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**June 2020**

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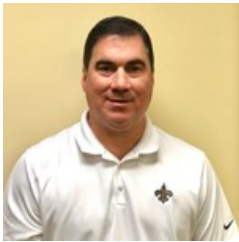
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## Goodbye But Not Farewell

**Joey O'Connor**  
IIABL President 2019-2020



I hope this finds everyone in good health and doing well. It is hard to believe that a year has gone by so quickly. It seems like just yesterday we were in Destin for the 2019

convention and the Covid Virus was the most distant thing from our minds. Storms, always a concern but a virus? Wow, have we learned just how life altering a virus can be for everyone?

As I reflect in this odd predicament, I realize just how fortunate and lucky I am to have served as your President over the last year. Our State Association under the leadership of our CEO, Jeff Albright, our incredibly

*Continued page 5*

## Hello—My Name Is....

**Brenda Case**  
IIABL President 2020-2021



I speak to you as your incoming IIABL President, not standing at the podium with your fellow agents and board members - just a few steps from beautiful white sand and blue-green water - but via newsletter!

And I thank you for your audience.

Who could have imagined 3 months ago that there would be no IIABL Convention, no catching up with old friends and new ones in the Exhibit Hall, no poolside treats, no dinners with colleagues, or libations in the lounge? No beach activities? No officer installation? Unthinkable!

And yet, here we are!

*Continued page 5*

*Continued page 5*



**3** *storms and you're still there.*

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talented board and our very capable staff, we have started to lay the ground work for some very impressive initiatives going forward especially in technology.

I would also be remised if I did not bring up Auto Tort reform. While some people were disappointed with the Governor's veto, that has not stopped the legislature from continuing to work in this special session to send more practical Auto Tort reform bills to him. We hope he eventually gets the message to do the right thing for all of Louisiana and not just a special interest group. A huge thank you to Jeff, David Tatman, Steve Waguespack and LABI for helping to lead the charge. I am sure Jeff will tell you in more detail about the wild and crazy ride it has been, but trust me when I tell you, he contends he has never seen a legislative session like this.....ever.

Continued page 6

Despite all this, I wish to assure you that the important work of IIABL, on your behalf, has continued to move forward without interruption.

I have lost count of the number of years that I have served you on the IIABL board. In all of those years I want you to know how impressed I have been with the selfless way in which each and every director - from agencies large & small, from major cities to the smallest of communities, and with all the differences that range would suggest - has looked after your interests. They have done so unselfishly, thoughtfully, and without personal agenda. Your current board is no exception, and I am honored to serve with them.

Add to that your highly capable & highly respected CEO Jeff Albright, and the top notch

Continued page 6



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So, what now? Well, I will move on to serving as Past President and you will have a new President, Brenda Case. I cannot think of anyone with a better overall skill set to step in and continue leading our organization. I think you will be extremely proud of the job she will do for all of us. I am excited to see her get to work with her energy, calm demeanor but her innate ability to cut right to the issue and offer effective solutions.

For me, I will continue to look for ways to continue to be involved and help make this association and industry the best that it can be. So, while this is goodbye it is certainly not a farewell by any means.

A big thank you to the Presidents, State National Directors and Boards that I have served with over the years. You have had a profound effect on me and have made me not only a better agent but a better person. Thank you to our Young Agent Chairs and Committee members, you are the future. Stay engaged because it is very important to all of us that you do. Thank you to our company and broker sponsors. You do so much for us and it is recognized and appreciated at every board meeting at just how big of an impact you have on our programs and initiatives.

Thank you to Jeff, Francine Berendson, Karen Kuylen, Rhonda Martinez, Lisa Crooks and Jamie Newchurch. You all are the Allstars and Hall of Famers in my book in the world of Associations. Thank you to our members. You truly make a difference and I ask you to continue staying engaged, especially with grassroots initiatives, even if you think it is ignored, because I can assure you it does not. I also ask you to get more involved and volunteer for board positions. We are stronger together.

Finally, thank you to my Parents, Nancy, and Joe O'Connor for supporting me every step of the way. My Dad has been an invaluable resource throughout my career and as a board member and now President. Especially to my Son, Ryan and Daughter Alayna and my Wife of over 28 years for sharing me with you all since back to 2003. It has been a long but such a worthwhile ride, and I am still YOUNG enough to help down the road in any manner that the situation calls.

As a famous Yankee baseball player, Lou Gehrig said: TODAY, I CONSIDER MYSELF THE LUCKIEST MAN ON THE FACE OF THE EARTH. Yes, I do Lou, yes, I do.

staff that you all know and love – Francine, Lisa, Rhonda, Jamie & Karen, and you can see why IIABL has been able to achieve the respect that it has. Whether you know it or not, Jeff is regarded in the industry as one of the top association CEO's in the country. And those of you that have worked with the IIABL staff - whether at the convention, in discussing your E&O renewal, or in any other way, know that these ladies work together like a well-oiled machine.

