

Louisiana Agent

May 2020

**A publication of the Independent Insurance Agents &
Brokers of Louisiana**





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All Kinds of Tort Reform

There are all kinds of tort reform bills in this 2020 Regular Session of the Louisiana Legislature. Way too many to outline in a newsletter article. But we can give you an overview of the tort reform effort by highlighting three specific areas of reform.

Automobile Insurance / General Tort Reform

SB 418 by Sen. Kirk Talbot, R-River Ridge
Enacts the Omnibus Premium Reduction Act of 2020

Proposed law lowers Louisiana's jury trial threshold from \$50,000 to \$5,000, eliminates judicial collateral source rule, removes direction action against an insurer, eliminates the seatbelt gag rule, extends the prescription period for tort actions from one year to two years for motor vehicle accidents, and requires a mandatory ten percent rate reduction for personal auto insurance.

IIABL Position: SUPPORT

Status: Scheduled in the House Civil Law Committee Tuesday, May 26, 2020.

Click below to view full information on the bill:
<http://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=SB418&sbi=y>

HB 9 by Rep. Ray Garofalo, R-Chalmette
Enacts t Enacts the Omnibus Reduction Act of 2020

The proposed law increases the general one-year prescriptive period for tort actions to a two-year prescriptive period, reduces the jury trial threshold to \$5,000, provides for reduced damages for amounts paid or payable from collateral sources, and repeals the right of direct action against an insurer. It was amended in committee to mirror SB 418 by Sen. Kirk Talbot.

IIABL Position: SUPPORT

Status: Reported favorably as amended from House Committee on Civil Law and Procedure after an 11-3 vote; Subject to call on the House floor calendar.

Click below to view full information on the bill:
<http://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=HB9&sbi=y>

These are the bills that have received the most attention and has been the primary focus of IIABL's efforts on tort reform. SB 418 and HB 9 will bring Louisiana's legal system in line with other states in exchange for a mandatory auto insurance rate reduction. These bills will:

Lower Louisiana's jury trial threshold from \$50,000 to \$5,000.

Louisiana has the highest jury trial threshold in the nation at \$50,000. That means unless your case is valued at \$50,000 or higher, a judge rather than a jury, will decide your case. The end result is a trend of cases with higher value, but low enough to avoid a jury in the hopes of landing the right judge. Maryland has the next highest threshold at \$15,000 and 32 states have no jury trial threshold.

End the collateral source rule.

The current judicially made law prohibits evidence of what was actually paid by a plaintiff in medical bills and allows only evidence of full-price or "sticker price" medical bills to be submitted into evidence, without regard to contractual adjustments for health insurance or limits on reimbursement established by public payors. This allows plaintiffs and their attorneys to recover a windfall that far exceeds both their actual liability for medical care and the costs of health insurance premiums they have paid.

Remove the direct action statute.

Louisiana is one of only three states where a plaintiff can sue you and your insurance company. Most states recognize that bringing an insurance company into a lawsuit encourages a jury's tendency to award larger damages. It's human nature to see a company in a different light than a real person, but in the end it's a real person paying a very real bill.

Extend the prescriptions for tort actions from 1 year to 2 years for motor vehicle accidents.

Eliminate the seat belt gag order.

Seat belt usage is currently hidden from juries according to state law, even though unbelted occupants typically have medical costs three times higher than those wearing seat belts – as required by law.

Require a mandatory 10% rate reduction for personal auto insurance.

The bill also establishes a mandatory review of commercial auto insurance to lower rates when actuarially justified. This bill will help rebuild competition in our markets, providing real relief for Louisiana ratepayers.

SB 395 by Sen. Heather Cloud, R-Turkey Creek

Provides relative to false, misleading, or deceptive advertising.

Proposed law provides that no person in any advertisement shall make, or permit to be made, a false, misleading, or deceptive statement about a monetary result. Any violation shall subject the violator to any and all actions and penalties pursuant to the Unfair Trade Practices and Consumer Protection Law.

IIABL Position: SUPPORT

Status: Pending vote on House floor.

Click below to view full information on the bill:

<http://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=SB395&sbi=y>



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Covid-19 Tort Reform

It appears all but certain that trial lawyers will bring a great deal of litigation seeking damages for Covid-19 related claims. Business income losses, Workers' Compensation claims, and personal injury / general liability claims seem certain. The legislature is considering a number of bills to limit liability arising out of Covid-19.

HB 826 by Rep. Thomas Pressly, R-Shreveport

Provides relative to the limitations of liability due to the COVID-19 public health emergency

The proposed statute provides limited liability for healthcare providers, certain real estate owners, and certain private persons, firms, or corporations during the COVID-19 public health emergency.

