# LOUISIANAAGENT

JANUARY 2021



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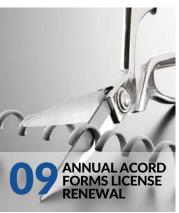


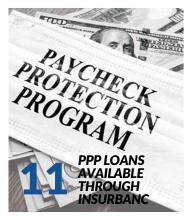


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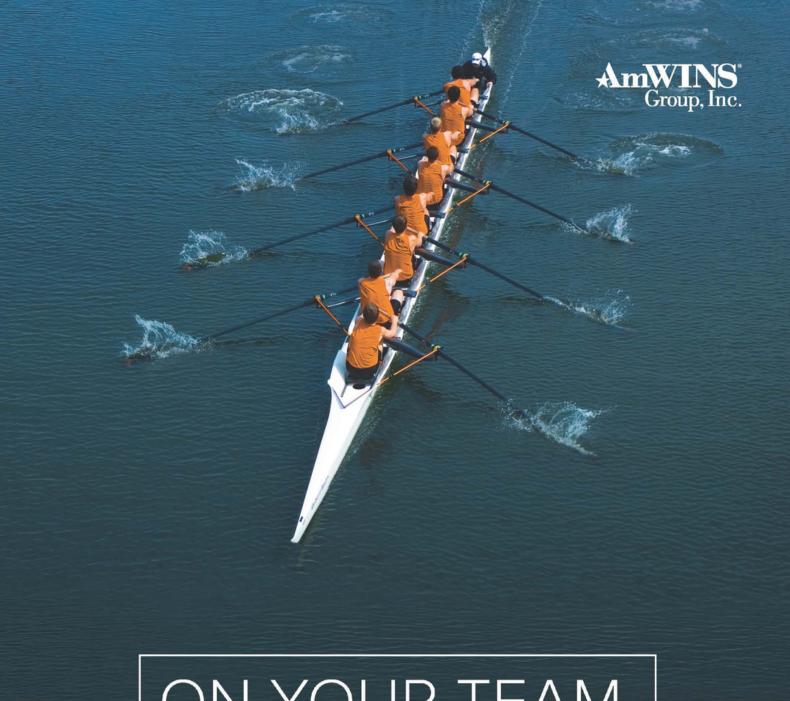
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# ASK BEN

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 questions we receive from our member agents. This month the question is...

# What are some trends you are seeing in the overall insurance marketplace?

### Marketplace Reports - 2019 Data

Agents often ask us to provide context from the larger insurance marketplace to better understand the trends they're seeing in their own agencies. To that end, both Big I national and IIABL are working to provide marketplace reports with summaries of the available industry data. IIABA recently released their report on national trends which can be found HERE. IIABL will soon be following that up with a more detailed analysis of the Louisiana data, and I'd like to share a few key points from both of those reports here.

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# Total Property and Casualty written insurance premiums grew by around 5% nationally and by about 4% in LA.

- Even adjusting for inflation, the insurance industry continues to grow. This is the continuation of a long-term growth trend for the extremely stable industry. Note: the data is for 2019 (pre-Covid), but early reports on the 2020 data indicate that this trend has NOT reversed over the past year.
- Premium growth is strongest in Commercial Auto (increased approximately 11% both nationally and in Louisiana).

# Direct to consumer writers are gaining market share, but independent agents remain strong.

- Direct writers now account for approximately 20% of the personal lines market (up 4% over the past 4 years).
  - Thus far, this has mostly come at the expense of captive agents (State Farm, Geico, USAA, etc.)
  - Independent agents have maintained approximately 35% personal lines market share over that time period.
- In Commercial Lines, however, independent agents continue to dominate with approximately 85% of the market (little direct writer involvement in this space to date).
  - Many industry prognosticators predict that recent increases in investment by direct writer companies may mean that independent agents begin to feel significant pressure in the coming years, primarily in personal lines and small commercial.

## Louisiana pays more than average in total P&C insurance premiums.

- Nationally, the per capita average is around \$2,100
- Louisiana pays over \$2,650 per capita
- This is primarily due to windstorm/flood exposure and significantly higher auto premiums in both commercial and personal lines

### Loss ratios in Louisiana have been pretty good for the most part - except in auto.

 While every company operates a little bit differently, a good rule of thumb is that loss ratios below 60% tend to indicate acceptable underwriting profit. This leaves enough room for the company's other expenses while still turning a profit.

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- Louisiana's average for the whole P&C market has been trending around 54% most years,
  - However, in 2016 (the year of the massive flooding in Baton Rouge, Lafayette, and other parts of south Louisiana), P&C loss ratio jumped to 87% -- driven primarily by the 805% loss ratio in flood and the 93% loss ratio in Private Passenger Auto.
  - Note, also, that because this is 2019 data, we don't see the effects of COVID or the multiple storms that pummeled Louisiana in 2020.
- Auto insurers continue to struggle to turn a profit in Louisiana, despite consistent rate increases.
  - Private Passenger Auto has averaged 72% loss ratio over the past 5 years (62% in 2019)

Commercial Auto has averaged 88% over that same period (89% in 2019)

Keep your eyes out for the upcoming Louisiana Insurance Marketplace Report from IIABL.

The findings I've listed in this article are just the tip of the iceberg for the upcoming report, and I'd encourage you to examine it fully when it is released in the coming weeks. The full report includes a line by line breakdown of the Louisiana insurance market including: written premium, loss ratio, average commission rate, a list of the top carriers by line, and more.



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The result of the agreement is that your agency will not have to pay the EUL fee to ACORD, and agents will experience no change in your management system workflow or use of ACORD forms with the exception of an initial and annual validation to confirm Big "I" membership. This will be executed via a clickthrough acceptance.

Keep in mind that obtaining this license through ACORD is an <u>ANNUAL RENEWAL</u>. Starting Friday, January 1, agencies need to go through the ACORD Forms license renewal.

The Big "I" ACORD License FAQ page covers everything you need to know. For information on obtaining a complimentary license, click HERE.



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# PPP Loans Available Through MSW/Banco

The COVID-19 pandemic has fundamentally altered our nation's small business landscape adversely impacting their bottom lines. The CARES Act was signed into law in 2020 which created many emergency funding programs totaling more than \$700 billion in economic relief.

In response to the continued market disruption and economic impact of the COVID-19 pandemic, Congress passed the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act on December 21, 2020 which was signed by the President on December 27, 2020. This Act provides another round of Payroll Protection Program (PPP) loans for small businesses who did not take advantage of the program in 2020. It also includes a "second draw" opportunity for

those who have an existing PPP loan and meet specific criteria.

The PPP has been a critical lifeline for more than 5 million small businesses and their employees. By reopening this program, this will make \$284.45 billion in funding available for small business.

