

MISSISSIPPI AGENT

VOLUME 41 • NUMBER 3

SUMMER 2021



2021-22
IIAAM CHAIRMAN

Scott Woods

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MISSISSIPPI AGENT

VOLUME 41 • NUMBER 3

SUMMER 2021

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Jason Ryder (North), Starkville

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MEET IIAAM CHAIRMAN

Scott Woods

Tell us a little
about yourself.

While my Dad was a native Mississippian, we didn't move to my ancestral homeplace in the Scooba suburbs until I was twelve. I went to Vanderbilt for college followed by Ole Miss for law school. Actually, the best thing I got from Ole Miss was my best friend and wife Tracy, as opposed to a love for the law. We have grown girl-boy twins

Maggie and Charles and the best daughter and son-in-law, Ashley Woods and Andrew Roberts. No grandchildren yet but we are looking forward to some soon! We also have Teddy, the 75 pound giant schnauzer rescue dog who thinks he's a lap dog and likes to make guest appearances on Zoom and Teams video calls.

My business career has been diverse. I practiced law for ten years in Jackson and made a career change to banking after a six-month mobilization for Operation Desert Storm; the twins were born a week before I left home on that one. My work at Trustmark started in 1992 and I worked with various departments until moving to insurance in 2000. Currently, I am also in charge of the Wealth Management Division for the bank. Along the way, I also had the honor of serving my country during the course of a twenty-five-year career as a combat arms officer in the Army and Army National Guard.

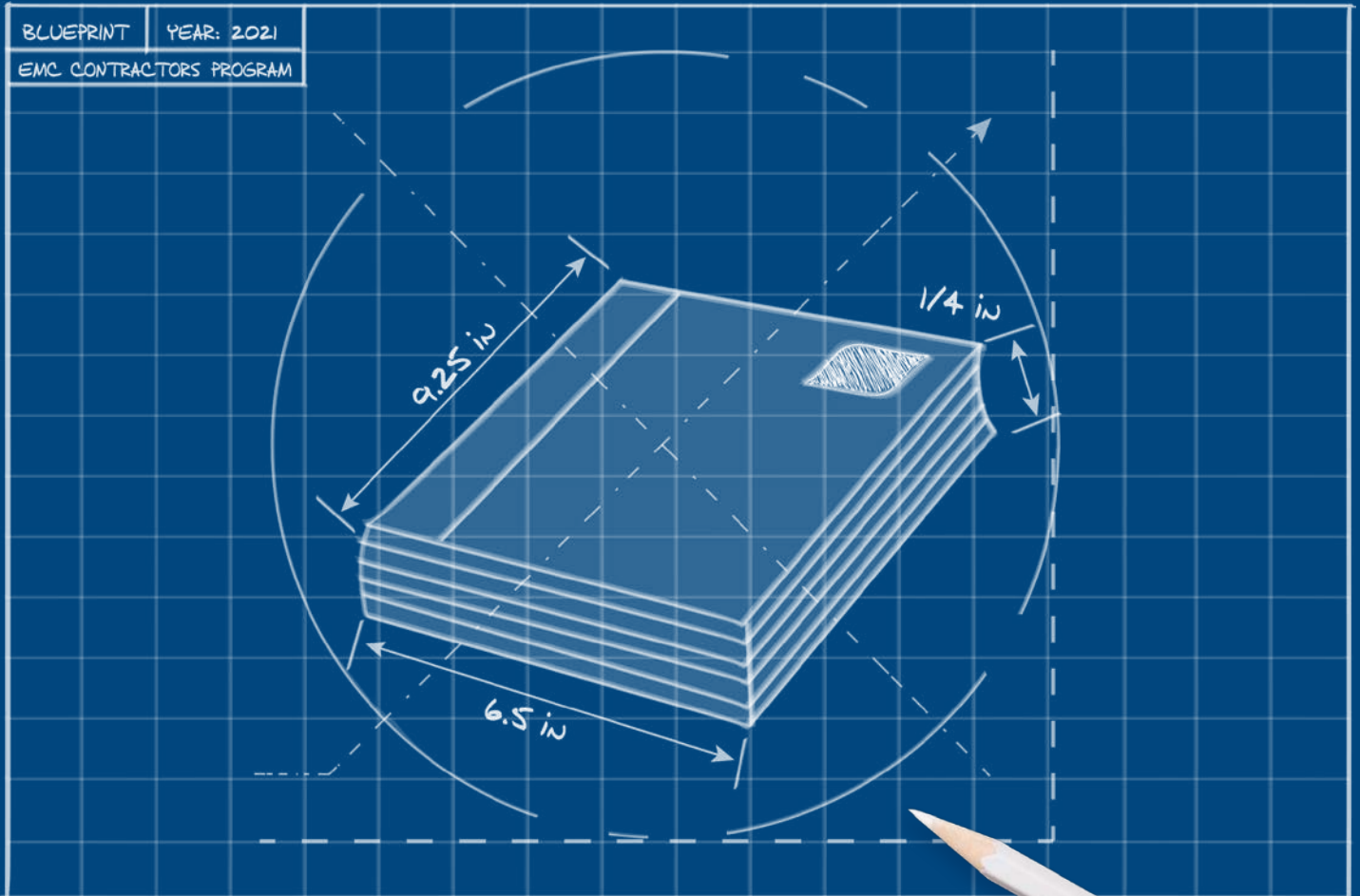
In my spare time, I like to travel, hike and snow ski and I'm all about hanging out in the American West—mainly the Rockies (not the coast). Tracy and I are currently working to check out "America's Best Idea", our national parks. We've done 20 of them and only have 43 left to go!



