LOUISIANA AGENT

FEBRUARY 2019

A publication of the Independent Insurance Agents & Brokers of Louisiana

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Louisiana Agent
February 2019

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In this issue:

Important Cybersecurity Information for IIABL Members

Agency Cybersecurity Requirements

Every independent insurance agency has ethical, legal, state, and federal requirements to safeguard the personal information of their customers. Many agencies are not adequately addressing their cybersecurity requirements. This is not something you can simply delegate to Applied or AMS or other agency management software providers.

Effective March 1, 2019, all NY-licensed insurance companies are required to implement policies and procedures to ensure the security of all non-public information held or accessed by all agencies who sell their products countrywide. These requirements apply even if you do NOT do business in New York. Several major insurance companies are amending their agency contracts to impose cybersecurity requirements on ALL agencies as a condition of doing business, including but not limited to requiring that you implement a cybersecurity policy and/or implement data security controls.

It is difficult for small independent insurance agencies to comply with these cybersecurity requirements so IIABL has partnered with Big I New York and Wisconsin to help our agents comply with cybersecurity requirements.

IIABL Resources for Small Member Agencies Cyber Security Webinar

HERE is a webinar that the Big I New York conducted to explain how the New York cybersecurity law will affect agents throughout the country

Continued page 6

because of the Third-Party Service Provider Requirement that applies to insurance companies. The webinar discusses how a Covered Entity needs to comply and how an out of state agency that is not licensed by the NY Department of Financial Services may be affected.

Cybersecurity Compliance Bundle

Don't know where to start when it comes to complying with cybersecurity regulations? We've got your back. Our new Cybersecurity Compliance Bundle, FREE for Big I members, contains a comprehensive set of documents and templates to walk you through every step of complying with the New York State cybersecurity regulations. The bundle contains editable documents you can customize to meet the needs of your company.

Included documents:

- Cybersecurity Compliance Journey
- Internal Risk Assessment Guide
- Cybersecurity Policy Word Template
- Cybersecurity Policy Word Template TPSP Addendum
- Third Party Risk Assessment Guide
- Third Party Service Provider Sample Questionnaire
- Third Party Service Provider Tracking Template

Device Inventory

To Download the Cybersecurity Compliance Bundle:

Go to the Big I NY Cybersecurity webpage: http://www.BigINY.org/cyber.

Click on 'Cybersecurity Compliance Bundle'. You will be prompted to log in if you aren't already - this is your Big I/IIABA log in. A ZIP file will download the Cybersecurity Compliance Bundle to your computer.

Big I Advocacy with Insurance Companies on 3rd Party Requirements

The Big "I" is hearing much confusion and consternation from our agents about how the New York Cybersecurity Law/Regulation will impact them, and about what actions companies are considering with respect to these requirements.

The Big I has reviewed the NY regulations closely, and specifically, the third-party service provider requirements. Section 500.11 requires that companies develop and implement written policies and procedures to ensure the security of their information systems and nonpublic information that are accessible to or held by third-party service providers, including agencies. These policies and procedures are to be tailored based on an initial and periodic risk assessments of the third-party service providers. It is clear, however, that the regulation does not require companies to compel agencies to comply with the NY regulation itself, and it does not impose or enumerate specific mandates for agencies or other third-party service providers.

Considering the lack of clarity and direction contained in the regulations, and in the NYDFS guidance and commentary up to this point, the Big I is lobbying insurance companies for reasonable requirements for agencies in their capacity as third-party service providers. Big I suggestions to insurance companies include:

- Consider adopting an "attestation-plus" approach that would require agencies to represent that they comply with applicable state and federal data security standards, and to notify the company when they are breached.
- Strongly consider making such representations and obligations mutual, so that agencies that share nonpublic information with insurers are similarly protected, especially those agencies licensed in New York and deemed "covered entities" themselves.

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Insurers may also consider developing or adopting a simple, short, and straightforward questionnaire that asks agencies whether they have a data security plan, incident response plan, and access controls.

The Big I urges insurance companies to take a reasonable and balanced response to the third-party service provider requirements, within the confines of what the regulations require, and tailored to the unique relationship that exists between companies and agencies that may be unlike companies' relationships with other entities that are deemed "third-party service providers" under the regulations.

Check Policies Against Binders

Agents report increasing differences between coverage bound and the policies received. This is particularly true in surplus lines markets where insurers have freedom of form and rate and have broader variations of coverage.

Agencies should check policies received from insurers against the applications, proposals, quote/term sheet, binder to make sure that the policy provides all of the coverages that were applied for, quoted and bound.

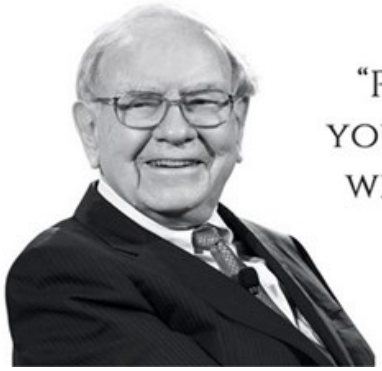
Animal Exclusions

One specific area where we have seen a dramatic change in coverages is in animal exclusions on Homeowners policies. Many insurers have a "bad dog" or Named Dog Exclusion which lists several of the more aggressive breeds that are not covered under the liability section of the policy. In recent months we have seen broader exclusions for Owned Dog Exclusions and even Total Animal Exclusions.

Agents can reasonably discuss Named Dog exclusions with policyholders…most homeowners understand that a pit bull may not be covered. However, the broader exclusions can pose difficult situations. A Total Animal Exclusion becomes a problem when your kid comes home to visit and brings their dog, or cat, or pet snake, or…

From 2.0 to 3

"[A]n insured should not have to consult a long line of case law or law review articles and treatises to determine the coverage he or she is purchasing under an insurance **policy."** – *Kovach v. Zurich Am. Ins. Co.*, 587 F.3d 323 (6th Cir. 2009)



Ah, if only that was **possible. Or is it…**

The preceding was the introduction to an article I wrote in May 2018 called "Reverse Engineering: Making Lemons From Lemonade." The article was about insurtech upstart Lemonade's attempt to simplify a homeowners renters policy by introducing an open-source product they called Policy 2.0.

