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#### 117th IIABL CONVENTION



#### ITABL Top 10 Bills of the 2019 Legislative Session

<u>HB 51</u>	Huval, Mike(R)	Provides relative to the admissibility of evidence for failure to wear a safety belt. <i>Bill History:</i> 04-24-19 S Referred to Senate Committee on Senate Judiciary A Current law does not allow the failure to wear a seat belt to be entered into evidence in auto accident litigation. Failure to wear seatbelts increase injuries by 50%. HB 51 would allow the judge to decide to allow the introduction of such evidence.  The bill passed the House and will be heard by the Senate Judiciary A Committee. IIABL strongly supports HB 51.
HB 213	Huval, Mike(R)	Provides relative to expedited jury trials.
		Bill History: 04-25-19 HB 213 Failed to pass (Vote: Y: 40/N: 45) HB 213 allowed for expedited jury trials when both parties agree to such procedure. Proponents wanted to provide the option for streamlined jury trials as an option. Opponents argued that such trial would not allow for proper hearings. The bill failed to pass the House floor. IIABL supported HB 213.
HB 229	Huval, Mike(R)	Provides with respect to the use of a wireless telecommunications device while operating a motor vehicle.  Companions: HB 619 Huval, Mike (Refiled from 44R Session)
		Bill History: 04-30-19 H Passed to third reading HB 229 would require hands-free use of cellphones. The bill passed the House Transportation Committee and will be heard on the House Floor next week. IIABL strongly supports HB 229.
HB 288	Hollis, Paul(R)	Provides relative to the administration of large deductible policies and collateral as relates to workers' compensation.
		Bill History: 05-06-19 S Set on the Senate Orders  HB 288 provides that large deductibles for worker's compensation policies that are uncollectable from insolvent employers, and qualify under the Guaranty Association, shall be paid by LIGA. The bill passed the House and will be referred to the Senate committee.  IIABL supports HB 288.
HB 361	Jordan, Edmond(D)	Provides for a premium tax on surplus lines coverage that includes fire loss or damage.
		Bill History: 04-22-19 H Removed from hearing 04/23/19 - House Ways and Means
		HB 361 would increase the surplus lines tax to help fund the State Fire Marshall's Office. An agreement has been reached to amend the bill to dedicate part of the existing surplus lines tax with no increase in the overall surplus lines tax. The bill will be heard in the House Ways and Means Committee next week.
		IIABL strongly opposed the original bill and supports the proposed amendment.

HB 371	Talbot, Kirk(R)	Establishes an independent dispute resolution process for certain out-of- network health benefit claims.  Bill History: 05-01-19 H Voluntarily Deferred in Committee House Insurance HB 371 provides for an independent dispute resolution process for out-of- network health insurance claims, as a way to settle "balance billing" disputes. The bill will be heard in the House Insurance Committee next week. IIABL strongly supports HB 371.
HB 372	Talbot, Kirk(R)	Enacts the Omnibus Premium Reduction Act of 2019 relative to automobile insurance.  Bill History: 04-25-19 S Referred to Senate Committee on Senate Judiciary A HB 372 reduces the jury trial threshold, repeals direct action, provides for medical cost transparency, extends prescription to 2 years, and mandates that insurers fill rate reviews with LDI each year for 3 years so that cost savings are passed to policyholders. The bill passed the House and will be heard in Senate Judiciary A Committee in the next two weeks.  IIABL strongly supports HB 372.
<u>SB 75</u>	<u>Lambert(R)</u>	Provides for changes in the producer of record upon written request of the policyholder or first named insured.  Bill History: 03-26-19 S Referred to Senate Committee on Senate Insurance SB 75 would have changed provisions in the producer of record law. IIABL strongly objected to these changes and asked LDI not to move the bill. LDI agreed. Our thanks to Commissioner Donelon and his staff for working with us on this bill.  Continued page 6

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\*Excludes liability coverage associated with these features.



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<u>SB 89</u>	Luneau(D)	Prohibits insurance providers from using credit reports and gender as basis for rate setting.  Bill History: 05-01-19 S Involuntarily Deferred Senate Insurance SB 89 would have prohibited the use of gender and credit information in underwriting. IIABL strongly opposed SB 89 which was killed in the Senate Insurance Committee.
<u>SB 148</u>	Hewitt(R)	Provides relative to safety belts.
Bill Wilson, ARM, AIM,		Bill History: 04-30-19 S Voluntarily Deferred in Committee Senate Judiciary A Current law does not allow the failure to wear a seat belt to be entered into evidence in auto accident litigation. Failure to wear seatbelts increase injuries by 50%. SB 148 would allow the judge to decide to allow the introduction of such evidence.  The bill will be heard by the Senate Judiciary A Committee next week.  IIABL strongly supports SB 148.

#### Insuring Unlimited Contractual Liability



Bill Wilson, CPCU, ARM, AIM, AAM

This language was included in the bidding requirements from a railroad, though it was never reviewed by the insurance agent or underwriter:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work pursuant to the Agreement dated December

27, 2018 by and between the City of \_\_\_\_\_ & \_\_\_\_ Railroad, including work upon railroad property, within railroad right of way and in close proximity to operating railroad tracks."

The construction contract with the general contractor who won the \$24M contract required that the above language be added to the contractor's CGL policy.

Of course, the insurer refused to manuscript any such language. Aside from any regulatory restraints on manuscripting endorsements to filed forms by admitted carriers, what is problematic is the assertion that the insurance policy "COVERS the liability assumed by the insured...."

For this statement to be true, the CGL policy would have to have a remarkably broad insuring agreement, NO exclusions, and NO limits. Many, if not most, contractual indemnity agreements are without limit or cause and are uninsurable.

This illustrates the importance of qualified personnel carefully reviewing contracts prior to the bidding process to ensure that all insurance requirements can be met. Otherwise, winning bidders may find themselves immediately in breach of contract.

*William C. "Bill" Wilson, Jr., CPCU, ARM, AIM, AAM* 

One of the premier insurance educators in America on form, coverage, and technical is-

sues; 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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#### Hiring is a Hassle

First you have to deal with the fact that you don't have enough people on the team.

Second you have to put together an honest and compelling job listing.

Then there is the screening process. You read resumes and cover letters. You start to choose which candidates you want to talk to.

Then you start the conversations. Some of us have one conversation per candidate, most of us have at least two conversations with selected candidates.

Of course, all of this goes on while you still have to produce. The primary work doesn't stop.

Murphy would probably tell us that the work in-

creases when we don't have help (it did for me).

