverse as insects, animals, and persons. The few cases we have found in other

jurisdictions are divided on this question. We conclude that the term does not have a simple, plain, and generally accepted meaning and that it is susceptible of more than one reasonable interpretation; therefore, we hold that the term is ambiguous."

Marks v. Trinity Universal Insurance Company and Hardy & Murray, Inc., 531 So. 2d 516 (Louisiana Court of Appeals, 1988):

This case, like <u>Umanoff</u> above, involved raccoons and the court cited the logic of <u>Jones v. American</u> <u>Economy</u> above to find that "vermin" was ambiguous.

<u>Christ Episcopol Church of Bastrop, LA v. Church Insurance Company</u>, 731 So. 2d 1071 (Louisiana Court of Appeals, 1999):

This is the one case we know of where the court upheld the "vermin" exclusion. The case involved damage to the church organ caused by mice and

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rats. In citing various dictionary definitions and other sources, the court concluded that, despite varying definitions of "vermin," the common feature in each was that the term includes mice and rats. [Note: Again, this point is moot since the current ISO HO-3 policy expressly excludes rodents. – Ed.]

So, based on the above, in our opinion the insurer would be hard pressed to demonstrate, as required by them when denying a claim under an "all risk" policy, that the term "vermin" includes bats. I've personally been involved in claim denials based on the "vermin" exclusion that involved raccoons, skunks, turtles, and snakes. In each claim, after looking at the case law, the insurers reversed their denials and paid the claims.

Postscript:

We have been told that some courts (mostly lower level courts where decisions are usually not precedent setting nor governing as a matter of law) in a few states have found bats to be vermin because of the noxious fumes and residue from their urine and droppings.

So, there could be a case for an animal being a vermin in one circumstance and maybe not another, just as a normally harmless substance has been alleged to be a pollutant under certain circumstances. Bats are, for the most part, very beneficial creatures because they keep the mosquito (and other parasitic insect) populations down...one of those rascals can devour thousands of real vermin in a night! However, I wouldn't think kindly to them living in my attic...at THAT point, there's probably an equitable argument for it being a vermin, but the courts don't seem to support that situational position, just as relatively few courts have upheld the pollution exclusion for "harmless" substances.

IF the homeowners exclusion was written more like the commercial lines exclusion without the use of the term "vermin" (e.g., "Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals." in the ISO CP 10 30), it would probably be more likely that a claim such as this could be reliably denied. The more specific exclusion is probably more enforceable. I've gotten a couple of skunk claims paid for agents (believe it or not, one adjuster cited the pollution exclusion as part of the denial!), but pointed out that there wouldn't have been coverage under the CP form.

October 2002 Update:

A reader sent us another court case reference, though we do not have access to the actual transcript. According to him, in the case of Ben Har Holding Corp. v. Fox, 263 N.Y.S. 695 (1933), the court found that bedbugs, cockroaches, water bugs, and red ants, along with noxious little animals or insects, collectively, as squirrels, rats, mice, worms, flies, bugs, etc. were vermin. The subject of this case, crickets, were found not to be vermin.

2011 Update:

The 2011 ISO Homeowners filing that is effective in May 2011 in most states has now adopted the commercial lines exclusion and removed the specific exclusionary reference to "vermin."

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PRESIDENT SIGNS COVID RELIEF PACKAGE

By: Big "I" Government Affairs Staff

Late December 20, 2020, bipartisan Congressional leadership agreed to a roughly 900 billion-dollar COVID relief package. The COVID relief package is expected to be added to the government funding omnibus legislation and voted on as early as December 21, 2020, to stave off a federal government shutdown. Although the legislative text has not been released yet, we wanted to provide you with information as soon as possible about what is expected to be in the legislation. Below we have listed some of the most consequential legislative victories for Big "I" members and their clients - mainly pertaining to the Paycheck Protection program (PPP). The Big "I" Government Affairs Team was extremely active throughout these negotiations and strongly advocated through letters, phone calls, and zoom meetings to have many of the below issues included in the COVID relief legislation.

