

# BIG I | MISSISSIPPI

INDEPENDENT INSURANCE AGENTS OF MISSISSIPPI

VOLUME 42 • NUMBER 2 • SPRING 2022



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# BIG I | MISSISSIPPI

### ADDRESS ALL CORRESPONDENCE TO:

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# CHAIRMAN'S MESSAGE

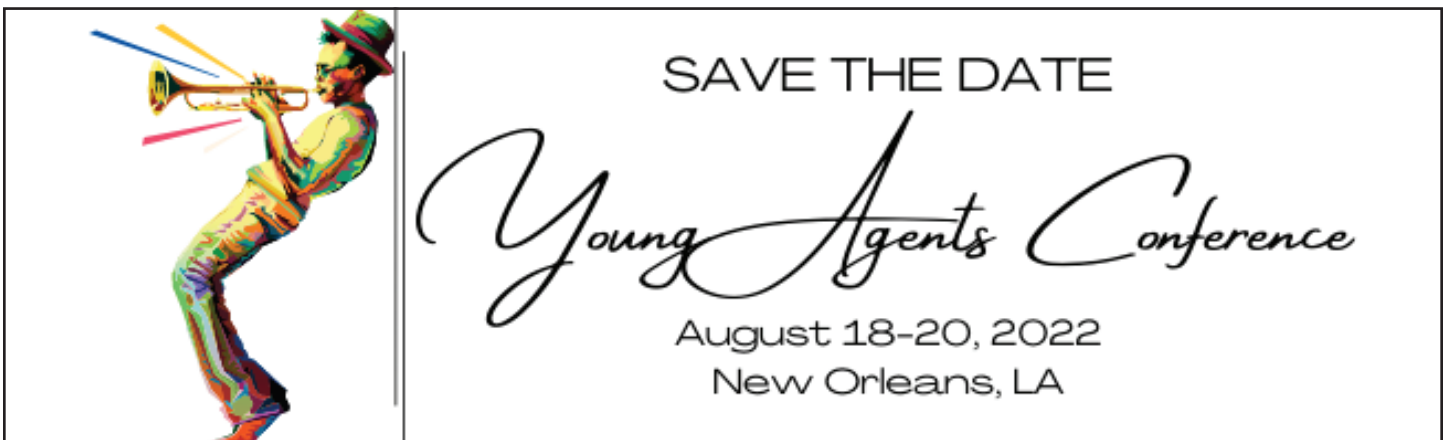
by Scott Woods



Is it just me or does it seem to you like spring is flying by and summer is almost here??!! We've had a flurry of activity so far this year starting with the Agency Management Conference in February that almost set a new attendance record at 137 attendees. That was followed by a highly successful Young Agents' Baseball Outing at Trustmark Park in April. It was a lot of fun and we actually had to buy more tickets! Last but not least, members of your Association's leadership attended the National Big I Legislative Conference in Washington which was, once again, a live event. The National legislative landscape continues to be interesting; among other things, whatever you want to believe is going on with our weather and the challenge of cyber security are going to continue to take prominent places on the DC agenda so it's good for the Big I to maintain a focus on those and other issues.

We're now on the fast run to the Annual Convention in Sandestin on June 5-8. Abbey Lea, our convention coordinator, aided by Sara and Clinton, has done a great job getting things lined up for us to have a super convention and trade show. Registration has been happening quickly, so if you haven't registered, please do so as soon as possible because rooms are going fast! New favorites, such as Casino Night and Taco Tuesday, are making a return appearance and we'll have lots of other activities for all. So, come see what Big I Aloha is all about!

Before I close, I want to thank our Board, my Executive Committee, the Association staff, and all of you for what you do for our Association and for your support and friendship during my time as your chairperson. It's been my honor and privilege to serve you! I'm happy to say that I'm leaving you in the very capable hands of Amy Smith as incoming Chair as the Association celebrates its 125th anniversary.