In that article, I enumerated numerous wacky features in that proposed renters policy (e.g., it covers your "stuff," a term not defined in the policy) and illustrated how the policy, as it stood at the time, appeared to be dramatically inferior to the "ISO standard" forms being used by Lemonade at that time.

I have blogged extensively, including LinkedIn Pulse articles, about insurtechs and the mistaken belief that they are "disrupting" the insurance industry. For the most part, I've attributed much of the sometimes bizarre (and often dangerous) things they do to the premise that they just don't "get it." They really don't understand that the mission of the industry is not fast/easy/cheap convenience but rather assisting individuals, families and organizations in minimizing their exposure to serious or cata-

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strophic financial loss.

Sadly, this is all too often true of our own established institutions. An example is the pervasive perception that insurance, especially personal lines, is largely a commodity. As an industry, via our incessant price-focused advertising, we have conditioned consumers into believing this commodity myth. Even worse, we have apparently convinced ourselves of the same thing, as illustrated by this quote from industry icon Warren Buffett:

> ***"Insurers have generally earned*** *poor returns for a single reason: They sell a commodity-like product.* ***Policy forms are standard...."***

One would think that Mr. Buffett would know better, but apparently his knowledge and expertise do not extend to the policy level. That is further evidenced by the recent announcement of a new Berkshire Hathaway small business insurance product that he refers to as "THREE." This products purports to provide property, business income, general liability, professional liability, D&O, cyber, auto, and workers compensation coverage in a policy form that is...get this...JUST 3 PAGES long.

I first read about this in the daily Coverager newsletter then came across a more detailed explanation here:

Berkshire Hathaway's New "THREE" Page Policy Aims To Revolutionize Small Business Insurance

There is a link in the article that takes you to the proposed 3-page policy. I've only had time for a cursory look, but here are some initial unstructured observations and questions:

- Is this actually a legal contract? There is none of the language found in traditional insurance policies that establishes offer, acceptance, and consideration.
- There is no mention of coverage territories for property, liability, or autos, so what law(s)

apply to liability, court jurisdiction, etc. For example, presumably there is worldwide coverage for the use of autos, which might not be that important because…

- It appears that there is no coverage for the hired/nonowned auto exposure (including rental cars and temporary substitutes), only listed vehicles presumably equivalent to ISO Symbol 7 coverage.
- There is also no mention of auto coverages like un(der)insured motorists and no-fault laws. If an insured is curious about what is and isn't covered, I suppose they're expected to obtain a copy of governing state laws and decipher them?
- Property coverage appears to extend only to property owned or leased by the business, with none of the Additional Coverages/Coverage Extensions provided by ISO standard forms, including coverage for damage to the property of others. Or is damage to such property covered by the liability portion of the policy since it has very few listed exclusions such as those related to care, custody or control (see below).
- Non-building structures appear to come within the limit for business personal property, not the building(s) limit. Could this create potential gaps for insureds who are landlords or tenants only?
- Property coverage appears to be on an open perils basis with express coverage for theft. Unlike most traditional property forms, there doesn't appear to be an exclusion for theft by business partners, employees, etc.
- Coverage is for "physical damage" to property. Since there is an obtuse reference to cyber coverage, does such coverage extend to loss of data and information that is not "physically damage" since it's not physical property?
- Is there debris removal coverage since the policy only references coverage for "physical damage" to property?
- I see no exclusions or limitations for damage

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Bill Wilson, CPCU, ARM, AIM, AAM

due to flooding, earthquake, war, terrorism, widespread off-premises power failure, vacancy, freezing of plumbing or sprinklers in an unheated building, and the list goes on. Nor is there any anti-concurrent causation wording.

- There is no apparent limitation for insurable interest… if you "own" it or presumably any part of it, it's covered.
- There are no appraisal or arbitration clauses such that claim resolution is limited solely to the insurer's discretion.
- Property may be replaced with that of "similar capabilities," whatever that means.
- The only insureds appear to be the business and "listed Additional Insured or employees." Hopefully, this is all employees and not just those "listed." In other words, let's hope "llsted" refers on to Additional Insured, meaning that there is no option for automatic AI coverage. This limited insureds provision appears to preclude coverage for volunteers, permissive auto drivers, spouses of partnerships, and vicarious liability insured status for the use of autos.
- I see no exclusions or limitations for faulty workmanship nor any of the ISO CGL property damage exclusions, employers liability, damage to property in an insured's care, custody or control, liquor liability, aircraft/watercraft, product recall, and the list goes on.
- There also appears to be no restrictions on autos used off public roads or when racing. If that's accurate, someone could take up stock car racing and be covered, whereas ISO's CGL policy has an exclusion for that.
- The pollution exclusion appears to be almost absolute, whereas the ISO CGL policy generally provides coverage for most pollution incidents that occur off premises if the pollutant doesn't belong to the insured. ISO property policies also include some amount of pollutant cleanup coverage.
- Since no mention of "bodily injury" or "property damage" is made (just reference to an insured's legal liability), does the policy cover things like discrimination, fines, penalties, etc.? Does it cover criminal liability? EPLI coverage?
- I see no automatic coverage, even for liability, for acquired autos until they are listed and presumably the carrier can refuse to add any auto they choose.
- There is no mention of loss of use or transportation expenses coverage.
- Where's the medical payments coverage?
- Where's the Other Insurance clause?
- The cyber coverage does not appear to preclude coverage for data breaches or hacks by insureds. There is no mention of coverage for the loss or reconstruction of data and information.
- Workers compensation coverage is governed by state laws. Where is the employers liability coverage?
- There appears to be no general liability Separation of Insureds clause. In fact, there is a specific exclusion for insured vs. insured (cross liability) claims involving the business and Additional Insureds, a condition that probably puts most contractors in breach of contract, which raises another question….
- How is contractual liability handled? There appears to be an absolute exclusion for contractual liability without any carve-out of explicit coverage for "insured contracts" typically found in other policies for leases, easements, assumption of tort liability, etc. For many insureds with such contracts, this puts them in breach of contract.
- There is no coverage for property damaged during illegal transportation. Does that include an accident involving speeding?
- The policy does not cover any occurrences that start "or take place" outside the policy period. Does that mean, for example, that a fire that starts during the policy period and continues after expiration will not be paid in full?