- The proposal would include roughly \$325 billion in small business relief, including \$284 billion for the PPP.
- This PPP funding includes money to allow the hardesthit small business to receive a second forgivable PPP loan. PPP eligibility for a second loan would likely be limited to small businesses that have sustained a revenue loss of 25%-30% in any quarter of 2020.

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- 501(c)(6) organizations such as local chambers of commerce, economic development organizations, and tourism offices, would become eligible for PPP loans. it is important to note that this provision is currently expected to have vague restrictions regarding "lobbying organization" and its definition will be a critical factor in determining if state associations are eligible for PPP loans.
- The legislation makes clear that business expenses paid for with the proceeds of PPP loans, even when forgiven, are tax-deductible, consistent with Congressional intent in the original CARES Act.
- The PPP loan forgiveness process is simplified for borrowers with PPP loans of \$150,000 or less.
- The legislation includes a provision to increase the business meals deduction to 100% (it's currently 50%) for 2021 and 2022.

In addition to the above issues that directly affect Big "I" members and their clients, the legislation also included a number of other important provisions. The package includes direct checks to individuals of \$600 and a weekly unemployment boost of \$300 for ten weeks. The deal would also include large sums of funding for vaccine development and distribution, education, transportation, and health care among other things. of note, the legislation did <u>not</u> include liability protections or money for state and local aid as lawmakers were unable to find a compromise on those two issues.

It is important to reiterate that legislative text has not yet been released and the above information is based on reports/unofficial summaries from the Hill. We will provide additional information as details continue to emerge and please be sure to read the December 21, 2020, Markets Pulse.





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#IIABRLunchesLocal

IIABR CONTRIBUTES GIFT CARDS FROM LOCAL RESTAURANTS TO SPONSOR AGENCY MEMBER LUNCHEONS

Independent Insurance Agents of Baton Rouge (IIABR) is helping to sponsor Independent Insurance Agents luncheons by supporting local restaurants in Baton Rouge. COVID-19 has changed our city and disrupted the way that organizations, like IIABR, connect and network with their members. Businesses across the state are suffering and that includes the restaurant industry.

"We wanted to support restaurants," states IIABR President, John Didier. "As a local Baton Rouge Association, it is important to our board of directors that our contribution helps local restaurants that we have seen struggle and want to see succeed during and beyond the pandemic."

As an organizationIIABR meets monthly at a local restaurant for a luncheon that would bring together at least fifty members in the area for networking, a delicious local meal, and an educational presentation. Due to the pandemic and restrictions on gathering, IIABR has not been able to host their monthly luncheons since March.

In a show of support, IIABR has purchased approximately \$3,000 worth of gift cards

from local Baton Rouge restaurants and donated them to each IIABR member agency to help sponsor an office luncheon.

Didier continues, "This initiative not only supports our local restaurants, but show our members that we continue to be committed to providing opportunities for our members to learn, network, and share valuable information. We hope each of our member agencies will take this opportunity to spend quality time with their staff with a great meal from one of our local restaurants and we look forward to the opportunity when we can gather again in the future."

President Didier is encouraging all IIABR members to share photos of their staff luncheon with the hashtag #IIABRLunchesLocal.



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2020 MARKET SHARE REPORT NOW AVAILABLE

Independent agents continue to hold a large piece of the commercial market at 84.5%, according to the 2020 Market Share Report. The report is now available to download.

The report's data is from A.M. Best and the analysis has been completed by the Big "I." This year's report marks the 25th year in which A.M. Best Company has provided the Big "I" with year-end industry market share data to provide an updated assessment of the state of the independent agency system.

The 2020 report reflects the analysis of data for select property-casualty premiums by line for the years

2017-2019, including personal auto, commercial auto, homeowners, commercial multi-peril, commercial group and workers compensation.

Accident and health premiums were not included in the report.

2017 to 2019 saw a 4.7% overall increase in direct written premium (DWP) across all lines reviewed. Notable, commercial auto showed an increase of 11.4% in DWP, while worker's compensation reported a loss of 3% DWP.