IIABL Position: SUPPORT

Status: Pending vote on House floor.

Click below to view full information on the bill:

<http://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=HB826&sbi=y>

SB 491 by Sen. Hewitt

Limits liability of persons who provide relief or recovery equipment or services during a declared state emergency.

The proposed law amends the limitation of liability for rendering disaster relief or recovery equipment or services during a declared state of emergency to include an entity making masks and homemade sanitizer. Proposed law further provides immunity during a declared state of emergency for an entity delivering disaster relief in coordination with the federal government, the state, or its political subdivisions, except in the event of gross negligence or willful misconduct.

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IIABL Position: SUPPORT

Status: Scheduled in the House Civil Law Committee Tuesday, May 26, 2020.

Click below to view full information on the bill:
<http://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=SB491&sbi=y>

SB 508 by Sen. Patrick McMath, R-Covington

Limits liability for restaurants that provide food-to-go during a state declared emergency.

The proposed law provides that a restaurant which, in good faith and regardless of compensation, provides food-to-go by drive-through during a declared state of emergency, when that state of emergency prohibits the congregation of persons within a restaurant, shall not be liable for any civil damages or injury, unless the damages or injury was caused by gross negligence or willful and wanton misconduct.

IIABL Position: SUPPORT

Status: Scheduled in the House Civil Law Committee Tuesday, May 26, 2020.

Click below to view full information on the bill:
<http://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=SB508&sbi=y>

Coastal Lawsuit Tort Reform

SB 359 was introduced in response to a large number of lawsuits filed by a few select parishes, which challenge decades of state-permitted oil and gas activity in the coastal zone. The parish litigation constitutes an unprecedented abuse of the statute that has effectively blurred the lines of enforcement authority over "uses of state concern." SB 359 will amend Louisiana's State and Local Coastal Resource Management Act (SLCRMA) to reaffirm the state's proper role in enforcement actions across the coastal zone. This clarification will ensure the state is in control of the existing lawsuits and ensure that 100 percent of any funds recovered under SLCRMA, will be spent directly on coastal restoration and hurricane protection, as the Legislature intended.

SB 359 by Sen. Bob Hensgens, R-Abbeville

Provides for the enforcement of coastal use permits.

The proposed law authorizes the secretary of the Department of Natural Resources, or the attorney general, to bring such actions necessary to ensure no violation of permit uses of state concern and no violation of permit uses of local concern are made in the coastal zone. It further provides that authority of a district attorney or local government to bring a legal action shall be limited to uses of local concern within their jurisdiction. Technical amendments were added in May 7, 2020 in the Senate Committee on Natural Resources.

Status: Returned to the Senate calendar subject to call

Click below to view full information on the bill:

<http://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=SB359&sbi=y>

Trusted Choice Relief Grants

The Trusted Choice® COVID-19 Relief Fund was established to provide critical relief to independent insurance agencies and brokerages and their owners and employees experiencing economic disruption or loss or financial distress as a result of the COVID-19 pandemic. Grants may be used for technology and communications, lost wages and benefits (healthcare), and more. For the list of eligible and ineligible expenses, see below.

A special thank you to [Progressive Insurance](#) for its generous donation to the fund! A special thank you to [Foremost and Bristol West](#) for their generous donation to the fund!

13 Big I Louisiana members have received grants for a total of \$40,750.00. There have been 2 rounds of grant processing and round 3 will be announced shortly.

Thank you Trusted Choice!



Bill Wilson
Property & Casualty Insurance Commentary

It's Not Just About "Direct Physical Damage"

Over the past few weeks, I've read well over 400 articles, many by attorneys, about whether there is any business income coverage for the COVID-19 pandemic. A primary focus of the coverage analysis articles is whether or not there has been any "direct physical damage" caused by the SARS-CoV-2 virus.

For most business income policy forms, that may be important when it comes to business income coverage for damage ON the described premises, but it may be far less important when it comes to coverage for business income loss due to orders of civil authority. Here's why.

Last week, I reviewed the civil authority cov-

erage in ISO CP 00 30 forms with edition dates of 1988, 1990, 1991, **1995**, 2000, 2002, **2007**, and 2012.

There was no change in coverage until 1995 when the 72-hour waiting period was specifically referenced in this coverage and the coverage was extended from 2 to 3 weeks.

There was no subsequent change until 2007 when coverage was extended from 3 to 4 weeks and the coverage grant was modified significantly.

For policy edition dates up to 2007, coverage required that a civil authority "prohibits access to the described premises due to **direct physical** loss of or damage to property, other than at the described premises, caused by or



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resulting from any Covered Cause of Loss."