That's why we need to do it right whenever we have the chance.

It's such a hassle that maybe we should take more time to make sure that we do it right the first time.

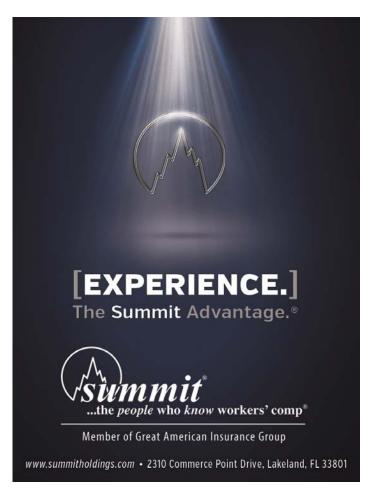
None of us wants to get it wrong and then have to do it again.

Be in a hurry to hire, but don't be in a rush.

Source: Insurance Journal

Patrick Wraight, CIC, CRM, CISR, AU, AINS





#### How Insurers Are Weeding Out Risks in the Fragile Auto Insurance Market

Auto insurance premiums in the US are now the highest on record, according to an annual report from car insurance search engine The Zebra, which found that insurance rates increased for 83% of American drivers over the last year. With many factors to blame, from a driver's zip code to the cost of repairing technology-laden vehicles, the insurance market is "tightening its belt," particularly in commercial auto.

One expert in this space calls the state of the auto insurance market "fragile, to say the least."

"Carriers are trying to reduce their losses at this point, and a lot of different things are going on that's driving that, whether it's distracted driving, which is at an all-time high [or] fuel costs being down, so more people are driving on the roads than before," said Larry McLean, Vice President at Insurance Office of America (IOA), adding, "Vehicles are more expensive to fix and continually get more expensive to fix. We've got adaptive cruise control, cameras, parking assists - all those things [were implemented] in high-end cars a couple of years ago and now, a lot of the cars have them. A car that cost \$3,000 to fix might be \$6,000 to fix today."

A litigious environment, with aggressive at-

Continued page 10



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torneys stalking their next prey, hasn't helped losses in commercial auto either. Similarly to personal auto, insurers are trying to figure out how to monitor people's driving behaviors, and pick up the best accounts with the safest drivers to help with profitability. Tech-based tools have been especially effective in mitigating risks, such as devices that block cell phone use when a vehicle is moving.

"They can actually talk on a Bluetooth headset, but other than that, they can't text, they can't read an email, they can't go on Facebook, so everything freezes on the phone," explained McLean, adding that these devices can also track a vehicle's speed and other driving habits. "We also use driver-facing and forward-facing cameras, so if we have bigger trucks or a fleet of vehicles, we see a lot of times that a dump truck operator will **get dragged into a lawsuit when they didn't** do anything wrong, but [another driver] tried to squeeze by them on an exit, for example, and hit the side of the truck."

Cameras can help verify what actually happened and prevent added losses from lawsuits.

When companies are hiring drivers for commercial fleets, screening for bad hires through integrity testing is another useful method to lower risk by weeding out candidates that are quick to anger, or have a





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propensity to use drugs or steal.

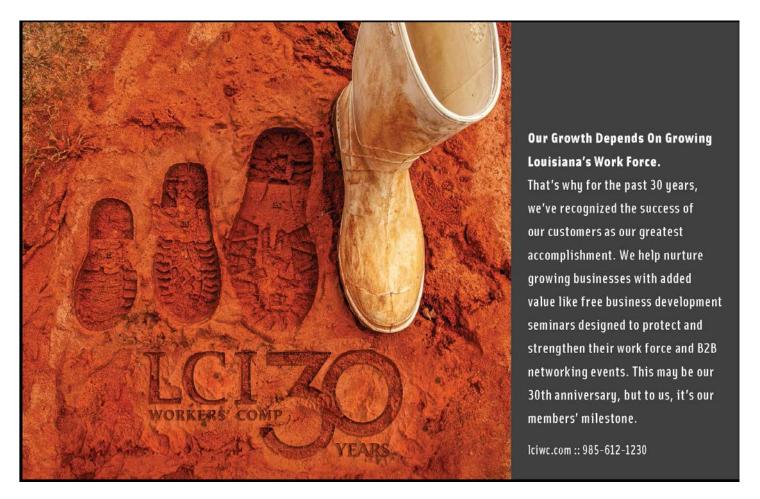
"You might have somebody that seems OK, but they're basically a bomb ready to go off, so it can help with multiple things – not just driving, but better employees, a better fit for your team from a social aspect to create the culture you need, and then all the way down to [protecting against a] hostile workplace," said McLean.

For smaller commercial auto businesses, it's important for brokers and agents to explain to them why their auto insurance costs are rising, and paint a clear picture of the cause and effect between the various factors contributing to higher premiums, including accidents.

"They think of it as corporate money and they realize it's coming out of their pocket as well, so we try to make an emotional connection with them that it's not corporate America – for these small businesses, that's your profit, that's your bonus, that's your growth," said McLean.

On the personal auto side, changes are also coming as HR 1756, a new bill <u>recently introduced in Congress</u>, will make it illegal for auto insurance companies to use consumers' credit scores in determining insurance rates.

"They do that because they say those are the people most likely to have an accident,



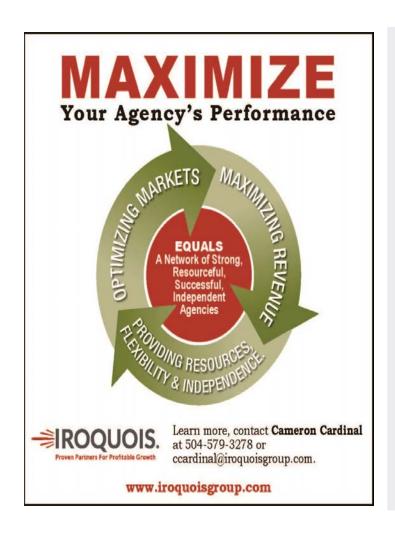
and that's as far from the truth as it can be," said Donald Hardy, founder of the Georgia-based insurance agency Quantum Benefits, adding that he'd also like to see a requirement that auto insurers must notify the insured when their liability and premium change.

"The insurance industry should, number one, be required to notify a person who's driving an older vehicle that their coverage has been reduced to comply with state laws, and, number two, your premium should be reduced to correspond with the liability involved. As it is now, you can be driving a 20-year-old car and still pay brand new rates on it, and, if you wreck it, they're not going to repair it," said Hardy.