InsurBanc understands independent agents and their business. They specialize in insurance agency financing. InsurBanc is again prepared to work with eligible agencies to obtain the emergency financing during this round of funding. If you have an existing PPP long from InsurBanc, your loan officer will contact you. For more information or to begin the process for new borrowers, please visit InsurBanc's registration page

on their <u>website</u> and one of their loan officers will reach out to you.

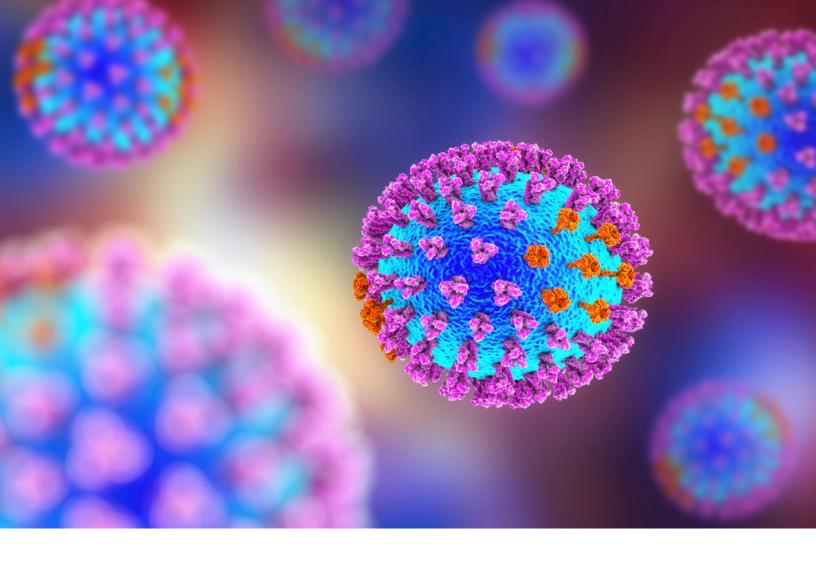
These are unusual times and circumstances, but IIABL and InsurBanc remain committed to you and all our agency members. We will continue to do our best to help navigate this crisis into the future and bring you timely and relevant information that can help your business thrive.



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# Pandemic, Agency Growth & the New Year

WHY SMART AGENTS WILL PROSPER IN THE COMING YEAR

By David Tralka and Robert Pettinicchi

Barring an unforeseen event as disruptive as COVID-19 was this past spring, and being optimistic that a winter wave of the pandemic is contained, 2021 looks to be a hopeful year for independent insurance agencies. Agencies have weathered the pandemic storm remarkably well thus far and have demonstrated that they can adapt to grow both organically and inorganically in the coming year.

In 2020, independent agents proved once again how versatile and resilient their business model is, and the property/casualty market, with a few exceptions, held up during one of the biggest economic dislocations in modern history.

Make no mistake, the pandemic has changed the way we work and do business, and it has laid low far too many parts of our

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economy. But its impact has been uneven, and overall it hasn't led to the downturn for the insurance business that many feared.

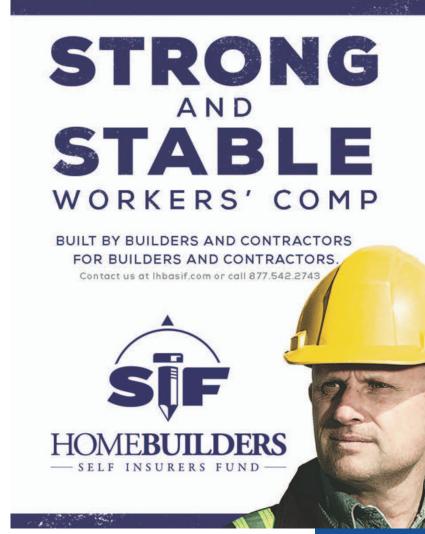
Let's consider a few areas where the pandemic has had—or more accurately, hasn't had—an effect on agency values and how that may shape activity in 2021.

### Mergers and acquisitions are still on a tear

There simply hasn't been the slowdown in agency acquisitions some expected earlier this year. While there was a lull in M&A activity in April and May, acquisitions quickly picked up in June, according to Reagan Consulting. Many owners are still looking to sell, and there are plenty of buyers out there. In fact, it seems buyers have only increased their appetite for agencies and books of business. Late in the year, there are also many hints of tax-motivated selling on the part of some business owners, reminiscent of 2012.

Reasonable people may differ over whether agency owners should perpetuate internally or sell to an acquirer, but ideally everyone can agree that when competition remains keen for agencies, it's a good sign for the industry. Here are eight reasons why we're seeing healthy M&A activity:

(1) Interest rates are historically low and will likely stay that way for some time. Inexpensive capital fuels borrowing and agency



acquisitions. Quite simply, low rates drive transaction activity and fuel higher value multiples. It's important to understand that this downturn is quite different from the one in 2008, when credit markets dried up. Getting capital today is not a problem.

(2) Agencies are performing better than expected. Most of the agency owners we talk to are optimistic about business. It's true that some markets such as hospitality, entertainment and transportation are suffering, but agencies rarely have all of their business in one industry. Looking at the numbers compiled by Reagan for the industry as a whole, we can see that agency sales velocity, organic growth and profitability have all been stronger than expected.

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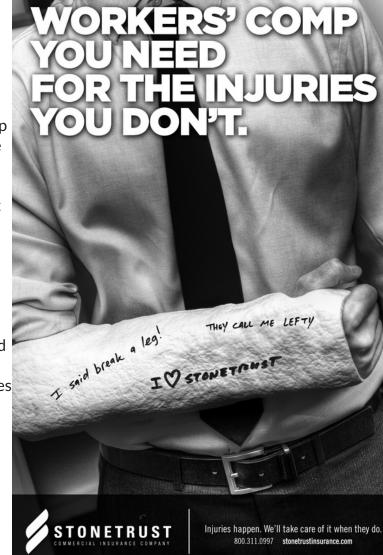
- (3) Agency values have held up extraordinarily well. Despite most other service sectors in the economy being battered by the pandemic, there hasn't been any real deterioration in agency cash flow and related agency values. Prices haven't dipped. Well-run, well-positioned agencies are always in demand, now more than ever.
- (4) Markets are hardening for some lines of business. This provides a built-in cushion for agencies. While agencies may be writing fewer policies, those policies are commanding higher premiums, and that means enhanced commission income.
- (5) The economy is holding steady. Unemployment is quite high in some sectors, but GDP appears to be rebounding.
  Consumer spending has picked up in the goods sector with the hope of a steady rise in the larger services sector as well. The housing market has been a bright spot, with first mortgages and refinance loans off the charts.
  Construction also is holding up.
- (6) The demographics of agency ownership haven't changed.
  Owners are still getting older, and

that means more agencies will be changing hands. Low interest rates make these transactions even more appealing. The pandemic is also motivating sellers who've been sitting on the fence. With

valuations and prices holding up, these owners have decided to call it quits sooner rather than later. They've grown weary of the current uncertainty and just want to cash out.

