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## Louisiana Agent November 2019

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## **IIABL Board Plans for the Future**

The IIABL Board of Directors met on November 14-15, 2019 in Baton Rouge to prepare the association's 2020-2023 strategic plan to help members succeed in the future.

The board started with a discussion of significant strategic issues facing independent insurance agents in the coming years.

The first major strategic issue was insurtech: the use of technology innovations designed to squeeze out savings and efficiency from the current insurance industry model. Many analysts believe that insurtech will "make or break" independent agents in the next five years. Some of the insurtech trends facing agents include:

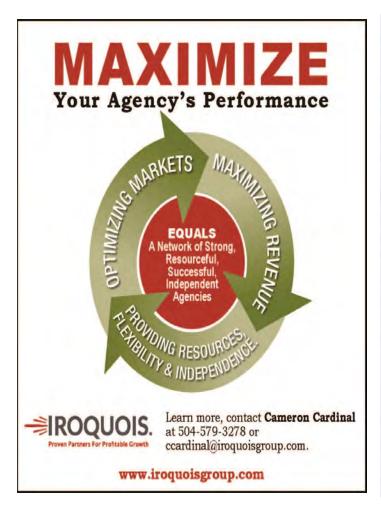
- Transition from a single agency management system to a composite "technology stack"
- Use of APIs (application programming interfaces)
- Web based technology platform processing

- Internet of everything
- Usage-based insurance
- Automated data entry and document processing
- Artificial intelligence, AI underwriting, chatbots, etc.

AI customer insight / profiling / marketing

Another closely related strategic issue for agents is the use of "big data:" the use of extremely large data sets that may be analyzed computationally to reveal patterns, trends, and associations, especially relating to human behavior and interactions. Insurance companies are all rushing to develop big data technologies to underwrite and market insurance. This will have a profound impact on independent agents. Some trends in big data include:

• Integration of information from many (most?





all?) sources

- Comprehensive information used for client risk assessment
- Use of big data and behavioral economics for customer insight / profiling / marketing
- Intelligent automation: holistic solution for digital transformation, mainly based on process management (BPM) to orchestrate users, tasks, systems and robots (RPA) depending on business needs

Comprehensive information used to manage claims and fraud detection

Most independent agencies are very small businesses who do not have highly sophisticated agency management. 60% of IIABL members have 5 or fewer employees. Demands from regulators, insurers and consumers will require that independent agents become much more sophisticated in their agency management. Some drivers include:

- Regulatory requirements, cybersecurity, etc.
- Demands of insurance companies
- Demands of customers

Competition from large agencies
 Need for specialization and expertise

Of course, the most basic requirement for independent agencies is market access. Member surveys show that small agencies continue to struggle with access to markets and want IIABL to assist them. Important factors include:

- Competition between large agents and small agents
- Need for incubation of new independent agents to perpetuate the system
- Insurer concerns about concentration of business in mega agencies

Insurer concerns about the value of aggregators

Finally, one of the biggest strategic trends in the insurance business is the ongoing consolidation of insurers, agencies, and the development of numerous alternative distribution channels.

After exhaustive discussion of strategic issues that independent agents must face in the coming years,



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the IIABL Board began evaluating the current programs and services IIABL provides and comparing them to the member needs of the future. A recent member survey helped to define what members identify as important.

At the end of the strategic planning process, the IIABL Board identified four strategic goals to help members succeed in the coming years:

IIABL will provide members with best in class insurtech and big data resources

IIABL will help members improve agency management with information, consulting and education

IIABL will provide market access to members through Independent Market Solutions

IIABL will explore ways we can leverage the collective power of the members

Details of the new IIABL Strategic Plan are being developed. The board will adopt the final written plan at the January board meeting. IIABL continues to work hard to help member agents succeed.

# FBI Warns on Rise in Sophisticated Cyber Crimes

By Andrew Selsky

On Dec. 14, 2018, Aaron Cole was about to buy a new house and received an email that he thought was from his title company, directing him to make a \$123,000 deposit.

Cole complied, not realizing that a sophisticated hacker network had likely been spying on his communications with the title company and that although the email looked like others he had received from the title company, this time, the email address was slightly different.

A week later, the title company called, advising him it was time to send money. The Oregon man suddenly realized he had given away his family's life savings to criminals. The money was from the sale of their former house.

"It was the worst feeling," Cole said. "And then having to go home and tell my wife that I just gave away all the money. She could tell right when I walked in the house and just sat down, and I just couldn't come up with the words to tell her."

In 2015, \$220 million was lost to wire fraud in the United States. In 2019, losses will surpass \$1.5 billion, according to WFG National Title Insurance Co.

In the past, attempts to trick people were often clumsy, FBI agents told journalists on Friday. Now they can be sophisticated. If people are asked via email to transfer money under a deadline, they should not rush and instead call a known number of the person the email is purportedly from and confirm the request, the agents said.

"The emails have gotten well-crafted and quite detailed. They're highly tailored to that particular victim," said Gabriel Gundersen, an FBI supervisory special agent with the Oregon Cyber Task Force. "It's a social engineering piece, where they're coercing a victim to do something based on an artificial agenda or an artificial timeline."

In one of the largest cases of its kind in U.S. history, federal authorities in Los Angeles announced an indictment in August charging 80 people, most of them Nigerians, with stealing \$6 million in an email scam and money laundering network. George Chamberlin, assistant special FBI agent in charge of the Portland division, said such cases can take years to develop.

Partnerships between victims, local law enforcement, the FBI and its field offices overseas, and law enforcement in other countries is critical to combatting this transnational crime, said Loren Cannon, the FBI's special agent in charge of the Portland office.

In Oregon, losses surpassed \$24 million from computer-related crimes from Jan. 1 through Sept. 30 of this year. For all of last year, \$23.5 million was stolen, the FBI said.

Most of the money has been lost in so-called business email compromise scams, in which organized crime groups trick victims into making wire transfers to bank accounts controlled by the criminals.

Cole, from the Portland suburb of Oregon City, was lucky. His title firm, WFG National Title Insurance Co., hired him — for the same amount of money he lost — to be a spokesman to warn others about cyber scams.

Source: Insurance Journal



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Please feel free to download the resume document and good luck with finding your next great employee!.

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# ACORD Forms Licenses – Updated Info

The Independent Insurance Agents & Brokers of America (Big 'I') and ACORD are launching a new Big I member benefit. Starting Jan. 1, 2020 Big I members with annual P&C gross revenue of less than \$50 million will receive a complimentary license to use ACORD forms.

On Jan. 1, 2020, ACORD will begin charging all users of ACORD forms an End User License (EUL) fee including agents, brokers, and carriers. Currently, most agents access ACORD forms via their agency management systems or other ACORD-authorized third-party forms redistributors. The Big 'I' has negotiated an agreement with ACORD, wherein Big 'I' will cover the cost of the End User Licenses when accessing via a management system or redistributor, or provide an EUL discount when accessing directly through ACORD Advantage Plus Pro-





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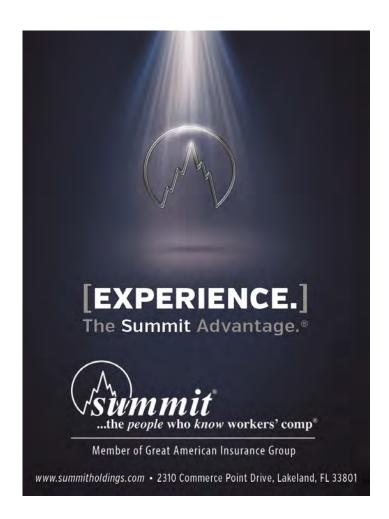
#### gram.