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LOCAL SERVICE
LOCAL VALUES

THE INDEPENDENT INSURANCE AGENTS AND BROKERS OF LOUISIANA MATTER TO US.

That's why Imperial PFS®, the leading source of funding for the IIABL membership, has been located in Louisiana for more than 30 years. In addition to a strong local presence, we shape our business around the things that will benefit you the most - Service, Technology, Reliability, and Affordability.

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- No endorsements of any kind? No Protective Safeguards requirements? UM? Etc., etc., etc.

I have to admit, when I saw this article and perused the policy, I immediately thought about the date, sure that it had to be April 1.

I can only imagine who sees this policy as an advancement for the industry. First would be business owners who Mr. Buffett says don't "...have the time to actually read through the policy forms that are supposed to protect them...." He goes on to say that "...a small business can be confident in the protection it is getting, because the whole policy can be read in a few moments." I suspect that the only confident parties involved are policyholder attorneys and expert witnesses whose futures are assured by the litigation virtually guaranteed by this policy.

Let's see how regulators view this in the coming months and whether 3 pages of "policy" forms become 300 pages of processing and explanatory documents.

Independent Market Solutions (IMS) Version 2.0

A couple of years ago IIABL joined with the Big I in Florida and North Carolina to form Independent Market Solutions (IMS) to provide markets to small agencies who have trouble attracting or maintaining markets.

To be frank, we have had operational growing pains which has limited our ability to be effective. However, we have new professional management of IMS and are ready to roll out version 2.0 so to speak.

Today IMS is a joint venture of Big I state associations created to bring insurance markets to small agents with access to over 4000 subproducer agencies in Florida, North Carolina, Louisiana, Texas, Georgia, Kentucky, New York, New Jersey, Pennsylvania, Maryland, Delaware, Tennessee, California, and Illinois.

Continued page 15

This large multi-state Big I market access program allows for enhanced insurance company-agency relationships, a broad spread of risks, increased premium production and reduced operating costs.

IMS Value Propositions for Independent Agents

IMS provides markets to start-up agencies needed to perpetuate the IA system and small / rural agencies that struggle to keep markets. IMS also works to solve problems when markets are distressed, or there is a need for new specialty or niche markets.

IMS is an exclusive Big I member benefit which provides a kinder, gentler alternative to commercial aggregators. There is no cost for an agency to join IMS and no monthly fees. Every agency always owns their book of business and can roll that business to another insurer, or if the book becomes large enough can get a direct contract with the insurer with no cost.

Agencies have a direct working relationship with the insurance company which improves efficiency and allows the agency to build their relationships with company personnel.

Agencies receive competitive commissions and profit sharing (when available). IMS retains a small share of the agency compensation to fund operations but works to maximize agency income.

IMS Value Propositions for Insurance Companies

IMS has a professional program manager for operations and business development, so insurers always get high quality service.

This broad multi-state Big I distribution channel provides significant production opportunities and excellent geographic spread of risk.

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The consolidated joint venture provides insurers with significant economies of scale and a management structure that reduces operating costs and improves efficiency.

IMS acts as the marketing department for the insurer but does not interfere with the direct business operations with the subproducer agencies.

Each insurance company has complete control over which states or geographic areas they want to conduct business, which lines of business and each individual subproducer appointment. Agency appointments are made to compliment and not conflict with existing direct agency appointments and are based on mutually beneficial and profitable relationships which can be terminated by the insurer at any time.

IMS Markets

IMS is pleased to announce a brand new market: Attune. Attune writes Business Owners Policy (BOP), Workers' Compensation, Excess Liability The BOP is on Blackboard Insurance Company (AIG) and the Excess is on New Hampshire Insurance Company (AIG) paper. The WC is on Employers Insurance Company paper.

IMS continues to offer homeowners and dwelling fire markets with UPC Insurance Company, Acadian Managers, Lighthouse, Southern Fidelity, and State National Fire.

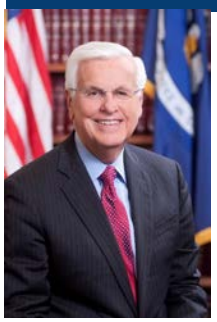
IMS will be adding new personal lines and small commercial lines markets.

For more information, or to apply to be an IMS producer, go to:

https://www.bigiims.com/States/LA/

Citizens Success Requires New Depopulation Methodology: Updates on Louisiana Citizens Property Insurance Corporation

Commissioner's Corner



As it does every year, Louisiana Citizens Property Insurance Corporation (Citizens) opened its book of business to the private market for the statutorily required annual depopulation program which moves policies from the insurer of last resort to private insurance companies. 2018 marked the twelfth round of depopulation, but the Citizens Take-Out Program was amended by Act 131 of the 2018 Regular Legislative Session to adapt to the current market environment.

Today, Citizens homeowners' market share is an estimated 0.5 percent of the total market, which has diminished from 9.8 percent in 2008 when it was the third largest insurer in the state. Each year, Citizens has been required to open its book of business and offer to transfer policies to the private market. This depopulation results in lower premiums for policyholders and reduces the potential for future assessments, which are charged to all property insurance consumers across the state when Citizens' exposure exceeds their reinsurance coverage and cash availability.

Once Citizens policy count reaches a certain threshold it can no longer generate enough revenue to maintain itself. Act 131 changes the Take-Out Program from a requirement to open their book of business each year into a *possibility* to offer policy migration to the voluntary market following approval of the governing board approval. This legislation further allows Citizens to base their offerings on geographic and risk characteristics that reduce its exposure while allowing Citizens' leadership to ensure that the insurer of last resort has sufficient infrastructure to fulfill its obligations following Louisiana's next severe weather event.

According to Citizens, the five companies participating in 2018 requested 633 policies through depopulation. This was a sharp drop from 10,072 policies requested through depopulation in 2017. Additionally, in 2018 Citizens experienced attrition of approximately 5,000 policies and this statistic is projected to remain a constant in 2019. As directed in Act 131, Citizens used a data-driven approach to select policies it makes available for depopulation. In 2018, policies for take-out were offered from 15 parishes: Jefferson, Orleans, St. Tammany, Terrebone, Lafourche, St. Bernard, St. Mary, Plaquemines, St. Charles, Vermillion, Iberia, Lafayette, St. John, Assumption and St. Landry.