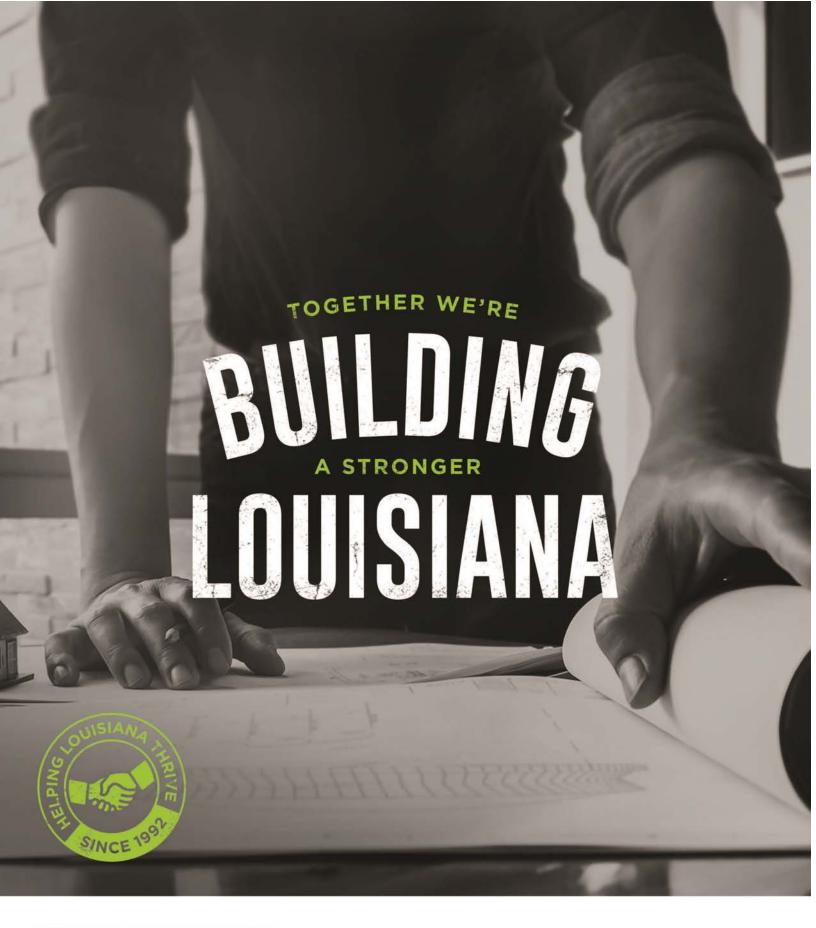
The takeaway is that insurers need to keep lines of communication open with insureds, along with taking advantage of tools that can help decrease exposures.

"We'll do bi-monthly meetings where we discuss loss trends with the clients that have had challenges, [or] we'll go in and shut down the company for three hours every other month and [conduct] driver training," said McLean. "It's not a matter of flipping a switch, but it's trying different levers that might help altogether."

Source: Insurance Business America







AT LWCC, WE'RE DRIVEN BY OUR UNIQUE MISSION to improve and protect the lives of Louisiana's workforce—ultimately helping our home state thrive. It's a commitment we made over 25 years ago, and to this day, keeps us focused on building safer and more stable futures for our communities. Learn more about Louisiana's Highest Rated Workers' Compensation Company at LWCC.com



### Agents Warned About E&O Risks in Claiming Cyber, Cannabis Expertise

Insurance agents and brokers who market themselves as experts in cannabis or cyber could wind up regretting that positioning. Because both are relatively new exposures subject to changing regulations and coverages, producers marketing themselves as experts could face scrutiny, lawsuits and possible errors and omissions claims, according to speakers at the Professional Liability Underwriting Society (PLUS).

"Any time we see someone advertise expertise, we're going to see a claim," said Kiera Goral, assistant vice president of Specialty Claims at OBE.

Patrick Carley III, a New York-based partner

with the law firm of Traub, Lieberman, Straus & Shrewsberry, is seeing a number of E&O claims resulting from producers not understanding cyber, but still purporting to be an expert.

"It behooves agents and brokers to be very cautious about exactly what they are representing their expertise to be, especially when it comes to cyber," said Carley.

Given that there are many plug-and-play cyber products on the market, agents may miss coverage gaps, advised Javier Gonzalez, partner and executive vice president of Sales for N.J.-based Axis Insurance Services. That's

Continued page 15





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why it's vital for agents to educate clients, he said. After a loss, a client may question why a particular coverage wasn't offered. Gonzalez suggested that agents and brokers who use checklists when reviewing a client's insurance portfolio include cyber on those lists. In addition, because the cyber product is constantly evolving, auto-renewing without a review is a bad idea.

"I think on the claims side, it's pretty clear when there's a large loss, it's typically going to be as a result of the agent or broker dabbling in a product they didn't have any previous experience in," said Gonzalez.

It's especially important to review coverage when a policyholder is changing carriers, said Michell Girardin Freimuth, vice president and insurance agents E&O practice leader for Allied

World. She suggested having clients sign off on changes, especially if they are losing coverage.

Agents can mitigate this risk by educating younger employees on communication and what to include or not include on social media sites. QBE's Goral has seen depositions where printouts of social media posts were brought in to support "expert" questioning. She also suggested completing peer reviews and identifying for long-standing clients where there is likely to be a coverage gap before a claim arises.

Carley added that employee social media accounts should be monitored, and employees should be reminded to memorialize oral conversations with clients. Agency websites should be reviewed regularly, as well.



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"Their representations track back to you," said Carley.

With respect to agents and brokers' own cyber exposure, Gonzalez is seeing more social engineering claims arising from email requests not being verified. The same scenario was seen with title agents a few years ago, he said. Multiple policies may be at play in these losses including cyber and E&O if involves policyholder premiums, panelists said.

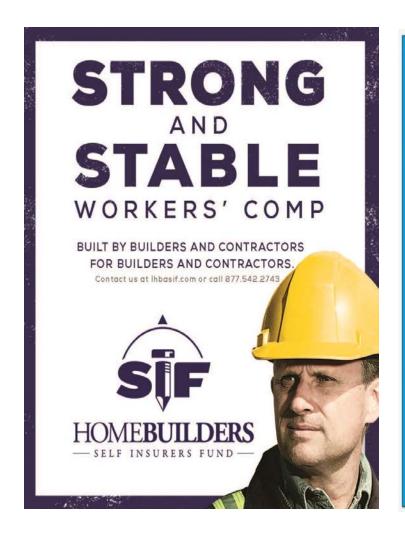
Problems with Pot

Cannabis coverage is also fraught with issues. Allied World's Girardin Freimuth said

the first question she gets as an underwriter is whether it's covered under E&O. Her answer: maybe. It depends on applicable state and federal laws.