(7) Cash flow always reigns supreme. Predictable, sustainable cash flow derived from steady premiums is what powers organic growth. Smart agency principals are finding ways to more efficiently produce revenue and minimize expenses, and they're now willingly leveraging technology to increase growth opportunities, particularly those that are arising from the pandemic.

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(8) Tax policy may spur even more transactions. Elections often their business now and the rest bring changes in fiscal policy, and we likely will see changes to the tax code. If there is an increase in the capital gains tax, expect a rush in sales transactions timed to beat the effective date of the tax change.

Several factors are converging to create the perfect storm for agency acquisitions in 2021: plenty of inexpensive capital, willing sellers who want to retire, aggressive buyers who want to take advantage of the market, relatively high values, and tax uncertainty that may accelerate activity if capital gains taxes go up. Owners who are a few years away from retiring can have the best of both worlds if they sell part of later. Such staged exit strategies will continue to gain traction in 2021, with owners choosing to cash in on some of the upside of their agency's value but still retain control of their business.

A typical scenario would be for a seller to identify a next-generation owner such as the agency's top producer. The current owner might agree to sell 30% to the producer now and the remaining 70% three to five years later. In the interim, the current owner continues to earn income, retain control and participate in the agency's growth.

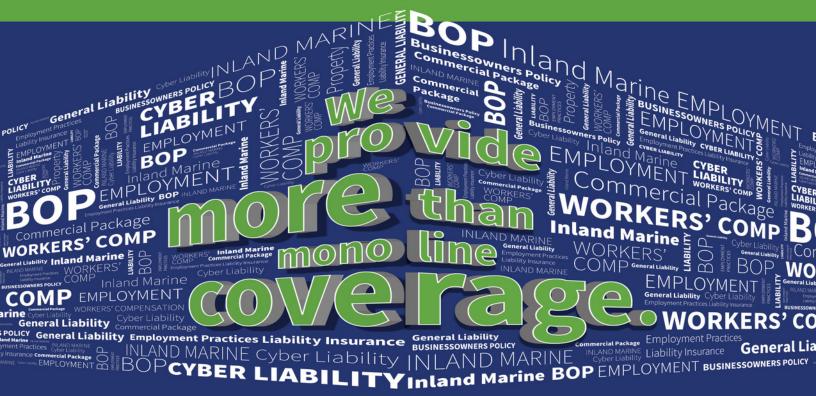
### Consumer demand for digital interaction

During the height of the pandemic, McKinsey & Company observed that "we have vaulted five years forward in consumer and business digital adoption in a matter of around eight weeks." We all learned to work remotely and access services online. From ordering restaurant meals and groceries on the internet to telemedicine and online classrooms, Americans are quickly shifting to a new way of life.

The insurance industry is no exception. Personal lines customers and small business

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### **DISCOVER WHAT WE COVER**



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owners are looking for easier ways to connect with their agents. These same clients can interface digitally with banks and brokerage firms; now they have the same expectation for insurance providers. Consumers seek convenience because that's the way business will get done in the future.

Agencies are also learning that there is a difference between innovation and agility. New technology isn't enough if you can't adapt and respond quickly to changing events. Digital collaboration tools are becoming the new normal and will remain in place long after the pandemic is behind us.

Bricks and mortar aren't going to be as important, either. Customers are able to use their smart phones to power their banking relationships, so why not their insurance relationships, too? Nimble agencies that invested in technology and automation, new agency management systems and remote conferencing capability will be able to ride the innovation wave to achieve greater efficiencies and capture new business.

In 2021, agency owners will need to hold onto their best people with both hands. The battle for agency talent predates the pandemic, but remote working arrangements and greater mobility will make retaining good people even more challenging. A recent study by Cisco found that companies have 4.7 times more home workers now than before the pandemic. Agents are no longer limited by geography and can sell remotely from anywhere.



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Agencies must adapt to a changing workplace where remote employees are trusted to get their jobs done, empowered to work flexible schedules and encouraged to form collaborative work groups tied to specific projects. Owners, too, must find creative ways to keep their top producers, perhaps by offering them the ability to become an owner of the agency over time.

### Stress test your agency for the future

Banks regularly stress test their balance sheets to see how they would perform in a financial crisis. This ensures that the financial system has enough capital to withstand an economic shock. You can use this same concept to stress test your agency.

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Look back on the year and examine your business. How did you handle the stress of the pandemic? What impact will you see on your business going forward, and how will that affect your financial well-being?

It helps to identify your strengths and weaknesses. Are there areas where you can trim expenses? Are there new markets you can enter to replace income you've lost from accounts you no longer have? Do you need to invest in new software or upgrade your management system? Do you have the right personnel to meet your goals for 2021?

Agencies that keep up with technology, modernize their operations, retain top producers

and perfect their marketing will be well positioned for the coming year. To quote William Wordsworth, "Let us learn from the past to profit by the present, and from the present to live better in the future." In 2021, the successful agencies will be the ones that can profit from the current uncertainty and find new opportunities to grow in the future.

#### The Authors

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# TRUSTED CHOICE

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As we begin our next 75 years, we give our most humble thanks to our independent agents. We owe our success to you.

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# WHAT DOES "DIRECT PHYSICAL LOSS OF OR DAMAGE TO PROPERTY" MEAN?

Jan. 5, 2021 | CGL, Commercial Property









\*Beyond Floods\*\*\* branded policies underwritten by one or more companies in the National General Insurance Group, Winston-Salem, NC, NatGen Flood Division. Rates vary. Terms, conditions, limits and exclusions apply. Availability may vary by state. Recently, I've read a bunch of articles touting a North Carolina pro-policyholder COVID-19 decision that, among other similar erroneous conclusions, opined that "loss of" can also mean "loss of use of." The premise is that, under the insurer's business income form language, "loss of" property can also mean the inability to use the property even if it is not physically or permanently altered in some way. In other words, the inability to access the property in a customary way triggers coverage under the form.

I addressed this issue in my "Why Insurance Doesn't Cover the COVID-19 Pandemic" book published in December 2020. The following is an excerpt from that book explaining why "loss of" and "loss of use of" are not equivalent. The book goes on to also cite case law that has reached the same conclusion. Most property policies today require DIRECT physical loss or damage, as distinguished from INDIRECT, or consequential, loss or damage. Historically, in the insurance industry, "direct" loss is distinguished from "indirect" loss of use. Many of the articles written about COVID-19 by policyholder attorneys, as well as the lawsuits they file, claim that "direct" loss includes "loss of use." That's simply not the case and never has been. That view, if more than simply wishful thinking or n effort to torture words until they confess to something they didn't do, does not reflect an understanding of the intent of the

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insurance contract. The importance and value of an historical perspective of insurance contract language is discussed below in determining what is meant by "physical" loss.