This year Access Home Insurance Company, Maison Insurance Company, Ocean Harbor Casualty Insurance Company, Safepoint Insurance Company, and Spinnaker Insurance Company are again participating in depopulation. Of the 633 distinct policies requested for review this year, only 32 policies were authorized for removal to private companies. Those 32 policyholders have until February 29, 2019 to opt out of moving to a private company.

As we come nearer to closing the books on the new depopulation program, we have learned many valuable lessons. The foremost being the importance of the continued stability of Citizens for homeowners unable to procure coverage from the private market while complying with its duty to minimize the risk of future assessments for all property insurance policyholders in our state. Thank you for all of your help in making Citizens a continued success.

IIABL January Board Meeting

The IIABL Board of Directors met in New Orleans on January 25, 2019.

IIABL Legislative Chairman, Mike Scriber, Scriber Agency in Ruston, discussed IIABL's plans for the 2019 legislative session. Because this is an election year, the expectation is that there will be fewer bills filed and less controversy than in other years. However, House Insurance Committee Chairman, Kirk Talbot, will probably have some automobile insurance reform bills coming out to the High Automobile Insurance Task Force. IIABL will be heavily involved in any auto insurance reform efforts. Commissioner Donelon has indicated that he will have a small legislative package with no major controversial bills. IIABL CEO Jeff Albright, and lobbyist David Tatman are visiting legislators in the months leading up to the session.

One of the biggest needs IIABL member agencies have year after year is the need for outstanding new talent in their agencies. Workforce development is one of the top strategic goals for IIABL. Over the years we have tried several different programs to develop new talent. We have found it difficult to identify, recruit, and train new young people to our industry. Louisiana is fortunate to have an outstanding Risk & Insurance Program at the University of Louisiana Monroe (ULM). It is the 9th largest risk & insurance program in the country. Dr. Christine Berry has an industry background and trains students to work in the insurance industry. In recent years, Dr. Berry has successfully placed students in IIABL member agencies, with wholesale brokers, insurance companies and claims companies. To help coordinate efforts with industry, the ULM Foundation is trying to raise money for an Industry and Student Coordinator. The IIABL Board of Directors fully supports this initiative and voted to pledge a $50,000 contri-

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bution over five years to support the Risk & Insurance Program. IIABL has also posted the InVEST Internship Guide on the IIABL website to help IIABL members engage ULM Risk & Insurance students as potential employees.

IIABL CEO Jeff Albright updated the board on the actions of IA Action Partners, which is a group of about 24 Big I state associations who are exploring ways to work together to provide business solutions to Big I members. There are the five work areas for IA Action Partners:

1. Independent Market Solutions – market access program
2. IA Business Solutions – technology solutions for Big I members
3. IntellAgents - benchmarking and consulting services for agents
4. Big I Hires – workforce development solutions
5. Association Management Company – consolidated Big I state operations

For over a year IIABL has been working with the Louisiana Association of Business & Industry (LABI) to address the automobile insurance crisis with reforms to the Louisiana tort system. LABI has developed 20/20 Judicial Vision which is a comprehensive plan to build a business coalition, educate the public and legislature, work to elect business candidates to the legislature this fall, and pass automobile/tort reform in 2020. To fund and coordinate this coalition, LABI created the Louisiana Free Enterprise Institute (LFEI). IIABL is working closely with LABI and LFEI to address the automobile/tort crisis. After thorough analysis and discussion, Don Stiel made a motion, which was seconded by Joe Montgomery, and the IIABL Board approved a $10,000 contribution to the Louisiana Free Enterprise Institute without objection.

Just before Christmas, an IIABL member contacted Jeff Albright with a disturbing nonrenewal of a surplus lines policy. The situation put the policyholder and agent in a terrible situa-

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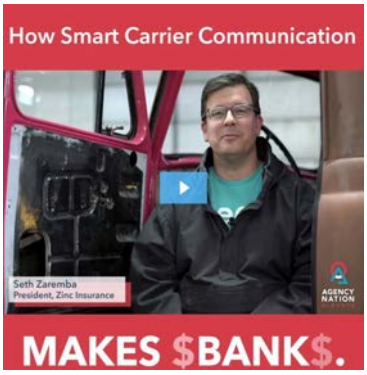
Watch these Videos from Insurance Agents Who Will Share Their Secret Sauce at Elevate

Zack Gould & Matt Naimoli

"We'll share our agency's processes and how we get buy-in."

Watch Zack & Matt now.

SETH ZAREMBA



"So much about the agent/carrier relationship remains unevolved. We can do better. Guns down, and with the consumer in mind, let's talk about what the agent/carrier partnership needs to looks like if we are to win."

Watch Seth now.

Robby Burton

"For the first time, technology that drives our industry will enable agents to exceed expectations for the customer experience."

Watch Robby now.

DANI KIMBLE

"In this session, I'll share how our agency's digital and social brand experience has led to direct results around recruitment, referrals, culture and new business."

Watch Dani now.

GRANT BOTMA

"At Elevate 2019 I will be sharing with you the secret behind a profitable culture."

Watch Grant now.

RAHIM VIRANI

"Do you wish each customer, regardless of which agent they speak to, had a consistent and common experience that showed the value of your agency and the agent? If so, come to my session."

Watch Rahim now.

NATE BUNTY

"I'll share the Facebook formula I've used to generate thousands of leads for my agency and my agency's centers of influence"

Watch Nate now.

ROB MACOVIAK

"Wouldn't it be amazing if your agency management system could talk with other applications? I'll share how ours does."

Watch Rob now.