Goral said it's a difficult question to answer, given the criminal acts exclusion that may preclude coverage since marijuana remains classified by the federal government as a prohibited substance.

Another dilemma is whether to segregate premiums obtained from insuring cannabis-related exposures, said Carley. The theory is that other premiums would be safe in case there is a seizure of funds by the federal government. One strategy he's seen: an agency created a new entity just to address cannabis risk.





According to Gonzalez, carriers and brokers must decide whether they are going to be in that space given the risks.

#### M&A Issues

E&O claims are also expected to rise as mergers and acquisitions continue at a healthy pace, according to Girardin Freimuth, who pointed out the importance of reviewing problematic areas such as ensuring insurance policies address prior acts and whether professional services of the acquired agency are covered under the buying agency's current policy.

"Addressing prior acts is the number one issue," said Goral.

Source: Insurance Journal



#### How to Manage Microsoft Outlook's AutoComplete List



Microsoft continues to improve the Outlook email client. There seems to be an increasing number of productivity tools

built into the Outlook platform many people are not aware exist, nor do they know how to use them.

One of those tools is called the AutoComplete list.

The AutoComplete list, automatically maintained by Outlook, is used by both the automatic name-checking feature and the automatic completion feature. This list is also known as the nickname cache and is generated automati-



The place you call home is not only one of your most important assets - its where you and your family live. You need insurance coverage that protects not just your home, but your quality of life.



cally when you send email messages from Outlook. The list contains SMTP addresses, LegacyExchangeDN entries, and display names for people to whom you have sent email previously.

The AutoComplete list for Outlook is specific to Outlook and does not share information with the Outlook Web app (OWA).

#### Limit to the number of entries

Outlook limits the number of entries that you can save in the AutoComplete list. After you reach this limit, Outlook uses an internal algorithm to determine the best names to remove from the list. It does this based on a usage weighting. Therefore, you may find some names unexpectedly removed from your nickname cache. There are two general approaches you can use to avoid this situation:

1. You can proactively remove AutoComplete list entries that you no longer need. This is the

preferred approach.

To remove entries from the AutoComplete cache one entry at a time, follow these steps:

- 1. Open a new email message.
- 2. Type the first few characters of the AutoComplete entry that you want to remove.
- **3.** When the entry appears in the list of suggested names, move your mouse pointer over the name until it becomes highlighted, but do not click the name.
- 4. When the "X" icon appears next to the highlighted name, click X to remove the name from the list, or press the Delete key on the keyboard.
- 2. You can increase the limit for the nickname cache. Because this configuration is untested, we do not recommend it.

Continued page 20





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\*Subject to eligibility.

There is a limit to the number of entries maintained in the AutoComplete list. For Outlook 2016, the limit is 1,000 entries.

#### How to enable the AutoComplete feature

If AutoComplete is not enabled on your Outlook, following are the steps to turn it on for Outlook 2010, Outlook 2013, and Outlook 2016:

- 1. On the File menu, click Options.
- 2. Select the Mail tab.

Scroll approximately halfway down until you see Send messages. Make sure the Use Auto-Complete List to suggest names when typing in the To, Cc, and Bcc lines box is checked.

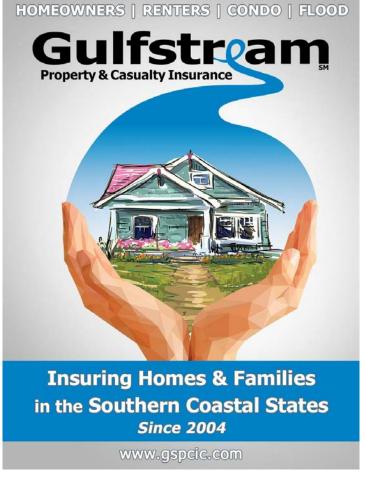
It is straightforward to manage your Auto-Complete list. For a long time, I did not pay attention to the AutoComplete list and ended up sending a few emails to the wrong people. My recommendation is to go ahead and remove old email addresses or addresses you no longer use to keep your AutoComplete list clean.

Steve Anderson is the leading authority on Insurance Technology, Productivity & Profitability. Contact Steve at <a href="mailto:steve-at-s

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#### Catastrophe Planning

Hurricane season is quickly approaching. While we are all hoping for a calm season and praying that all storms in the Gulf steer clear of Louisiana, we must all be prepared for the "just in case" scenario.

The IIABL website is your member source of comprehensive information for you & your insureds. Catastrophe Planning is housed under the Information & Membership tab of the IIABL website, www.IIABL.com.

It is suggested that your agency have a catastrophe plan. As an IIABL member you can download the Agency Catastrophe Guide. In this guide you can develop your agency's disaster plan, protect technology, prepare for and manage claims and many other items available so that you and your agency are storm ready.

Additional resources from ACT (Agents Council on Technology) and from SwissRe can be found for your agency.

Website links to FEMA, SBA, Selective Flood, etc. make it easy for your to access these important resources should it be necessary. From the state level links for Get a Game Plan and Ready.gov can be found here also.

IIABL has included information for your insureds such as:

- 1. Hurricane Preparedness for Business
- 2. Protecting Your Family & Home from Hurricane and Windstorm
- 3. Hurricanes: 12 Things You Need to Know Now about Your Insurance
- 4. 10 Key Steps to Prepare for a Disaster

We hope that this information is a valuable member benefit for you & your insureds. Check out additional information on the next article in this newsletter, Disaster Guides—Before, During and After.

#### Disaster Guide - Before, During and After

ACT's Disaster Planning work group has prepared an updated Disaster Guide that provides a map for not only planning but also response and recovery. It will help your agency minimize harm to individuals and business operations and will allow you to quickly return to serving customers in their greatest hours of need.

Before diving into a response plan, you'll need to undertake a disaster risk assessment. Send an email to, <a href="mailto:fberendson@iiabl.com">fberendson@iiabl.com</a> with the subject line disaster risk assessment for a chance to win a \$25.00 gift card. ACT has a great assessment that helps you rank the perils you most likely will face, which will guide your overall response priorities and strategy.