The key distinction here is that the policy language explicitly refers to "direct loss of property," not "direct loss of use of property." If loss of use was intended, the language likely would be worded that way. For example, consider this excerpt from the definition of "property damage" in ISO's Commercial General Liability (CGL) policy [emphasis added]: "Property damage" means:

1.

- i. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- ii. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it....

Note that the CGL policy covers three categories of "property damage": (1) physical injury to tangible property, (2) loss of use of that physically injured tangible property, and (3) loss of use of tangible property that is not physically injured. To illustrate, a bucket truck operator repairing electrical lines on a business premises loses control of the bucket, crashing it into a restaurant building and tearing down several electrical lines. The restaurant is shut

down for several weeks for repairs and several other businesses lose power and shut down for a day or two.

If the crew's CGL policy responds to the claims, coverage corresponding to the three categories of "property damage" above would (1) pay for the repair of the restaurant building and contents, (2) indemnify the restaurant for its loss of business income, and (3) compensate the other business for their business income losses even though they had no physical injury to their property. So, the CGL policy responds to both direct losses as in (1) above and to indirect losses as in (2) and (3) above.

First-party property forms aren't that comprehensive because they cover limited contractually agreed-upon types of loss or damage, whereas CGL policies cover very broad legal liabilities imposed mainly in tort. Physical injury to tangible property is covered by direct loss property forms such ISO's CP 00 10 – Building and Personal Property Coverage Form, whereas loss of use of property is covered by indirect loss property forms such as ISO's CP 00 30 – Business Income (And Extra Expense) Coverage Form, but the latter only of there is first direct damage to property.

In other words, compared to ISO's CGL policy, their property forms cover only categories (1) and (2) property damage. The CP 00 10 covers category (1) direct damage, while the CP 00 30 covers category (2) which is contingent on there being direct physical loss or damage to tangible property. The CP 00 30 is not triggered by the indirect loss of use of physical property...it's triggered by the direct loss of or damage to physical

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property. The business income loss itself IS the loss of use.

To further illustrate direct vs. indirect/consequential loss, property forms may include, by endorsement or on a sublimited basis, coverage for "Ordinance or Law" claims. For example, a \$2M building is 50% damaged by a covered cause of loss, so the local building code requires the demolition of the undamaged portion of the building. That \$1M cost is a consequential loss and not damage ("loss" vs. "damage" is discussed below). And it's not a direct loss, but rather an indirect loss that resulted from a direct loss to tangible property.

As another example, most property policies exclude damage resulting from

power failure, but some damages can be covered by endorsement. These options may cover food spoilage, property damage due to temperature changes, etc.

However, if the business simply cannot operate without power, the business income loss is purely economic...there has been no direct physical damage.

As a side note, it's interesting that, to my knowledge, few, if any, lawsuits have been filed alleging direct damage under a form such as ISO's CP 00 10 or a BOP policy. One would think that, if the plaintiff's attorney truly believed that the alleged presence of SARS-CoV-2 constituted "direct physical" loss of or damage to property, a claim under that or another direct damage property form would have been filed.

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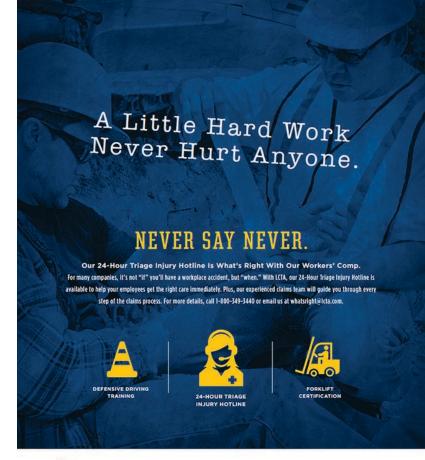
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Continued from page 23.

A deeper dive into all of the insurance issues of the COVID-19 pandemic can be found in my book "Why Insurance Doesn't Cover the COVID-19 Pandemic" which is available for download on Amazon for only \$6.99. In the North Carolina case referred to above, a different decision might have been reached had all parties read this book.

#### By 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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\*Excludes liability coverage associated with these features.



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PROPERTY CASUALTY 360

# CAN EMPLOYERS REQUIRE WORKERS TO GET A COVID-19 VACCINE?

Here's what legal experts are saying along with tips to help employers evaluate whether to implement a mandatory vaccination program.

BY JODY MCLEAD, ESQ JAN. 6, 2021, 10:00 AM Employers are currently evaluating whether to implement a mandatory COVID-19 vaccination program since two vaccines were recently approved and are in distribution. This evaluation process is even more critical with the onset of the flu season and the rising case numbers of coronavirus infections.

To start, an employer must determine if it needs to mandate the vaccine in their workplace by balancing the company's ability to reduce or eliminate the spread of the virus through other administrative means available against avoiding the additional legal and operational risks associated with a mandatory program.

As employers evaluate their needs for a mandatory or voluntary program, they will need to consider the following questions:

Continued on page 26.





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- Reasonable Accommodation
   Exceptions: Can the employer respond appropriately to requests for accommodations?
- Equal Employment Opportunities: How will a mandatory program impact attraction and/or retention of talent?
- Compliance Concerns: Can a mandatory program be compliant through all its stages and not pose additional legal risk to the company?
- Labor Relations: Are all or part of the workforce unionized and subjected to a collective bargaining agreement and must the issue be subject to additional bargaining?
- Workers Compensation: Can an employee claim an injury from receiving a mandatory vaccination and filing a worker's compensation claim?

Employee Safety Concerns: Can an employee object to a vaccination for 'safety reasons' and is that employee protected under the Occupational Safety and Health Act (OSH Act) administered by the Occupational Safety and Health Administration (OSHA)? Can employees collectively object to a mandatory vaccination as a term or condition of employment and have protection under the National Labor Relations Act (NLRA)?

Mandatory vaccination programs
Generally, an employer can implement a mandatory vaccination program. This ability by the employer, however, is subject to reasonable accommodation obligations under federal, state, and local laws for those with disabilities who request a medical accommodation or those who have Continued on page 27.









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a bonafide religious belief against vaccinations.

An employee requesting an accommodation under the Americans with Disabilities Act (ADA) must first establish he/she has a covered disability. Note that there is a circuit split regarding whether sensitivity to vaccinations constitutes a disability.

If an employee does request an accommodation (not to receive a vaccination) and is in fact covered under the ADA, is that the end of the story for the employer and must it accommodate? An employer can defeat an accommodation if it can show special circumstances exist resulting in an undue hardship to them if the employee is accommodated and does

not receive a vaccination. Accommodations for those eligible to receive one can include a different vaccine solution without the offending or triggering ingredient, a remote work option if the employee's position allows, or possible changes in the employee's duties so long as those changes are not considered 'essential functions' of the role.

An employee requesting a religious accommodation for exemption from an employer's mandatory vaccination program must establish a bonafide religious belief for such a request to pass muster under Title VII. Personal or ethical objections are generally insufficient to meet this high threshold. If the requesting employee does meet the threshold of a bonafide religious belief, an employer could still deny the accommodation if it can establish that the *Continued on page 28*.