MATT SIMON

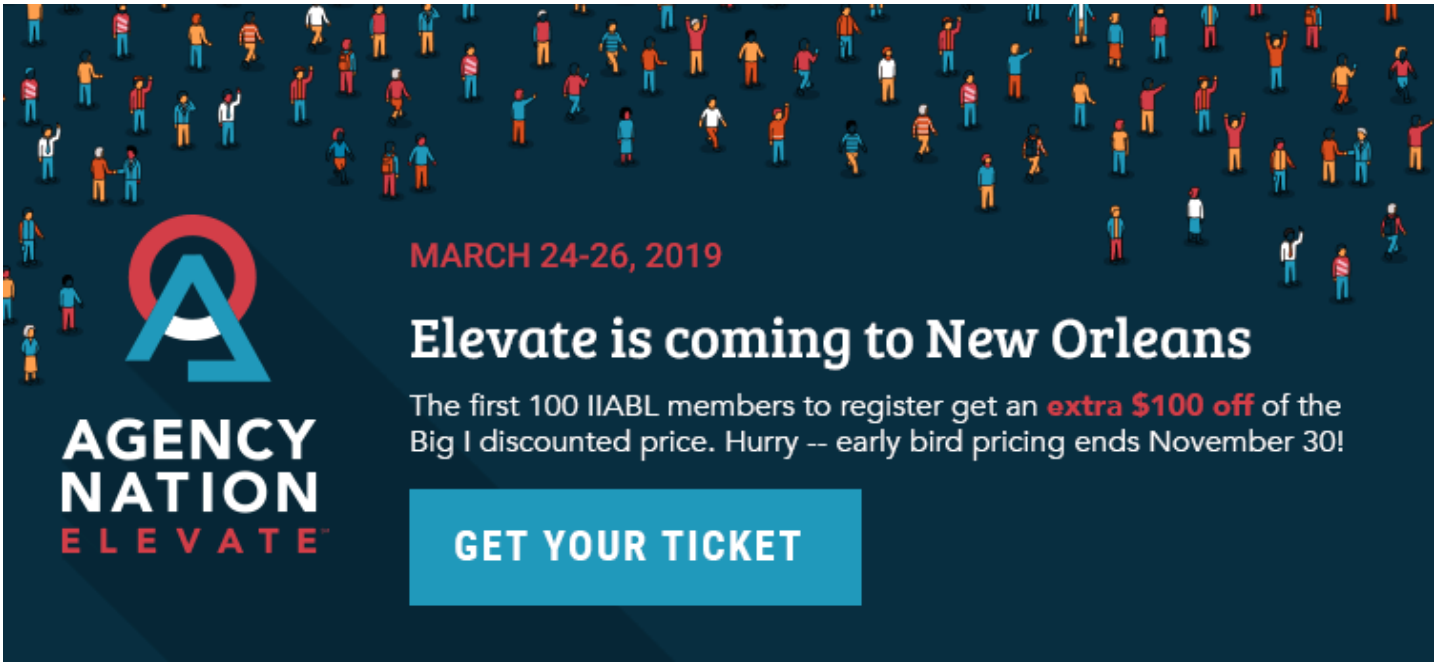
"Why wouldn't you want to know exactly how loyal your clients are to you at any given moment? I'll share how I make it happen."

Watch Matt now.

SCOTT GREENE

"Learn how we've strategically, realistically, and affordably, controlled our market in the digital space with videos, videos, videos."

Watch Scott now.



tion, so IIABL contacted Commissioner Donelon for assistance. The agent was finally able to secure coverage, but the circumstances caused Commissioner Donelon to have his legal team carefully review the statutes related to surplus lines nonrenewal and cancellation. The LDI legal staff determined that R.S. 22:887 requires surplus lines insurers to provide a 30-day notice of nonrenewal or cancellation. LDI is preparing an advisory letter to notify the industry of this requirement.

IIABL President, Johnny Beckmann, reported to the board on various aspects of association business, upcoming events, and ongoing projects.

IIABL Secretary-Treasurer, Brenda Case, reviewed the finances of the association.

National Director, Lee Schilling, reminded the board of the huge success the Big I had in Congress and with the Treasury Department in securing the Trump tax breaks for Subchapter S "pass through" entities which represent the great majority of Big I members.

IASC President, Brad Bourg, reported that Independent Market Solutions (IMS) has expanded into 13 states and is brining on new insurance company markets.

The IIABL Board will meet again on March 22 in Baton Rouge.

Preparing for Emerging Risks

Sedgwick, a leading provider of technology-enabled risk, benefits, and integrated business solutions, recently published its "Forward thinking 2019" list, which includes major industry trends that employers and risk management professionals should watch this year. Sedgwick divided its list into several categories, with one very appropriately being "Preparing for Emerging Risks." Within this trending category, the following three areas are highlighted.

- Planning for the unexpected
- Understanding the impact of the sharing economy on the workforce
- Adapting to generational changes

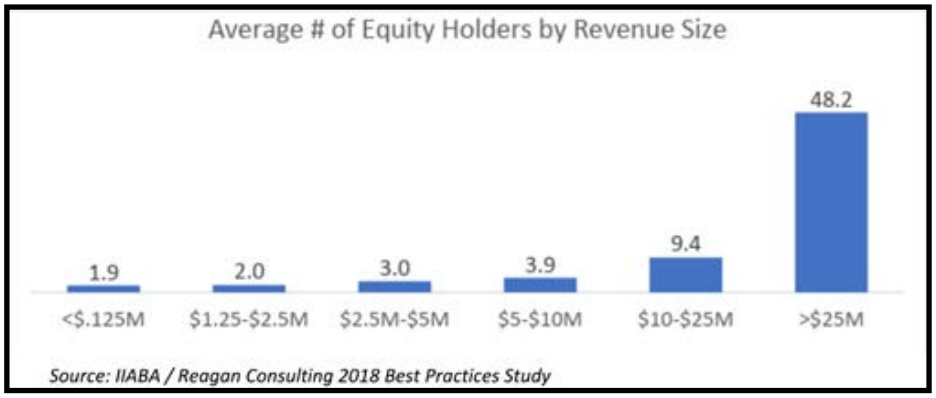
Planning for the unexpected involves preparing and updating disaster recovery and business continuity plans to respond to man-made and natural disasters as well as cyber events. The sharing economy brings with it new risk profiles, especially with respect to liability exposures, for those who actively participate in these industries as well as those who use their services or partner with them in other ways.

There are currently five generations in the workforce as Generation Z comes of age and begins careers, which poses challenges for return-to-work programs. The workforce is undergoing a substantial transition as older workers with substantial knowledge and experience retire and younger workers replace them. This transition will require adaptable human resources policies and innovative programs to attract and retain the best talent and maintain consistent quality and service levels. Expect continuous growth in the use of robotics and automation as a means to meet the challenge of a worker shortage—which in itself will lead to safety and training challenges.