To help you get your initiative started, the Disaster Guide suggests you identify employees

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who will participate in the implementation of your response plan. Your employees, both at the leadership level and at the core functional level, will each have a special responsibility or set of responsibilities, and seamless integration is crucial. Controlling the flow of information internally and externally will eliminate confusion and help you get a consistent, coherent message out to carriers, clients and vendors alike. The initial preparations also involve your physical location(s), equipment, supplies, utilities, and transportation/mobile sites. In some cases, moving items to safer regions may be required, so partnerships should be established as soon as possible. Waiting until a storm is on the way could leave you without easy, affordable resources.



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Your carriers and vendors will appreciate your outreach and may already have excellent suggestions or programs of their own for disaster response that you can work with claims, emergency personnel and payments, authorized adjusters and contractors. Designating a couple of employees as managers of these integrated plans can create expertise that will be sorely needed in a pinch. Your agency management system should be current with updates, and you should have remote access to all your files and programs. Cloud-based systems and a paperless environment can save the day if your hardware takes a direct hit.

During a disaster, your priority is safety and awareness. If you have a text tree or a Twitter account or some other marked safe or need help contact method, you will want to use it in the midst of the disaster. A battery-operated radio, charged spare batteries for cell phones, and crank lighting can be of great assistance during a disaster.

Once it is safe to do so, you will initiate your disaster response plan, which includes checking with all employees and having everyone execute their duties. Your website is an excellent tool for communicating vital information to those using cell phones when the power is out, so make sure your website is mobile compatible and updated with the latest information your clients need: claims, temporary housing, food and water, pet assistance, medical care, etc. When roads are passable and travel is permissible, the person assigned should check the office. If it is safe and usable, you can start reaching out to clients, carriers and the media with information on your capabilities and accessibility.



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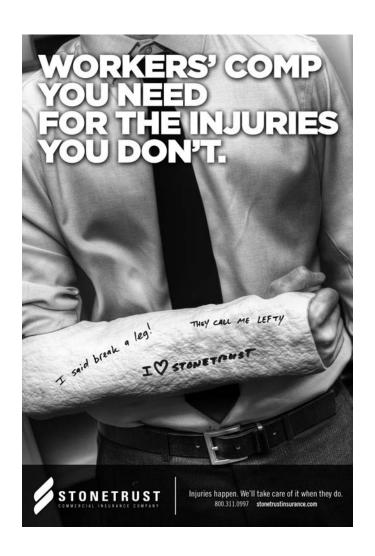
Lastly, don't forget to run a post-disaster debriefing. This will give you a chance to iron out any bumps for the next time. And don't forget that a second disaster could hit while you are still in recovery from the first. This means you must never consider the job done, and must keep on guard for a new blast of difficulty even when in response mode. Having that deeper plan could set you way above your competitors and be the difference between full readiness and unmanageable calamity.

For the full ACT Disaster Guide, click here, then scroll down to find the three main steps: Be Prepared, During the Disaster, and After the Disaster.

#### Mobile-Responsive Websites Are Ideal

Increasingly, people are searching for products and services online on their mobile devices instead of a computer. According to Matt Aaron, co-founder of Insurance Agent Mobile App, two thirds of web searchers depart a site if it isn't optimized for mobile technology. Moreover, 80% of insurance shopping starts on mobile devices, and Google favors mobile usability in searches, Aaron says. Agencies that accommodate mobile-device use of their websites can ecommerce capability and consumer leads.

Learn more about how responsive design works and how it can benefit your agency from Eggs Medias recent blog on five essential responsive design benefits here.









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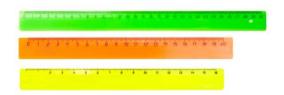
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## Rate & Rule Filings

Company	Coverage Type	Overall % Impact:	Overall \$ Impact:	Number of Policyholders:	Changes
Americas Ins Co	4—Homeowners	-1.3%	-\$204,876.00	8,036	New: 5/1/2019 Renewal: 6/1/2019
Allstate Indemnity Co	19 - Private Passenger Auto	+2.9 %	\$151,075	2,230	New: 06/10/2019 Renewal: 06/10/2019
LUBA Indemnity Ins Co	16—Workers Comp Lost Cost Adoption	-6.630%	-\$618,811	183	New: 07/01/2019 Renewal: 07/01/2019
Manufacturers Alliance Ins Pennsylvania Manufactur- ers <b>Assoc Ins Co</b> Pennsylvania Manufactur- ers <b>Indemnity Co.</b>	16 - Workers Comp	-6.1%	-\$192,963	243	New: 05/10/2019 Renewal: 05/10/2019
Markel Insurance Co	16 - Workers Comp	-3.40%	-\$140,170	1,535	New: 05/10/2019 Renewal: 05/10/2019
AmGuard Insurance Co	19 - Commercial Automobile	18.340%	\$345,682	217	New: 06/10/2019 Renewal: 06/10/2019
LUBA Casualty Ins Co	16 - Workers Comp Lost Cost Adoption	-5.390%	-\$4,135,155	3,182	New: 07/01/2019 Renewal: 07/01/2019
LA Citizens Prop Ins Co	1—Property	4.2%	\$2,578,000	37,000	New: 06/10/2019 Renewal: 06/10/2019
Liberty Personal Ins Co	19-Private Passen- ger Auto	11.1%	\$14,218194	31,515	New: 4/24/2019 Renewal: 5/29/2019
Stonetrust Commercial Ins Co	16 - Workers Comp Lost Cost Adoption	-7.10%	-\$1,692,69	2,344	New: 06/10/2019 Renewal: 06/10/2019



## Rate & Rule Filings

Company	Coverage Type	Overall % Impact:	Overall \$ Impact:	Number of Policyholders:	Changes
Liberty Ins Corp Liberty Mutual Fire Ins Co First Liberty Ins Corp	19- Private Pas- senger Auto	11.1%	\$1,961,054	4,172	New: N/A Renewal: 5/29/2019
USAA Casualty Ins Co USAA General Indemnity Garrison P&C Ins Co	19– Private Pas- senger Auto	3.8%	\$9,546,587	96,640	New: 4/27/2019 Renewal: 6/12/2019
Great Northern Ins Co Pacific Indemnity Co Vigilant Insurance Co Federal Insurance Co	4—Homeowners	15.1%	\$3,890,790	3,241	New: 6/3/2019 Renewal: 7/18/2019
Charter Oak Fire Ins Co Phoenix Insurance Co Travelers Indemnity Travelers Ind. Of America Travelers Ind. Of Connect- icut Travelers P&C Co of America	5 - Commercial Multiple Peril	3.6	\$441,000	2,630	New: 09/01/2019 Renewal: 09/01/2019
Property Ins Assoc of LA	1-Property	-7.7%	-\$2,931,916	27,899	New: 11/01/2019 Re- newal: 11/01/2019
Allstate Ins Co	5-Commercial Mul- tiple Peril	7.5%	\$158,154	1,480	New: 06/17/2019 Re- newal: 08/28/2019
AmGUARD Ins Co EASTGUARD Ins Co NORGUARD Ins Co	16 - Workers Comp	-3.620%	-\$169,191	964	New: 06/10/2019 Renewal: 06/10/2019

#### Get Your Website ADA-Compliant

The number of lawsuits filed alleging discriminatory website access rose to 2,250 in 2018, nearly three times the 814 seen in 2017, according to statistics from law firm Seyfarth Shaw. Web-

site accessology.com calls website-access lawsuits the new frontier in disability litigation, and says, The complaints typically detail roadblocks that visually impaired individuals face when using screen reader tools that read the contents of a website aloud.