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lack of a vaccine to the employee poses an undue hardship to the workplace. Defined, an undue hardship evaluation under Title VII must establish harm to the employer, its employees or third parties that could result due to the accommodation. Note that there is a circuit split on whether 'speculative harm' is sufficient to establish undue hardship. One federal court has ruled in a speculative harm case that exemptions to a mandatory flu vaccination could place other vulnerable people at risk.

It also should be noted that several state legislatures have enacted laws surrounding mandatory vaccinations for school-aged children establishing differing standards. The legislation was premised on public health concerns and an overall concern for the protection of minors within their

locales. In the case of COVID-19, it may be likely that some state and local legislatures will propose and pass restrictive legislation related to COVID-19 vaccinations and mandated programs.

Many legal experts have suggested that mandatory vaccination programs involving COVID-19 may be evaluated differently because we are still currently in the grip of the pandemic, which has led to large numbers of infections, significant numbers of COVID-19 fatalities, as well as considerable economic devastation for businesses across many industries. However, COVID-19 and the resulting pandemic could also be a matter of first impression discarding previous evaluation standards and precedents surrounding other mandatory programs.

Continued on page 29.



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#### **Federal agencies**

In the past, the Equal Employment
Opportunity Commission (EEOC) has
generally been hostile to employer
mandatory vaccination programs, while the
Centers for Disease Control and
Prevention (CDC) and the Occupational
Safety and Health Administration (OSHA)
have been more accommodating to the
issue.

However, during this recent COVID-19 pandemic, the EEOC has already acknowledged that it meets the ADA's direct threat standard thereby, establishing that a COVID-19 infected person in the workplace poses a significant risk of substantial harm to others. This acknowledgement gives employers added measures it can use around testing that are generally prohibited to them by the ADA.

Experts are hesitant at this time to predict whether previous government standards will remain constant for an employer-based Covid-19 mandatory vaccination program.

#### How can employers prepare now?

It is believed that because two COVID-19 vaccines have recently been approved and are currently in distribution, both the state and federal authorities will issue more guidance and/or legislation around employer mandatory programs. Employers should begin to evaluate their specific workplace situation and determine what is the correct course of action for them by considering the following:

Industry and workforce facilities:
 Employers should ask if a mandatory vaccination program is necessary for their industry, workforce, or workplace

facilities. Is a program necessary when individuals can obtain their own vaccination? Is a positive outcome of reducing virus spread also possible by encouraging vaccination — emphasizing established CDC guidelines and/or working remote without mandating vaccinations?

- Outlying restrictions: If the employer deems a mandatory vaccination program necessary, is it company-wide or are there restrictions based on geography (high infection rates) or workplace locale where other alternatives (remote work or social distancing) cannot be enacted or maintained?
- Reevaluate accommodation processes:

  If a mandatory program is

  implemented, employers should

  evaluate their accommodation

  processes and staffing to avoid delays

  and additional legal risk. The employer

  may also need to accommodate

  employee requests with additional

  personal protective equipment (PPE),

  modification of job duties and/or use of

  several types of vaccine solutions. It is

  wise to look forward and prepare.
- Establish who is in charge: Employers should have one individual or department who is responsible and accountable for compliance around a mandatory vaccine program and its processes.
- Costs associated: Employers need to determine if they will provide the vaccines at little or no cost to employees to coincide with their choice of employee program.

Employers should begin their evaluations of whether to implement a mandatory program considering the industry,

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workforce and acceptable legal risk such a program might impose. Employers' approach to handling the rollout of a mandatory COVID-19 vaccine program will ultimately make or break their relationship and trust with their workforce. With that in mind, employers must stay on top of their decision, remain flexible as the virus and the vaccines move forward and more importantly, employers must be conscious of how they communicate to their employees to maintain their trust and mitigate any potential risk.

Jody McLeod (info@mcleodlegalsolutions.com) is founder and principal at McLeod Legal Solutions. She is a principal at McLeod Legal Solutions. She is a licensed attorney with more than 30 years of legal experience

in both the private and public sectors. Jody's specialties include general employment law advice and counsel; third-party internal investigations; NLRA/NLRB matters; wage and hour compliance (advice and counsel as well as mitigation efforts); risk management; litigation; and litigation management specializing in employment discrimination and wage and hour class actions.



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# HOMEOWNERS INSURANCE, CLAIM DELAYS TOP THE LIST OF 2020 HURRICANE COMPLAINTS

January 22, 2021 Louisiana Department of Insurance

Nearly 80 percent of the 873 complaints that the Louisiana Department of Insurance (LDI) has received about hurricane claims are about homeowners insurance, Louisiana Insurance Commissioner Jim Donelon announced.

"I encourage any policyholder who's having trouble with their insurance company to call us," Commissioner Donelon said. "We can help."

Hurricane grievances have included complaints about various types of residential, auto and commercial property insurance, as well as complaints about insurance adjusters and agents, but the vast majority of complaints from the 2020 storm season concerned homeowners insurance. The most common grievance was claim delay.

As of January 11, policyholders had filed 691 homeowners insurance complaints about claims from hurricanes Laura, Delta and Zeta. The Louisiana Department of Insurance investigated and closed

Continued on page 33.



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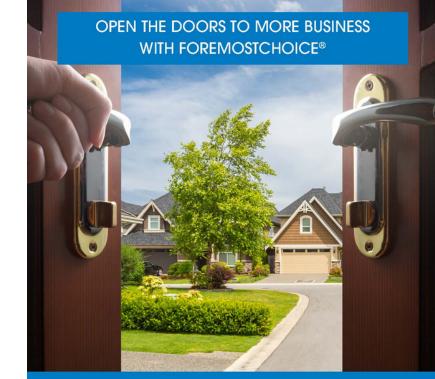




### Continued from page 32.

597 of the complaints by that date. The 15 insurers with the highest numbers of complaints are listed in the chart below.

Many of these companies are small insurers with a high number of complaints relative to their size, while others have a large number of complaints and a large market share. The chart includes a complaint index that allows consumers to compare companies without regard to size. A company with a complaint index of 1 has an average number of complaints. A company with a complaint index higher than 1 has more complaints than average.