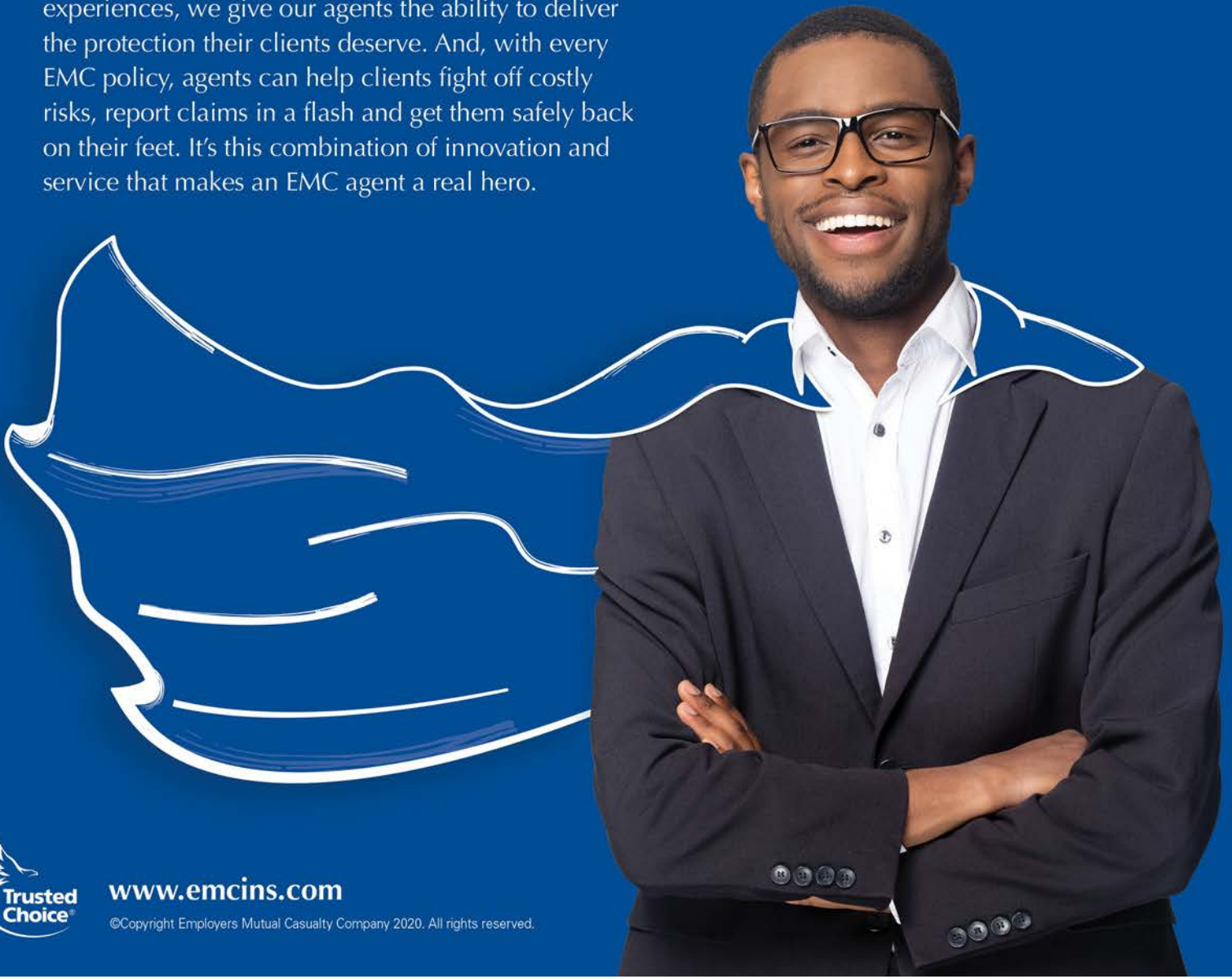
As your IIABL board, we take our responsibility to be your advocate seriously. Perhaps you do not remember completing that survey of concerns and opinions.... but a surprisingly large number of you do complete and return it. And we give it our full attention. We spend many hours at the beginning of each year slicing and dicing your responses, adding other ongoing issues based on your calls as well as current events, in establishing our annual working plan. And rest assured, that plan does not sit on a shelf. It is front and



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center of our attention every time we meet, whether as a group or in committee.

