

MISSISSIPPI
AGENT

VOLUME 37 • NUMBER 2

SPRING 2017

June 11-14, 2017 | Annual Convention & Trade Show
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CHAIRMAN'S MESSAGE

by Durr Boyles



It's hard to believe, but convention is almost here which means it's time for some "Sun, Fun and Sand!" The IIAM Annual Convention and Trade Show will be back at the Sandestin Beach Hilton June 11-14. This will be a great time where friends, families and colleagues gather to conduct business and have a good time. New this year, we will also offer an optional three hour CE seminar on Monday morning. Dave Tralka, President and CEO of InsurBanc, will present a seminar on Key Considerations in Agency Acquisition and Perpetuation. Register for this seminar on your convention registration form.

I want to take a personal moment to thank a group of people who give much of their time to our association – our officers and executive committee. Thanks to our Chairman-Elect Cecil Vaughan, Vice Chairman Ray Robertson, Treasurer Ray Collins and National Director Shaw Johnson III as well as Brian Berry, Brad Kent, Tatum Brown, Roman Gale, Susan Johnston, Josh Smith, Pam Wilson, and Scott Woods. They work full-time in their agencies and still make the time to meet on association matters and work at association functions.

I also want to thank the IIAM staff – Clinton Graham, Stephanie Spahn, Kathy Roberts and Lauren Hawkins. Their work benefits all of us as they plan and host association events and seminars, write E&O insurance for many of our members, lobby on our behalf in the legislature and much more.

Speaking of events, we recently held the Trusted Choice Big I National Championship Golf Fundraiser at Patrick Farms Golf Club in Pearl and the Young Agents Baseball Outing at Trustmark Park in Pearl. Both events were well attended and we appreciate everyone who was there!

We want to say a special thank you to our sponsors who made the baseball outing possible. You will find a complete list of those sponsors and some photo highlights from the outing in this issue of *Mississippi Agent*. Don't forget we will also have our joint IIAM/IIABL Young Agents Conference in Biloxi August 17-19. Larry Linne, President and CEO of InCite Performance Group, will be the conference speaker. On Saturday we will again have round table discussions followed by the Meet the Sponsors Luncheon.

The money raised from the recent golf fundraiser will go towards the 2017 Trusted Choice Big I National Championship Junior Golf Tournament that we are hosting in Madison this August. Junior golfers from around the country will come to Annandale Golf Club August 7-10 to play in one of the largest and most prestigious junior tournaments. If you are interested in being a sponsor for this event or would like to learn more about volunteering for the tournament, contact Stephanie Spahn at IIAM at 601-939-9909.

Since this is my last article as IIAM Chairman, let me say how much I have enjoyed this past year. It has gone by quickly, but has been memorable and fun! Thank you for the opportunity to serve you and get to know you better. I look forward to seeing many of you at convention as we enjoy some "Fun, Sun and Sand." See you there!



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FROM THE COMMISSIONER

by Mike Chaney
INSURANCE COMMISSIONER



Another legislative session has come to an end. I am pleased with the outcome of legislation of interest to the Mississippi Insurance Department, and my thanks go out to our department legislative team who worked long and hard hours to get our bills and needs addressed.

Among our legislative accomplishments this session are:

HB 469 - Fire Protection District Boundaries

Currently, Miss. Code § 19-5-151 allows for adjustment of the boundaries for fire protection districts only with the unanimous consent of its board of commissioners. This has become a problem with some residents being trapped in a fire district when it would be more efficient and effective that they be included into a different and more closely located fire station. For one example, a home may be located in one fire protection district but would be better served in another district, and that neighboring district is willing to take the home into their district, allowing the insured to achieve a rating benefit. However, the current district would not release the home and its tax millage to be incorporated into the other district.

To address this problem, § 19-5-151 is amended to place that power in the Board of Supervisors for the county to ensure the most appropriate and efficient fire protection coverage for the county's citizens. This method allows each county Board of Supervisors to take action in boundary management as they deem most appropriate for its citizens rather than applying a one size fits all approach. This would resolve many complaints about people being forced to pay both county wide and fire protection district tax while receiving no insurance rate reduction. Note: Boards of Supervisors are not required to take this action; they just now have the authority to do so if they feel it is warranted.

For any policyholders that you have that may benefit from a change to different fire protection district as provided in this bill, you may want to make sure they are aware that this option is now available to them. This bill was approved by the Governor on 3/13; effective July 1, 2017.

HB 447 – Regarding Surplus Lines Placement Eligibility

Basically this bill deregulates the surplus lines industry. Currently a risk may only be placed with a surplus lines carrier if the risk may not be placed within the admitted market. This bill removes the requirement that insurance not be available from an authorized insurer thus authorizing placement of insurance with a surplus lines insurer without regard to the availability of authorized insurance. This bill eliminates the requirement for an affidavit for personal lines policies. Additionally it requires that all producers provide a form (certificate) approved by the commissioner to policyholders at the time of issuance of the policy informing the policyholder of certain consumer protection information. Miss. Code Ann. § 83-21-23(1) requires that the surplus lines insurance producer shall furnish to an insured at the time of policy deliverance an informational notice. The informational notice provides the following information to the insured:

- The insurance procured under this surplus lines policy may or may not be available from the admitted market that may provide greater protection with more regulatory oversight.
- In the event of an insolvency of the surplus lines insurer writing this policy, the losses shall not be paid by the Mississippi Insurance Guaranty Association.
- This coverage has been procured through a duly licensed nonadmitted insurance producer.

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This bill also continues to require that the insured be advised in writing that, in the event of insolvency of the surplus lines insurer, losses shall not be paid by the Mississippi Insurance Guaranty Association. House Bill 447 amends certain surplus lines licensure requirements found Miss Code Ann. § 83-21-19(2). On and after July 1, 2017, an insurance producer who holds a property, casualty and/or personal lines of authority and who holds a certificate of authority with a licensed fire and casualty insurance company in this State, may be licensed as a surplus lines insurance producer license, provided the applicant meets the other requirements set forth in Section 83-21-19.