In the 2007 edition, ISO changed the "direct physical" requirement and introduced two requirements for coverage:

The trigger in 2007 becomes "damage to property" not "direct physical loss of or damage to property."

The civil authority must prohibit "**Access to the area** immediately surrounding the damaged property" and "the described premises are within that area but are not more than one mile from the damaged property...."

"The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property."

I reviewed the ISO Forms Filing CF-2007-OFR07 that was submitted to most state regulators but it really doesn't say much about these changes, In particular, it doesn't explain why the "direct physical loss of or" language was removed, leaving only the "damage to property" requirement.

The significance of this change is that insureds that have the 2007 or 2012 editions of the CP 00 30 do not have to prove "**direct physical** loss of or damage to property" but only "damage to property" away from, but within a mile of, the described premises. However, they still have the burden of demonstrating the actual existence of "damage to property."

But that being said, keep in mind the newly introduced language that requires that the civil authority must prohibit "**Access to the area** immediately surrounding the damaged



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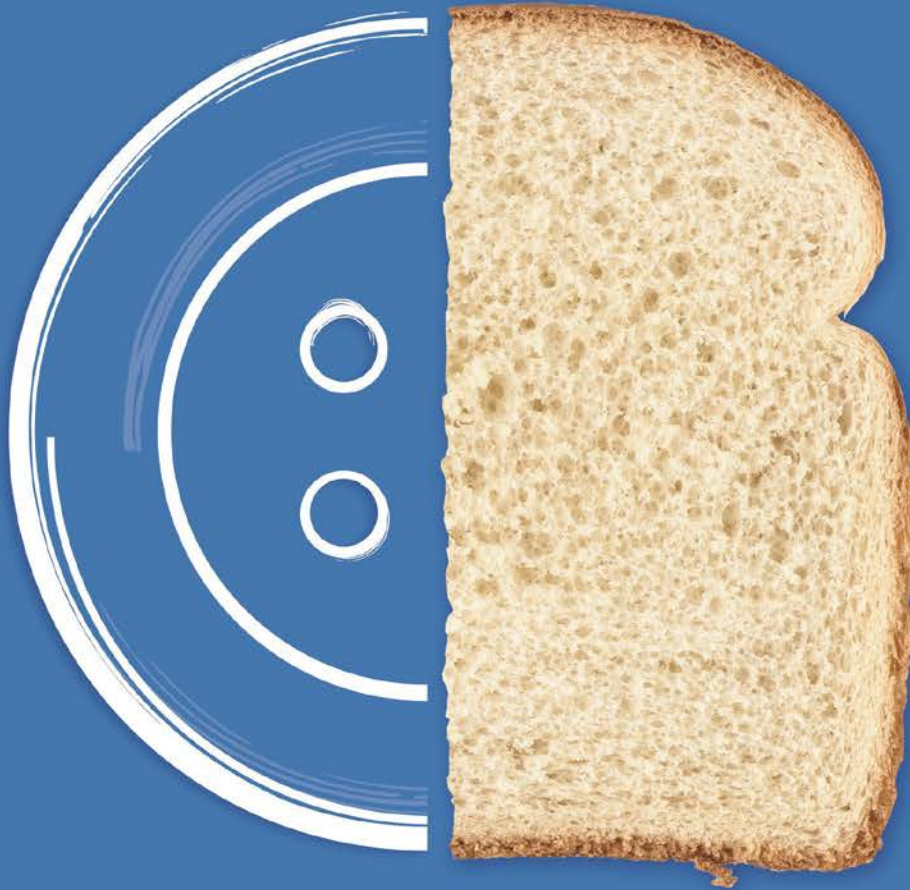
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For the most part, business owners have been free to access their businesses. Likewise, while the business might not be open to the public, the public is free to walk or drive down the street in these areas. There is no prohibited access to the “area” where businesses are located.

So, while “direct physical” loss or damage is a primary coverage issue in earlier editions of the ISO CP 00 30, in later editions “access to the area” in which a business is located is potentially even more of a problematic issue in seeking coverage.

Once again, this issue illustrates why it is critically important to read the precise language in the insurance contract and not make generalizations about coverage. RTFP!





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Should You Use Google Meet Instead of Zoom?

TECH TIPS



We have all had a crash course in how to use video conferencing tools to get things done.

This week I participated in a 4-hour board of directors meeting because we could not meet in person. Everyone is experiencing the benefits and drawbacks of video.