Do you agree that emerging risks should be on every risk professional's radar? Do you have any additional thoughts to share on preparation for emerging risks? What do you see as the greatest of these risks? How should businesses and risk professionals be preparing for them?

The Importance of Buy-Sell Agreements

Most independent agencies in the U.S. operate as closely-held organizations with concentrated ownership. According to the IIABA / Reagan Consulting 2018 Best Practices Study ("BPS"), firms under $25 million in annual revenue have fewer than 10 equity holders, and those under $10 million have fewer than four equity holders.



With concentrated ownership, many never think to ask the question – does our agency need a buy-sell agreement? If you have more than one equity holder, the answer is yes. A detailed agreement should be in place to govern how ownership transfers take place in the event equity changes hands.

A well-crafted buy-sell agreement addresses the basic provisions that govern ownership transfers:

1. A list of triggering events. Events that trigger a purchase or sale of equity typically include death, permanent disability, retirement, termination of employment, or an age threshold (65 years old, for example).

2. Requirements or restrictions on

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sales. The triggering event provisions typically address when ownership interests must be sold and who the buyer may / must be...is it the agency? Other owners? Outside entities? Can non-employees (i.e. family members) hold an equity stake?

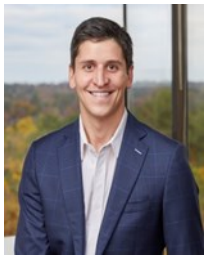
3. A valuation mechanism. How is equity valued in the event of a transfer? Do you have an independent third-party value the firm? Do you use a formula approach (a multiple or Revenue or EBITDA)? Does a clawback provision exist?

4. Terms and funding. What terms (# of years, interest rate, down payment, etc.) and funding (seller or outside financing) are in place for ownership transfers?

Restrictive Covenants. When equity holders sell equity back to the agency or to new or existing owners, what restricts them from competing with the agency in the future? The value of the agency is directly impacted by having (or not having) enforceable restrictive covenant provisions in place.

Since every organization is unique, a buy-sell agreement should be drafted to meet each firm's stated ownership objectives. A well-crafted buy-sell agreement also ensures that everyone knows the "rules" of the game when buying and selling equity.

Does your agency have the proper plan in place to facilitate ownership transfers? Don't wait until it's too late. Trying to figure out terms after the sudden death of an owner or another triggering event can get complicated.



Mark Crites
Vice President

Reagan Consulting

ReaganView is Reagan Consulting's forum for providing an occasional perspective on issues and opportunities relevant to the insurance distribution system

Big I Member Resources Available on New Tax Regulations

In January, the Internal Revenue Service issued final regulations concerning a new tax deduction for "qualified business income" under Section 199A of the tax code. The Big "I" lobbied aggressively on this regulation as it is critically important for owners and shareholders of insurance agencies and brokerages organized as pass-through entities, such as partnerships and S-corporations.

The rule confirms that agency and brokerage owners and shareholders are eligible for a tax deduction of up to 20% on qualified business income—regardless of taxable income level. The new deduction reduces the top effective tax rate on pass-through income to approximately 29% from 37%. For those in the 24% bracket, it can reduce the rate to as low as 19.2%.

In response to the regulation, the Big "I" has posted multiple new resources for members on the Big "I" website. Big "I" members must log in to view the materials, which include:

A recording of the 30-minute webinar the Big "I" hosted last week, for any members who were not able to attend

A PowerPoint presentation that provides a comprehensive explanation of how the new tax deduction benefits pass-through owners and shareholders, including discussion of the specific sections of the over 200-page regulation relevant to insurance agencies and brokerages

A one-page overview of the new tax rate for C-corporations and the new tax deduction available to some pass-through businesses

A four-page FAQ document that outlines the must-know facts about the new 199A deduction

While a major victory Big "I" members, the regulations are complex. The Big "I" encourages members—especially those who derive income from non-traditional activities—to consult a tax professional to determine how the new deduction specifically impacts their businesses.

Jennifer Webb is Big "I" federal government affairs counsel.

Best Practices for Insurance Agency Exit and Succession

The right plan is essential when you're ready to move on from your insurance agency, whether it's into retirement or to another business

There are lots of reasons to think about a succession plan, and it's not all about an agency owner choosing to retire. Life happens. Serious illness, the unexpected death of an owner or divorce might be reasons to sell your interest in the agency. Or you could get lucky, win $100 million in the lottery and move to Tahiti.

When to start planning

Often, independent insurance agencies are family-owned businesses, and the dream of the founder is to pass the legacy on to family members. "My business partner and I always thought we might get one of our five sons into the business," says Stuart S. Durland, vice president of operations for Seely & Durand Insurance in Warwick, N.Y., an agency founded by his grandfather in 1934. "That never transpired so we had to start thinking about the alternatives."

Succession planning is a complicated process with lots of moving parts.

Durland joined the agency in 1990 after a stint at Travelers Insurance Company. He notes that there is four years' difference in ages between the partners, which puts one closer to retirement than the other. Does the older owner retire first? Or does he stay longer to accommodate a departure year for the younger owner? They started thinking about this 20 years ago and developed a buy/sell plan, which is funded by life and disability insurance.

Matt Naimoli and Zack Gould, founders of G&N Insurance, which opened in 2010 in Southborough, Mass., aren't ready to start thinking about a succession plan or exit strategy. "Most entrepreneurs say that the day you open your business, you should have a plan to exit," Gould acknowledges. "We tend to adhere to the notion of 'If you enter with an exit plan, you're not enabling yourself to reach your true potential.'"

Naimoli adds that, as young agents who started from scratch, "We're still focused on growing and creating impact and we have very little experience with succession planning. Likely to our own fault, we're too focused on expansion."

U.S. Army veteran Robert Klinger, president and CEO of the Klinger Insurance Group, disagrees strongly. He believes that agents need to start planning from day one, saying "Begin with the end in mind." He advises agency principals to consider succession and exit strategy as part of their annual business plan, noting that insurance agents need to do a better job of their own risk management. He recommends having a road map that is a working document subject to modification annually.