The result of this agreement is that your agency will not have to pay the End User License fee to ACORD, and agents will experience no change in your management system workflow or use of ACORD forms beginning on Jan. 1, 2020 - with the exception of an initial, and then annual, validation to confirm Big 'I' membership. This will be executed via a click through acceptance.

Independent agencies and brokerages that do not belong to the Big 'I' national association, will need to pay EUL fees to ACORD or join the Big I to take advantage of this benefit and so much more!

## Click this <u>link</u> for FAQ's and a flow chart.

As always, please contact Ron Berg at <a href="mailto:ron.berg@iiaba.net">ron.berg@iiaba.net</a> if you have additional questions.





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## **November IIABL Board Meeting Report**

Upon completing the strategic planning session on November 14-15, 2019, the IIABL Board of Directors held their regular business meeting.

IIABL Secretary-Treasurer presented the 2018-2019 CPA Financial Audit completed by Hannis T. Bourgeois & Associates. The IIABL Finance Committee reviewed the audit line by line with Cheryl Young, CPA. The audit was clean with no recommendations. The Finance Committee recommended that the board accept the audit. On a motion by Eugene Montgomery with a second by Lydia McMorris, the IIABL Board voted to adopt the audit without objection.

For the past nine months, IIABL has been working with one less fulltime employee and without a part-time marketing representative. During the strategic planning discussion, the achievement of

multiple goals depended upon having someone to deliver solutions to member agencies. IIABL CEO Jeff Albright reviewed the budget with the board and recommended that IIABL hire a fulltime membership and marketing person. On a motion by Lee Schilling with a second by Robert Riviere, the IIABL Board voted to hire a marketing person without objection.

For the past five years, IIABL has provided significant funding for Louisiana specific search engine optimization (SEO) for TrustedChoice.com in order to improve the ability of member agencies to appear on Google searches for insurance. The IIABL Board heard a presentation by Chip Bacciocco, President of Trusted Choice.com, and reviewed the SEO proposal for 2020. There was a robust discussion of the pros and cons of the TrustedChoice.com SEO proposal. Ultimately, the board decided that it was difficult to measure tangible



results from the expenditures. On a motion by Teeny Perret with a second by Lydia McMorris, the IIABL Board voted to discontinue TrustedChoice.com SEO program without objection.

Jeff Albright updated the board on IIABL's auto/tort reform efforts and the results of the 2019 Elections. Working with the Louisiana Association of Business & Industry (LABI) and other business associations, IIABL played a significant role in electing a much more conservative group of candidates to the Louisiana legislature. Auto/tort reform will be a major issue in the 2020 Regular Legislative Session, and IIABL will play a major role in that effort.

IIABL Young Agents Chair Janette Campbell reported that the young agents will be working with IIABL to expand and improve our social media communications and marketing, expand support for InsurPAC, and assist with Program InVest to encourage young people into careers in insurance.



## **Executives Must Lead in the Changing Insurance Marketplace**

Here are three steps to usher in disruption for a new generation of insurance employees and consumers alike.

#### By Dave Armstrong

The evolution of the insurance industry is completely dependent on people. With a new generation "coming of age," stepping out into the workforce, commuting, and starting businesses, today's leaders need to ensure that their organizations are evolving with the marketplace and not getting left behind.

Millennial consumers respond to the idea of insurance **quite differently** than past generations. Because technology is a pervasive part of everything they do, they expect technology to play a key role in how the insurance industry functions.

While digital-savvy consumers can be a tough crowd for insurance companies, those who work in the industry are exerting pressure from within — but it's pressure for less technology rather than more. These workers are constantly connected to not only work-related stimuli but also to social media, news, and endless data. They're experiencing "digital fatigue" and increasingly look for workplaces to roll out more balanced working initiatives and processes, including more face-to-face interactions.

So how does the industry evolve for both consumers and the workers who run it — especially when their needs are in opposition? Before answering that question, we must consider the context of why the industry has been slow to change.

## What competing needs mean for insurance executives

S&P Global Market Intelligence showed the total cash and assets from U.S. insurance carriers to be **\$5.77 trillion** just last year, a figure that includes reserves for benefit payments in the future.

New processes and technological transformations could easily change the methods behind those reserves. They also could spark major concerns about the industry taking a financial hit if the methods don't work, forcing risk managers to negotiate new, disruptive processes while keeping these reserves in mind.

All of that is to say that the risk involved in disrupting an industry with so much at stake means the pace of change has been infamously — but sensibly — slow.

## Three ways to go from traditional to transformed

Knowing that demand is high in an industry that pursues evolution and transformation, follow these three steps to usher in disruption for a new generation of insurance employees and consumers alike:

### No. 1: Nurture a flexible workplace.

Healthy disruption begins at home. If your employees are itching for change while simultaneously feeling burned out from too much technology, adapt your working environment before you make any other changes.

Studies show that companies with flexible work options and a focus on balance are viewed **more favorably by job seekers**. Those companies also are more appreciated by current employees, so it's a change worth pursuing.

#### No. 2: Welcome the new, diverse workforce.

You can only start serving new generations if those generations are actually represented in your company. Seek members of different groups when you practice talent development. With baby boomers retiring by the thousands every day, you can't afford to stick to the same hiring focus.

Fill your organization with people who work in different ways. Combining salaried employees, freelancers, and contract workers affords you greater flexibility to use the various talents required for specific assignments — or even to implement a more variable cost structure as your organization evolves.

### No. 3: Take a bold step toward integrated, personalized solutions.

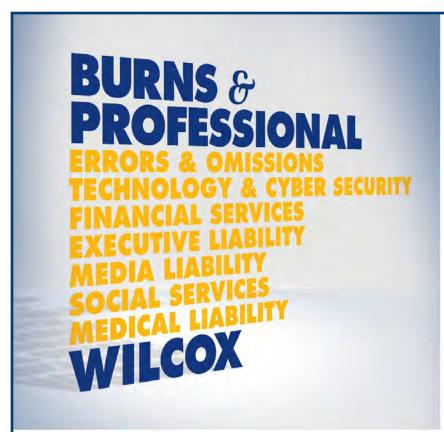
While being absorbed by risk management is the status quo, leaders must also test processes to embrace artificial intelligence, cognitive technologies, machine learning, and open-source data systems to create the evolution that today's world demands.

Consumers are willing to share more about themselves in return for a more **personal**, **integrated** way of managing their lives. Leaders must listen to these emerging preferences and capitalize on that openness.

As they evolve, insurance organizations must continue to provide valuable protections and benefits to consumers and their families during some of the most difficult periods of their lives. Transform and disrupt toward that goal, and you can't go wrong.

Dave Armstrong (darmstrong@sassadvisors.com) is the president of Sass Advisors and the current president of **PIMA**. He has more than 25 years of executive leadership and expertise building and retaining high-caliber teams in growth-oriented insurance benefits organizations. Prior to founding Sass Advisors, Dave was the president and CEO of the benefits division at AIG.