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# FROM THE COMMISSIONER

by Mike Chaney  
INSURANCE COMMISSIONER



Spring flooding season is upon us and I hope that you are preparing your customers now. At last check, there were more than 63,000 National Flood Insurance Program (NFIP) policies in force in Mississippi. Mississippi NFIP premium is approximately \$784/annually and the state premium ranks 35th nationally. However, over one million properties in the state are not covered by any type of flood insurance.

Risk Rating 2.0 went into effect for new policies on October 1, 2021. Existing policies will see new pricing on April 1, 2022. Of the NFIP policies in force about 10,000 policies will see a premium decrease while 74% of existing policies – about 44,000 – will see an increase of up to \$10 per month.

Now is also the time to prepare for spring severe weather and Atlantic Hurricane Season. Each year, we remind consumers to prepare now for emergencies by planning an evacuation route and putting together a “Go Bag.” I would encourage you to talk to your clients about preparing now.

Go Bag contents may vary by region and family situation, but should include cash, medications, a battery-powered radio and a gallon of water for every family member. You should also include important documents like Social Security cards, passports, birth certificates, driver’s licenses and more. Include a copy of your insurance policies so you can quickly file a claim once the danger has passed.

The Mississippi Insurance Department (MID) recovered \$3,846,918 for consumers in 2021. The MID Consumer Services Division handled a total of 10,867 complaints from Mississippians. Additionally, the MID Investigations Division received more than 600 complaints last year and recovered more than \$486,000 for consumers. The division issued 1 cease and desist order and revoked 15 licenses.

I hope to update you on legislative issues in my next article. Until then, if you need assistance, please reach out. I would be happy to discuss with you any of our new insurance-related laws. As always, I’m happy to help you!



# LESSONS LEARNED

STATE COURT V. FEDERAL COURT



## WHY SOME AGENTS GET SUED

*By: David A. Barfield  
Biggs, Pettis, Ingram & Solop, PLLC  
111 East Capitol Street, Suite 101  
Jackson, MS 39201*

“Lesson’s Learned” is a recurring article by David A. Barfield based on real errors and omissions cases in Mississippi. David has represented insurance agents for over 30 years. The names of all parties and all case citations have been omitted to preserve anonymity of the parties.

## INTRODUCTION:

Most plaintiffs' attorneys prefer to file their cases in state court. This is true for a number of reasons. Some attorneys practice more frequently in that court, and are more familiar with the procedures and local rules. Perhaps the plaintiff's attorney perceives the state court jurisdiction as friendly to plaintiffs. Also, procedure is typically more rigid in federal court, and the deadlines for various stages of the proceeding are much stricter.

However, if a plaintiff has a dispute with an insurance company, the company is likely organized and existing under the laws of a state other than Mississippi. The insurance company's principal place of business is likely in a state other than the state of Mississippi. If the plaintiff's attorney just sues the insurance company, the insurance company can remove the plaintiff's case from state court to federal court on the grounds of diversity of citizenship. One of the bases for the federal court to have jurisdiction over a civil action is that it is a dispute between citizens of different states which has amount in controversy in excess of \$75,000.00. If those two requirements are met, the insurance company can remove the plaintiff's case from state court to federal court thereby depriving the plaintiff of the jurisdiction and venue in which he sought to have his case tried.

It is a desire on the part of plaintiffs and their counsel to keep their case in state court that causes some insurance agents to be named as defendants in lawsuits. One of the ways

plaintiffs' counsel try to keep their cases from being removed to federal court is to assert some type of claim against a local defendant, usually a local insurance agent or insurance adjuster. If the plaintiff's attorney can set forth an alleged claim or cause of action against the local agent and/or adjuster that presents a possible cause of action against the in-state defendants, then there is not complete diversity of citizenship. Absent diversity, the insurer may not be able to remove the case to federal court, unless it can establish something known as a fraudulent misjoinder of parties.

In trying to find facts to allege a viable cause of action against the resident defendant, plaintiff's counsel will be quite creative. This, of course, does not mean that there is any validity to such allegations, as will be shown by the discussion of a Mississippi case hereinbelow.