Andrew Harris, CEO of Liberty Insurance Associates in Millstone Township, N.J., started planning when his son expressed an interest in being in the insurance industry. Harris gave his son an online career aptitude test as a gift to see what industry he might have an affinity for. It turned out that his son (also named Andrew) had a strong correlation for insurance and

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Rate & Rule Filings

Company	Coverage Type	Overall % Impact:	Overall $ Impact:	Number of Policyholders:	Changes
American Fire & Casualty Ohio Casualty Insurance Ohio Security Insurance West American Insurance	17—Other Liability	+3.9%	$553,166	4,599	New: 7/1/2019 Renewal: 7/1/2019
Arch Insurance Company	16—Workers Comp	-12.20%	-$624,692	120	New: 3/1/2019 Renewal: 3/1/2019
Shelter General Ins Co	19—Commercial Auto	+20.4%	$526,490	1,105	New: 4/15/2019 Renewal: 4/15/2019
AmGUARD Insurance Co	19—Commercial Auto Loss Cost Adoption	+15.72%	$398,740	92	New: 4/1/2019 Renewal: 4/1/2019
ANPAC Louisiana Ins	19—Commercial Auto Loss Cost Adoption	+15.0%	$225,546	392	New: 8/1/2019 Renewal: 8/1/2019
Zurich American Ins Co	19—Commercial Auto Loss Cost Adoption	+10.1%	$394,599	370	New: 7/1/2019 Renewal: 7/1/2019
American Fire & Casualty Ohio Casualty Insurance Ohio Security Insurance West American Insurance	5—Commercial Multiple Peril Revised Rate Only	+2.8%	$655,746	2,991	New: 7/1/2019 Renewal: 7/1/2019

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business. Harris Jr. worked at another insurance company for 10 years, and when it was sold he joined his father's agency, where he's been ever since, learning the ropes.

More planning at larger firms

Tom Doran, a partner at Reagan Consulting in Atlanta, Ga., counsels larger firms with three to five owners or more in strategic planning. For such larger firms, he notes, succession and exit strategies are part of the annual planning process, which he notes should be an ongoing exercise to ensure the perpetuation of the business that's not dependent on any one person. It should be a continual process, not event driven.

Doran advises agencies to look at the "ages and stages" of the agency owners and potential owners down the road. For larger organizations, you need an ongoing dedication to succession planning to ensure that there's a steady stream of incoming men and women who will serve as agency owners in the future. It's as important as the agency's growth strategy, producer recruitment strategy and market expansion strategy.

Robert "Bob" Pettinicchi, executive vice president and chief lending office, InsurBanc, based in Farmington, Conn., advises independent insurance agencies and notes that prospective buyers often hope that no one has a succession plan so they can swoop in. He also believes that the agency's plan shouldn't be a "succession" plan; it should be **a "success" plan**. Every action should be about creating value.

"It's a people question," Doran says. To transfer a business, you need a buyer and a seller. "It's too late when you're getting ready to sell to look around and find out that there are no buyers internally. At that point, you may have no choice but to sell to an outside buyer," he adds.

Key items to consider

Durland believes that you need to be comfortable

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that the person or entity purchasing your agency or your share will be reliable and conscientious, especially if it's a loan-based deal. He urges agency principals to think of the staff and ensure that they won't be impacted too significantly. "And you have to accept that business may be done differently under the new ownership, which isn't necessarily a negative," he says.

"Set up a plan with guidance from accounting, legal and industry professionals," Harris says. He recommends having a funding plan in place — either external or internal. Agents need to look at their cash flow and profitability to see whether it can support any internal perpetuation plan.

An important question from the outset is whether anyone in the family wants to be part of the business, Klinger says. "If so, can they run it? Does someone in my company want it? Do I want to sell outright? Do I want to bring partners in?" He recommends meeting with a business broker experienced in selling insurance agencies and asking what they look for in terms of financials. You may need a few years to get the business in shape to sell. He adds, "There's been heavy merger and acquisition activity in the last three to four years, but will that continue for the next five years?"

Steven J. Aronson, president of 100-year-old Aronson Insurance, an Acrisure partner Agency, in Needham, Mass., thinks that quality of life is an important consideration for designing an exit strategy. "Many buyers will pay you a handsome price for your agency, but how happy will you be the day, week, month or years after the deal is done? If you want to walk away, will your client be well cared for — the same way you did? If you want to stay, but not "manage", will you be happy working for the other next owner? If you want to stay and manage, which might be the best opportunity to maximize your financial deal, will your style fit into the buyer's culture?

"If you will stay," Aronson adds, "you can earn substantial additional dollars by caring for and

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continuing to grow your old agency or book." He believes this option is particularly important if you are younger, or if you have children in the business.

"Three key things are setting value expectations, determining who the buying group would be, and laying out projections of what the deal would look like to both buyer and seller," Doran says. This should be done about three years in advance so when the time comes to execute the plan there are no surprises to either party.

As soon as you have more than one owner, Doran adds, depending on the owners' ages, you should have a shareholder or partnership agreement in place. It should spell out how equity would be transferred in the event of death, permanent disability, termination of employment or retirement of one of the owners.

Seek trusted advisors

It's important to get advice from trusted professionals, whether you're a sole proprietor or a larger organization. You need a good accountant, a tax specialist (who may also be your accountant), an attorney experienced in succession planning for independent insurance agencies similar to yours, and a valuation specialist. Klinger suggests that you also talk to your carrier partners. "Some might want to approve the buyer, especially if buyer isn't appointed with the same carriers," he observes.

Harris had been a member of MarshBerry, a consulting firm that provides intellectual capital, strategic consulting, and merger and acquisition advice to clients within the insurance industry. "MarshBerry or similar firms look at your agency from a board of directors point of view, asking what is your value, what are you doing to increase the value, and what is your long-term plan, are you going to keep it or sell it?" Harris explains. He believes that it's im-

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portant to maximize the profit and efficiency of the agency. "If you do that you don't have to sell it," he says. "You can perpetuate it. It will run without you."

Ease on down the road

To everything there is a season, but how do you know when it's the season of life for you to move on from the agency? "It depends on the circumstances," says Durland. Most purchasers want the seller to stay on for a certain amount of time to ensure transparency and a smooth transition.

Harris notes that there's an intuitive aspect to easing out of an agency; there are no hard and fast rules on timing. He agrees that transition is important, but some overlap is best. In his case, his son is gradually taking over the agency. He has stepped down as president, but he's the CEO.