Zoom is one of the most downloaded video conferencing programs right now and for a good reason. I have been using Zoom for a few years because it is easy to use and the video and audio quality is excellent, even when using a laptop webcam and microphone. They have an Outlook plugin and Chrome browser extension to make it easier to launch the program or invite people to your meeting without having to type in a web address or close one program to launch an app.

Google is promoting its platform – [Google Meet](#) – as an alternative to other video programs. It does not want to be left out!

The Rundown on Google Meet

Google Meet is a video meeting platform available to anyone with a G Suite account. Like most programs, Google Meet lets you connect with others via audio or video through your computer's web browser, or using the Meet app. Launching your meeting is straightforward with invitations being sent through email. You can easily tap into your Gmail contact list to invite colleagues to join you or add contacts directly through Meet. If recipients have a Google account, the meeting is automatically added to their calendar and reminders are set.

This video conference program gives you a specific meeting ID that you can use over and over again. You can also create additional rooms so that multiple meetings can be held at the same time. These can also be used as breakout rooms for more in-depth

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collaboration on important topics or team-building exercises.

Free Until September 30

Google recently announced they are making Google Meet free for everyone.

For customers who are new to G Suite, they introduced a new way to get started quickly with Google Meet: G Suite Essentials, an integrated workspace that also includes Google Docs, Sheets, and Slides for full content collaboration, Google Drive for cloud storage, and enterprise-grade support. G Suite Essentials works with your existing productivity tools so you can get started immediately without having to migrate your email or calendar. If you're interested in G Suite Essentials, [check them out for help to get you started](#).

If you already have G Suite, Google Meet is included in your G Suite license, and until September 30, Google is opening access to advanced features for free. These advance features include:

- Larger meetings, for up to 250 participants per call

- Live streaming for up to 100,000 viewers within a domain

- Secure meeting recordings saved to Google Drive so you can share with employees who can't attend

If you are already a Google G Suite customer, then using Google Meet makes sense.

If you are using Microsoft 365, then [Microsoft Teams](#) could be the best tool. And, if you are already using Zoom (or another platform), you will need to determine if it is worth the effort to change.

What I do know is you might have signed up for one of these platforms thinking it would be temporary. Video conferencing has quickly become an essential tool for your organization. Take the time to evaluate all the options.

What video platform have you decided is best?

Providing Non-Insurance COVID-19 Advice

Businesses around the country are reopening or resuming semi-normal operations. They may realize that their insurance policies likely do not provide coverage for COVID-19 claims. Property policies typically require direct physical loss, CGL policies may have communicable disease exclusions like the ISO CG 21 32.

As a result, insureds may be seeking noninsurance risk management advice from agents. For example, the Big "I" Virtual University's "Ask an Expert" service received the following question from an agent:

"We have several clients that are nonprofit private swimming pool clubs. As we begin to reopen after the pandemic, these organizations are looking to us for how best to reopen safely and how their insurance will respond. We know that their insurance will not respond to a COVID-19 related lawsuit, but how can we help with waivers and standard procedures that will give them a level of comfort that they can reopen?"

First of all, E&O experts recommend that agents should not opine about coverage for COVID-19 claims, but rather refer questions to the carrier(s). I wrote about that in [this article](#).

Almost three years ago, I wrote about "[The Danger of Being Too Helpful](#)." In this article, I provided a dozen examples of agents providing advice that likely go beyond the norm for an insurance agent (possibly resulting in a lack of E&O coverage if a claim or suit arises from the advice) or otherwise exceed the expertise of most agents and, as a result,

heighten the E&O exposure. They also don't serve the customer well if the advice provided isn't appropriate.

In the example above, unless you have a license to practice law, you should probably not be assisting customers in drafting liability waivers. Unless you have a license to practice medicine, you should probably not be assisting customers in drafting procedures for minimizing COVID-19 exposures. Even seasoned risk management experts would want professional counsel in assisting a customer.

The CDC has advisory practices for various types of businesses and health exposures. For example, [this page](#) on their web site addresses "Healthy Swimming." The customer of this agent can dig deeper on the CDC web site for advice and seek guidance from local health officials. For waivers, the customer should consult with a qualified attorney.

The hallmark of a good agent, especially those providing customer service, is a desire to be helpful to customers. However, exceeding one's expertise is probably not being helpful and, in fact, can be dangerous to both the customer and the agency's E&O policy.

Author: Bill Wilson
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What You Do and Don't Do When a COVID-19 E&O Suit Arrives

COVID-19 has changed the agent's errors and omissions (E&O) landscape for the next several months. While we can't predict the number of agents who may have E&O claims at this point, the odds are high that if you don't get sued, an agent you know will.