## ALLEGATIONS OF THE INSURED:

The insured sued his insurer and his agent for damages as the result of two fires at his commercial establishment. He alleged that the insurer had conducted a grossly inadequate investigation of his claim, and willfully failed to make a realistic evaluation of the claim or provide him with a justifiable basis for denying his claim. He also claimed the insurer had delayed payments to the loss payee as required by Mississippi law and asserted allegations of bad faith. The

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insurer responded that it had not actually denied the claim, but had declined payment for a number of reasons, including that there was evidence that the fires were intentionally set, there had been no proper proof of loss provided by the plaintiff, and the plaintiff had failed to submit to an examination under oath thereby violating his duty of cooperation.

As for the allegations against the agency, the plaintiff alleged that he had contracted with the agency to place his insurance “with a reputable company which would insure his properties and provide prompt, quality service in the event

of loss.” He claimed that the agent had violated that duty and had placed his coverage with a company that the agent “knew or should have known would be unable to meet its contractual obligations.”

### **FACTS GIVING RISE TO THE LITIGATION:**

The agent had procured insurance on plaintiff’s commercial business. A fire occurred at the business which resulted in fire and smoke damage to the building. Four days later, a second fire occurred which the plaintiff alleged totally destroyed the property. Plaintiff made a claim for the losses caused by the fires. Approximately two years later, after having received no payment, the plaintiff filed suit in state court. The insurer removed the case to federal court claiming that the Mississippi agent had been fraudulently joined as a defendant in order to defeat diversity jurisdiction of the federal courts. The plaintiff, through his counsel, filed a motion seeking to have the federal court remand the case back to state court.

### **WHAT HAPPENED?:**

The federal court denied the plaintiff’s motion to remand the case to state court and dismissed the action against the agent.

In determining whether the removal to federal court was proper, the court had to decide whether the plaintiff had any possibility of establishing a valid cause of action against the agent. If he did have such a possibility, then the case was to be remanded to state court. If he did not, the case would stay in federal court. The court noted that if there is no reasonable basis for predicting that state law might impose liability on the Mississippi resident agent under the facts as alleged, then the claim is deemed to be fraudulent.

The court stated that if there were allegations in the complaint or evidence that the insurer had failed to pay the plaintiff’s claim because it lacked the financial resources to do so, then the plaintiff would likely have a viable claim against the agent, provided he could demonstrate that at the time the agent secured the policy for the plaintiff, the insurer’s financial condition was such that it rendered him an unreasonable risk. The court held that the unrefuted evidence established that the insurer had been admitted, approved and licensed by the Mississippi Department of Insurance, and that the end of the year in which the fire occurred, the insurer had a policy surplus in excess of \$132,000,000. The court stated



that the insurer clearly had the ability to pay the plaintiff's claim and the allegations that the agent knew or should have known that the insurer would have been unable to meet its contractual obligations provided no possibility of a recovery against the agent.

The court also pointed out that the agent, under well-established Mississippi law, is not liable under the contract for the payment. The court went on to note that although the agent is not liable for ordinary negligence in performing their duties on behalf of their insurers, agents can incur independent liability when their conduct constitutes gross negligence, malice, or reckless disregard for the rights of the insured. However, in this case, the plaintiff did not allege that the agent performed any role in the investigation of his claim, or was in any way involved in the decision to deny benefits. In his complaint, he certainly did not allege any act that would constitute gross negligence, malice or reckless disregard for the rights of the insured.

There was only one remaining possible theory of recovery against the agent, based on the allegation that when it secured coverage from the insurer, it knew or had reason to know that the insurer would not promptly evaluate and pay plaintiff's valid claims for benefits. The court concluded that the plaintiff had not alleged or produced any evidence that the insurer had a "reputation" for denying valid claims. Accordingly, the court denied plaintiff's motion to remand and dismissed the agent.