These opinions are the author's own.



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## **How to Hire and Retain Entry-Level Employees**

**BY SUSAN PALÉ** 

Employee turnover in industries with high numbers of entry-level employees—such as retail, food service and health care—has always been high. But thanks to the state of the current labor market, employers attempting to hire and retain entry-level employees face a particularly daunting challenge.

Entry-level employees want many of the same things in a job as other employees. Often, though, their needs are different. They may work multiple jobs and have housing, transportation, scheduling and child care concerns that other employees don't.

In 2017, the Rockefeller Foundation conducted a comprehensive study of a group the researchers identified as Opportunity Youth—people age 18-24 who were entering the workforce without a four-year college degree. Participants identified the following top five items when asked what they wanted most from a job:

- 1) A livable wage
- 2) A fair, respectful manager
- 3) Work/life balance
- 4) Job-specific skills training
- 5) A consistent schedule

In the current job market, the high number of open positions combined with a pool of candidates that isn't increasing in size means a lot of companies are competing for the same workers. Successful recruitment and retention often require out-of-the-box thinking.

Consider a hospital and skilled nursing facility situated next door to each other in a small city, which adjusted their shifts to align, then persuaded the local bus company to send buses at the end of shifts to pick up workers and drive them to



the central transportation hub—not only reducing outdoor wait time in a cold-weather climate, but also increasing family time and lowering child care costs.

Or consider a pizza franchise owner in a small but fast-growing Western city, which gives all employees paid holidays and a week of paid vacation after one year of service. On holidays, the owners and their family staff the stores.

Bottom line: Be aware of the unique needs and wants of your entry-level employees. Doing all that you can to cater to them will lead to more successful recruitment and retention.

Susan Palé is a contributor for Affinity HR Group, Inc., a Big "I" Hires-affiliated human resources partner.



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## **Be the Risk Manager Your Commercial Auto Clients Need**

## BY JACQUELYN CONNELLY

Fleet vehicle accidents are among the costliest of injury claims for a business. The average cost of a loss related to a fleet vehicle accident is approximately \$70,000—almost twice the cost of the average workplace injury, according to the National Safety Council.

It's simple: Drivers are consistently a fleet manager's largest exposure to risk, according to the National Highway Traffic Safety Administration. In short, if your commercial auto clients want a safe fleet, they need to start with safe drivers.

"The one area that a business owner can control and which has a major impact on rate and acceptability is driver quality," says Mike Miller, commercial lines business leader, Progressive Insurance.
"With low unemployment rates, a booming econo-

my and a driver shortage, it's easy for a business to compromise on driver quality. But short-term decisions can impact the affordability and access to insurance coverage."

But in the midst of an ongoing driver shortage in the <u>commercial auto market</u>, "finding good, qualified drivers is really tough," says Doug Fairbanks, a commercial auto agent at Hartland Insurance Agency, Inc. in Hartland, Michigan. "We saw more driver turnover in 2019, but many drivers who are still looking for work are generally the ones with less experience or poor history."

How can you help your fleet managers weed out the good from the bad? Pre-employment requirements are a good place to start, says Fairbanks, who cites screening programs from the Federal Motor Carrier Safety Administration



(FMCSA) and both background and MVR checks to confirm drivers meet requirements regarding number of years of experience and experience operating different types of equipment.

"Young drivers and problem drivers continue to cause claims," Fairbanks explains. "You need to make sure you're not only hiring qualified people, but doing the research to make sure your assessment is accurate."

<u>Travelers encourages</u> fleet managers to obtain MVRs for anyone who drives on behalf of their company, then review them regularly to make sure they are up to standards. The MVR policy should apply consistently to all employees who drive.

Once drivers are hired, fleet managers should implement policies and training to prevent driver fatigue—a factor responsible for 100,000 accidents every year, according to the National Highway Traffic Safety Administration. Employers must manage work schedules and monitor hours for all drivers, and require them to adhere to rules regarding proper rest.

Finally, most commercial drivers must also meet

minimum medical certification requirements from the Department of Transportation (DOT). Fleet managers should raise awareness with their drivers regarding how smoking, drinking, mental illness and other factors may affect their driving, and encourage them to eat healthily on the road.

All of the above is especially important in the midst of an ongoing hard commercial auto market. "It used to be that the first thing underwriters would look at would be the losses versus the premium dollars over the last three to five years," Fairbanks says. "But now, the very first thing they look at is inspections from the DOT before they even ask about claims. I've had companies decline risks that have no claims but have poor inspection records from the DOT."

Helping your commercial clients "proactively manage and work on their safety scores" is crucial in ensuring they "don't get to policy renewal and the underwriter says, 'Oh, these are awful—we're not renewing," Fairbanks adds. "Keep an eye on it throughout the year so that when you know there's an issue, you can correct it or at least say to underwriting, 'We had this really bad inspection, but here's what



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we've done as a result, and we haven't had any problems like that since."

Moving forward, telematics programs will play an increasingly important role in helping fleet managers monitor driver performance and prevent the consequences of losses, tickets and other violations. Although ride-along evaluations, motorist call-in reports, DOT roadside inspection reports and accident review processes can help ensure drivers are staying safe behind the wheel, telematics devices take it a step further, providing vehicle performance data as well as evidence of speeding, aggressive acceleration, and hard braking and cornering.

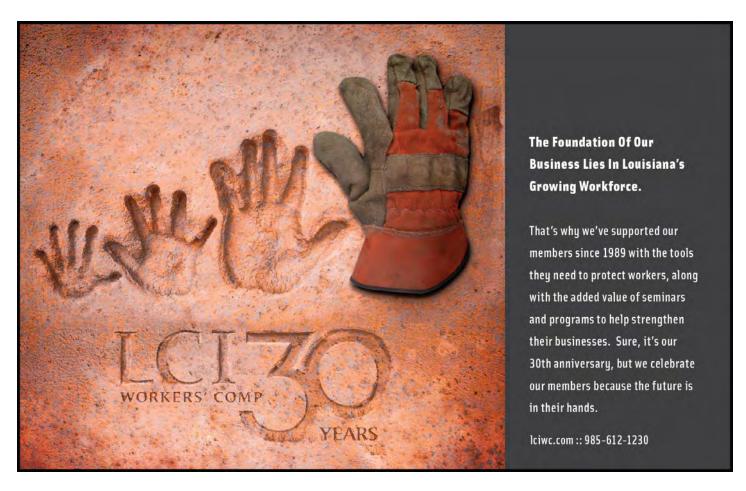
"The more you can control who's going into the vehicle is helpful, but with a good telematics program, you can also find out when your drivers aren't driving safely," Fairbanks says. "Ten years ago you never would have known if someone had near-misses, and those are obviously all indications of claims coming."

"Recommending the use of a telematics program to track driving behaviors can put control

into the business owner's hands," Miller agrees. "Programs that measure driver actions and can help the owner find poor behaviors before they turn into losses is a nice win, and can also provide more accurate rates for safer drivers."

And most telematics programs are "pretty affordable," Fairbanks adds. "By the time you figure in pricing discounts for using the telematics program, and then the long-term savings from better rates because you're having fewer claims as a result of using your telematics data, that helps the insured in the long run."

Jacquelyn Connelly is former IA senior editor.