This bill was approved by the Governor on 3/13 and takes affect 7/1. MID is currently drafting a bulletin that will provide producers will all licensing changes and an Informational Notice form for companies to use.

HB 957 – Insurance adjusters; revise licensing laws regarding

This was not a MID bill, but we did work with the sponsors of this bill to draft something that we felt was workable. Most insurance adjusters are from out of state and only come into our state when there has been some type of disaster where a lot of claims must be adjusted quickly.

These adjusters have found that it is difficult to get licensed in every state, and they basically need to have a one stop certification process. Of course, MID and other regulators want to make sure if an adjuster comes into our state that they know our laws.

This bill was an adjuster industry sponsored bill that, after working with MID and the Insurance Coalition and making certain changes, we believe will provide the needed education and testing that we want, yet allow that education and testing to work in other states. It allows the commissioner to waive any license requirement for an applicant with a certification from a person or entity approved by the commissioner that provides adjuster education and training and has met the standards as set forth by the commissioner regarding pre-licensing coursework and examination. MID is still required to approve all pre-licensing education and examinations issued. If MID has approved the education and examination from this approved certifying entity, MID will accept the certification from the entity and use that certification for the licensure requirements. As we have the first legislative session in the nation, we were the first state to get this bill. It is now being pushed in other states. This was approved by the Governor on 3/10 and will be effective 7/1.

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SB 2298 –2017 Omnibus Accreditation Legislation

This bill contains required accreditation standards that were developed by the National Association of Insurance Commissioners (“NAIC”) after the global financial crisis of 2008 to assist regulators in establishing an effective level of enterprise risk management of all insurers by establishing these standards and modernizing the regulation of risk management. These changes are also a concerted effort to modernize reinsurance regulation after the 2008 crisis.

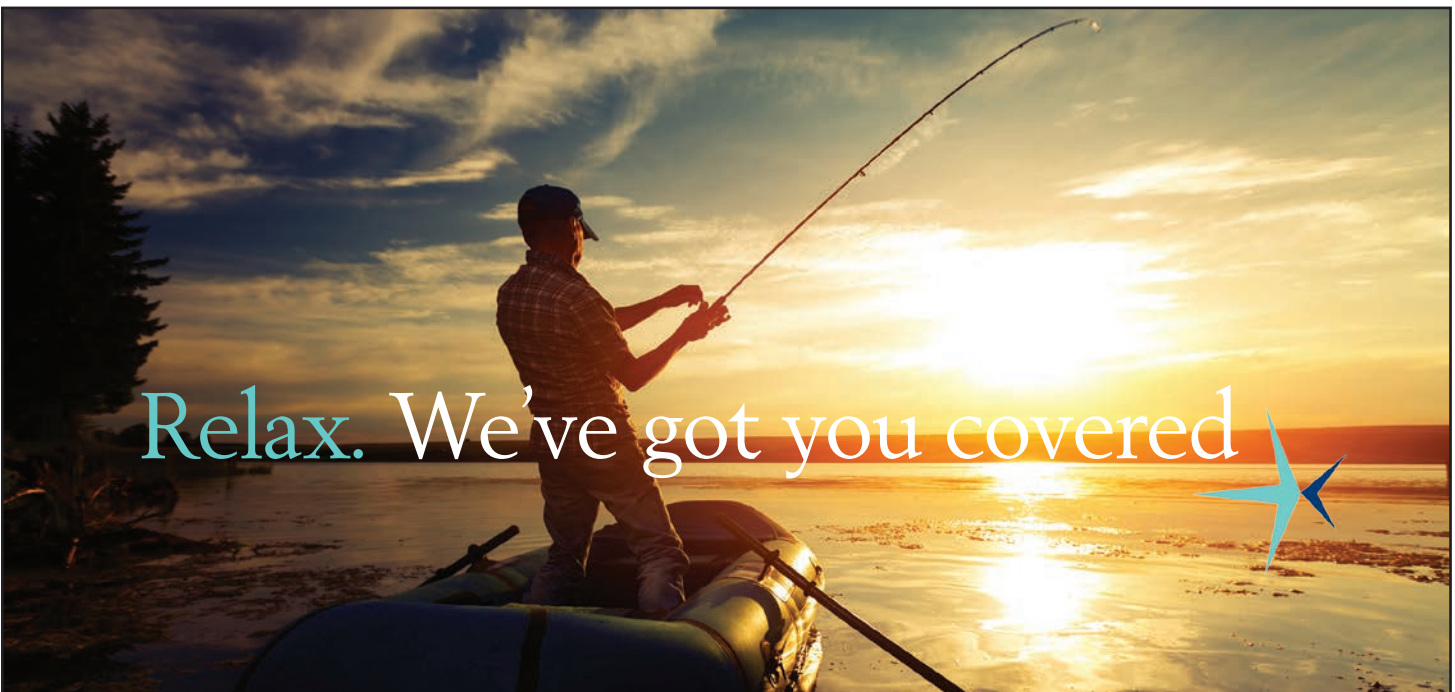
- The bill is made up of three related parts:

Part 1: The first part includes **Amendments to Insurance Holding Company System Regulatory Act**. These amendments are:

- a. **Pre-Acquisition Notice** - Requires an insurer in this state file a Pre-Acquisition Notice with MID when there is an acquisition in which there is a change of control of an insurer authorized to do business in this state.
- b. **Examination of Insurers Registered Pursuant to the Holding Company Act** - gives the Commissioner au-

thority to order any insurer registered under the Holding Company Act to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method.

- c. **Supervisory Colleges** - gives the Commissioner authority to participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies, and to share information such as the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes with other regulators concerning insurers registered under the Holding Company Act.
- d. **Group Wide Supervision of Internationally Active Groups** - gives the Commissioner authority to act as the group-wide supervisor for any internationally active insurance group which includes an insurer registered under the



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Holding Company Act that meet certain requirements. It is important to note that Mississippi is not the lead regulator for any internationally active insurance groups.