## LESSONS LEARNED:

- Even when you do everything right, you can still be sued.
- Make sure you place your business with financially sound insurers.
- Don't panic if you are served with a summons and complaint, let the process work.
- Many of you are probably wondering if you could recover your attorneys' fees from defending a claim such as the one at issue. Typically, under our American system, each party is typically responsible for their own attorneys' fees, barring some statutory or contractual provision to the contrary. However, if a court determines that a complaint has been filed and that it is frivolous in nature with no basis, the court can, by motion of the defendant, award sanctions which may or may not include attorneys' fees. These are rarely awarded, particularly in a case where, as here, the court admitted that there was at least a viable theory of liability asserted against the agent, even though it turned out to have no evidence in support of it.
- In these times, if you have an insured who has a significant uncovered loss, you might expect to be named in a lawsuit by the insured's attorney. Accordingly, stay out of the claims process. Advocating for your client in the claims process could damage your ability to defend your actions as the agent. It is fine to act as an intermediary between your customer and the insurer, providing the exchange of information back and forth. However do not express opinions on coverage.



# Aloha DESTIN

The logo features the word "Aloha" in a large, blue, stylized script font, and "DESTIN" in a smaller, blue, bold, sans-serif font. Two orange hibiscus flowers are positioned between the words, one to the left of "DESTIN" and one to the right of "Aloha".

## *Independent Insurance Agents of Mississippi*

*June 5-8, 2022 · Annual Convention & Trade Show  
Sandestin Hilton · Destin, Florida*

Our annual convention and trade show will be held at the Sandestin Hilton from June 5-8. IIAM Chairman Scott Woods invites you to have a good time and say “Aloha Destin” while we reconnect and build lasting industry relationships.



# CONVENTION & TRADE SHOW *Schedule*

## *Sunday, JUNE 5*

- 2 - 5 pm** Registration / Trade Show
- 6 - 11 pm** Kids Nite Out
- 6 - 7 pm** Welcoming Cocktail Party

## *Monday, JUNE 6*

- 8 - 10 am** Registration / Trade Show
- 1 pm** Beach Activities: Volleyball and Sandcastle Building
- 1 - 3 pm** Ice Cream by the Pool
- 6 - 11 pm** Kids Nite Out
- 7 pm** Casino Night / Family Bingo

## *Tuesday, JUNE 7*

- 9 am - Noon** General Session
- 1 pm** Beach Activities: Young Agents Cornhole Tournament
- 1 - 5 pm** "Quench Your Thirst" Beach Refreshment Tent
- 1 - 4 pm** Frozen Drinks by the Pool
- 6 - 11 pm** Kids Nite Out
- 7 pm** Taco Tuesday
- 8 pm** Charlie's Crab Chase

## *Wednesday, JUNE 8*

- 8 am** Aloha Breakfast



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# Speakers



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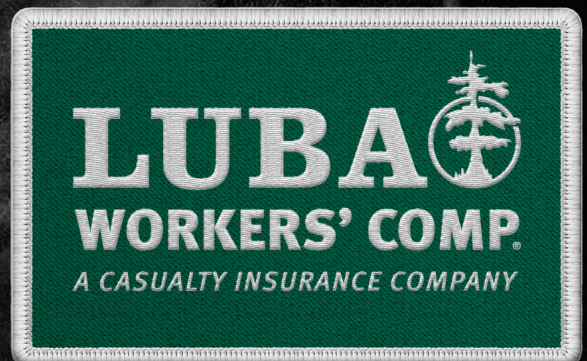
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# Master your agency's growth potential with **THE SALES VELOCITY METRIC**

*By: Jennifer Becker*

The annual Best Practices Study, a joint initiative between Reagan Consulting and the Big “I,” provides valuable insight into operations, finances and benchmarking information to the independent agency channel and wider insurance industry. With over 3,000 data points, the study contains a trove of valuable information agency owners can apply to their own agencies. But if you don't want to delve too far into the study, the sales velocity metric is one highly impactful area your agency should immediately consider.

Reagan Consulting developed the sales velocity formula and metric to compare an agency's new business against other firms and report it in the Best Practices Study. Expressed as a percentage, sales velocity is calculated by dividing the new business written in the current year by the prior year's commissions and fees.

Sales velocity is among the most important drivers of organic growth and may be one of the most important indications of an agency's ability to succeed and perpetuate over the long term.