## **Senate Committee Passes TRIA Reauthorization for Seven Years**

The Independent Insurance Agents & Brokers of America (the Big "I") thanks the U.S. Senate Committee on Banking, Housing and Urban Affairs for passing S. 2877, the "Terrorism Risk Insurance Program Reauthorization Act."

"The scheduled expiration of the Terrorism Risk Insurance Program (TRIP) at the end of 2020 is approaching, and the Big 'I' applauds the Senate Banking Committee for taking action to extend the program on a long-term basis well before the scheduled expiration," says Charles Symington, Big "I" senior vice president of external, industry and government affairs. "The Big 'I' especially wants to thank Senator Thom Tillis (R-North Carolina) and Senator Tina Smith (D-Minnesota) for introducing this important legislation. We would also like to thank Senate Banking Committee Chairman Mike Crapo (R-Idaho) and Ranking Member Sherrod Brown (D-Ohio) for recognizing the critical role that the program plays in the U.S. economy and for working so hard to build bipartisan consensus on the committee."

S. 2877 would provide for a seven-year reauthorization period, require a report on cyber terrorism risks, and require biennial Treasury reporting that includes disaggregated data on places of worship. Since its initial enactment, TRIP has undergone three additional reauthorizations in 2005, 2007 and 2015, with many reforms to protect taxpayers and increase private sector involvement. There is still a very real need for the program, as the threat of terrorism is still everpresent, and the unique nature of this risk has not changed. The current authorization of the program is due to expire on Dec. 31, 2020.

"Following the bipartisan passage out of the Senate Banking Committee, the Big 'I' urges the Senate to pass this legislation well in advance of the program's scheduled expiration," says Wyatt Stewart, Big "I" senior director, federal government affairs. "This legislation is vitally important to maintaining the strength of the commercial property-casualty insurance market and would provide much-needed stability to the U.S economy."

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\*Excludes liability coverage associated with these features.



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## 3 Fantastic New ISO Construction Industry CGL Endorsements

**Note:** ISO's CGL Forms Filing GL-2018-OFR18 has a number of changes, revising existing AI related endorsements and introducing new ones. The three endorsements below are the ones that immediately caught my eye. If time permits, in the near future, I'll write a blog post about some of the other changes OR (more likely) I'll link to a reliably accurate article from another source like IRMI or the Big "I" Virtual University.

Currently in ISO's CGL program, you can automatically extend **ongoing operations** coverage to additional insureds using the CG 20 33 or CG 20 38 additional insured endorsements. However, **completed** 

operations can only be extended to specifically named additional insureds via the CG 20 37 endorsement (which can also be used with specifically-named ongoing operations additional insured endorsements like the CG 20 10 and CG 20 26).

In a month or so in most ISO jurisdictions, that will no longer be the case.

ISO in introducing two new additional insured endorsements:

**CG 20 39 12 19** — Additional Insured – Owners, Lessees Or Contractors – Automatic Status When Required In Written Construction Agreement With You (Completed Operations)

**CG 20 40 12 19** — Additional Insured – Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement (Completed Operations)

The CG 20 39 is designed to work with the CG 20 33 to extend both completed and ongoing operations coverage, respectively, to additional insureds. The CG 20 40 is designed to work with the CG 20 38 to extend both completed and ongoing operations coverage, respectively, to additional insureds.

Coverage under all four of the aforementioned endorsements is only triggered by a *written* contract or agreement requiring such coverage. The CG 20 33 and CG 20 39 require "contract privity." If you don't know what that is, check out **this article**. The CG 20 38 and CG 20 40 are the superior endorsements and should be requested by agents since coverage does not require contract privity and applies to anyone required to be an additional insured under the contract that performs operations for the CGL insured.

Suicu.

In addition, ISO is introducing an automatic subrogation waiver endorsement as an alternative to its scheduled name CG 24 04 waiver endorsement:

CG 24 53 12 19 — Waiver Of Transfer Of Rights Of Recovery Against Others To Us (Waiver Of Subrogation) — Automatic



## So, why did ISO introduce these incredibly practical and useful forms?

I worked for the Independent Insurance Agents & Brokers of America (The Big "I") for 17 years. One of the Big "I"s best kept secrets is their technical affairs advocacy with ISO, AAIS, NCCI, ACORD, and others. The Big "I"s **National Technical Affairs Committee** has met with ISO at their headquarters annually for decades. In addition, about 20 Big "I" state associations belong to the <a href="Mid-America Insurance Conference">Mid-America Insurance Conference</a> that meets annually with these organizations in the Midwest...in fact, this conference just ended yesterday.

Each of these Big "I" organizations prepare agendas that, for example, ask ISO to change existing policy forms and add new forms that benefit in-

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surance consumers and the industry. These agendas are often 150+ pages in length. The endorsements discussed above are examples of new marketplace forms these conferences have requested. Quite possibly, the only reason these endorsements exist is because either or both of those groups advocated with ISO on behalf of independent insurance agents and their customers.

I wanted to identify the source of these excellent new marketplace products to demonstrate what can be accomplished for the entire industry by small groups of highly motivated and persuasive insurance professionals. And none of this cost millions and millions of dollars in lobbying, PAC expenses, or proverbial wining and dining of insurance company executives. It's the best bargain in the industry and few people in the industry know anything about it.

If you are an agency member of the Big "I" in one of the 20 or so participating Big "I" states or you're an independent agency insurer, you can send representatives to the Mid-America Insurance Conference. From a coverage knowledge standpoint, you will learn more in two days at this meeting than in two years of CE classes. Some of the very best insurance coverage experts in the country attend this conference. If you're an agent in a Big "I" state that does not participate in the Mid-America Insurance Conference, encourage your state association to join to enable your attendance.

If you have questions about the Big "I"s technical affairs advocacy and how you can participate or support it, including the Mid-America Insurance Conference, contact my successor at the Big "I", Chris Boggs, at <a href="mailto:chris.boggs@iiaba.net">chris.boggs@iiaba.net</a>.

## Is a Mobile Gym a Vehicle or Premise?

A court ruled that a mobile gym operating out of a truck was not an uninsured auto after a woman sued her insurer for benefits.

#### By **Hannah Smith**

The Court of Appeals of Florida, fourth district, has ruled that a mobile gym operating out of the back of a truck was not an uninsured auto for the purposes of the automobile insurance policy of a woman who was allegedly injured while training in the mobile gym.

Garrett Nodell owns and operates a mobile gym out of the back of an Isuzu truck. The gym is called Mobile Fitness Centers of America. Nodell drives the truck to his client's location and conducts workouts in the back of the truck. The gym is equipped with exercise machines and equipment, some of which are bolted to the floor of the truck. To power the gym, Nodell either hooked up to electricity at the home of the client or used a generator.

For years, Nodell trained Natalie Deutsch in the back of the truck while it was parked near her home and plugged into her electricity. **During a training session**, Deutsch suffered permanent injuries, allegedly due to Nodell's **negligence during the training**.

Deutsch sued Nodell and the gym. Both suits were settled. Deutsch also sued her own auto insurer, GEICO, under the premise that the mobile gym was an uninsured auto under her car insurance policy and, therefore, that she was entitled to recover uninsured motorist benefits.

Both parties moved for summary judgment, and the trial court granted the motion for GEICO, holding that the "unambiguous" provisions in the policy excluded coverage for the mobile gym. Deutsch appealed the decision.