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Company/Group	Market Share	# of Complaints	Complaint Index
		_	
State Farm Group	26%	163	0.90856
FedNat Holding Company Group [1]	3.9%	93	3.48228
GeoVera Specialty Insurance Company	1.8%	66	5.25358
United Insurance Holdings Group [2]	4%	52	1.87236
Allstate Insurance Group	10.8%	51	0.68065
Allied Trust Insurance Company	0.9%	40	6.32678
TWIMG Group [3]	3.1%	23	1.08225
USAA Group [4]	6.2%	23	0.53878
Liberty Mutual Group [5]	5.6%	18	0.46819
Progressive Group [6]	3.9%	18	0.67448
Centauri National Insurance Company	1.6%	15	1.389
American Bankers Insurance Company of FL	1.4%	14	1.43079
IAT Reins Co Grp [7]	0.9%	13	2.17708
Aegis Security Insurance Company	0.4%	10	3.77807
Munich Re Grp [8]	0.1%	10	1.09704
Total for 15 Insurers with the most hurricane complaints		609	
Total Hurricane Homeowners Complaints		691	
Total Hurricane Complaints as of Jan. 11		873	

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[1] FedNat Ins Co [52] - Maison Ins Co [41]

[2] United Prop & Cas Ins Co [41] -

Family Security Ins Co Inc [11]

[3] Lighthouse Excalibur Ins Co [12] -

Lighthouse Prop Ins Corp [11]

[4] USAA Cas Ins Co [16] - USAA Gen Ind Co

[5] - Garrison Prop & Cas Ins Co [2]

[5] Liberty Personal Ins Co [13] - Safeco

Ins Co of OR [5]

[6] Progressive Prop Ins Co [11] - ASI

Llovds [7]

[7] Occidental Fire & Cas Co of NC [12]

- Wilshire Ins Co [1]

[8] American Modern home Ins Co [4] -

American Modern Prop & Cas Ins Co [2] -

American Western Home Ins Co [2] -

American Family Home Ins Co [1] - American

Southern Home Ins Co [1]

Commissioner Donelon encourages policyholders who are having trouble with their insurance claims to call the Louisiana Department of Insurance for help at 1-800-259-5300 or file a complaint online at https://www.ldi.la.gov/fileacomplaint. A team of complaint specialists in the LDI's Office of Consumer Services is working exclusively on issues related to hurricanes Laura. Delta and Zeta, and they stand ready to answer consumer questions and resolve complaints.

In 2015, the Louisiana Department of Insurance re-organized its complaint function so that a new division handled all complaints, whether about life insurance, health insurance, property insurance or any other insurance issue. Trained complaint specialists listen to a consumer's account of a problem, contact the company on their behalf, investigate the situation, and

Continued on page 35.



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determine whether the company has complied with Louisiana law and the provisions of the consumer's contract. Most complaints are resolved within 30 days. If a larger pattern of complaints is observed, it can trigger a broader investigation of a company known as a market conduct exam.

The LDI has an online tool where consumers can view the total number of complaints filed against companies who write insurance

in Louisiana. Consumers can visit visit

www.ldi.la.gov/complaintdata to see complaints sorted by company name, premium written and the complaint index, which measures complaints for a company relative to the amount of premium written.

As of November 20, Louisiana insurers had received 236,928 claims for all lines of insurance from hurricanes Laura and Delta. Half of those claims, or 119,127, were closed by insurers with payment. Policyholders can file supplemental claims if they incur additional expenses in repairing their properties or if they discover previously unknown storm damage.

# About the Louisiana Department of Insurance:

The Louisiana Department of Insurance works to improve competition in the state's insurance market while assisting individuals and

businesses with the information and resources they need to be informed consumers of insurance. As a regulator, the LDI enforces the laws that provide a fair and stable marketplace and makes certain that insurers comply with the laws in place to protect policyholders. You can contact the LDI by calling 1-800-259-5300 or visiting www.ldi.la.gov. Click here to download the LDI logo.



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# COMMISSIONER DONELON ANNOUNCES EXCEPTION TO 12-MONTH FILING RULE

Due to the unprecedented 2020 hurricane season, Commissioner Donelon has agreed to make an exception to the 12-month filing rule for changes due to the cost of reinsurance. This exception will be documented in the Louisiana Department of Insurance (LDI) Rate and Rule Filing Handbook.

**Exception to the 12-Month Filing Rule** 

1) For all property rate filing requests: Due to the difficulties created by an unprecedented 2020 hurricane season (five named-storm landfalls in Louisiana), the LDI suspends the 12-month filing rule until July 1, 2021. A company can make as many rate adjustments as the company deems necessary to compete profitably in Louisiana's property markets.

Rate requests under this temporary suspension should clearly state, in the cover memo of the rate filing, that the filing is being made under the temporary suspension of the 12-month rule.

On July 1, 2021, the 12-month rule will again be effective and the last rate increase, even if made under the temporary suspension, will be used as the beginning reference point for the 12-month rule.

A rate filing made under this exception to the 12-month rule must include all rate filing information required in the Rate and Rule Filing Handbook.

2) For all other requests for exception to the 12-month filing rule: The LDI will consider an exception to the 12-month filing rule based on a case-by-case basis based on the request's merits. Such requests should be made directly to the Commissioner (with a copy to the Deputy Commissioner of Property and Casualty) before a rate filing is filed with the LDI or the request to be treated as an exception to the 12-month filing rule should be clearly stated in the cover memo of the rate filing made with the LDI through SERFF.

Please contact Rich Piazza or Warren Byrd if you have any questions or need any clarification. Rich Piazza, Chief State Actuary Warren Byrd, Deputy Commissioner, Office of Property & Casualty



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#### **BIG I GOVERNMENT AFFAIRS UPDATE**

Big "I" Secures Agent Exemption to New Small Business Reporting Requirement



January 1st, the U.S. Senate voted to override President Trump's veto of the "National Defense Authorization Act" (NDAA). The House voted to do the same earlier in the week meaning that the NDAA is now set to become law.

Pertinent to Big "I" members, the NDAA contains a provision that would create a burdensome new federal reporting requirement for most small businesses. This onerous new requirement was originally meant to cover nearly all small businesses including insurance agents.

However, working with key legislators the Big "I" was

successful in securing a full exemption for independent agents and brokers by showing that insurance producers already provide this beneficial ownership information to state regulators and that the additional burden of providing it to the federal government would be duplicative and unnecessary.

Throughout the legislative process, the Big "I" was the only producer group that advocated on behalf of agents and brokers to exclude them from this new onerous requirement. For various reasons, the other producer groups did not engage.

Without this exemption, the beneficial ownership provision would have required agencies with fewer than 20 employees to file new reports on their beneficial ownership with the U.S. Department of the Treasury's Financial Crimes **Enforcement Network** (FinCEN). Agencies would have to comply with the new requirement annually starting within two years of the law's enactment for existing businesses 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.

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The Big "I" is especially grateful to Sen. Mike Crapo (R-Idaho), chairman of the U.S. Senate Committee on Banking, Housing and Urban Affairs, and Rep. Carolyn Maloney (D-New York) for their determined work on this provision. Throughout the NDAA negotiations, the Big "I" worked with both Chairman Crapo and Rep. Maloney to improve this legislation and make sure insurance agents and brokers remain free from these duplicative burdens while still ensuring that bad actors would be prevented from using anonymous shell

companies to hide illicit activities.