Sometimes what IIABL does for you is obvious. You are almost certainly aware of the major role that IIABL has played (and continues to play) in the current tort reform effort. But unless you were part of the conversations, you probably don't know how IIABL helped to deflect cyber legislation that would have been unnecessarily onerous for insurance agents. This and countless other issues are often resolved before you ever hear of them, through behind-the-scenes negotiation that never sees the light of day.

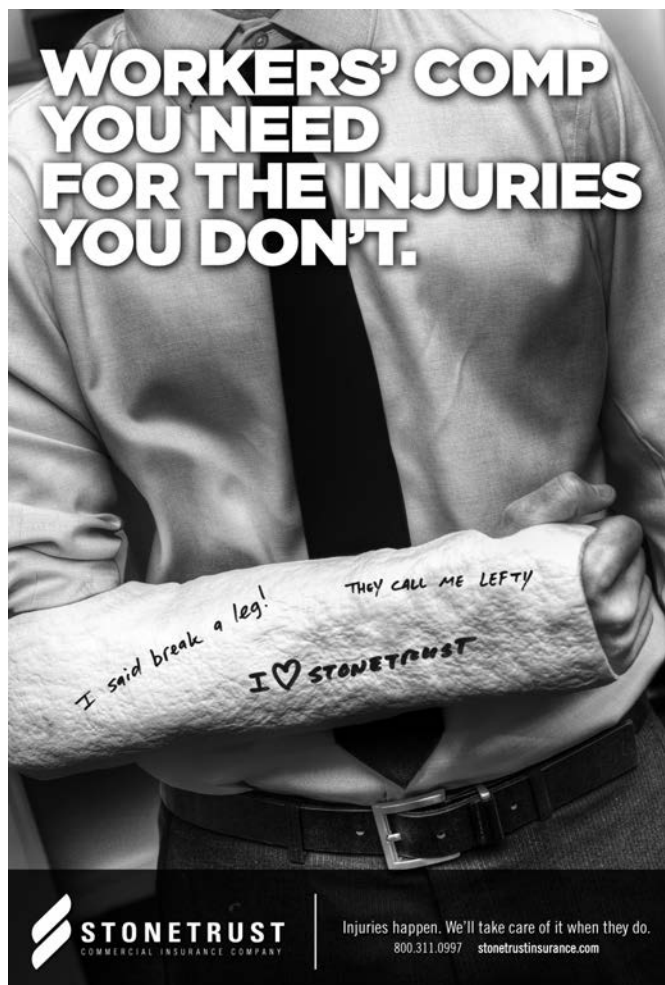
And we endeavor to offer to you the resources that you need to succeed and thrive

in today's market. Speaking of cyber regulations, you hopefully have seen that we offer solutions to help you comply by offering state-of-the-art cyber risk management services to our members at a discounted rate. This is one of many member benefits – you can peruse them all on our fresh new website, and I hope you will take a few minutes to do that.

Your president, Joey O'Connor, has been a steady guide for the board this past year, and I can honestly say that the board has not missed a beat despite the unforeseen challenges we have all encountered recently. It would be hard to count the planning sessions, the research homework, the phone calls, and the big & small meetings that have been required of him, all while still keeping things going smoothly at his own agency during this turbulent time. Throughout it all he has kept a cool head, exhibited compassion and caring for you, our members, and worked hard for consensus when agreement was not immediately universal. All of this has resulted in the best possible outcome for the many challenges that presented.

What can you expect in the coming year? Will there be meetings and gatherings as in the past? At this point, we do not know. The one thing we can assure you is that whatever we do, it will be done with you and your safety in mind, as well as the future success of your agencies and our industry.

You can expect to see front and center technology resources to help you compete in the world of tomorrow, help with markets, timely news and information, education brought to you in new ways, new products and resources to help you work through the issues affecting you, and always a close eye on and involvement in regulations and legislation that might affect you. We want to help you through



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In the coming year, I know that my job will be made easier by the support of your excellent board, executive committee, Jeff, and the IIABL staff.

Most importantly, however, I hope we can count on support and participation by **YOU**, our members and supporters. Let us hear from you, support our events, tell us what you need, act quickly when we ask for your

grassroots action. Together, we can make a difference – for our agencies, for our clients, and for our industry!

I am grateful for your confidence and look forward to serving you.

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## Coverage for Auto Loading and Unloading

Last week I received an inquiry from an independent agent who writes the CGL coverage (2013 ISO form) for an HVAC contractor, but the auto is written by a captive agency company. He does not have a copy of the auto policy but was told it was a personal auto policy with a "business" endorsement attached.

Most auto policies cover the ownership, maintenance, and use of covered autos. Some specifically include "loading and unloading," though

there are variations on who (named insured, family members, others) is covered for which coverage (liability, medical payments, etc.). However, the majority of forms I've reviewed are silent as to whether "use" includes loading and unloading the vehicle.