On appeal, Deutsch argued that the injuries arose out of the use of the vehicle; however, the issue was not whether the injuries arose out of the use of the vehicle, but whether the injuries arose out of the use of an uninsured auto. Deutsch also argued that the truck did not fit within a cited definition of premises because the truck was not a house, building, or tract of land. While that is true, the GEICO policy excluded coverage for a vehicle being used as premises.

The appellate court affirmed the decision of the trial court, ruling that the mobile gym was not an uninsured auto under the GEICO policy because the vehicle was located for use as a premises. Under the policy, the term "uninsured auto" did not include "a land motor vehicle . . . located for use as a residence or premises . . . "

These three undisputed facts were relevant in the court's decision to determine that the truck was a premise. There was no brick and mortar office for the gym, the equipment was bolted to the floor, and the gym was powered by the generator or the electricity from the client's house, facts leading to the conclusion that clients only worked out in the gym when it was stationary, parked, and connected to a power source. Clients were never trained while the gym was being used as a vehicle. The truck was in use as a building, like any other stationary gym in a brick and mortar building.

Accordingly, the appellate court held that the truck was not an uninsured vehicle when Deutsch was injured.

The case is Deutsch v. Geico Gen. Ins. Co., No. 4D18-2714, 2019 Fla. App. LEXIS 1645 (Dist. Ct. App. Oct. 30, 2019).

**Editor's Note:** With the growing popularity of mobile vets, gyms, pet groomers, and food trucks, the issue of whether these businesses are covered under auto insurance or business insurance has become more important. In this case, the "uninsured auto" was being used as a stationary gym. The gym was not operating while the truck was moving. The injury did not occur while the truck was being used as a truck, only when the truck was stationary. The truck, when parked, hooked up to electricity, and would then be used as a gym. While being used as a gym, the truck is considered to be being used as a premise. Although this case did have some very specific facts, the important takeaway is that the truck could not have been mobile while functioning as a gym, and in that way, it was being used as a premise instead of a vehicle.

This story is republished from FC&S Expert Coverage Interpretation, the recognized authority on insurance coverage interpretation and analysis for the P&C industry.





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## **Virtual University – From the Editor**

**Chris Boggs - Executive Director** 

You know me and my penchant for history, so I cannot leave this day alone November 22.

Three famous people died on this day in 1963. November 22, 1963, witnessed the deaths of:

- John F. Kennedy;
- · C.S. Lewis; and
- Aldous Huxley.

I would assume we all know who John F. Kennedy is or was. I would also assume that many if not most of us have read something from C.S. Lewis. But I tend to believe many don't know much about Aldous Huxley I didn't. Huxley, like Lewis, was a writer and philosopher; but unlike Lewis, who was a Christian, Huxley espoused mysticism and universalism and was a psychedelic drug user.

Regardless your familiarity level with each of these three men, their same-day deaths were the subject of the book, *Between Heaven and Hell* by Peter Kreeft. I never read the book, but it sounds interesting. In this book, the three men meet in Purgatory and debate their various beliefs.

Enough of our foray into history. Let's talk about this edition of VUpoint. About seven years ago, I wrote several vignettes" or short scripts that attempt to answer some technical insurance questions in less than 1,000 words. The goal was to record short videos, but I never did anything with them. Well now it's time to make use of the work.

In this issue we have:

<u>Understanding Liquor Liability Coverage</u>: The title may be a bit misleading; we are not reviewing the liquor liability coverage form. However, we are looking at what factors affect or trigger liquor liability coverage.

Liquor liability insurance is designed to defend the insured against charges of negligent conduct related to the service of alcohol; and to indemnify or pay on behalf of the insured if they are ultimately found legally liable for the injury or damage.

Operations serving or supplying alcohol can be subject to charges of negligent conduct when, for example, a patron or third party is injured as a result of the negligent service of alcohol or negligence in not preventing an individual from injuring a third party. Legal liability can also arise out of other negligent actions or inactions. Charges of assault and battery account for a high percentage of liquor liability claims so any liquor liability policy should include coverage for this exposure.

Attorneys typically seek a connection to as many

pockets as possible. Lawsuits often name the establishment, the liquor manufacturer, the distributor and any others that seem to make sense (or even those that do not make sense). Any entity making, selling or serving alcoholic beverages needs this protection because the unendorsed commercial general liability (CGL) policy excludes coverage for liability arising out of one of these activities. Here is helpful advice, if you can smell the alcohol, write the coverage.

The cost defense and the ultimate claim cost is based on the individual jurisdiction's definition of legally liable. Forty-three states and the District of Columbia apply a codified or judicially interpreted liquor or dram shop law.

- Some states allow every bar in which the intoxicated person drank to be pulled into the lawsuit; the establishment has to prove that the patron was not or did not appear intoxicated while there. Each bar or restaurant in these states can be held jointly and severally liable.
- At least one state holds the establishment liable if the patron appears intoxicated even if they came in that way and didn't imbibe there.
- Other states require proof that: 1) the establishment sold alcohol to the or that intoxicated the individual; 2) injuries were sustained; and 3) the intoxication was the proximate cause of the injury(ies).

In essence, coverage provided by the liquor liability policy is partially based on statute rather than strictly policy language. Liquor liability insurance typically covers the cost of damages and all legal fees and related expenses up to the policy limits.

#### **Controlling Costs**

If price is truly the concern, the owner can take many actions to reduce the cost of liquor liability coverage. Like most forms of insurance, liquor liability premiums are based on exposure and the historical losses of the insured operation.

Insurance Services Office (ISO) assigns liquor liability hazard grades." Grades range from 0 to 10 and are based on the liquor (dram shop) laws and liquor-related court decisions of that state. A 0," the best possible grade, indicates

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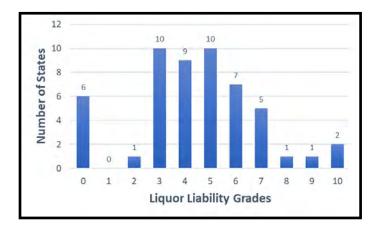
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there is no cause of action against an alcohol vendor. A grade of 10," the worst possible grade, indicates that strict liability is imposed on the vendor. The higher the grade, the higher the rates. Liquor liability grades are found in each state's **State Exception** page of Rule 45 of the CGL's commercial lines manual (CLM). States breakdown as follows:



Rates are especially high for establishments with a poor claims history and those having unique exposures such as pool tables, live music, exotic dancers or other forms of live entertainment. Owners of operations with these histories or exposures typically pay a premium surcharge."

#### **Training your staff**

Closing earlier, removing pool tables or other diversions and/or getting rid of live entertainment may not be practical; but the insured may consider alcohol-awareness training as an option. Many liquor liability carriers offer discounts for such training.

Alcohol awareness training is a good starting point and should be required for all management and staff who serve alcohol. Servers learn to identify patrons who have had too much to drink, how to avoid serving under-aged customers and when to make and keep notes. Servers also learn the consequences of failing to take responsibility for their patrons. Many servers assume that they will not be held personally responsible for serving an intoxicated customer, but this may not be the case in certain states.

Security personnel should also be trained. Unfortunately, security staff may be overzealous in their duty, using stun guns, mace and physical force to restrain patrons. Such attacks, ironically, endanger rather than protect a business.