As many of you know, legislative victories come in various forms: sometimes it means passing legislation beneficial to the IA system, other times it means stopping legislation harmful to independent agents, and here it meant securing our exemption to protect independent agents from this new requirement that will apply to many other small businesses.

Please read News & Views for more information.



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## THREE KINDS OF EBITDA

#### By Chris Burand, Certified Business Appraiser Burand & Associates, LLC

Agency owners are like gossiping kids, always asking and telling what the latest multiple of EBITDA their agency's value is. But they never ever discuss the EBITDA. Let's say the multiple is 6. Then it is 6 times EBITDA, but what is the EBITDA? Three, at least three, different kinds of EBITDA exist, and it pays to know which EBITDA is being multiplied.

**EBITDA** stands for earnings before interest, taxes, depreciation, and amortization. The idea is to identify cash flow excluding financing effects (if you want to identify true cash flow including financing effects such as loan repayments and interest, use "free cash flow" which is a better measure of value anyway). However, EBITDA has now been bastardized in so many different ways that there is even disagreement as to what the "E" for Earnings represents. Different people use different numbers for the same firm's "E". I find that almost no agency owner understands how the EBITDA formula actually works in the real M&A world. Here then are three examples, and by no means are these comprehensive in variety or detail.

EBITDA #1, Actual EBITDA - Actual EBITDA is your actual, unadjusted EBITDA.

#### For example:

Commissions	\$1,000,000
+Contingency	\$100,000
-Compensation	\$600,000
-Sales Experience	\$50,000
-Administration Expense	s \$200,000
+Interest	\$10,000
+Taxes	\$20,000
+Depreciation	\$20,000
+Amortization	\$40,000
Actual EBITDA	\$330,000

Your actual, unadjusted EBITDA IS NOT the EBITDA upon which your value is determined! The EBITDA used is an adjusted EBITDA if the valuation is done correctly.

EBITDA #2 - Pro Forma EBITDA adjusted for the sale

#### to a larger buyer:

	4
Commissions	\$1,000,000
+Contingency	\$130,000
-Compensation	\$500,000
-Sales Experience	\$50,000
-Administration Expense	s \$250,000
+Interest	\$30,000
+Taxes	\$10,000
+Depreciation	\$20,000
+Amortization	\$80,000
Actual EBITDA	\$470,000

If you sell for 6 x \$330,000 rather than 6 x \$470,000, then you leave 6 x \$140,000, or \$840,000 on the table.

EBTIDA #3 - Pro forma EBITDA for a strict Fair Market Value situation:

Commissions \$	51,000,000
+Contingency	\$100,000
-Compensation	\$500,000
-Sales Experience	\$50,000
-Administration Expenses	\$180,000
+Interest	\$10,000
+Taxes	\$20,000
+Depreciation	\$20,000
+Amortization	\$40,000
Actual EBITDA	\$450,000

These are just examples and should not be taken as literal in any way whatsoever. My point is that not only is each agency's EBITDA different,

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but the EBITDA for each agency must be different for each kind of buyer. Not knowing the applicable EBITDA renders the multiple irrelevant. For example, I once saw an agency brag about selling for 11 times EBITDA. Their actual EBITDA was, let's say \$1,000,000. They were paid \$11,000,000. Their pro forma EBITDA, the EBITDA that actually mattered, was \$1,800,000. They actually were paid a less than normal price, but they did not know it.

On the other hand, some owners see the big EBITDA dollars after a buyer or some consultant has worked through the agency's numbers. They take the results to a bank and expect the bank to loan on that grossed up profit margin for an internal sale. Do not do this. You will only embarrass yourself because banks, at least those knowing what they are doing when loaning to an agency, typically only use the strict Fair Market Value EBITDA, not the larger EBITDA calculated when selling to private equity and publicly traded brokers.

The adjustments are different depending on the type of buyer. Compensation is often a huge difference because many buyers only pay 20%-25% renewal commission and then exclude any commission on accounts generating less than \$X (and

that \$X can be large). Producer compensation reductions are not usually as large in other scenarios. Also, those big buyers are usually making extra money in a myriad of ways that regular buyers will not make. They also get favorable financing.

Valuations based on EBITDA sound simple, even alluringly sophisticated, but still simple enough for everyone to understand. Quality valuations using EBITDA are complex.

Oversimplification serves business brokers and specific buyers well while injuring the sellers.

Oversimplification can cause less knowledgeable sellers to make mistakes.

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Because EBITDA calculations are so easy to manipulate and even disguise the manipulation, the U.S. Securities and Exchange Commission has warned against using EBITDA. Many academic studies show firms using EBITDA have numbers that should be viewed more carefully because, the authors conclude, some such firms may be abusing this method.

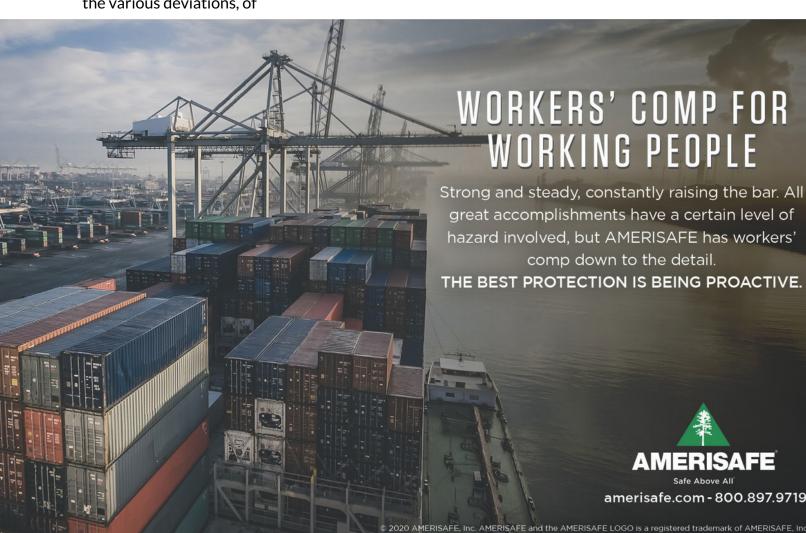
Not being taken advantage of is important. One really needs to know which of the three major kinds, much less the various deviations, of EBITDA to apply to your specific situation. I strongly recommend hiring an advisor who specializes in this area and is not a business broker to advise you if your local accountant is not steeped in insurance agency valuations.

NOTE: The information provided in this article is intended for educational and informational purposes only and it represents only the views of the authors. It is not a recommendation that a particular course of action be followed. Burand & Associates, LLC and Chris Burand assume, and will have, no responsibility for liability or damage which may result from the use of any of this information.

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their contingency contracts by learning how to negotiate and use their contingency contracts more effectively. We maintain that agents can achieve considerably better results without ever taking actions that are detrimental or disadvantageous to the insureds. We have never and would not ever recommend an agent or agency implement a policy or otherwise advocate increasing its contingency income ahead of the insureds' interests.