Proper actions and reactions when threatened or served with an E&O suit arising out of this pandemic are of utmost importance. Once a threat is made or a suit filed, the allegedly improper act or omission has already occurred - don't worsen the situation by making bad decisions. Remember these "dos" and "don'ts" if you find yourself in an E&O situation.

Let's start with the first **MAJOR** don't: **Do not**

overreact to the claim. Understand that there is no shame in being accused of an error or omission, especially given the weird aspects of this COVID-19 situation. Even the best practices and procedures may not protect the agency right now. Anger, either toward yourself or others, is counterproductive and serves only to increase the weight of the situation.

Do Not Do These Things

Do not, under any circumstances, alter the client's file. What's done is done. Making changes creates the appearance that there is something to hide. Accept what is there and prepare for what comes next.



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Do not discuss the claim with anyone other than the claims representative, defense attorney or any other member of the office directly involved in the claim. The only individuals who need to be involved in any discussion related to any E&O claim are those personnel directly related to the care of the plaintiff's account and those defending the agency.

Do not make any admission of liability or wrongdoing; and do not offer or make payment.

Do not provide any written or recorded statement to the plaintiff without your E&O carrier's claim representative present.

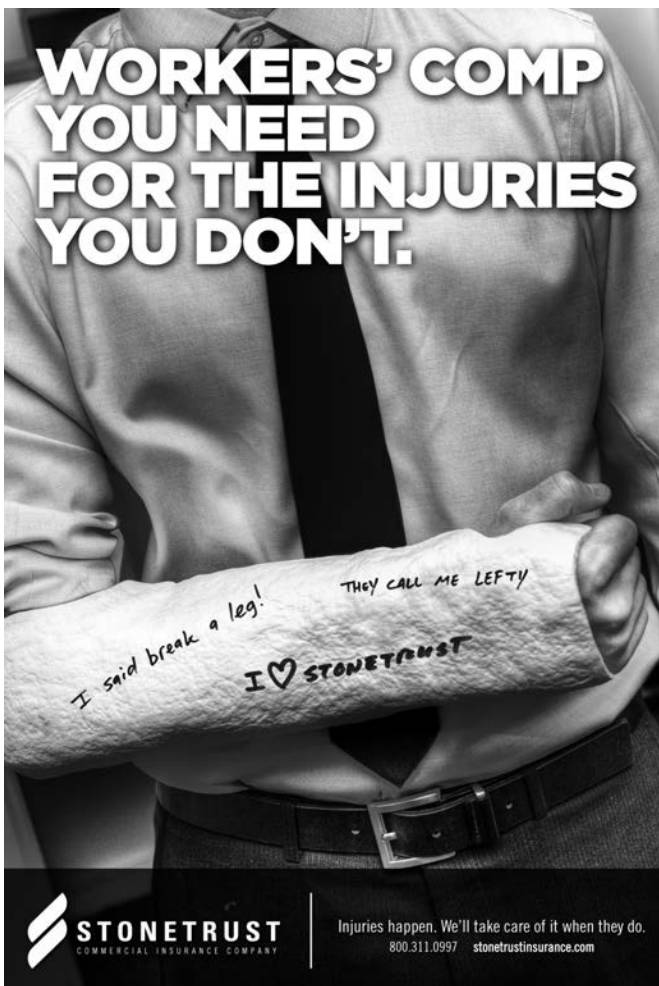
Do not allow inspection, copying or removal of client files and records without consulting with your E&O claim representative.

Do not try to manage the claim on your own. The E&O carrier has more experience and is better able to manage the process. Allow those with more experience and resources to manage the suit.

What to DO

What should your immediate and ongoing "do's" be following an E&O claim?

Notify the E&O carrier of a "claim" or potential claim immediately. Provisions in the E&O policy require the insured to notify the insurance carrier as soon as practicable



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following the receipt of a "claim" or any indication of a potential claim.

Listen for "trigger" words or questions.

Some words, phrases or questions just don't seem normal, in fact, they sound like something a lawyer would say. If your client uses terms like "duty," "breach" or "breach of duty," assume they have been talking with a lawyer. Also pay attention to the questions that are asked, does it seem like they are trying to trap you into admitting something? Notify the carrier of a potential claim if words or phrases seem to indicate a lawyer is already involved.

Assume every conversation is being recorded. Regardless of the legalities of recording a conversation, assume your answers are being recorded. Pick responses carefully.

Gather and organize all pertinent records related to the insured and the situation.

But when doing this, remember the second "don't" - don't alter them. The claim representative needs all the information to conduct an investigation and prepare and provide a proper defense.

Write down all the information known about the incident surrounding the claim.