Training is essential but only if managers and owners take the training seriously. Staff should be continuously monitored to make certain everyone is consistently applying the lessons they've learned.

Several training programs exist to aid alcoholserving entities in their quest to become better at protecting their clients and staff while at the same time potentially lowering their liquor liability premium. These include:

- Training for Intervention Procedures by Servers of Alcohol (TIPS): A live training class with nine different programs are available depending on the type of operation and situation;
- ServSafe Alcohol: Sponsored by the National Restaurant Association Educational Foundation (can be done online);
- Serving Alcohol, Inc.;
- Techniques of Alcohol Management (TAM): Endorsed by the National Hospitality Institute offering in-person and online training;
- Techniques for Effective Alcohol Management (TEAM): A non-profit alcohol awareness program geared towards sports venues and sporting events; and
- Alcohol Safety Institute of America: An online training program.

### **Availability of Liquor Liability Coverage**

Depending on who you ask, liquor liability is now freely available unlike in decades past. However, availability may vary depending on the jurisdiction. Many standard carriers willingly extend liquor liability protection to any insured who meets their basic underwriting guidelines regarding the amount of liquor served (as a percentage of sales) and other exposure factors.

If the insured is unable to secure liquor liability protection from the carrier providing the general liability protection, many excess and surplus lines carriers stand ready to prove the necessary coverage on a stand-alone basis.

Insurance Premiums Versus the Total Cost of Risk: Anyone who watches TV knows that some insurance carriers spend millions of dollars to convince consumers that insurance is all the same and only the price matters. But we know there is a lot more than price at play. In this short piece we delve into six expenses that negatively affect the total cost of risk which is what the insured should truly be concerned about. When was the last time your client said, "That premium seems fair; the insurance company is getting adequate premium to cover its exposure and I'm getting the protection I need"?

I doubt ever. More than likely you have heard them say – maybe even today - "I can't believe I have to pay out all this money. The insurance

# 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
12/10/2019 12pm-3pm Homeowner's Policy Coverage Concerns for the Modern Family  12/16/2019 9am-11am/12pm-2pm 4 Key PL and CL Exposures	12/18/2019 10am – 11am  Business Income, Extra Expense, Off Premises Utility Failure  12/19/2019 9am-11am/12pm-2pm 5 Contractor Coverage Concepts  12/23/2019 10am - 12pm Those Kids & Their Cars!	A New Agent Training Solution INTENTIONAL TRAINING to Prepare For TOMORROW  Pick & Play Your Professional Bundle: Basic & Beyond  CLICK HERETO GET STARTEDI  NEW LEVEL PARTNERS  New Hire Training	BIG 1
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Events			
December 12, 2019 IIAGNO Past Presidents Luncheon	January 9, 2019 IIABR Luncheon Baton Rouge Country Club		
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company is killing me. Can't we get this premium down?"

Carriers advertising low, low auto rates on TV are play to the belief that insurance is all the same and all about the visible premium – the "price." But is it the price or the **cost** of protection the insured needs to calculate?

Insureds must understand – or be taught by us – that premium (the price) is only part (sometimes a small part) of their "**Total Cost of Risk**."

Six "costs" in addition to the premium combine to develop the insured's true **total cost of risk**: 1) Deductibles or Self-Insured Retentions; 2) The cost of uninsured or self-insured losses (intentional or unintentional); 3) Legal costs; 4) Loss control and safety costs; 5) Claims management costs; and 6) Opportunity costs.

Let's talk first about Deductibles and Self-Insured Retentions. Premium savings is often accomplished by increasing a deductible or using a self-insured retention (SIR). But any visible premium savings must be weighed against the initially invisible "out-of-pocket" cost directly related to the deductible or SIR. The Price:Cost comparison is easy with smaller clients that have relatively few losses. A small commercial client, for example, may enjoy a premium savings of \$2,000 by increasing its property deductible to \$5,000 from \$1,000; but one loss could "cost" the insured \$2,000 more than staying with the lower deductible.

	\$1,000 Deductible	\$5,000 Deductible
Premium:	\$20,000	\$18,000
Property Loss:	\$65,000	\$65,000
Amount Paid by carrier: (Loss – Deductible)	\$64,000	\$60,000
Total Cost of Risk following loss: (Premium + Deductible)	\$21,000	\$23,000

And this is if there is only one loss during the year; what if there are multiple losses during the year?

Larger corporations are major proponents of high

deductible programs because there is the immediate premium savings (as seen on the balance sheet). But when compared to the actual cost of loss experience such a plan may ultimately be more expensive.

Basically, visible premium savings are eaten away by the "invisible" costs of deductibles and self-insured retentions following a loss.

Now let's add in the costs associated with uninsured and self-insured Losses. In an effort to cut insurance costs, insureds may intentionally or, worse, unintentionally self-insure certain risks. Before implementing intentional self-insurance there must be careful study of loss frequency and, more importantly, loss severity. (Frequency is how often the loss occurs; severity is how expensive the loss is.)

Unintentional self- insurance is generally the result of coverages being cut from a program in an effort to lower the premium.

Any out-of-pocket expense related to selfinsurance is part of the insured's total cost of risk. Like the use of deductibles or SIR's, these may push the cost of risk beyond the pre-change price of insurance. Two prime examples of these expenses are claims management costs and legal costs.

**Internal Claims Management Costs** are most often associated with self-insured losses or uninsured losses. These losses and claims must be managed by someone. This "someone" may be an internal employee designated as the claims administrator or it may be an outside third-party administrator (TPA).

Although the expense of the internal employee may be captured under a separate line item – payroll expense – the cost is still a part of the total cost of risk. Any TPA expense is also a part of the cost of claims management and the total cost of risk.

**Legal Costs** flow out of the claims management of uninsured and self-insured losses. Defending uninsured or self-insured events or losses can be expensive. The cost of defense counsel will devour any premium savings enjoyed by self-insuring.

However, there are legal costs that may be required – regardless of the program. These are legal costs incurred to **avoid** a financial loss, such as the costs to develop proper contractual risk transfer mechanisms or employee manuals (just two examples). These are necessary to properly run any business operation and are costs that occur regardless of the insurance protection purchased.

**Loss Control and Safety cost**, like unavoidable



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legal costs, apply almost regardless of the underlying protection. In an effort to avoid or reduce loss, insureds may invest in loss control and safety. This includes sprinkler systems and safety equipment like safety glasses and fall protection. Granted, some of these are required by regulation, but such costs arise out of the inherent risk of the operation and are thus part of the "total cost of risk."

**Opportunity Costs** are the last piece of the total cost of risk picture. This is a somewhat subjective factor in the total cost of risk, but to manage a non-traditional (or even traditional) insurance program requires resources be taken from other areas of the operation. These are monetary and time resources.

The insured can choose to pay a higher premium and allow the insurance company's personnel to do the work; or they can choose to do some parts of it themselves. This comes back to a price: cost analysis.

Payroll and time costs are a factor in the total cost of the insured's risk.

To ask the question again, is it the **Price or the Cost?** Insureds can ALWAYS find a lower PRICE, but at what COST? Understanding the **Total Cost of Risk** concept is important to both insureds and agents. Being able to distinguish between the two

can save insureds in the long run.