Settlements typically run in the tens of thousands of dollars and require the company at fault to amend its website which can add thousands more to the end cost.

With the complexities and costs in mind, ACT developed an ADA Memo in conjunction with the Big I national general counsel to provide agencies a solid background in the requirements of the Americans with Disabilities Act as well as suggestions for successful website compliance. This memo is also available to members at the Big I website under Services in the Legal Advocacy dropdown menus Memoranda & FAQs section.

#### FAQ REGARDING WEBSITE COMPLI-ANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA)

Prepared January 2019

Title III of the Americans with Disabilities Act of 1990 (ADA) requires any private entity that owns, leases or operates a place of public accommodation to provide accessibility for disabled individuals. Although the ADA does not expressly address the internet, which barely existed at the time of its enactment, most courts have recognized that its protections apply to websites. In 2018 alone, plaintiffs filed more than a thousand ADA website accessibility lawsuits against a variety of businesses.

#### **FAOs**

#### 1. Do ADA website accessibility requirements apply to insurance agencies?

Title III applies to twelve different categories of places of public accommodation," which is defined to include insurance offices" among other service establishments. While plaintiffs have generally targeted major retailers, restaurants, and hotel groups as defendants, insurance offices are also included within the ADA's statutory categories of public places. Indeed, there has been at least one federal class action suit for alleged website accessibility deficiencies filed against an Ohio-based insurance carrier.

#### 2. Does the ADA apply even if my business does not sell anything on its website?

Federal courts, including in the Third, Sixth, Ninth and Eleventh Circuits, have found that website accessibility may still be required if there is a sufficient nexus" or connection with physical offices that do make sales. Additionally, Title I of the ADA prohibits discrimination in the job application process such that online job listings and applications may also create potential exposure. Based on the direction of this legal precedent, it is prudent to err on the side of ensuring one's website is accessible to disabled individuals.

#### 3. How do companies ensure their websites are ADA compliant?

There are no federal guidelines or clear guidance on how to ensure compliance and accessibility. The World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG) 2.0, however, is recognized as a generally accepted industry standard. Agencies may wish to seek a compliance audit with a reputable vendor to determine how their websites measure up against the WCAG 2.0 and ways to address any issues.

- Lack of formal regulations does not excuse non-compliance with existing laws.
- Look to W3C's <u>Web Content Accessibility</u> <u>Guidelines (WCAG) 2.0</u> for guidance for websites, mobile and digital.

- In general, although W3C has issued WCAG 2.1, courts generally look to 2.0 as the standard as of the date of this FAQ.
- More WCAG background can be found <u>HERE</u>.

Most businesses look to outside vendors to ensure their websites are accessible. One of the first steps is undertaking an ADA compliance audit to identify any issue in the website's layout and code. Some common accessibility issues that are addressed include:

- Fonts, styles and backgrounds that make it difficult for certain users to read content due to size or insufficient contrast.
- Missing alternative text or alt tags" that allow automated screen readers to describe visual elements on a website.
- Inadequate labeling of inputs on fillable forms and fields, such as on a checkout page.
   For additional insight, please also see IA Magazine article, <u>Is Your Agency at Risk for a Website Accessibility Lawsuit?</u>" (Dec. 12, 2017).

Please note that providing a comprehensive checklist of items goes far beyond this memorandum. Addressing the issues identified above does not ensure a website is fully ADA compliant.

Additionally, a telephone operating service could also provide another route to compliance. The Department of Justice has stated that covered government entities may comply with the ADA's requirement for access by providing an accessible alternative, such as a staffed telephone line, for individuals to access the information, goods, and services of their Web site." See <u>75 Fed. Reg. 43460-01</u> (July 26, 2010). While such services could provide a defense to liability, courts may still examine the record to determine if the service was an adequate alternative and if contact information was supplied in an accessible format on the website.

#### 4. Is my website compliant if I hired a vendor to develop it?

Not necessarily. Many website developers now attempt to address accessibility and may provide solutions, but this is still an emerging issue. Also,



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agencies may not necessarily be protected by indemnification or warranty provisions, to the extent they exist in their vendor contracts.

#### 5. Other Considerations Vendors, Liability Coverage and State Laws

There are also several important caveats with respect to relying on vendors for ADA compliance generally. First, to the extent possible, agencies should seek indemnification protections from their vendors for thirdparty accessibility claims. A trend is developing in the law, however, that may render such indemnification clauses unenforceable based on a view that ADA compliance obligations are nondelegable. Second, agencies should consider whether they have insurance coverage for accessibility discrimination claims. While some Employment Practices Liability Insurance (EPLI) policies may cover ADA lawsuits, coverage remains a fact- specific inquiry and could implicate exclusions, e.g., for claims based on discrimination. Some commentators have also suggested exploring coverage under media liability or cyber insurance policies.

It is also important for agencies to consider not only liability exposure under the ADA, but also any state- specific laws or regulations that may be implicated, such as the California Disabled Persons Act and Unruh Act. To date, the vast majority of suits have been filed in New York, California, Florida and Pennsylvania. Given the exponential increase in filings over the past few years, businesses operating in any jurisdiction should review their website's accessibility sooner than later.

#### 6. How important is it to make my website accessible?

The number of ADA website accessibility lawsuits is likely to continue to increase in the future. Additionally, one in seven individuals in the U.S. has a disability, including more than 7.3 million people who are blind or have a visual impairment. Thus, not only does addressing website accessibility help limit legal exposure, it could also help agencies ensure they are serving more customers.