Part 2: Amendments to Credit for Reinsurance Model Law which provides a framework for increased scrutiny and oversight on Reinsurers located outside of the United States. The revisions to the Credit for Reinsurance Model Law provide for a state certification process for reinsurers applying for authorization to post less than 100% collateral for its obligations under the applicable reinsurance contract. This in turn will give financially strong reinsurers the ability to more efficiently use currently restricted capital which may be reinvested in the U.S. to write more business.

Part 3: Adoption of the Own Risk Solvency and Assessment Act (ORSA) - which is an internal process undertaken by an insurer to analyze all reasonably foreseeable and relevant material risks that may have an impact on an insurer's ability to meet its policyholder obligations.

This was approved by the Governor on 3/6.

SB 2479 – Relating to Reenacting the Public Safety Verification and Enforcement Act.

In 2013, the Public Safety Verification and Enforcement Act was passed that required the Department of Public Safety to establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements as required under Mississippi law. After significant delay due to issues and protests resulting from the Request for Proposal for this system, the system is scheduled to begin operation in June of this year. However, because the statute was scheduled to be repealed July 1, 2018, this bill extends the repealer to July 1, 2022 and was approved by the Governor on 3/1.

And while much was accomplished during this session, budget issues continue to prove to be a challenge for all state agencies. With the **HB 1498 Appropriations** bill, like all other state agencies, MID's appropriation for FY18 includes a decrease from FY17. In 2017, MID was appropriated a little over \$13 million, the appropriation for 2018 is \$11.8 million. That is an 8.8% cut; almost a \$2 million decrease in funding, so as you can imagine things are going to be tight. There is also concern that, as of this writing, three agencies including the Attorney

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General's Office did not get funded. Like other agencies, our legal division is staffed with AG attorneys and currently has two vacancies; so if the legislature can't get an appropriation bill passed in a special session for the AG's office, it isn't going to affect only the AG's office, but also the other state agencies where they provide legal assistance.

The state is not the only legislative body failing to act on some issues. I was very disappointed in Congress's failure to take action enacting a healthcare reform bill, resulting in the bill being pulled. There were many innovations in the bill that were designed to help reduce healthcare costs, including access to expanded health savings accounts and now those opportunities are gone. As a consequence, Mississippi consumers will be denied the option of having new, cheaper healthcare plans and more choices of health care providers to choose from. There will be only one federal exchange provider in the state in 2018, and a likely growth in Medicaid resulting in more state dollars being spent. We will continue our mission at MID in seeking the best health insurance for all Mississippians.

We recently held the first meeting of the Health Insurance Enforcement and Consumer Protection Grant Advisory Board. Attending were a variety of individuals from the healthcare field including doctors, agents, mental health providers and insurance company representatives. The board was created to help facilitate the exchange of

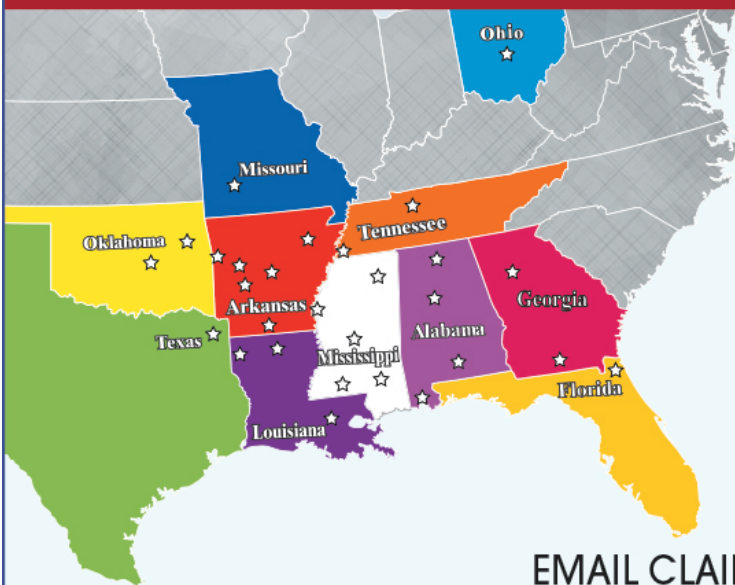
ideas related to the grant project. Experience has taught us that seeking input from many different areas of the healthcare and health insurance industries is invaluable. The board plans to meet every other month, in addition to more frequent subgroup conference calls.

The Health Insurance Enforcement and Consumer Protection (HIECP) grant provides funds to enhance states' ability to enforce certain market reforms and consumer protections under Part A of Title XXVII of the Public Health Services Act. MID wants to ensure that our laws, regulations and procedures are in line with federal requirements. The advisory board will help give guidance and insight on how the grant funds will be used within the state.

With the board members input, MID will seek to streamline the plan submission process by providing new detailed guidance, forms and reference materials for issuers. The goal of this guidance is to ease the administrative burden on insurance companies by eliminating as much of the regulatory "back and forth" as possible.

Other congressional action we are monitoring is the introduction of bills designed to revamp the National Flood Insurance Program. The last program reauthorization is set to expire in September of this year, and several bills have already been introduced to reform the program. We are again seeking approval for private flood insurance to be accepted by mortgage companies and banks.

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E&O AUDITS

THEY AREN'T TOO SCARY

By Eric J Moberg, President & CEO, The Moberg Group, Inc.

The word “audit” tends to make people cringe. For some the thoughts of mean IRS bean counters scrutinizing your finances come to mind. Over the years we have referred to audits as “E&O Risk Management Reviews” or “Agency Operational Reviews”, but that is really just semantics. Bottom line however is that the word audit can have a very positive meaning.