Each member of the team directly related to the client and the incident giving rise to the E&O claim should record all they can remember about the incident or incidents on which the claim is based. This should be a factual narrative statement in chronological order. Leave out opinion and emotion. This is the time to act like you are talking with Joe Friday from Dragnet – just the facts. Who, what, when, where and why is all that should be contained in these accounts.

Assign one person as the claim leader.

One person should be assigned the duty to report, track and manage all COVID-19 E&O claims within the agency.

Cooperate with the E&O carrier. This includes providing information and facts that look bad for the agency. Hiding or hedging certain aspects of the facts surrounding the situation on which the claim is based creates distrust between you and your insurer; it also makes the agency look guilty. The insurer is on your side.

Make sure you comply with all policy conditions and requirements. If the agency fails to comply with all E&O policy conditions, coverage may be jeopardized.

Hopefully, You Will be Spared

Hopefully, you and your agency will not need this information. If not, that's great. But given the uncertainty of this current situation, it's better to be prepared.

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TAXING IDEAS

So, You Filed for a PPP Loan? What's Next?

All of us have heard that small business owners can apply for an SBA loan and not have to pay it back. Those words sound wonderful! But we all also know there has to be a catch. And - there is. The rules to follow to be able to actually not pay back the loan are complicated and confusing. This article will attempt to provide the best ideas to comply with those rules.

The very first piece of advice Agency Consulting Group would give is to OPEN A SEPARATE BANK ACCOUNT TO BE ABLE TO TRACE THE USE OF THE LOAN PROCEEDS!!! Is this a requirement by law? Absolutely not. However, the banks will ask you to trace how the money was spent. Any part not used for appropriate expenses will not be forgiven.

A 'word to the wise' from some very astute tax professionals - the banks that lend you this money and the IRS tend to use the theory of "deemed order of expense" if you don't have a separate bank account from which to spend the forgiven grant money. This means that when you pay your regular expenses after receiving this loan/grant money, they will assume that you used your latest funds (the loan/grant money) to pay your expenses since that money was received most recently. For example, you put your loan money into your regular operating account and then pay your bill for your monthly advertising, the office supply company and your outside cleaning company. None of those expenses are permitted for

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the PPP loans and would therefore not be forgiven.

You need to know that there is an interest expense to this loan. It's a very affordable 1%. We would expect that this will have to be paid and will not be part of the loan forgiveness. The loan itself does not have to start being repaid for six months. The interest will accrue from the time you get the loan monies. For any amount not forgiven, the loan must be paid in full in two years.

The name of this program is the "Paycheck Protection Program." Obviously, this defines the purpose of the loan to be paying payroll costs. You may ask, "What's included in payroll?" The law defines payroll as salary, wages, commissions or tips. But, there is a limit of \$100,000 gross salary per

employee. If your employee earns more than that (annualize their payroll!!), you cannot fully pay them from the loan proceeds. You will need to use your regular operating funds to make up the difference.

What else can you use the money for? Employee benefits such as group health care insurance or retirement plans are allowed. State and local taxes such as unemployment tax are allowed. The taxes withheld from your employees' paychecks are allowed. BUT - BE CAREFUL! Your employer portion of the federal payroll taxes are not allowed. This means the FICA or FUTA you, the employer, must match and pay must be paid from general operating funds, not loan proceeds. Yes, there is another program that allows you to defer your FICA tax payments but you can only use this option for taxes incurred before your loan forgiveness is awarded.




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You may use some of the loan proceeds for non-payroll expenses such as mortgage interest, rent or utilities but again there are rules. You may not use more than 25% of your loan for these expenses. The other 75% must be payroll. If you do not use your full loan proceeds, you must still keep the 75/25% ratio on the part you do use. Please note that the principal portion of your mortgage payment is not included in the allowable uses, only the interest.

Your loan will also not be forgiven if you do not maintain your levels of staff and payroll expense. When you applied for the loan, you reported how many full-time employees you had. You cannot reduce your full time staff below that number. You also cannot reduce your employee's salary more than 25% of what they earned when you applied for the loan. And you must restore your full-time employment and

salary levels by June 30, 2020.

The loan forgiveness is not automatic. You must request the forgiveness from your lender who is servicing your loan. The request must include documentation reflecting the use of the funds and certify that you used the forgiveness amount requested to keep employees and make eligible mortgage interest, rent and utility payments. The lender will have 60 days to respond to your request.

You can find this information in a very nice [fact sheet](#) by clicking this link.

If you have questions, you may call our office (856-779-2430) and ask for our taxpro, Sherry Diamond, EA, but specific questions may be better answered by your own accountant and taxpro who would know your individual circumstances.