Organic growth is growth that is not acquired and another area an agency should also monitor carefully.

The Best Practices Study provides the results in six different revenue categories to ensure it is comparing apples to apples. Even if you're not lucky enough to be selected as a Best Practices agency, you can still test out the sales velocity formula with your agency's numbers and compare your results to bonafide Best Practices agencies.

In the 2021 Best Practices Study update, the most recent report, agencies between \$2.5 million and \$5 million in revenue have an average sales velocity of 14.2%, with the top quartile achieving 23.8%. In the \$10 million to \$25 million revenue range, the average is 12.5% and the top quartile is 20.1%.

An agency's organic growth is driven by four primary factors: exposures, rate changes, client retention and new business generation. The first two are mainly outside the agency's control. The last two are items an agency can proactively manage.

Best Practices agencies build cultures of accountability where producers must consistently produce new business at levels consistent with other Best Practices agencies. The keys to excellent sales velocity? Developing a strong sales culture that drives high new business per producer and building the production force the right size for your agency. Best Practices agencies never stop

looking for the right talent and aggressively invest in recruiting and developing young producers.

Successful agencies also provide the training and tools to develop their staff, so be sure your agency is equipping producers to succeed with accountability, training, support and branding.

The greatest potential for significantly improving your agency's performance starts with one simple metric: sales velocity. It allows you to isolate your agency's new business contribution to your organic growth results. Focus on what your agency can do to impact the metric and drive results based on new business activity.

Now is the time to take stock of where you stand, then utilize the proper tools for the specific practice or performance gaps to get the process started for your agency.

*Jennifer Becker (jennifer.becker@iiaba.net) is Big "I" director of education programs.*

*Go to [independentagent.com/best-practices](http://independentagent.com/best-practices) to get your copy of the 2021 Best Practices Study update, a long-standing joint initiative between Reagan Consulting and the Big "I," and start improving your agency today.*



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# 2022



# AMC







# AGENCY MANAGEMENT CONFERENCE

The 2022 Agency Management Conference was held on February 16-17 at the Country Club of Jackson. On the first day, speaker Chris Boggs taught lessons learned from the COVID crisis for agency management. Afterwards, in place of the normal “Meet the Companies” reception, we celebrated the many invaluable years that Stephanie Spahn had served the association. Friends were able to come and celebrate her over food and drinks, which made for an amazing night. On the second day, speaker Carey Wallace informed agents on how to be a data-driven agency and how data transforms agency management. The conference ended with an enjoyable luncheon where Chairman Scott Woods gave an update on association affairs. We would like to thank our many sponsors that helped make this year’s conference so successful! We are already excited about next year’s Agency Management Conference and will be releasing the dates soon.