After performing hundreds of audits, I can assure you that the vast majority of agencies that have audits performed become repeat clients. I’m sure most other auditors would tell you the same thing. The reason? There must be some significant benefit to the agency or this wouldn’t be the case. Let’s start with who the auditors are:

- Most agency auditors have extensive agency backgrounds, some as managers, some as agency owners. The average auditor has over 20 years in the business. Some that are more “seasoned” (old) like myself have over 40 years in the insurance business and have owned their own agency.
- Most of us have performed audits in hundreds of agencies over the years and visit new agencies every month. These agencies vary in size from just a few people to the largest agencies in the country. My smallest client has

2 employees including the agency principal, my largest has over 1,200. Geographically this includes agencies in the most rural areas to those in the largest cities. Agencies that are generalists to those that are extremely specialized. We have probably seen almost every variation there is in agency operations and markets, including wholesalers, MGAs, Program Managers, and MGUs.

- Auditors gather a tremendous amount of agency operational knowledge from their exposure to so many different organizations. We see and learn new things from innovative agencies all the time, giving us a good perspective of what’s going on in the industry.
- On occasion we also see some of the worst of agency operations with little structure and little or no management. We learn from those agencies as well. Sometimes it can be scary for the auditor too!

Now that you are more comfortable with who will perform your audit, let’s look at some of the benefits the agency will derive from completing an agency audit. I’m sure you want to know what’s in it for your agency. The answers are many, but let’s start with the benefit that catches most agency owner’s eye. For those agencies insured through the SwissRe/Westport program the

agency may receive a five year, 10% premium credit for *completion and compliance* with the audit. This credit is in addition to any E&O education credits you may earn on an annual basis through your association. In most cases the credit will pay for most, all, or in some cases more than the cost of the audit, *in the first year!*

Even if your agency is not in the SwissRe/Westport program, the most obvious benefit is the reduction of E&O exposure for your agency. Going through an E&O claim is not a pleasant experience. Besides the financial impact, including the deductible, potential additional legal expenses, the cost of management and staff being tied up in depositions or court, it can be an emotional event for the employees involved. Completing an audit cannot guarantee that you will not be sued, but if you have followed the audit recommendations, it should put you in a more defensible position.

Another benefit that I have heard many times from my clients is that we bring industry knowledge that they do not have the opportunity to be exposed to them. I am asked quite often “how does my agency stack up to others you see?” Of course things we see that are proprietary within an agency are never shared with another agency. However, general things we see including industry trends, interesting communication methods used with agency clients, and innovative marketing ideas, can sometimes be shared as they are not specific to one agency.

A benefit we have developed over the past 23 years of performing audits is providing agencies with many of the solutions to the common recommendations we make as a result of the audit. This includes over 120 documents, checklists, disclaimers, and examples of wording for letters they can use for communication and documenting contacts with the agency’s clients. This also includes samples of compensation plans, non-piracy agreements, renewal questionnaires, and catastrophe and data security plans. We also provide our clients with a copy of our widely used Agency Operations & Procedures Manual.

An objection I sometimes hear, usually from an agency that has not had an audit, is the fear that it will take too much time away from their work. I can assure you that an audit is not disruptive to the agency. We are well aware that your work with clients comes first. We normally have just one staff member away from their desk at a time for no more than 20-30 minutes. The discussions with the staff are workflow and communications oriented. How do they interact with your clients, with each other, and with your carriers. How is that communication documented, and is the process both communication and documentation con-

sistent with procedures.

The “Trinity” of E&O Risk Management is: **Communication, Documentation, and Consistency.** Every agency can benefit from developing consistent workflow and documentation. Audits help to identify areas that can be improved, and provide the path to achieve consistency in the agency. It’s not always whether you did a good job, but rather, can you prove you did. Documentation is the key.

The good news is that most agency audits are done voluntarily. They are not punitive in nature, and it is a “win-win” for the agency, state association program, and the E&O carrier. Great ideas can be exchanged, new methods learned and developed, and E&O exposure reduced. The feedback from the staff is usually very positive as they feel they have been included in the opportunity to provide their input, and hopefully influence positive change within the agency.

So, let your fears subside. The word audit does not have to invoke fear. Talk to your association about having an audit performed in your agency before your next renewal.

Eric Moberg’s career in the insurance industry spans over 40 years and has involved management and executive positions with insurance companies, vendors providing services to the insurance industry, as a successful agency owner, and currently as President/CEO of The Moberg Group, Inc. (TMG), an insurance consulting firm working with Independent Insurance Agents and Wholesale Brokers.

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FUN, SUN AND SAND

IIAM 119th Annual Convention and Trade Show
June 11-14, 2017

It's time for another year of fun at IIAM's 119th Annual Convention and Trade Show June 11-14, 2017! This year's theme is a "Fun, Sun and Sand," so get ready for a fun week!

IIAM Chairman, Durr Boyles, invites you to attend this convention where there will be exhibits, networking opportunities and a lot of fun! This year's special guests include author of *Dispatches from Pluto*, Richard Grant; Insurance Commissioner Mike Chaney; and incoming IIABA Chairman-Elect Vaughn Graham. The convention kicks off Sunday, June 11, with registration and the trade show starting at 2:00 p.m.

New this year, we will also offer an optional 3 hour CE seminar on Monday morning. Dave Tralka, President and CEO of InsurBanc, will present a seminar on Key Considerations in Agency Acquisitions and Perpetuation. To register for this seminar, please check the appropriate box on the registration form.

This convention offers something for everyone and is very family oriented. From Kids Nite Out to the Dinner/Dance and beach activities, there will be plenty of action for the whole family. Make plans now to head to Destin this June for some fun in the sun!