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First Quarter Results and a Look Ahead

Reagan View by:
Jim Campbell

According to an "advance" estimate released by the Bureau of Economic Analysis last week, the US economy shrank at an annualized rate of 4.8% in Q1 which translates to an actual decline of 1.2% for the quarter. This estimate, likely to be revised in late-May, represents an end to the consistently positive growth achieved in recent years and the biggest drop in US economic activity since the Great Recession.

Since the pandemic-driven lockdowns were not enacted until March, the impact on Q1 results was limited. Most economists anticipate a much steeper decline in second-quarter activity, especially with many sectors of the economy largely shut down all of April. Early forecasts suggest the annualized Q2 contraction will likely be at


least 25% and may be as much as 40% or more. Given the virtual certainty of a Q2 contraction, it can be argued the US economy is effectively already in recession, technically defined as two consecutive quarters of negative growth.

Against this broader economic backdrop, several publicly traded brokers reported Q1 results last week. Following are a few highlights:

- **Brown & Brown** reported Q1 organic growth of 5.6%, up slightly from 5.2% for Q4 2019. According to CEO, Powell Brown, the company is anticipating the biggest pandemic-driven impact to financial performance will be

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Webinars			
May 27, 2020 12pm-3pm Commercial Property Claims that Stink and How to Handle Them June 17, 2020 8am-11am Culture, Ethics and E&O	June 2, 2020 12pm-1pm Condominiums and How to Insure Them June 22, 2020 10am-12pm Those Kids and Their Cars!	June 15, 2020 1pm-4pm Personal Lines Problems & Pitfalls June 24, 2020 1pm-4pm Who Owns What?	June 16, 2020 8am-11am Coverage Problems Your Contractors Hate June 24, 2020 1:30pm-3:30pm Why Certificates of Insurance...Just Why?
Events			
To be Announced			

realized in Q3, although Q2 growth could also be negative. Full-year organic growth is expected to fall within a range of slightly positive to down by low-to-mid single digits.

- **Marsh & McLennan** reported Q1 growth in underlying revenue of 5%. However, the outlook for 2020 has changed in light of the current crisis. Revised forecasts anticipate modest declines in underlying revenue for full-year 2020, with deepest declines expected in the second and third quarters. Modestly positive underlying revenue growth for full-year 2020 remains a possibility, depending on the pace of recovery.

Arthur J. Gallagher reported Q1 organic growth in its Brokerage Segment of 3.1%, including a negative 3.2% COVID-related adjustment to estimated revenues. This adjustment anticipates Q1 revenues will be af-

ected by future audits, cancellations, mid-term adjustments, decreases in estimated covered lives, and/or decreases from volume and loss ratio sensitive contingent contracts. While the company does expect to see some declines in client exposure units, further premium rate increases may partially offset these declines. Although negative growth is possible for Q2 and Q3, the expectation is for positive growth in Q4 with full-year 2020 growth flat to modestly negative. At this point, management expects 2021 growth to return to 2019 levels.

The economic data and financial results released over the past week provide some clarity into Q1 and indicate some future expectations as outlined below:

- **Strong Start.** The pre-COVID environment yielded strong results for the US economy and for the insurance brokerage industry

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Continued page 34

specifically. Both entered the year in a position of strength. If continued, 2020 may well have been a banner year for organic growth in insurance distribution. And while this course has been severely altered, the strong start and related momentum should provide some cushion to soften the blow from post-COVID results and help support full-year 2020 results for agents and brokers.

Potential for Strong Finish. Q2 may be the economic low point with a sharp contraction virtually assured. But we're also seeing the early stages of the economic reopening in Q2. Assuming the pace of reopening gains momentum through the quarter, recovery may be underway by Q3. Economists will debate the shape of the recovery, but a strong recovery in the second half of the year seems possible. According to Treasury Secretary Steven Mnuchin, "As we begin to reopen the

economy in May and June, you're going to see the economy really bounce back in July, August, and September."

We are facing an unprecedented challenge and uncertainty remains high. In the words of the great philosopher, Yogi Berra, "It's tough to make predictions, especially if it's about the future." What appears certain is US economic results for Q2 will be ugly. Many businesses, including agents and brokers, will feel the effects for at least the next two quarters. But this crisis will pass and the economy will reboot. Perhaps soon. And for insurance agents and brokers, there are reasons to expect that a strong, successful, and growing firm entering 2020 will be a strong, successful, and growing firm entering 2021.