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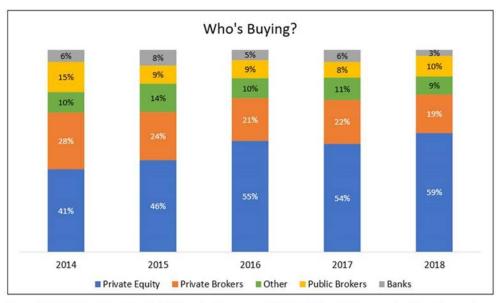


We have the tools and service to hire, manage and pay your employees. It's how we built our business. Now we'd like to help build yours.



#### The Biggest Mistake Most Buyers Make

In this M&A-crazed environment, it may come as a surprise to you that the second-most active buyer of private insurance brokerages in 2018 was other Private Brokers. Private Equity buyers are getting most of the press, as they did a whopping 59% of the deals closed in 2018. But Private Brokers closed 19% of the deals done last year. Private Brokers like you *are* getting deals done.



Source: SNL Financial as of December 31, 2018 (based on Announcement Date). Includes whole company, franchise and asset sales.



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Competing against deep-pocketed Private Equity and Public Broker buyers is no easy task, but it can be done successfully. However, there is one fatal mistake private insurance brokers make more often than any other when trying to get deals done – they move at the pace of molasses.

In the old days, when courting an acquisition target, it was very common to take months or even years to get to a deal done. Lunch after lunch after lunch with the prospect and endless meetings with your partners to make sure the cultural fit and the financial deal is just right. Today, if you wait months to get a term sheet in front of a prospect, you're likely to hear, "sorry, we've decided to go in a different direction." That's code for "we're selling to a Private Equity buyer who delivered an eye-popping term sheet to us a week after they met us."

It is perfectly reasonable to want to do your due diligence as a buyer, but increasingly the bulk of diligence is completed after the term sheet is signed, not before. Remember: a term sheet is a non-binding agreement. If due diligence goes south and doesn't support the assumptions you made when crafting the term sheet, you are still free to change or kill the deal.

In this environment, if you think you can still operate with a slow acquisition dance mentality as if it's still 2005, you'll find out quickly one of the primary reasons Private Equity players are getting 59% of the deals – they move at the speed of light. Want to start getting your fair share of the deals getting done? Start looking more like Amazon and less like Sears.

Tom Doran Partner/Reagan Consulting





# ITABL EDUCATION & EVENTS CALENDAR

Webcasts			
E&O Risk  Management  Click above for schedule  Available on Demand	Ethics Click above for schedule Available on Demand	Flood Click above for schedule Available on Demand	Commercial & Personal Lines Courses Click above for courses & dates for 2019
Listed are a few of the May webcast.  For the 2019 webcast calendar click here.  5/1 Business Income  5/2 Contractor Coverage  5/9 BAP Symbols/ Endorsements  5/14 Homeowners Coverage  for the Modern Family	5/16 Certificates of Insur- ance 5/21 Getting the Named Insured Correct 5/23 Contractors, Contrac- tors, Contractors 5/22 The Agent & The Ma- chine 5/23 Ethics: Data, Dilemmas and Knuckleheads	A New Agent Training Solution  INTENTIONAL TRAINING to Prepare For TOMORROW  Pick & Play Your Professional Bundle:  Basic & Beyond  CLICK HERE TO GET STARTED!	BIG 1
Seminars			
	E&O Risk Management May 14—Monroe May 15—Lafayette May 16—Baton Rouge May 17—Metairie		
Events			
May 22nd Young Agents Day @ The Races Bossier City	ITAGNO Seafood Soiree' May 23, 2019 Southport Hall	June 16 -19 <u>Annual Convention</u> Destin, FL	
On-Demand Webcasts	Pre-Licensing		
Click here for the course catalog of all of the on-demand webcasts. Reminder—all of the IIABL online courses do not require a test for CE Credit	Online prelicensing 3 optional study packages Click here for additional information		

## Risk Managers Reminded of Strategies for Coping with Disasters in Their Many Forms

Preparing for the unthinkable requires a lot thought.

Risk management professionals this week cautioned audiences of the myriad pitfalls in planning for catastrophes during the Risk & Insurance Management Society's annual conference at the Boston Convention and Exhibition Center. Corporations were counseled to make sure they have the right coverage, insurers were advised to defend their rights and business owners were told they may be just one hack away from losing everything.

Edward Colechia, a senior vice president for Marsh's claims practice in Boston, outlined the anatomy of a catastrophic general liability loss and offered guidance on how to best cope with the inevitable. Preparation is key, he said. Before any risk is accepted, the insurer should make a site visit to assess the situation on the ground.

Colechia said an on-site visit to one of Marsh's clients in the Midwest might have averted a \$200 million claim that still left the insured with a \$50 million coverage gap. Six people died when a deck collapsed. Colechia said a claims adjuster found that the wooden deck was riddled with mushrooms.

The risk manager must conduct loss runs to assess the full extent of the potential loss, Colechia said. He or she should also have a list with the phone numbers of everyone involved in the "insurance tower." Ensure that the language in each policy is aligned so that when the limit on the primary policy is exhausted coverage under an excess policy, for example, kicks in, he said.

"Communicate. Communicate. Communicate," Colechia said. "That means internal as well as external."

#### Reservation of Rights

Insurers that have accepted a risk need to make sure they properly reserve their rights in case a claim is excluded under the terms of the policy, said attorney Barry M. Miller, an administrative partner with Mazanec, Raski & Ryder in Lexington, Kentucky.

Miller said a reservation of rights letter should be sent to a claimant as soon as a defense of the claim begins, or soon after. He said such a letter must clearly explain any coverage limits and how they apply to the facts of the claim. Insurers that don't explain limits or exclusions risk a court holding that they are estopped from raising those terms in defense of the claim.

Miller said it should be kept in mind that in some states, insurers are allowed to demand reimbursement of any money spent defending a claim that was not covered. But the right to that reimbursement must be reserved, he said.

Miller said reservation of rights letters should be specific, not boilerplate. Simply restating the limits and exclusions in a policy won't do. He said the letter must explain how the policy language pertains to the facts at hand.

#### Cyber Attack

The exclusions mentioned by Miller could be a disaster if the claim involves a cyber attack. Strategies for coping with that particular peril was the topic of another presentation from attorney Joshua Gold of Anderson Kill in New York and Lance Ewing, executive vice president of global risk management and client services for Cotton Holdings Inc. Their presentation was titled "Cyber Coverage for Things that Go Boom."

Gold said cyber risks "keep morphing." In the early days, the privacy of data was the major concern. Policies where written to protect insureds from potential class action lawsuits caused by data breaches.