SPEAKERS



Richard Grant
 Dispatches from Pluto
 Keynote Speaker



Vaughn Graham
 IIABA
 Chairman-Elect



Mike Chaney
 Insurance
 Commissioner



Dave Tralka
 Pres. and CEO
 InsurBanc
 CE Instructor

CONVENTION & TRADE SHOW SCHEDULE

Sunday, June 11

- 8:30 - 9:30 a.m. Board Meeting
- 10:00 a.m. Past Presidents Brunch
- 2:00 - 5:00 p.m. Registration
Trade Show Open
- 6:00 - 11:00 p.m. Kids Nite Out
- 6:30 - 7:30 p.m. Welcoming Cocktail Party
Dinner on your own

Monday, June 12

- 6:30 - 9:00 a.m. Breakfast Cart
- 8:00 - 10:00 a.m. Registration
Trade Show Open
- 9:00 a.m. - noon Continuing Education (optional)
- 1:00 p.m. Beach Activities -
Volleyball and Sandcastle Building
- 1:00 - 3:00 p.m. Ice Cream by the Pool
- 1:00 - 4:00 p.m. Young Agents Tent

Monday, June 12 (cont.)

- 6:00 - 11:00 p.m. Kids Nite Out
- 7:00 p.m. Cocktail Reception
- 7:30 p.m. Dinner/Dance

Tuesday, June 13

- 6:30 - 9:00 a.m. Breakfast Cart
- 9:00 a.m. - noon General Session
- 1:00 - 5:00 p.m. "Quench your Thirst"
Beach Refreshment Tent
- 1:00 - 4:00 p.m. Young Agents Tent &
Cornhole Tournament
- 1:00 - 4:00 p.m. Frozen Drinks by Pool
- 6:00 - 11:00 p.m. Kids Nite Out
- 7:00 p.m. Cookout Dinner/Pool Party
- 8:00 p.m. Charlie's Crab Chase

Wednesday, June 14

- 9:00 a.m. - noon Jazz Brunch

NEWS & NOTEWORTHIES



Berry named to MSU Insurance Hall of Fame

On April 6th, IIAM Past Chairman Brian Berry was inducted into the Mississippi State University Insurance Hall of Fame during the 30th Annual MSU Insurance Day. Brian was introduced by fellow Insurance Hall of Famer and IIAM Chairman, Durr Boyles. He was selected for induction by his peers because of the passion and dedication he has given to his clients, colleagues, and the industry overall. As part of his induction, Brian was also honored at the Mississippi State Baseball game and threw out a strike for the first pitch.

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The advertisement features a black and white photograph of a construction worker in a hard hat and safety vest, sitting on a wooden plank on a construction site. The worker appears to be in pain, holding his leg. A hammer and another plank are nearby. The background shows a building under construction with wooden framing.

Woods goes “Over the Edge” for Batson Children’s Hospital

Fisher Brown Bottrell President Scott Woods participated a few weeks ago in “Over the



Edge with Friends of Children’s Hospital” in Jackson. Over the Edge is a unique fundraiser in which participants raise money for Batson Children’s Hospital by rappelling down the 14-story Trustmark Corporate Office Building. Scott raised over \$4,500 for the hospital.

Wooley Receives Outstanding Supporter Award

As part of the Insurance Symposium, the Ole Miss RMI program recognizes one individual each year for long-term



involvement and commitment to the program by awarding the “Outstanding Supporter Award.” IIAM Past Chairman Dudley Wooley is the recipient of this prestigious award for 2017.

IIAM HOLDS YOUNG AGENTS BASEBALL OUTING

IIAM recently held the annual Young Agents Baseball Outing to watch the Governor's Cup Baseball Game between Mississippi State and Ole Miss at Trustmark Park in Pearl. Agents and company representatives gathered at the Holiday Inn Trustmark Park for a pre-game social with hamburgers and hotdogs before heading to the park to watch the game. During the social, the Young Agents hosted an IIAM-PAC Wine/Liquor Toss Fundraiser that raised over \$500 for our state PAC. Raising money for the PAC is one of the Young Agents' goals for this year and this was a great start! Thank you to Safeco/Liberty Mutual for sponsoring this fundraiser.

IIAM would like to thank the following sponsors for helping make this event a success:

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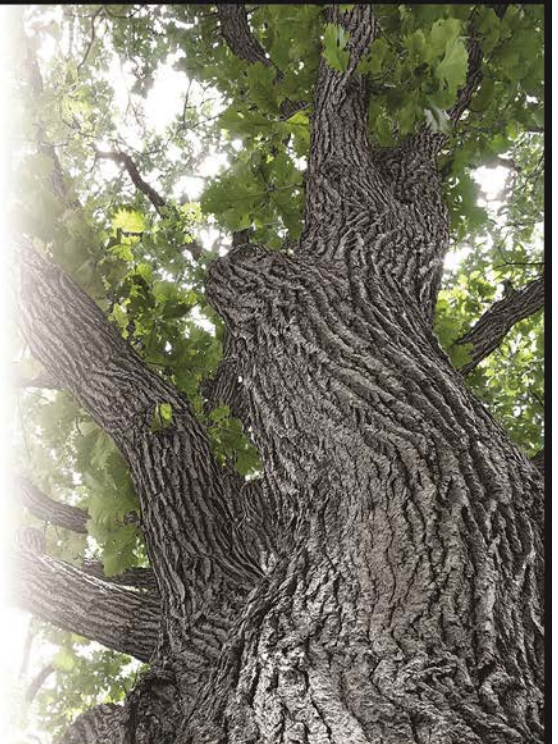
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PROTECTING YOURSELF AND YOUR AGENCY AGAINST DATA BREACHES

by Rebecca Blunden, Esq.