Don't misunderstand, there is a place for alternative protection programs and even some price comparison among the less sophisticated coverages; but don't ever let the insured, or yourself, be fooled into believing that insurance is all about the price.

How Many Different 'Values' Can Property Have?: Property, real and personal, can have many values assigned to it. Some are insurance-related" and some have absolutely no place in an insurance conversation. This brief article lists the various values assignable to property and digs into the values that relate specifically to insurance.

Property can be assigned many "values" depending on the purpose of the valuation and who is valuing it. Some examples include:

- The amount for which the property could be sold; known as "market value." Market value is what a willing buyer will pay a willing seller.
- What an expert thinks it's worth. In simple terms, this is "appraised value." A property or business appraiser evaluates the subject property



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based on local market conditions, estimated income, cost to build from the ground up and other comparison calculations.

- The value to the individual who owns the property. This is intrinsic value, what a certain piece of property means to you or me in terms of memories and significance.
- The cost to replace the property with new property just like or similar to the property. In insurance terms, this is often called replacement cost.
- Depreciated value. Depreciation has a dual function as it relates to property values. Accountants use depreciation as a business "expense" that lowers taxable income. But depreciation plays a part in insurance as well; it is generally applied within the concept of Actual Cash Value.
- The cost to replace the property with something functionally equivalent. Can the owner replace a hardwood floor with subfloor and linoleum and be just as happy or accomplish the same goal?

The value assigned for tax purposes. This is a jurisdictional value municipalities use or assign to calculate or create tax-related income. Although not necessarily a complete list of possible property values, these seven cover the

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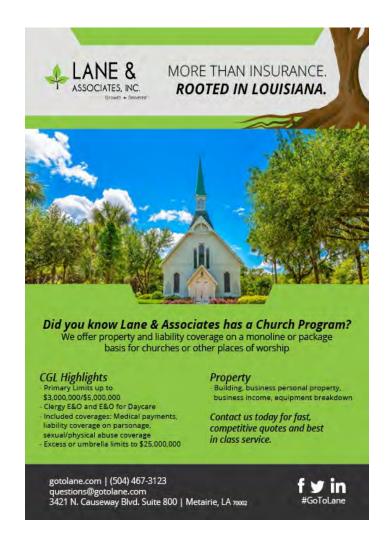
majority of "values" assignable to any particular property. But we, as insurance professionals, are primarily concerned about only four of these:

- Actual cash value
- Replacement cost;
- Functional replacement cost; and
- Market value.

#### Actual Cash Value

**Actual cash value** has historically been defined as the cost new, on the date of the loss, minus **physical** depreciation. "Physical" is highlighted because there are many different types of depreciation that don't relate to insurance: depreciation due to obsolescence, accounting depreciation and economic depreciation. Physical depreciation results from use and ultimate wear and tear meaning that the insured does not get paid for the "used up" value of the property.

Pay attention to the beginning point in the calculation of ACV, the cost new **on the date of the loss**. ACV is not based on the value when it was purchased or at any point between that date and the date of the loss. Only the cost new on the date of the loss matters.



However, ACV is not always calculated in this method. In fact, ACV can be developed in one of four ways:

- 1. Applying the Broad Evidence Rule;
- 2. Equating ACV to a property's Fair Market Value;
- 3. Applying the historical definition of replacement cost minus physical depreciation; or

Equating ACV with replacement cost. Each of these is discussed in the VU article, Why Defining Actual Cash Value is Amazingly Difficult. This article also links to a state-by-state breakdown of which method applies in each state. The most common is the Broad Evidence Rule.

ACV is the common basis of valuation for:

- The unaltered commercial property policy
- Coverage C in all unendorsed Homeowners' (HO) coverage forms
- Non-building other structures under Coverage B of the HO forms (but can be endorsed to replacement cost)
   Auto physical damage

### Replacement Cost



**Replacement cost** is often described as "new stuff for old junk." This is really an oversimplification of the replacement cost concept. Yes, the insured does get paid to replace something old with something new due to the purpose of insurance – **indemnification**.

Indemnification is the contractual obligation of one party (the indemnitor) to return another party (the indemnitee) to essentially the same condition (financial or otherwise) enjoyed before the loss, with no improvement or betterment. Within property policies (which are called first-party policies) the insurer is the "indemnitor" and the "indemnitee" is the insured.

Replacement cost may be the <u>truest</u> form of property indemnification when considered this way: the insured's machinery is destroyed by fire, now they have no means to conduct business and generate revenue; the insurance proceeds don't necessarily do any good, they need the equipment. Same with the building, the insured needs a building in which to operate, not the money. Replacement cost is the best mechanism for returning the building and contents to the insured so they can resume operations, regardless of the type of operation (manufacturer or office). This is the best demonstration of the goal, purpose and representation of indemnification.





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Still, how can replacement cost embody the principle of indemnification? Isn't the insured better off than before the loss? Valid questions.

Indemnification principles are not violated by replacement cost and, in fact, are upheld because the amount of insurance purchased equals the cost **new** of all eligible insured property on the day of the loss. Basically, the insured is valuing as if it were new and paying a premium based on that value.

Replacement cost generally applies to:

- Coverage A in the HO policy forms (except HO-8)
- Building structures in Coverage B of the HO policy
- By endorsement for Coverage C in the HO forms (except HO-8)
   As an optional valuation method for commercial

## Functional Replacement Cost

property

**Functional replacement cost** values property at the cost necessary to replace damaged or destroyed property with new property of <u>unlike</u> kind and generally lower quality which perform the same general function yet allow the insured to accomplish its objectives. Property replaced using functionally equivalent materials and products are

less expensive and often require a shorter replacement schedule. This valuation option may be appropriate:

- When the insured cannot rebuild the same square footage, usually due to the application of building codes, and a smaller building will be built in its place;
- When the insured does not want to rebuild the same square footage;
- When lower cost building materials can or should be used (i.e. masonry/non-combustible vs. fire resistive); or

If the insured does not need all the functions available on a particular piece of machinery or equipment (they found a great bargain on a top-of-the-line model, but don't need or use all the functions available and the insured does not want to pay the premium to insure it for the cost new).

Functional replacement cost is found:

As the valuation method applicable to Coverage A in the HO-8
 By endorsement to the commercial property policy





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#### Market Value

There is one more "value" you will have to deal with, especially when dealing with NFIP's flood insurance coverage and ordinance or law coverage – "Market Value." Market value is what a willing buyer will pay a willing seller, which is generally not related to insurance. But, NFIP's manual rules applies market value as the basis for many of its rules.

Likewise, many jurisdictions apply market value as the basis to decide at what point a damaged building must be brought into compliance with local building codes.

Lastly, in some states, market value is considered equivalent to actual cash value. And in the states that apply the broad evidence rule, the structure's market value is one piece of "evidence" used to develop the actual cash value.