Thank you  
 to everyone who attended the  
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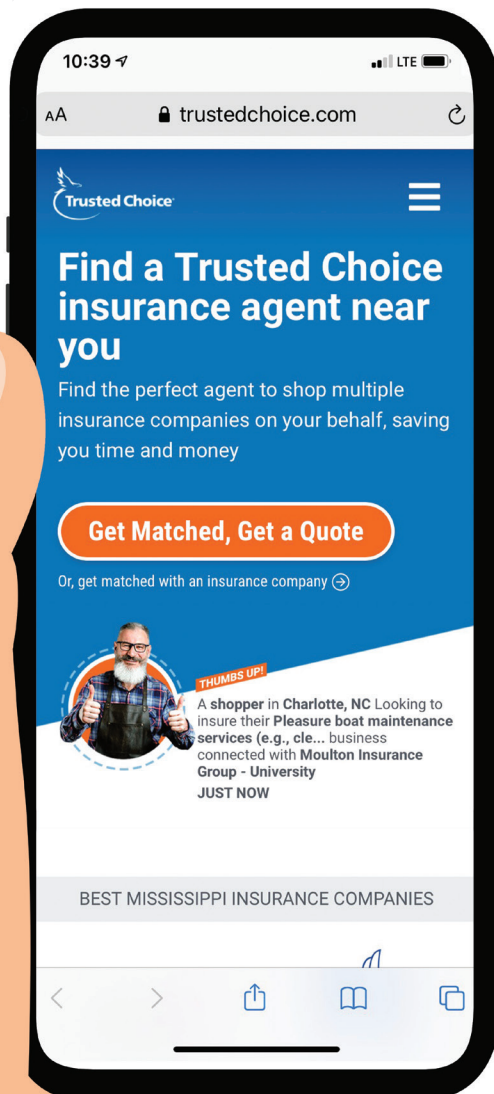
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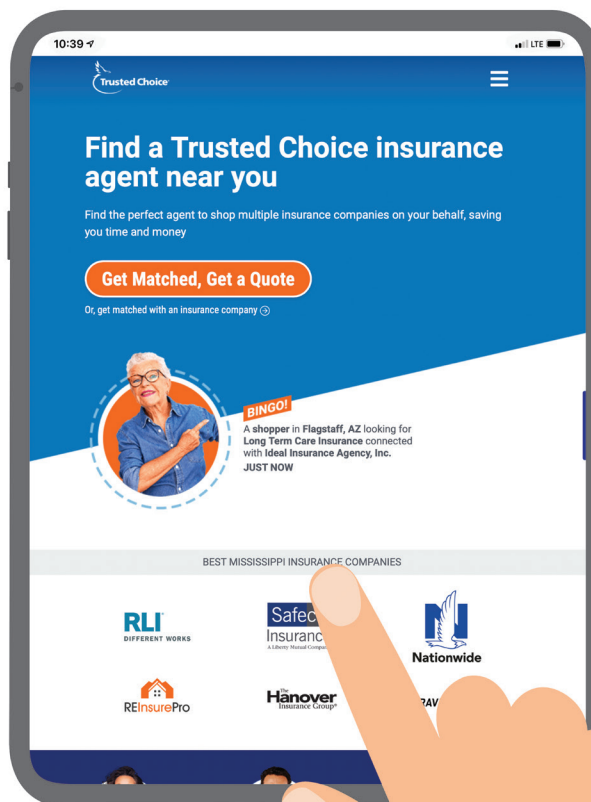


## How to Activate Your Free Member Plus Profile

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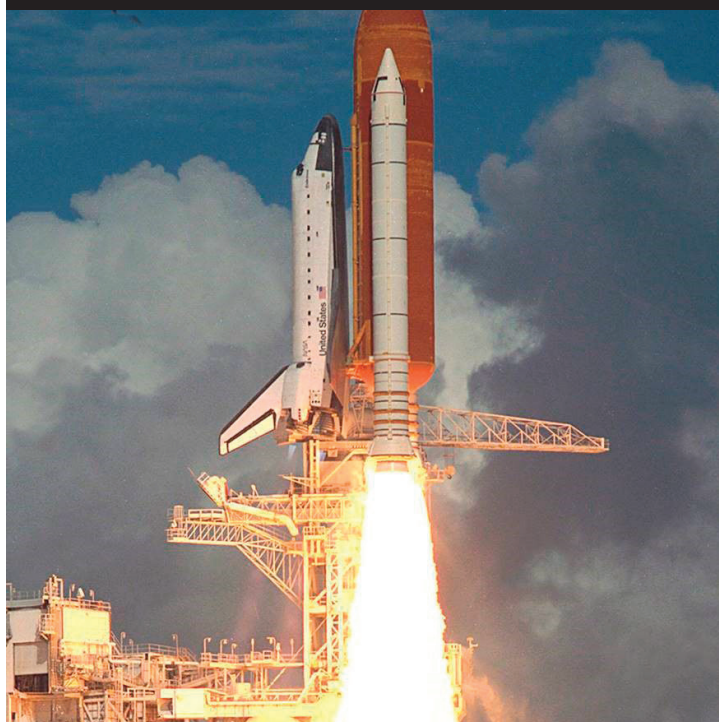
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Mississippi Manufacturers Association  
**INSURANCE SERVICES**



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