It's nearing lunch when your phone rings. As you answer, you notice that the caller ID shows a toll-free number. In response to your greeting, the person on the phone informs you that he is "David from Tech Support" and is calling because they have noticed unusual activity coming from your computer that morning. With some urgency, David asks if you will immediately go to your computer so he can work with you to determine if your computer has been compromised. You think of all the personal information you have on your computer—your own, your clients'—and turn to your keyboard, eager to fix the problem tech support has apparently located. Five minutes later, you've allowed David to download malware¹ onto your computer. After collecting data for a few months, the malware locks all the agency's computers with a message that it will only be freed once a ransom has been paid.² Your agency quickly pays it to get the computers running again, not knowing that all the information on its network has already been stolen.³

You take your annual vacation to Orange Beach. An agent is never really on vacation, and even your family expects that you will have your laptop so you can continue to help your clients. Three days in, your laptop is stolen from your car. Your password is your agency's name, which is on the inventory sticker on the bottom of the computer. You had client applications on it. Nothing was encrypted. All that personal identifiable information ("PII") is now in the hands of a criminal.⁴

You receive an email from Google on your work account, telling you that your Gmail password has been compromised, and providing a link to reset it. You use Gmail for all your personal email — banking, news, shopping. You know this might be a scam, though, so you forward the email to your IT department. IT emails you back, advising you to change your Gmail password. The email from IT provides a link to do so, but you don't notice it is a different link than the one in the original email. You click on the original link and reset your Gmail password. The original email was a scam and the original link resulted in malware being downloaded onto your work computer. It replicates across your agency's network, accessing all your agency's data.⁵

Scenarios like the ones described above and infinite variations happen hundreds of times each day. The methods are inventive, ever-evolving, and all are aimed at accessing your and your clients' PII. The growth in cloud-based computing⁶ and the increasing ways in which agents can move and access agency data (such as laptops, thumb drives, smartphones, tablets, and telecommuting) have increased your agency's vulnerability to a data breach.⁷

Raw numbers tell us data breaches are becoming more prevalent. In 2014, 783 data breaches were reported (and not all breaches are reported due either to the type of breach or a failure to report). In just the first 75 days of 2017, 312 data breaches were reported, putting

1 Malware is software designed for malicious actions. In simplest terms, once a computer has been infected with malware, that computer's actions can be dictated by an outside source. If an employee were to install malware on a company computer, the hacker behind the malware could then use the infected computer to mine for data, send emails, and launch attacks on that company or another company's network.

2 Malware that locks a computer or network is called ransomware. Incidents of ransom-ware quadrupled in 2016 and are expected to double again in 2017.

3 False tech support is a common method of intrusion. If you receive a similar call, ask what company or product they represent. Then find a phone number that you know to be genuine for that company and call back. As the Federal Trade Commission warns, "A caller who creates a sense of urgency or uses high-pressure tactics is probably a scam artist." <https://www.consumer.ftc.gov/articles/0346-tech-support-scams>.

4 PII includes any information that could be used by to conduct identity theft, blackmail, stalking, or other crimes against an individual. In January 2014, an AppleCare Insurance agent had a laptop stolen that contained PII and protected health information. In March 2010, a Farmers Insurance agent had multiple computers stolen that contained PII, including names, addresses, phone numbers, drivers' license numbers, and social security numbers. Neither agent had encrypted the data on the laptops. Both companies had to report the thefts as data breaches and advise their customers that they had lost their personal information.

5 This Gmail scenario is believed to be how John Podesta, who was the chairman of Hillary Clinton's 2016 presidential campaign, had his email hacked.

6 Cloud computing is an umbrella term that covers several concepts. The unifying factor is the use of the Internet to connect to the desired service rather than in-house computers or servers. There are two prevalent cloud computing concepts: software and storage. Software encompasses the websites and services that allow agents to use the Internet as a platform to run programs and store data. Storage envisions the data centers that host the software and save the data.

7 A data breach is any "incident where sensitive, protected, or confidential data has potentially been viewed, stolen, or used by an individual unauthorized to do so." Nate Lord, *The History of Data Breaches* (Jan. 27, 2017).

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2017 on pace for a record-setting 1,560 reported breaches.⁸ The reported data breaches reveal that it is not just large companies — such as Home Depot, Yahoo, Sony, and Target — that are being hacked. In fact, large companies that have more resources and more data at risk are increasingly taking proactive steps to protect against data breaches. This has made smaller businesses more attractive targets. It's easier to hack multiple small businesses and get the same amount of PII than one large business that may have hardened itself against cyberattacks.⁹ Not only are small to medium-sized businesses at the greatest risk for an attack, they are also more likely to suffer crippling financial losses as a result.¹⁰ The upfront cost of protection is generally lower than the cost of the data breach — in dollars to respond and to fix as well as lost productivity and lost business. Your clients expect that your agency will protect their PII. Studies show that consumers

are far less likely to continue to do business (or even begin to do business) with a company that has suffered a data breach.¹¹

HOW DO BREACHES HAPPEN?

Insurance agencies can be a treasure trove for criminals seeking PII. Not only is there information specific to the individual — name, address, date of birth, social security number — but there is often payment data, such as check or credit card information, and even loss information that could make your clients targets of scams.

The most likely way your agency will be breached is through malware and hacking. Another large threat to your clients' PII is a physical breach — like those lost laptops. Mistakes that lead to data breaches, such as a mis-delivered email or other inadvertent disclosure, are just as likely as a physical breach. Not only are small busi-

8 Paul Ausick, *More Than 300 Data Breaches to Date in 2017* (Mar. 15, 2017).

9 The Verizon Data Breach Investigations Report found that nearly 75% of data breaches occur at businesses with less than 100 employees. In 2014, half of all small businesses were breached. Ponemon Institute, *2015 Cost of Data Breach Study: United States*.

10 If just 100 client records are exposed, your agency can anticipate resulting costs in excess of \$20,000. Ponemon Institute, *2015 Cost of Data Breach Study: United States*. See also Kaspersky Lab, *Damage Control: The Cost of Security Breaches*.

11 Gemalto's 2016 Data Breach and Customer Loyalty Report.



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ness more “susceptible to hacking and malware attacks,” they are 50% more likely to sustain a physical breach than larger companies.¹² Finally, insider attacks, often perpetrated by former employees who left on bad terms, present a significant risk to a business that does not have (or enforce) a procedure for revoking former employee’s access.