So, although we don't think of market value as an insurance value, this valuation method can play a role. Market value is part of and plays a role in:

- NFIP conditions
- The ACV calculation in some states

#### **Let's End This**

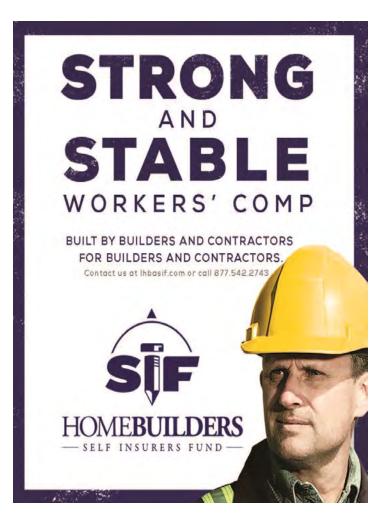
Even though a specific piece of property can have multiple values assigned to it, from an insurance perspective, only four matter. Property can be valued at its:

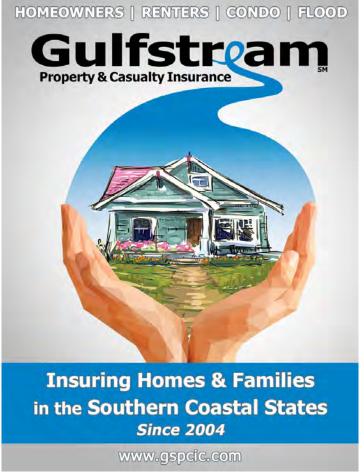
- Replacement cost;
- Actual cash value;
- Functional replacement cost; or Market value.

**The** value that applies following a loss is a function of the needs of the insured, the form and endorsements applied and the state. Our job is to meld all this information to develop the correct amount of coverage. And what we discover, this can be difficult.

Buddy has eaten almost all the candy he collected Halloween night. Don't tell him, but I procured" some maybe half - of his take for my own enjoyment. I don't think he noticed. Anyway, now that he is coming off his sugar high, he is treating us" to some interesting Ask an Expert questions.

As always, we are here to serve anyway we can. Talk with you soon.





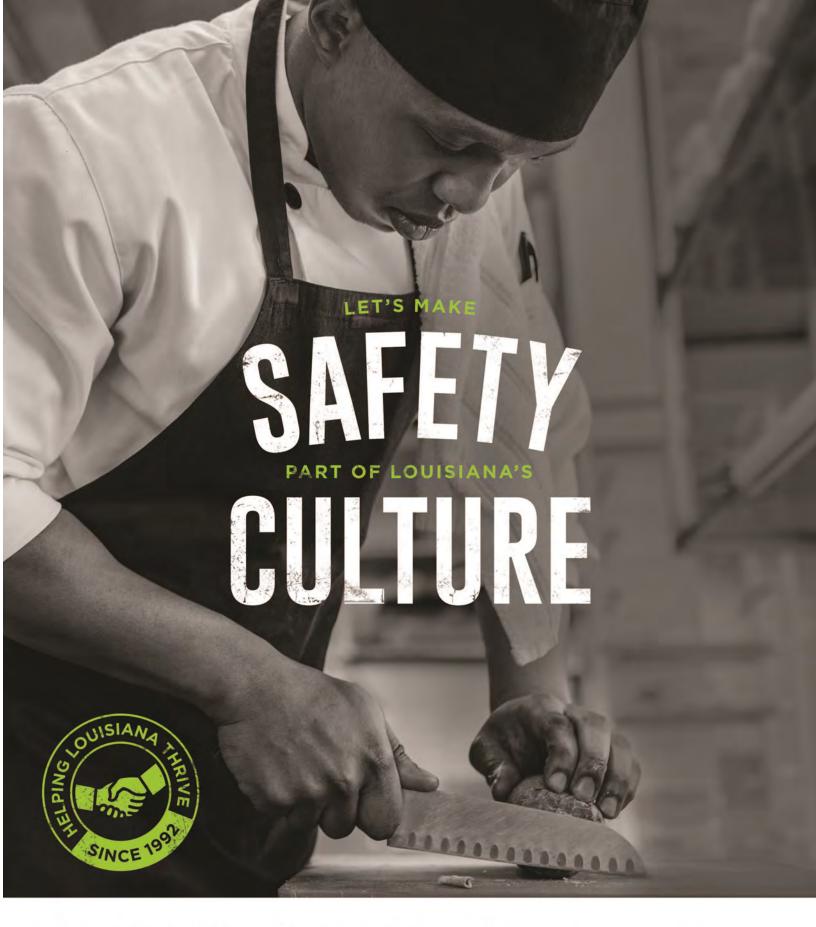


# Rate & Rule Filings

Company	Coverage Type	Overall % Impact:	Overall \$ Impact:	Number of Policyholders:	Changes
Travelers Indemnity of Connecticut Travelers Casualty Travelers Property Casualty	19—Commercial Auto	+15.029%	\$7,179,199	1,903	New: 4/1/2020 Renewal: 4/1/2020
Privilege Underwriters Reciprocal Exchange	4—Homeowners PURE High Value	+6.9%	\$1,608,952	2,550	New: 12/8/2019 Renewal: 12/8/2019
Allstate Property & Casualty	19– Private Passenger Auto	+30.0%	\$929,342	5,179	New: 1/23/2020 Renewal: 1/23/2020
Crum & Forster Indemnity North River Ins Co United States Fire Ins Co	19—Commercial Auto	+14.3%	\$359,292	50	New: 4/1/2020 Renewal: 4/1/2020
United Fire & Casualty Co United Fire & Indemnity Co	19—Commercial Auto	+11.5%	\$1,867,014	1,216	New: 3/1/2020 Renewal: 3/1/2020
Ohio Security Insurance Co	5—Commercial Multiple Peril	+31.%	\$369,259	1,994	New: 7/1/2020 Renewal: 7/1/2020
Ohio Casualty Ins Co	17-Other Liability Commercial Um- brella & Excess	+13.8%	\$328,039	1,303	New: 7/1/2020 Renewal: 7/1/2020







IN THE LAST DECADE, LOUISIANA HAS MADE GREAT STRIDES TO BECOME ONE OF THE SAFEST STATES TO WORK IN THE U.S. And through a strong safety culture and strategic approach to planning, LWCC is making it a point to continue this trend. Learn how LWCC goes beyond providing workers' comp coverage—with online safety training, on-site evaluations and more—by contacting an agent at LWCC.com.

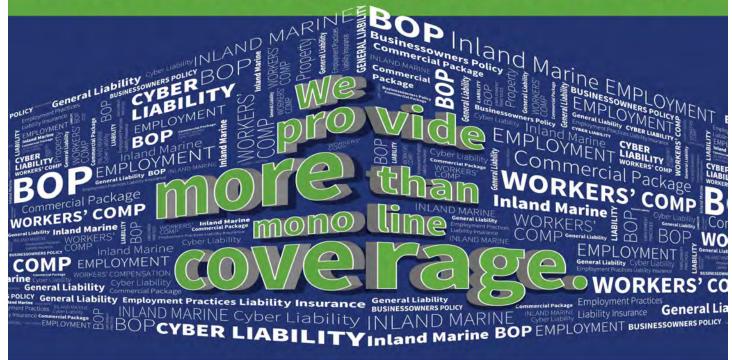






Thank you for your support and attendance for the IIABL Fall Education Conference

## **DISCOVER WHAT WE COVER**





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## **GOLD LEVEL**













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#### **BRONZE LEVEL**

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GULF STATES INS CO	GULFSTREAM P&C	HIGHFLYER HR	HOMEBUILDERS SIF
IROQUOIS SOUTH, INC.	LANE & ASSOCIATES	LIBERTY MUTUAL	LUBA WORKERS' COMP
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