Over the last three study cycles (2016-2019) no notable gains or losses were indicated in any of the *Continued on page 35.*



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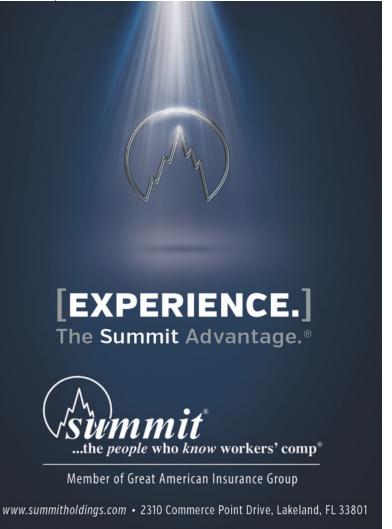
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data by distribution channel. Independent agency companies wrote 35.7% of all personal lines in 2019, up 2.3% from 2017. Direct response carriers' share grew by nearly 4%, while captive carriers lost 4%.

The report is <u>available for download</u>. Direct any questions regarding the report to Madelyn Flannagan, Vice President of Agent Development, Research, and Education, at Madelyn.Flannagan@iiaba.net.



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BIG "I" LEADERS NAMED AMONG TOP D.C. LOBBYISTS

The Hill, a prominent political newspaper, has once again named Bob Rusbuldt, Big "I" president & CEO, and Charles Symington, Big "I" senior vice president of external, industry and government affairs, among the top trade association lobbyists in Washington, D.C. this year.

As in previous years, the Big "I" was the only insurance agent/broker group to make the list.

In its announcement, The Hill stated the criteria for the recognition. "Not all of those honored on this list are registered lobbyists," the newspaper reported with its list. "The list highlights the broad range of talents needed to achieve success in the influence industry. But all of the people below are key players on K Street—and the ones the nation's biggest companies, labor unions and associations turn to when they want their voices heard in the nation's capital."

"The Big 'I' is proud to have our president & CEO and senior vice president of government affairs recognized, once again, by one of the premier political newspapers in the country," says Jon Jensen, Big "I" chairman, and president & CEO of Correll Insurance Group, Spartanburg, South Carolina. "We are grateful to Bob Rusbuldt, Charles Symington and the entire government affairs team for the hard work, meaningful relationships and dedication that consistently results in our association being named among the most influential in the country."

Congressional leaders regularly tap the Big "I" federal government affairs team for its political acumen for sitting on congressional steering committees, raising campaign dollars, hosting political events and strategizing to help members of Congress better serve their constituents and advance top issues. A vital component of the association's advocacy efforts is InsurPac, the Big "I" political action committee.

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BIG "I" REVIEWS THE REVISED CNA AGREEMENT

The Big "I" has reviewed the revised CNA Producer Agreement, which becomes effective on Jan. 1, 2021. As with past Big "I" reviews, this review focuses on insurance-related provisions and issues and is intended to assist members with understanding the terms of the agreement.

The Big "I" commends CNA for making many of the improvements that were suggested in the Big "I" review of the prior version of the agreement. We also thank CNA for reaching out to the Big "I" Office of General Counsel to go through the agreement and discuss possible improvements for future updates.

The Big "I" is pleased to make this and other company contract reviews available as a free benefit to all Big "I" members. to access a copy, log in to the Big "I" website and select Legal Advocacy & Governance in the Services dropdown menu, then click on Contract Reviews. The review is titled: "CNA Producer Agreement (effective Jan. 1, 2021) - Reviewed December 2020."

Please contact Scott Kneeland, scott.kneeland@iiaba.net, or Eric Lipton, eric.lipton@iiaba.net, with any questions.





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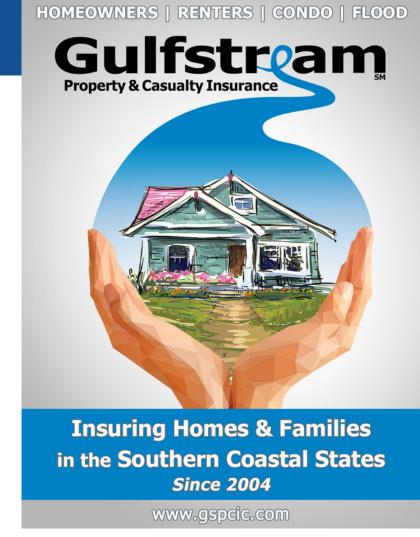
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