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# Commissioner Donelon Reports 2020 Hurricane Data, Including Zeta

Insurers have paid or reserved \$7.7 billion on claims of all types in Louisiana through the end of 2020 from hurricanes Laura, Delta and Zeta, Insurance Commissioner Jim Donelon announced today. This data represents the first measure of damage from all three hurricanes that struck the state in the record 2020 storm season.

Policyholders filed 290,847 claims of all types from the three storms as of December 31. Of those, 161,704 claims, or 56%, were closed with payment as of December 31, garnering \$5 billion in payments for damage caused by the three hurricane events.

"After a record storm season that tested the state multiple times, paid claims represent a way forward for those most affected by these hurricanes," said Commissioner Donelon.

"This is \$7.7 billion owed to Louisiana policyholders to rebuild their lives, homes and businesses. Furthermore, it's billions of dollars that didn't

come from taxpayers in a time when municipal budgets are reeling from the events of the last year."

The information was generated from a data call to all authorized property and casualty insurers, including surplus lines insurers, to submit their claims data on hurricanes Laura, Delta and Zeta. The figures include claims from personal and commercial insurance. They do not include claims or payments from the National Flood Insurance Program, which is not regulated by the Louisiana Department of Insurance.

The data call figures released today represent the most comprehensive look to date of insured losses in Louisiana from the record 2020 hurricane season.

Policyholders have filed 169,891 claims from Hurricane Laura, which struck Southwest Louisiana on August 27 as a Category 4 storm. Calcasieu, Rapides, Beauregard, Ouachita and Vernon parishes had the most claims from the storm.

As of Dec. 31, 2020, insurers had closed 77% of the claims from Hurricane Laura, 59% of which were closed with payment. Total paid losses plus reserves on reported claims from all surveyed lines of insurance for Hurricane Laura at the end of 2020 were \$6.6 billion, accounting for the vast majority of damage from the record 2020 hurricane season in Louisiana.

Policyholders have filed 71,945 claims from Hurricane Delta, which made landfall in Southwest Louisiana on October 9 as a Category 2 storm. Calcasieu, Lafayette, Acadia, East Baton Rouge and St. Landry parishes filed the most claims from the storm.

At the end of 2020, insurers had closed 82% of all Delta claims, and 53% of those claims were closed with payment. Insurers have paid or reserved \$556 million to cover losses from reported claims from all surveyed lines of insurance for Hurricane Delta at the end of 2020.

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Continued from page 42.

The data call results also included the first claim figures from Hurricane Zeta, which made landfall in Terrebonne Parish on October 28 as a Category 2 storm. Policyholders have filed 49,011 claims through the end of the year. Most of the claims came from Jefferson, Orleans, St. Bernard, St. Tammany and Lafourche parishes.

Insurers closed 79% of reported Zeta claims, and 46% of those claims were closed with payment. Total paid losses plus reserves on reported claims from all surveyed lines of insurance were \$499 million for

Hurricane Zeta at the end of 2020.

Data for the 2020 hurricanes through Dec. 31 can be found at www.ldi.la.gov/datacallresul ts.

The LDI will continue to collect data from property and casualty insurers to monitor the claims process. The final deadline for data is Oct. 8, 2021.

### About the Louisiana Department of Insurance:

The Louisiana Department of Insurance works to improve competition in the state's insurance market while assisting individuals and businesses with the

information and resources they need to be informed consumers of insurance. As a regulator, the LDI enforces the laws that provide a fair and stable marketplace and makes certain that insurers comply with the laws in place to protect policyholders. You can contact the LDI by calling 1-800-259-5300 or visiting www.ldi.la.gov.



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# IIABL EDUCATION & EVENTS CALENDAR

#### **FEBRUARY 2021**



#### **IIABL CE ON DEMAND**

- <u>E&O Risk Management</u>
- Ethics
- Flood
- Commercial Lines Courses
- Personal Lines Courses
- Professional Development



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#### **LIVE WEBINARS**

1/12/21 <u>Coverage Problems Your</u> 12-3 pm Contractors Hate

1/14/21 <u>Exposures That Prove Why</u> 8-11 am ALL Employers Need EPL

Coverage

1/26/21 <u>Culture, Ethics, and E&O:</u> 12-3 pm <u>The Right Way To Run An</u>

<u>Agency</u>



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#### **NEW PROGRAMS**

In an effort to bring new, relevant, and timely information to our members, we are constantly evaluating our education offerings to meet your education needs. We are pleased to announce the addition of the following programs into our library of offerings this month.

- Additional Insureds: Issues & Endorsements
- <u>Insurance Ethics Easy to Discuss, a</u> <u>Bit Harder to Achieve</u>
- Issues in Construction Bonds
- <u>Understanding Business Income</u>
   <u>Coverages</u>

## TRIPLE PLAY DAY February 4, 2021

Earn up to six (6) continuing education credits during Triple Play Days! Join us on Wednesday, February 4, for the following sessions, or register for a session or two later in the year that's more convenient for your schedule.

8:00 am <u>5 Contractor Coverage</u> Concepts Every Agent Must

Understand

11:00 am Condominiums & How to

Insure Them

2:00 pm 3 Keys to Getting the Named

**Insured Correct** 

#### **IIABL EVENTS**

#### Save the Date!

 IIABL Convention June 20-23, 2021 Destin. FL

 Louisiana & Mississippi Young Agents Conference August 20-22, 2021 Biloxi, MS

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#### **GOLD LEVEL**









#### SILVER LEVEL



























#### **BRONZE LEVEL**

Accident Fund Insurance Company of America

Allied Trust Insurance Co.

Americas Insurance Co.

Berkshire Hathaway GUARD **Insurance Companies** 

**EMC Insurance Companies** 

FCCI Insurance Group

Foremost Insurance Group

Forest Insurance Facilities

**Gulf States Insurance** Company

Homebuilders SIF

Iroquois South, Inc.

Lane & Associates, Inc.

LCTA Risk Services

LUBA Workers' Comp

Maison Insurance Company

National General Insurance

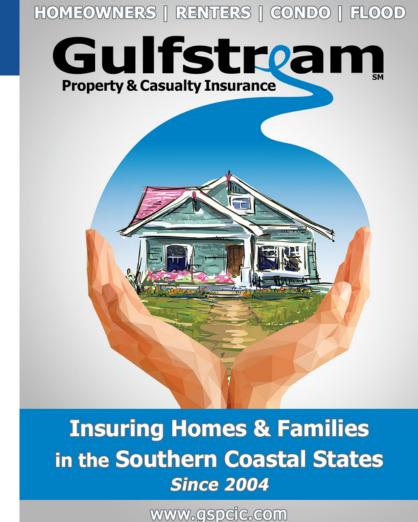
RPS/Risk Placement Services

Wright Flood

\*Partners as of January 25, 2021

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IIABL 2020-2021

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