The current ISO business auto policy (BAP) makes no specific mention of loading or unloading. Coverage for loading and unloading is governed by liability exclusions 7 and 8 in



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the BAP. The result is that **the ISO BAP covers loading and unloading by hand, hand truck, or mechanical device attached to a covered auto.**

The ISO CGL does specifically state that "Use includes operation and 'loading or unloading.'" The loading/unloading coverage in the current ISO CGL policy is governed by CGL definitions 11 and 16.b. So, **the ISO CGL policy covers loading and unloading by a mechanical device other than a hand truck or mechanical device attached to an auto, for example a lift truck.**

Insuring a loading or unloading exposure using the ISO CGL and BAP forms significantly decreases the likelihood that a claim will fall into the coverage cracks between two policies, especially if each policy is written through a different insurer.

So, what happens if property is damaged while a covered auto is being loaded or unloaded by hand or a hand truck? CGL definition #11 for "loading or unloading" says that property damage is *excluded* "**While it is being moved** from an aircraft, watercraft, or 'auto' to the place where it is finally delivered." The ISO BAP is the policy that covers



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this exposure. However, in the current situation, we do not know what the captive agency insurer's policy says.

Several years ago, an agent came to me with a claim involving a furniture company that damaged the interior of an upscale home while employees hand-carried a piece of furniture. The ISO CGL policy did not cover this exposure, but the ISO BAP would have. Unfortunately, the auto exposure was insured through another captive agency insurer and their policy covered "ownership, maintenance or use" of the auto. Their interpretation of "use" was that it did not cover loading and unloading.

Again, this is why it's usually preferable to cover

general liability and auto liability with the same insurer using forms that were designed to work together.

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## Most Important Bills of the 2020 Regular Legislative Session

The 2020 Regular Session of the Louisiana Legislature was one for the history books! Shortly after opening, the Session was suspended as a result of the Covid-19 pandemic. When the legislature reconvened, the focus was on how to deal with Covid liability, economic, and state budget issues.

Demand for auto/tort reform was at a fever pitch when the session started. Covid diminished the momentum and confused the strategies for passing legislation and dealing with a likely veto by Governor Edwards.

The legislative process was severely diminished because of Covid safety measures like wearing masks and social distancing, which resulted in legislators barring lobbyists from

lobbying in the House and Senate chambers. It is really hard to talk to a legislator from the balcony!

As usual, there were a significant number of bills which could have caused significant problems for independent agents and the insurance industry. Thankfully, we were able to favorably amend or kill virtually all of those bills. Following are some of the more important of those bills:



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## Bad Bills Which Were Amended or Killed

SB 477 Ward, Rick(R)

Provides relative to business interruption insurance.

SB 477 would have required property insurers to pay business income claims for the Covid-19 pandemic. Thankfully, legislators understood the catastrophic impact that would have, and the bill failed in the House Insurance Committee.

**Bill History:** 5026029 H Vote failed in committee—House Insurance

HB 614 Seabaugh, Alan(R)  
Talbot, Kirk (F)(R)

Provides relative to data security for persons regulated by the commissioner of insurance.

HB 614 was introduced by the Louisiana Department of Insurance. The bill is the National Association of Insurance Commissioners Data Security Act. The original bill would have created extremely difficult problems for independent agents. IIABL worked extensively with Commissioner Donelon and his staff to amend the bill to exempt most agencies from the most onerous provisions of the bill. IIABL would like to thank Commissioner Donelon for working with IIABL on this legislation. IIABL will produce a Technical Advisory on HB 614 in the near future to provide more information.

**Bill History:** 08-01-20 S Voted to Involuntarily Defer in Committee Senate Insurance.

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SB 299	Jackson, Katrina (F)(D)	<p>Prohibits insurers from using certain criteria for insurance rate setting.</p> <p>SB 299 originally would have prohibited the use of insurance/ credit scores, widow/widower, or employment classification as rating factors. Senator Jackson amended the bill to prohibit the use of employment type as a rating factor. We informed senators that many types of commercial insurance use employment classifications and there were not sufficient votes to pass the bill.</p> <p><b><i>Bill History: 05-22-20 S Returned to the calendar-subject to call.</i></b></p>
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The potential liabilities related to the Covid pandemic are potentially catastrophic. The legislature passed several bills to limit liability related to Covid, including the following:

### **Covid19 Bills**

HB 826	Pressly, Thomas (F)(R) Peacock, Barrow(R)	<p>Limits liability of persons who provide relief or recovery equipment or services during a declared state emergency.</p> <p>SB 491 provides liability protection to persons or businesses that provide products or services used during a declared state of emergency.</p> <p><b><i>Bill History: 6-13-20 G Effective</i></b></p>
<a href="#">SB 491</a>	<a href="#">Hewitt, Sharon(R)</a> <a href="#">Miller, Gregory(R)</a>	<p>Limits liability of persons who provide relief or recovery equipment or services during a declared state emergency.</p> <p>SB 491 provides liability protection to persons or businesses that provide products or services used during a declared state of emergency.</p> <p><b><i>Bill History: 6-12-20 G Effective</i></b></p>
SB 508	McMath, Patrick (F)(R) Edmonds, Rick(R)	<p>Limits liability for restaurants that provide food-to-go during a state declared emergency.</p> <p>SB 508, now Act 305, effective 06/12/2020, protects restaurants, their owners, employees, etc. from liability related to Covid-19 except for gross negligence or willful or wanton misconduct.</p> <p><b><i>Bill History: 6-12-20 G Effective</i></b></p>

The biggest issue of the session was tort reform aimed at improving personal and commercial automobile insurance markets and reducing Louisiana's high premiums. Following are some of the more important auto/tort reform bills of the regular session:

### **Auto/Tort Related Bills**

SB 418

Talbot, Kirk (F)(R)  
Garofalo, Raymond(R)

Enacts the Omnibus Premium Reduction Act of 2020.

SB 418 was THE BILL of the 2020 Regular Session. This was the culmination of almost 3 years of work by IIABL, LABI and a host of other business organizations. Unfortunately, negotiations in the last few hours of the session resulted in some deeply flawed last minute amendments. Doesn't matter...Governor Edwards vetoed the bill. IIABL would like to thank...and give a shout out...to Senator Kirk Talbot, who has been a champion on this issue for two years.

***Bill History: 06-12-20 G Vetoed - Senate Bill 418 is neither a compromise nor is it a mandate to decrease rates. Further, the rate reduction in this bill is permissive, rather than mandatory.***



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HB 9	Garofalo, Raymond(R)	Enacts the Omnibus Premium Reduction Act of 2020. HB 9 was a companion bill to Talbot's SB 418. Legislative leadership decided strategically to focus all their efforts on the Talbot bill and let HB 9 on the calendar. Rep. Ray Garafalo has worked tirelessly to reform our tort system. Shout out to him as well!  <i>Bill History: 5-20-20 H Returned to the calendar—subject to call</i>
SB 50	McMath, Patrick (F)(R) Huval, Mike(R)	Prohibits use of a handheld wireless telecommunications device by a person when operating a motor vehicle upon any public roadway in this state. SB 50 would have required hands free use of cellphones. Cell-phone distracted driving is a major cause of automobile accidents. Rep. Mike Huval has tried for the past 3-4 years to pass a distracted driving bill. This year Huval had his own bill but also joined Senator McMath to try to pass such a bill, but the House rejected both bills.  <i>Bill History: 5-27-20 H Failed to pass (Vote: Y 40/N:59)</i>

Following are some other important insurance related bills on various subjects:

#### **Other Important Insurance Bills**

SB 65	Talbot, Kirk (F)(R) Brown, Chad(D)	Creates an exemption for members of the armed services to avoid a penalty for lapse of automobile coverage.
SB 156	Luneau, Jay(D) Larvadain, Ed (F)(D)	Prohibits insurance contracts from depriving courts of this state of the jurisdiction or venue of action against insurer.
SB 345	Johns, Ronnie(R) Stefanski, John(R)	Provides relative to noncompete agreements.  <i>Bill History: 08-01-20 G Effective</i>
SB 395	Cloud, Heather (F)(R) Johnson, Mike (F)(R)	Provides relative to false, misleading, or deceptive advertising by lawyers.  <i>Bill History: 06-12-20 G Vetoed - Since SB 115 by Senator Pat Connick is now signed, the enactment of Senate Bill 395 would lead to confusion and duplication.</i>

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## Cybersecurity Threats and How to Stay Safe During the COVID-19 Pandemic

LCG-Global has produced a 14-page document addressing issues such as:

### How is COVID-19 Increasing Cyber-Risk?

- **Fear & Urgency** – Beware of attacks through social engineering that can lead to credential theft, financial fraud, ransomware and more.
- **Increased Attack Surface** – Remote working is creating opportunities to exploit people and resources

### A Summary of the Latest COVID-19 Related Threat Intelligence

- **Fake Domains**
- **Phishing Attacks**
- **Use of Familiar Brands/Trademarks**
- **Sophisticated Attackers**
- **Malware**

- **Sensitive Information**
- **Strain on IT Staff**
- **VPN Security**
- **Unmanaged Devices**
- **Lack of Monitoring**
- **Insecure WiFi**
- **Skeleton Office Crews**

### Tips to Protect Your Company

- **Avoid Being A Victim of Social Engineering in the Office or at Home**
- **Prepare for Reduced Personnel in the Office**
- **Bolster Your Home Office Defenses**