"I want to see more senior people *slowly* transition out of the business," Harris says. "But it depends on whether you want to stay active in the business but not in the same role with the same responsibility. You shouldn't want seasoned professionals to leave abruptly. They still have tremendous relationships and ability to add value to the company.

"The exit strategy isn't really about the money," says Barry Seigerman, an independent broker/producer with more than 50 years' experience in the industry as an agency founder and chairman and CEO of a multi-line agency. "It's all about the quality of life you want, what you will do after the sale and how you feel about what you've achieved versus what you set out to do."

There's a delicate balance when easing out and challenges in transitioning a family-owned business. As Harris observes, the successor may be looking over his or her shoulder to see whether Dad or Mom approves. At the same time, the agency staff may be looking at the parent as if to say "Is this decision your [son/daughter] made right?" But, he adds, "When things are right they tend to fall into place."

Aronson find the question of when to move almost impossible to answer. He's 65 and he wants to work full-time for another five years

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IIABL EDUCATION & EVENTS CALENDAR

Webcasts			
E&O Risk Management March 5, 9, 21, 26, 28 Available on Demand	Ethics March 6, 20, 22, 25 Available on Demand	Flood March 12 & 21 Available on Demand	Commercial & Personal Lines Courses Click above for courses & dates for 2019
2/26/2019 1pm—4pm On Ethics: Data, Dilemmas, Knuckleheads	3/7/2019 8am—11am Flood Insurance 3/12/19 12pm - 3pm Homeowner's Policy Coverage Concerns for the Modern Family	3/19/18 8am—11am Welcome to the Future Where Everyone Shares and Your Car Drives Itself 3/19/19 12pm –3pm Cyber Coverage - Data Breach and So Much More!	3/20/19 8am—11am Certificates of Insurance and Additional Insureds: Making Sense of It All 3/26/19 1pm—4pm Commercial Additional Insured Endorsements - Status and Purpose
Seminars			
2019 IIABL Spring Education Conference March 21. Baton Rouge 3 Hours Flood 3 Hours Ethics	E&O Risk Management May 14—Monroe May 15—Lafayette May 16—Baton Rouge May 17—Metairie		
Events			
March 14th IIABR Luncheon Juban's Restaurant	March 24-26 Elevate 2019 New Orleans Marriott	March 27th IIAGNO BBQ Central City BBQ New Orleans	April 5, 2019 Young Agents Crawfish Boil Lakeside Daiquiri Baton Rouge
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		

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and then ease out over the following five years. Why? "Because I *love* what I do," he responds. "And, as my wife reminds me, she married me for better or worse — but *not* for lunch." If he were 75, the answer would be different. "I might like to get out almost right away," he adds. "But at 40 or 50, or even 60, I'd be looking for a very long term opportunity to continue to work, in a meaningful way, with the new agency."

Klinger: Need to have a play book with "what if" scenarios and a plan for dealing with each one, e.g., what if I get sick, what if I get injured, etc. Who are people that my spouse or firm can turn to? Go to carriers, local associations, fellow agency owners to help you template some scenarios. That becomes working document.

When to let staff know

Depending on the confidentiality agreement you end up with, Durland says that you should let your key staff know as soon as you can that you're planning to transfer the business. "Being honest and up front is the best policy," he believes.

Seigerman concurs. "Always keep staff informed on long-term strategic goals and the various options you're considering," he advises.

Harris informed his staff from the time he brought his son into the agency. "My son *is* my perpetuation plan," he told them. Keeping the staff informed tells them you're going to be a legacy agency, and it's not for sale. It helps to keep the staff motivated when they know you have a perpetuation plan. They're not as worried about job security so they won't leave when you do. Harris recommends positioning the conversation this way: Not only do I need your help to keep the agency going, but so does my son. He also recommends having this conversation with your carrier partners.

In his agency, Harris has stepped down as president, but is still there as CEO. His son does more and more of the day-to-day running of the

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agency. "It's happening easily and naturally," He says.

Klinger advises having confidential conversations with your team when you start thinking about easing out. See what their interests are, what their plans are. Do any of them have aspirations of owning their own agency? Are they happy just being employees?

If you get sick, Klinger adds, be sure you let the staff know that you have insurance in place to keep the firm going. You need to know your staff and how committed and loyal they are to you. That's going to dictate the timing of when you tell them that you're thinking of selling. Also, what is the prospective buyer likely to be like? Reassure them that they'll still have jobs. Shortcut rumors with good communication. Employees can tell when owners are cutting back, for example, losing carriers, not growing the business, and so on.

Klinger is setting up his business like a law firm or accounting firm. He's growing junior producers to see which ones have the maturity and vision to be able to step up into the organization. "If you show them a career path, they'll work harder, he says.

Final words of wisdom

Succession planning is a complicated process with lots of moving parts, says Doran. "Most agency principals make the mistake of waiting too long to start the conversation." Don't let that be you.

Pettinacchi notes that communication seems to be missing in most plans. And it's the most important component.

"Have an outside consulting group work with you to look at your business and business plan and give you guidance. You're too close to the situation to look at it critically," Harris says. With all the changes facing the insurance industry, he still sees a bright future for the independent insurance agency. "It's going to be a challenge to attract people into it," he observes. There's a large opportunity for the next generation to flood into the industry as the baby boomers retire. "Recognizing that is the challenge, I firmly believe there is still a role for agents. It might be different, and the way we sell might be different, but consulting, advising and guiding people to make the right decisions on important topics will always be there. Right now, artificial intelligence can't look at all the permutations of your life and business. We need to do a better job as industry to focus collectively on what our future is going to look like."

"If you think your son or daughter is interested in the business, have them go to work for someone else first," Klinger advises. I want you to go out and make mistakes first. Learn from hard times. Start at the lowest level. Best officers were enlisted. They understand all the aspects of the operation and appreciate the hard work it took to get there. Better leader and earn more respect among your peers and subordinates. I'll do what it takes to make us successful. It's all about the team.

"Your team helped get you here — you did not build this alone, so take care of your team," Aronson says. Consider not only a nice bonus at the time of the transaction, but, if you are staying, consider stay-bonuses for 12, 24 and even 36 months out. They are your key to future success and happiness. "For your top people, these could be the largest checks they will ever see in their lifetime."

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