Covering the risk of bodily injury was not a concern for the cyber insurer or insured. But thanks to the Internet of Things, bodily injury is a very real risk from certain cyber crimes. Concerns about criminal mischief prompted California lawmakers to require security on every device connected to the internet, he said.

Cyber criminals can threaten the very existence of companies. Gold said a medical practice in Minnesota shut down after it was hacked. The physicians spent days manually calling patients to cancel appointments, he said.

Even the risk of cyber attack are well known, organizations don't always manage the risk well.

Ewing said cyber is becoming an increasingly important risk for directors and officers' coverage. He said shareholder lawsuits closely follow any data breaches suffered by pubic companies. Meanwhile, "the Securities and Exchange Commission has not made it a secret that they are going after any company that hasn't been diligent about cybersecurity."

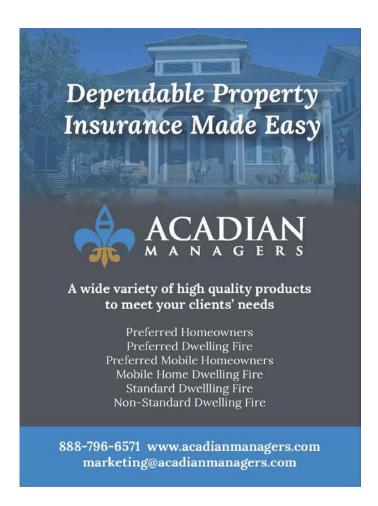
Public companies are required to disclose in proxy statements any risks that threaten earnings. He said cyber risk has moved up toward the top of the listed disclosures in many of those proxy statements.

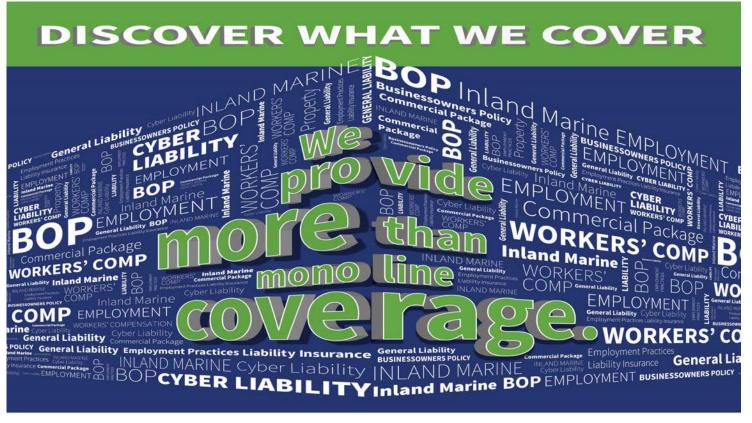
Ewing said directors need to pay close attention to their organization's insurance coverage. He said some policies require the insured to follow specific security practices in order to obtain coverage.

"It is drastically, direly important to work with a broker who has experience in cyber coverage," Ewing said.

Source: Insurance Journal

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#### Throw Me Something Big I 117th ITABL Convention June 16—19, 2019 Destin. Florida

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Agency or Company	Children's Name(s)	
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Email	Phone	

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Registration Fee	Before May 20, 2019	After May 20, 2019	Total
Member Registration	\$325.00	\$375.00	
Member Golf Registration	\$145.00	\$195.00	
Non-Member Registration	\$450.00	\$500.00	
Non-Member Golf Registration	\$200.00	\$250.00	
Total Due:			

Register on-line at <a href="www.iiabl.com">www.iiabl.com</a> or mail your check payable to IIABL to 18153 E. Petroleum Dr., Baton Rouge, LA 70809.

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#### Throw Me Something Big I 2019 ITABL CONVENTION June 16 - 19, 2019 TENTATIVE

Sunday, June 16, 2019

10am - 12pm Exhibit Setup Emerald Ballroom 12:30pm **Exhibitor Meeting** Emerald Ballroom 1pm - 6pm Registration Center **Emerald Prefunction** 1pm-4pm **Exhibit Exposition** Emerald Ballroom 1pm-4pm Welcome Refreshments Emerald Ballroom 5pm-7pm **Emerald Ballroom** 

Street Parade

5pm - 7pm Opening Reception Emerald Ballroom

Laissez Les Bons Temps Rouler

7pm-9pm Exhibit Breakdown Emerald Ballroom

Monday, June 17, 2019

8am - 1pm Registration Center **Emerald Prefunction** 9am - 12pm Opening Session -They All Ask'd For You Emerald Ballroom

Filed for 3 hours CE

Welcome - IIABL President Johnny Beckmann, III State of the Union - Commissioner Donelon IIABL Installation Officers & Board of Directors

**IIABL** Awards Presentation

Emilian Papadopoulos -Good Harbor Security Risk Mgmt.

Louisiana Politics, Elections Business Interests & Tort Reform - Stephen Waguespack, LABI

CE Seminar - Cyber Filed for 2 hours CE 2:00pm - 4:00pm Emerald C

Emilian Papadopoulos –Good Harbor Security Risk Mgmt.

3pm - 5pm Frozen Drink Treats - Carnival Time The Veranda Cocktails & Companies - Go To the Mardi Gras 5:30pm **–** 7pm Sunset Deck

8:30pm **–** 10pm Sweet Treat Dessert Reception - Second Line Emerald Ballroom C,D,E

Tuesday, June 18, 2019

6:30am - 9:00am Breakfast of Champions When the Saints Go Marching In Emerald Ballroom C,D

Registration Center 6:30am - 9:00am **Emerald Prefunction** 8:00am - 3:00pm Golf Tournament - Who Dat Kelly Plantation

9am - 5pm IIABL Beach Tailgate - Choppa - I Feel Dat Beach

Meet on the beach for volleyball, bocce ball,

tailgate toss & ladder ball.

Ice Cream & Beer - Mardi Gras Mambo 2:00pm- 4:00pm Barefoots Deck Emerald Ballroom

Dance Party - Fais do do 8:30pm - 12:30pm

Bucktown Allstars

Wednesday, June 19, 2019

8am - 10am Registration Center **Emerald Prefunction** 9am - 12pm Closing Session - Hey Pocky A-Way Emerald Ballroom D,E

Filed for 3 hours CE

Outgoing President's Speech-Johnny Beckmann Incoming President's Speech-Joey O'Connor

The Reinsurance Market - John Forney, CEO, UPC Insurance Co

Top Initiatives from IIABA Chairman Elect – Jon Jensen



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LANE & ASSOCIATES	LIBERTY MUTUAL	LUBA WORKERS' COMP	RPS COVINGTON
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