### A Few Examples of COVID-19 Related Malware

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- CoFense Phishing Defense Center (PDC)<sup>3</sup> discovered a new phishing campaign that preys on Coronavirus fears to get recipients to **click on a malicious link** from the Centers for Disease Control (CDC) in a Microsoft® branded email.
- Known malware known as *Hancitor* has been observed using a **coronavirus Insurance healthcare provider theme**.
- A new **ransomware called CoronaVirus** is has been distributed through a fake web site pretending to promote the legitimate system optimization software and data recovery software called *WiseCleaner*.
- Malware called *AZORult* was used to **weaponize a coronavirus mapping software** in order to steal credentials such as usernames, passwords, credit card numbers and other sensitive information that is stored in the users' browser.
- An HHS.gov open redirect was recently being used by attackers to push malware payloads onto unsuspecting victims' systems with the

help of coronavirus-themed phishing emails.

[Download the complete 14-page document.](#)

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The IIABL Articles and By-Laws provide that the IIABL President-Elect becomes the President without further election. Brenda Case with Lowry-Dunham, Case & Vivien will take office July 1, 2020 as your 2020-2021 IIABL President.

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# IIABL EDUCATION & EVENTS CALENDAR

Webcasts			
<a href="#"><u>E&amp;O Risk Management</u></a> Click above for schedule Available on Demand	<a href="#"><u>Ethics</u></a> Click above for schedule Available on Demand	<a href="#"><u>Flood</u></a> Click above for schedule Available on Demand	<a href="#"><u>Commercial &amp; Personal Lines Courses</u></a> Click above for courses & dates for 2019
<a href="#"><u>2020 Webinar Calendar</u></a>			
Webinars			
7/2/2020 10am-12pm <a href="#"><u>Hot Topics in Personal Lines</u></a>  7/7/2020 12pm-3pm <a href="#"><u>Insurance Issues for Today's World</u></a>	7/14/20 10am—1pm <a href="#"><u>NFIP: Then and Now</u></a>  7/16/2020 10am-1pm <a href="#"><u>Certificates of Insurance- Emerging Issues</u></a>	7/20/2020 9:30am-11:30am <a href="#"><u>9 Rules for Reading an Insurance Policy</u></a>  7/24/2020 10am—1pm <a href="#"><u>Professional Ethics in the Insurance Industry</u></a>	7/27/20 10am—12pm <a href="#"><u>Those Kids and Their Cars!</u></a>  7/29/20 1pm-4pm <a href="#"><u>Who Owns What?</u></a>
Events			
To be Announced			

## Rate & Rule Filings

Company	Coverage Type	Overall % Impact:	Overall \$ Impact:	Number of Policyholders:	Changes
Great Divide Insurance Co	19-Commercial Auto	28.2%	\$675,834	43	New: 8/1/2020 Revised: 8/1/2020
State Farm Fire & Casualty State Farm Mutual Auto Ins	19-Private Passenger Auto	-9.6%	-\$131,946,974	1,005,216	New: 8/24/2020 Revised: 8/24/2020

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Harry Kelleher & Company  
Harahan

Brittini Lagarde—Young Agent Representative  
Southern Insurance Agency  
New Orleans

Philip McMahon—Board Member  
Paul's Agency  
Morgan City

Lydia McMorris—Board Member  
Alliant Insurance Services  
Baton Rouge

## THE OTHER "B.I." PROBLEM

*Whatever happens in legislatures, agents, brokers, and carriers face questions about bodily injury coverage for COVID-19*

"Okay, so you've told us what isn't covered. Now can you tell us what *is* covered?"

Things won't get any easier for insurance agents and brokers, now that the country is slowly reopening in the wake of a pandemic that appears to be far from over.

For several months, commercial producers have had to explain to their clients why business interruption insurance, for the most part, does not apply to the biggest business interruption in U.S. history. Now that states are relaxing stay-at-home restrictions, commercial clients have a myriad of questions which can be boiled down to one: *Can we be liable simply for reopening?*

Republicans in Congress and the state houses want to minimize that risk by enacting measures that would grant businesses some



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level of civil immunity in cases where patrons or employees are infected with the COVID-19 coronavirus. Key Democrats have balked at the idea, claiming that expanded immunity might encourage businesses to open before it is safe to do so.

Now that states are relaxing stay-at-home restrictions, commercial clients have a myriad of questions which can be boiled down to one: *Can we be liable simply for reopening?*

It's worth noting that even Kentucky Sen. Mitch McConnell, leader of the Republican majority in the U.S. Senate, supports standard carve-outs maintaining liability for acts of willful or gross negligence. This common exception recognizes that there is always *some* standard of care, however low.