There are many ways that malware can be installed on a computer, but the most common method is via email. A malware email could simply have a small piece of code attached to it that is activated when the email is opened or when the attachment is activated. In many cases, computers may become infected via an email that came from a known person — client, co-worker, family member, or friend — whose own computer is infected. Malware is also spread via emails that do not contain any malicious code but contain a hyperlink to a website that appears friendly but is really false — the method in the Gmail scenario.

Websites present another common method for malware infection. Whenever people visit a website, they are inviting that website

to execute specific functions in order to view the material available on the website. The code used to execute these functions can be manipulated so it automatically installs malware on the visiting computer. In many scenarios, the user’s anti-virus/anti-malware protection software will block the automatic installation. Inadvertent actions by users, however, can remove the protection of the anti-virus/anti-malware software. A user may be prompted by a pop-up window containing language such as “To view this properly, you will need to install our enhanced viewer.” When the user elects to install this software, the malware has been voluntarily installed, which may bypass the anti-virus/anti-malware software.

WHAT SHOULD YOU DO TO PROTECT AGAINST A BREACH?

Now that you know how common it is for data breaches to occur and how an agency such as yours could be targeted, the next question is what should you do to protect against a breach.

12 Kamala Harris, *California Data Breach Report* (Feb. 2016).

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- Crisis Management coverage; up to \$20,000 per policy period for fees, costs, and expenses incurred within 6 months of a crisis event
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Big "I" PROFESSIONAL LIABILITY

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Mississippi does not have a legal minimum standard that must be met to protect your clients' PII. There is a duty of "reasonable care" that applies to "an insurance agent or broker who undertakes to procure insurance for a customer."¹³ It is likely this same duty of reasonable care will apply to decisions you and your agency make regarding protection of PII and securing against data breaches.¹⁴

The decisions that are made by the officers and directors of incorporated agencies regarding cyber security are protected by the business judgment rule.¹⁵ The business judgment rule grants deference to the business judgment of corporate directors regarding their decisions. The purpose behind this rule is for "courts [to] refrain from interfering with internal management of a corporation and . . . not interfere in the affairs of a private corporation

in the absence of proof of bad faith or fraud on the part of those entrusted with its management."¹⁶

Although the reasonable care standard and, to a much greater extent, the business judgment rule protect against successful litigation, the best defense is to not be sued at all by enacting reasonable practices that protect your agency against cyber risks. While there is no single plan that fits the needs of all agencies, there are certain universal steps that can and should be taken.

POLICIES. If your agency doesn't already have them, it needs to establish security practices and policies that will protect PII. And then you need to enforce these policies. Such policies should address how agents and agency employees handle PII, such as using their mobile devices, the cloud, and external memory devices (such as a jump drive) to move or access agency data. You should also

13 *West v. Nationwide Mut. Ins. Co.*, 543 F. Supp. 2d 587, 589 (S.D. Miss. 2008).

14 In *Bliss & Glennon Inc. v. Ashley*, two of the claims asserted against the insurance agency were "negligent protection of personal and other sensitive information [and] invasion of privacy by public disclosure of private information." *Bliss & Glennon Inc. v. Ashley*, 420 S.W.3d 379, 383 (Tex. Ct. App. 2014).

15 *In re Home Depot S'holder Derivative Litig.*, No. 1:15-CV-2999-TWT, 2016 U.S. Dist. LEXIS 164841 (N.D. Ga. Nov. 30, 2016).

16 *City of Picayune v. S. Reg'l Corp.*, 916 So. 2d 510, 523 (Miss. 2005).



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create a reporting procedure for lost or stolen equipment that has or can access PII. Whatever policies you put in place, make sure everyone knows about them and the consequences of violating them.

TRAINING. Security awareness training, when done repeatedly throughout the year, is key to creating a safer agency. Training can be in-person, via videos or webinars, or even through emails. When you regularly train your agents and agency employees, mistakes (such as clicking on links in emails, downloading unauthorized software, and allowing David from tech support to load malware) are significantly reduced. Make sure everyone knows that there is no such thing as being too cautious with your client’s PII. As with the policies you create, training must have teeth: your agents and employees must be held accountable for not attending or participating in training.

PASSWORDS. Create a requirement for strong passwords that are changed regularly (perhaps two to three times a year). Consider requiring 12-character passwords with a mix of capital and lower case letters, including at least one number and one special character. Require passwords on all devices that access client PII, such as laptops, smartphones, and tablets. Make sure employees’ passwords for their work computers are not used by them elsewhere. See if multifactor authentication, such as requiring a number that is texted to the user’s phone, is an option either with your own software or with one of your vendors.

PROTECTION. Defend each of your agency’s computers with anti-virus/anti-malware software. Make sure the software you use is regularly updated; consider configuring all your software to install updates and patches automatically. Have a firewall for your network. If you have a Wi-Fi network, make sure it is secure. Don’t use a thumb drive you did not open from the package. Don’t allow storage devices to be used between your agency’s computers and home computers that are not as well protected.

ENCRYPTION. Encryption converts the agency’s data into a code that can only be decrypted with a key. It is not difficult or expensive. When a breach does occur, it can protect your clients’ PII from being exposed.

PAYMENT. Check with your payment processors to make sure they are compliant with all laws and regulations. Make sure they use validated tools to protect against data theft and fraud. Consider isolating the payment systems from other systems and don’t use the same computer to process payments and conduct regular activity that involves the Internet.

BACKUP. Regularly backup your agency’s data — automatically if possible, daily if not. Store the backup tapes at an offsite location or in the cloud; keep in mind that many data breaches have been caused by the theft or loss of backup tapes. So long as you have ensured that your cloud-based data storage provider has sufficient security, that may be a better route to take.

These are basic safeguards that can harden your agency against data breaches. Another level of protection is one that helps only after the cyberattack: cybersecurity insurance. A traditional liability or property policy (absent a specific endorsement) does not provide coverage for the ramifications of a cyberattack. While there is no set policy form, coverages that are available can provide protection against the costs of a data breach and ransomware incident.

WHAT SHOULD YOU DO AFTER A BREACH?