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Determining Building Values

My firm, [Burand Insurance Education](#), teaches in-depth coverages classes. The course material is in-depth and personal and when combined with my 25 years' E&O auditing experience, we convey a lot of existing knowledge that is not possible to gain when classes are taught in a lecture setting. This combination has truly provided the best situation for our participants to learn, without an E&O event, just how much coverage knowledge they possess and then improve upon it.

We have discovered large coverage knowledge gaps among our participants relative to many coverages. This kind of in-depth education, where knowledge gaps are discovered, is the most important kind of education possible even though the discovery of such gaps is alarming to many agency owners and executives. The realization of, "Oh my goodness, my producer/account manager does not even know that?!" is disconcerting. But it is far bet-

ter to learn of these gaps in a class setting as opposed to a deposition setting.

Specific to building values, we have learned that a large percentage of agency staff, producers, and underwriters, take the building value assessment at face value without understanding what the numbers actually represent. Before going further, however, I have a caveat that this article is far too short to be considered comprehensive or even thorough. Additionally, a point that we constantly reinforce in our classes is that students have to read the form they are selling to understand the coverage at hand. Much to the frustration of many people, universal answers do not exist. If everyone sold the same insurance policy, agents would not be necessary. The reason agents are necessary is to identify the applicable coverage in



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the form being sold. Therefore, the best advice, regardless of coverage topic, is to read and understand the forms you are selling and to not depend on your underwriters to advise you correctly. Read the definitions in the form and don't Google the definitions because Google is not the insurance company and therefore, their definitions are moot points.

Relative to building values, they are obviously important and also obvious to many, but what is not obvious to all people we have discovered, is whether the values are associated with actual cash value (ACV), replacement cost, functional replacement cost, or even market value. It is well worth every agency's time and effort to determine whether your staff and producers truly understand the differences in values and can effectively explain these differences to insureds.

Probably more important is understanding Ordinance & Law. An argument exists that re-

placement cost estimators include O&L. For example, the building cost to rebuild is \$300,000, but new codes will add an additional \$50,000 to the total. Does the estimator/ITV include that \$50,000? Many people say it does and many people say it does not. I am not privy to the confidential data used to determine replacement cost so I do not know the answer. I suspect that on any given building, it sometimes does and sometimes does not. Many times, where the building design or even square footage would be changed to meet new codes, the ITV almost certainly does not include the O&L cost. Therefore, my suggestion is unless explicitly stated, never assume O&L calculations are included.

Another reason to avoid making the assumption that O&L is included in the replacement cost is because insurance is designed to restore the insured to the same financial status



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they had immediately preceding the claim. The immediately prior status for a building not up to current code is rebuilding it to its prior status, not the up to code status.

Many people assume O&L only applies to old buildings. That is not necessarily the case. Considering all the new green initiatives and requirements that have been put into effect, buildings that are almost new may be code deficient. With COVID-19, expect significant building code changes soon.

Two building calculations are usually required. One ITV for the building as is and one for code compliance. A common response we get in classes is that O&L is automatically included in the policy so why bother? That question is usually evidence of not knowing coverage adequately because the person asking is not doing the math relative to whether the throw-in coverage is adequate for any given building. Is the throw-in coverage 10%? 20%? How close to adequate is the throw-in coverage? Is it enough to rebuild even to the point of obtaining a certificate of occupancy?

A professional agent will take the extra step of asking the insured to determine what amount of O&L is adequate. Insurance agents don't generally have the tools required to make these assessments on their own. Realtors and contractors are great resources. However, a 10% throw-in is obviously inadequate in a whole host of scenarios. In fact, in the worst cases I've seen, the O&L equaled the entire building replacement cost. How far does the throw-in coverage go in those situations?

Explaining O&L to insureds can be difficult and many will be lost relative to what number will apply. They are not building experts either. Adding to the difficulties of true professional agents is explaining to insureds why they are bringing the situation to their attention when the last 10 agents never discussed it.

Plenty of amateur agents exist who will gladly sell inadequate coverage and never have these kinds of discussions. A knowledgeable professional agent who cares about their clients enough to have these difficult conversations has a tall hill to climb, but with success they usually make the most money too. Additionally, no one needs an agent who sells inadequate coverage.

Be the hero explaining to clients and prospects that you are working hard to protect them rather than just sell to them. Explain your extra commission is \$5 (or whatever the number is) for the extra coverage. For some, when they realize you are making next to nothing for recommending better coverage, the more they will trust you. Meanwhile, you are protecting the agency from E&O claims and building a polished, professional reputation!

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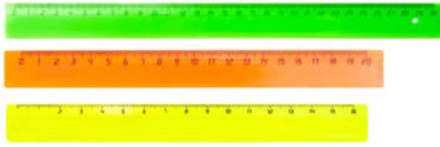
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