### **Party time! Masks optional**

Consider this: In mid-May, the Wisconsin Supreme Court struck down the governor's extended stay-at-home order. Almost immediately, newscasts showed people in the Badger State gathering in restaurants and bars, generally in close proximity with each other, and almost always without face masks. After all, how can you eat and drink with a mask on? And what's the point of going to a bar if you can't circulate?

This behavior contrasted with that seen in subsequent weeks in other types of establishments across the country. Businesses permitted to do so reopened with mandatory or voluntary restrictions regarding the number of customers, the spacing of patrons, and the wearing of masks.

So, if a restaurant or bar reopens for business as usual—pretty much the only business it can provide, as take-out service is a poor substitute—would it be willfully or grossly negligent for not restricting patronage (apart from legal occupancy requirements), regulating how its customers moved about, or insisting they wear face masks?

That question is less pressing for businesses that do not rely on largely unregulated gatherings. Still, a major trend in modern commerce is to market an in-person "experience" at a time when people can purchase their commodities online. Given that competitive demand, no one wants to treat

their customers like unwelcome threats that need to be controlled.

So, what would constitute gross negligence in reopening a business, presuming there was some immunity from simple negligence? The answer to that question will probably come down somewhere between two approaches, exemplified by the early guidance for reopening the economy proposed by the U.S. Centers for Disease Control (CDC) in April 2020, and the final guidance issued by the CDC a month later.

The original proposal was highly prescriptive compared to the final guidelines. For those desiring rules-based clarity, the former provided detailed steps and benchmarks to follow. For those favoring flexibility, the final guidelines emphasized principles to guide one's judgment.

From a liability perspective, the detailed approach would essentially provide a checklist to demonstrate that a business had undertaken certain steps, but left open the possibility that something might be missed. The more flexible approach allows for more discretion, but requires more judgments businesses may have to defend.

### **Can carriers afford to be reasonable?**

As previously noted, commercial producers have been in the unenviable position of having to explain why "BI" coverage in property insurance (for "business income" or "business interruption") doesn't apply in pandemics under most policies. Now, as the economy reopens, agents and brokers may have to explain why "BI" liability coverage (for bodily injury) may not apply in all cases.

Commercial insureds have to hope that health insurance covers the costs of treating those infected by COVID-19, but some accounts will undoubtedly face claims of debilitating injury and wrongful death arising from exposure to the virus.

While insureds and their agents and brokers will expect coverage for such claims under their general liability policies, the fact is that carriers cannot afford to be generous regarding an exposure of such potential magnitude.

First off, many insureds will be surprised to learn that an infection contracted by an employee in the workplace is generally not cov-

ered under workers compensation (although some states may require it) and is explicitly excluded from coverage under a standard GL policy.

It would be harder for GL carriers to avoid covering claims from customers and members of the public who have infections traced back to the insured business. But, for sake of solvency, insurers may have to try.

One potential approach to denying pandemic-related BI claims would be to invoke pollution exclusions by claiming COVID-19 is an "irritant or contaminant" under the standard policy definition of "pollutants." Drafters of pollution exclusions probably did not have viruses in mind, but COVID-19 is like a pollutant in that it is a free-ranging, hazardous substance outside the control of the insured.

Another potential approach to denying coverage would be to challenge whether the loss arises from a covered "occurrence," as defined in standard liability forms as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." No matter how compel-

ling from an economic perspective, the decision to reopen a business with the knowledge that a hazard still exists is not an accident.

Carriers are working hard to avoid this type of scenario.

Just as they have advocated for a public program to compensate business owners for losses not covered by business interruption insurance, insurance trade associations are lobbying for liability protections that will allow enterprises to reopen without putting themselves or their liability insurers in jeopardy.

Source: Rough Notes

*Joseph S. Harrington, CPCU, is an independent business writer specializing in property and casualty insurance coverages and operations.*



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## COVID-19 Vacancy Alert

*This guest column by Ethan Gross, JD of Global Midwest Adjusters International discusses COVID-19 and vacancy issues.*

The vacancy rate in commercial buildings is increasing, and will continue to increase as the full economic impact of the COVID-19 pandemic continues to unfold. As a result, building owners and managers are at greater risk of suffering uninsured, or underinsured, damage to the properties in their portfolio. We are sending you this information as you are a property owner or a trusted legal advisor and counselor. Immediate action should be taken to protect and properly insure these properties to prevent further financial losses.

Most commercial building owners and managers are not aware that property is considered "vacant" in most insurance policies unless at least 31% of its total square footage is rented and being used for customary operations or used by the building owner for customary operations. When a building is considered "vacant" by the insurance company for more than 60

days many coverages no longer apply or are limited. Many partially occupied buildings may soon breach, or have already breached, this 31% threshold as a result of COVID-19. This article will discuss the increased risk and recommendations for actions that should be taken immediately to protect properties below the 31% threshold.