You know how breaches occur. You’ve hardened your agency against attacks. But that does not mean a data breach won’t happen. The steps you take after the breach can be as important as those you took before.

First, notify the authorities — local and state. If the breach involves a large number of victims or indicates a problem with software used on critical systems, also contact the Federal Bureau of Investigation. If the crime involved computer intrusions or attacks, the transmission of malicious code, password trafficking, or the theft of payment card or other financial payment information, you should contact the Secret Service.

Second, whether you have cybersecurity insurance or not, put all your insurance carriers on notice.

Third, determine if you need to make notification pursuant to Mississippi’s data breach notification law.¹⁷ This statute only applies if your agency conducts business in Mississippi and in the ordinary course of business “functions, owns, licenses or maintains” a Mississippi resident’s first name or first initial with last name plus at least one other piece of private information, such as a social security number, driver’s license number, state identification card number, or account, credit card, or debit card number along with an access code or password. If a Mississippi resident’s personal information was or could have been “intentionally acquired by an unauthorized person through a breach of security,” you must disclose the breach to that resident “without unreasonable delay.” The notice must be written, telephonic, or electronic, but if the cost of providing notice

17 Miss. Code Ann. § 75-24-29.

exceeds \$5,000 or the group of persons to be notified exceeds 5,000 individuals, substitute notice can be used. If, however, your agency “maintains its own security breach procedures as part of an information security policy for the treatment of personal information” and notifies affected individuals in accordance with that policy (so long as the notice is without unreasonable delay), that procedure will be deemed in compliance with Mississippi law. Since this statute does not create a private cause of action, your agency cannot be sued by the resident for failing to follow its requirements. However, the Attorney General is empowered to enforce it and failure to comply with it can be a basis for negligence-based lawsuit.

Fourth, determine if a federal law contains a separate notification requirement. While there is currently a push for a federal standard for breach notification, no such legislation has been passed. There are, however, several federal laws that contain security and breach notification requirements and protections, including the Gramm-Leach-Bliley Act, HIPPA, the Sarbanes-Oxley Act, and the Payment Card Industry Data Security Standard. Depending on the data breach, the particulars of your agency, and/or the data you store, some of these may be applicable. Like Mississippi’s

notification statute, the Gramm-Leach-Bliley Act does not create a separate cause of action. Plaintiffs have, however, argued that breach of the Gramm-Leach-Bliley Act is evidence of negligence.

CONCLUSION

The insurance industry and your agency has adopted the convenience of new technology. Many of these advances, however, have brought risks. Insurance agencies need to stop wondering if a data breach will occur and start preparing for when it will happen. You are already being inundated every day with efforts to access your clients’ PII. The policies you enact will protect your clients and yourself when a data breach does occur.

Start today: put passwords on your smartphone and tablet. Change your work computer password so it has 12 characters. Use a different password for different computers and different websites. Set a reminder to change these passwords in six months. Require your employees do the same. This doesn’t take much time, and it is a step in the right direction. Consider what else you can do to protect yourself, your agency, and your clients. And then take those next steps.

The graphic features a central circular logo with a lighthouse and a colorful, abstract design below it. The text is arranged in a clean, professional layout with a color palette of blue, red, and yellow. The event details are clearly stated, including the dates and location. A promotional message about the conference speaker and activities is included at the bottom of the graphic.



IIAM HOLDS TRUSTED CHOICE BIG I NATIONAL CHAMPIONSHIP FUNDRAISER

IIAM recently held a golf fundraiser for the Trusted Choice Big I National Championship that will be held in Mississippi this August. Golfers from around the state came to Patrick Farms Golf Club on what was a perfect day for golf! Thank you to everyone who played in this fundraiser.

David Huggins, Keith Phelps, Rusty Bennett and Bradley Lunsford won first place in the tournament with Chris Mathison, Wesley Ray, Joe Ulmer and Seldon Van Cleve coming in second place. There were also several closest to the hole winners: hole number 4 – Eric Smith, hole number 8 – Scott Gray, hole number 11 – Keith Phelps and hole number 16 – Thomas Ferguson.

A national tournament like this championship IIAM is hosting in August requires numerous volunteers and sponsors. If you would like to be a volunteer during the tournament or you would like to be a sponsor for the tournament, contact Stephanie Spahn at 601-939-9909 or sspahn@msagent.org.





Fall 2017 Classroom Continuing Education

Aug.

Young Agents Conference (5 hours)
Instructor: Larry Linne
August 18-19 - Biloxi

Sept.

The Questions We Don't Ask but Should (6 hours)
Instructor: Lisa Worley
September 26 - Oxford
September 27 - Flowood
September 28 - Hattiesburg

Oct.

E&O Risk Management/Ethics (6 hours)
Instructor: Tom Quaka
October 5 - Flowood
October 10 - Flowood
October 12 - Oxford
October 24 - Hattiesburg

Nov.

How Big I Best Practices Can Help
Improve Your Agency (6 hours)
Instructor: Jeff Albright
November 30 - Flowood

Boost Your Sales



The Mississippi Manufacturers Association has expanded its Property & Casualty lines for the benefit of qualified members. MMA has found a superior partner in Berkley Southeast Insurance Group, a W.R. Berkley Company. By teaming with Berkley Southeast Insurance Group, MMA is able to offer other lines of P&C coverage in addition to Workers' Compensation. Our combined strengths now allow us to offer:

- MULTI-STATE COVERAGES
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- AUTO LIABILITY
- PRODUCT LIABILITY
- GENERAL LIABILITY
- UNPARALLELED CLAIMS AND LOSS CONTROL SERVICES

Submissions for premium quotations and questions regarding MMA Insurance Services should be submitted to your agency's assigned underwriter with Berkley Southeast Insurance Group. If no underwriter has been assigned, please use AGENCY CODE 3699 and contact Frank Bowyer, Berkley Southeast Insurance Group, 601-581-4135, or mobile 601-317-4161, fbowyer@berkleysig.com



Mississippi Manufacturers Association

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