### Anticipated Increased Vacancies

According to FEMA it is estimated that 40 to 60 percent of small businesses never reopen following a disaster. Typically, this refers to fires, floods, hurricanes, etc. While the full impact of COVID-19 and the related stay at home orders are still unknown, the impact on small businesses will likely be similar to other disasters, and



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possibly worse. One of the reasons most small businesses fail following a disaster is they do not have sufficient insurance to rebuild. Businesses impacted by COVID-19 may not have the cost of physically rebuilding or replacing property, but they bear the full brunt of the lost income since most insurance policies will not pay for lost income resulting from a virus. As such, most small businesses are suffering greatly and, unfortunately, many will not survive these shutdowns. As these businesses close, many buildings will fall below the 31% insurance policy threshold for vacancy. Increased Risk

Vacant properties are at an increased risk for suffering substantial property damage. Some of the primary causes of damage to vacant properties are fire, water, vandalism, theft, weather related damage, and mold. As these properties are often not routinely inspected, initially, small issues can go undetected resulting in much larger losses. According to a report by the National Fire Protection Association fires in vacant structures result in approximately \$642 million dollars in damage each year. And 50% of vacant building fires

are intentionally set,[1] further demonstrating the increased risk.

### **What Happens to Insurance Coverage When a Building Becomes "Vacant"?**

**Vacancy Clause:** Standard commercial policies contain a vacancy clause that limits coverage for "vacant" buildings. These policies consider a building vacant unless at least 31% of its total square footage is rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations and/or is used by the building owner to conduct customary operations. It should be noted that buildings under construction or renovation are not considered vacant.


Once an insured building is considered vacant for more than 60 consecutive days most policies exclude coverage for the following causes of loss:

Vandalism; Sprinkler leakage (unless the system was protected against freezing) Building glass breakage; Water damage; Theft; or Attempted theft.

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Therefore, if the property is damaged by any of the above during the time it is "vacant" the insurance will not pay for any loss or damage. Even if the damage is the result of a covered cause of loss, such as fire, the policy provides a penalty that will reduce the amount otherwise payable by 15%. Caveat; some policies may exclude all losses if a building becomes vacant.

### **Protective Safeguard Endorsements:**

Separate from the vacancy endorsement, many policies contain what is referred to as a protective safeguard endorsement. Some policies call this a "Warranties" endorsement. Either way, these endorsements set forth very specific obligations that the insured must comply with as a condition of coverage. Failure to comply may void the policy completely.

Some examples of these safeguards, or warranties, of particular concern for vacant properties include requirements that buildings:

Have Watchmen and/or Caretakers; Are "locked and secured"; Maintain heat at specific minimum temperatures; Maintain monitored alarm system.

Again, failure to comply with these provisions may void a policy completely, even if the owner is unaware that this endorsement exists or that they are out of compliance.

### **How Do you Protect Your Property If It Becomes "Vacant?"**

**Policy Review:** Building owners and managers should review their policies thoroughly to determine if there are limitations or exclusions for vacancy or other protective safeguard or warranty endorsements that may apply if the building becomes vacant or warranties are breached. Most insureds are not aware of these limitations and exclusions in their policy.

It is also recommended that building owners and managers discuss vacancy and protective safeguard coverage concerns with an insurance professional.

**Vacancy Permit:** Perhaps the most important step a building owner or manager can do is to purchase a "Vacancy Permit." This endorsement will typically suspend some or all of the policy restrictions when the property is vacant for more than 60 days. Building owners and managers should discuss these endorsement options with

an insurance professional.

**Protect the Property:** As properties lose tenants and become partially or completely vacant, building owners and managers should take extra precautions to make sure the buildings are protected. There are numerous actions that can be taken to protect properties. The full extent of physical action that should be taken are beyond the scope of this article. For additional information on actions that may be taken to protect a vacant building from damage I recommend reviewing the following white paper prepared by Zurich North America. <http://hpd.zurichna.com/Whitepaper/Zurich-Protecting-your-vacant-building.pdf>

### **Conclusion**

Building owners and managers must review their insurance policies now and speak with an insurance professional to make sure they have a complete understanding of what is and what is not covered under their policy in the event a property becomes "vacant." Owners and managers should closely monitor the vacancy rate at their properties and if they are in danger of becoming "vacant" as defined in their insurance policies, take all steps to acquire the appropriate coverage. Finally, owners and managers must thoroughly research and then implement appropriate actions to physically protect their properties from damage.

[1] Fires in Vacant Buildings 2/18, NFPA Research Quincy, MA, Marty Ahrens

Source: FC&S

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