What was your path in the insurance industry to where you are today?

Trustmark acquired the Bottrell Agency in Jackson in 1999. In January 2000, my boss at the time, Jerry Host, asked me to go over to the Agency on a six-month assignment to help integrate the Agency into the Bank. So, twenty-one years later, I'm still working on it!

continued on page 11...



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IIAM'S New Officers, Board and Executive Committee Members

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Durr Boyles
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FROM THE COMMISSIONER

by Mike Chaney
INSURANCE COMMISSIONER



It was a pleasure joining you at the IIAM Convention in Destin, Florida in June. I enjoyed the comradery as much as the beach and hope you all did too. It was also a nice break during a busy year with many insurance-related changes.

My office continues to closely monitor insurance-related fallout from the COVID-19 pandemic. Specifically, I support continued, expanded access to telemedicine, outside of what was provided for by executive order. Legislative attempts by the State medical association to expand access failed during the 2021 session.

Flood insurance policyholders should expect some changes this fall with an update to the National Flood Insurance Program (NFIP) called Risk Rating 2.0. It will change how flood insurance is priced and determine flood risk. The Federal Emergency Management Agency (FEMA)

has touted the transformation as “equity in action” with policyholders no longer paying more than their share of flood insurance premiums. Agents that write flood coverage should stay informed and current on this program.

The NFIP has historically suffered from funding issues and needed a long-term solution to provide flood insurance for years to come. Risk Rating 2.0 ensures protection for flood policyholders going forward. There are also private flood insurance providers which is a good thing, providing policyholders with options. Homeowners should also consider improvements to their homes to make them safer and less flood-prone.

More than 63,000 Mississippi homeowners currently have flood insurance through the NFIP. Of those, 96% of current policyholders’ premiums will either increase or decrease by \$20 or less per month. Over 10,000 policyholders will see an immediate decrease in premiums. An increase or decrease will depend on the property flood zone, year of construction, how the property will be used and elevation difference.

If my office can help you in any way please reach out. I would be happy to discuss with you any of our new insurance-related laws. As always, I’m happy to assist you. Stay safe!

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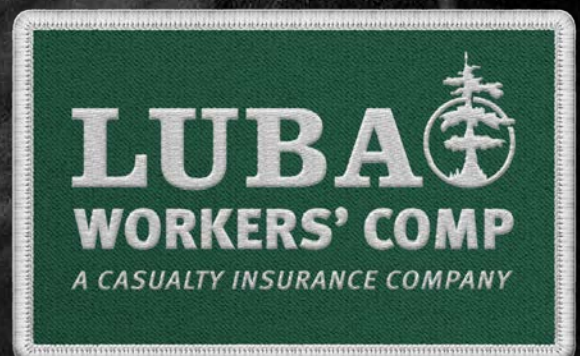
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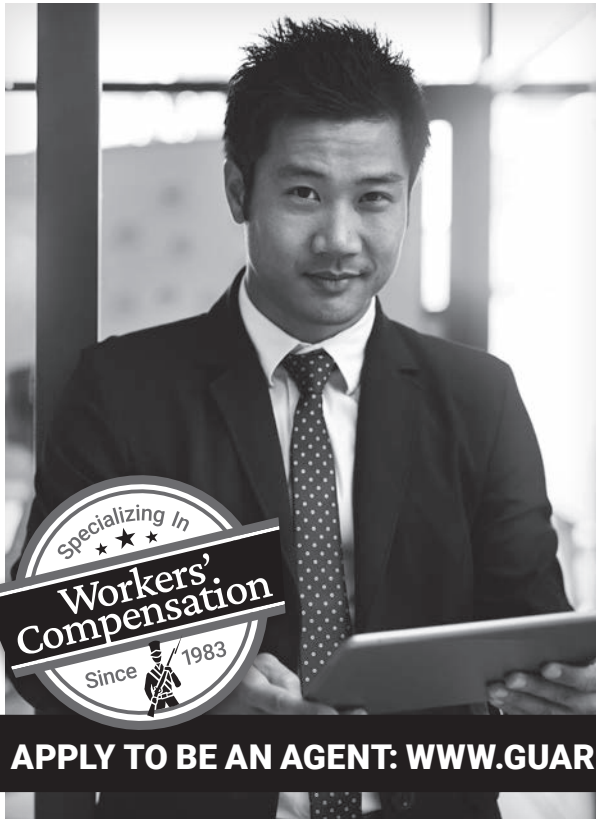
MEET IIAM CHAIRMAN SCOTT WOODS | *(continued)*

What do you find most fulfilling about being an independent insurance agent?

Watching the people I work with, who are a lot smarter than me, help our customers protect themselves, their families and businesses from life's unexpected events.

Lightening Round:

1. **What is your favorite app on your phone?** - SkyView Lite- it's a cool night sky star and planet finder and it's free!
2. **What is a fun fact people may not know about you?** - I've been to all 50 states and one U.S. Territory.
3. **Advice you would give to your 22 year old self.** - You gotta "risk it for the biscuit". You might be surprised what you can do and accomplish if you just give it a try and take a chance on yourself. Live your life with no regrets.



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NEWS & NOTEWORTHIES

LUBA Workers' Comp hires veteran insurance professional, Trey Stone, as Senior Business Development Underwriter



LUBA Workers' Comp has hired veteran insurance professional, Trey Stone, to support the company's continued expansion in Alabama and Tennessee. Stone will serve as Senior Business Development Underwriter, a new position within the company. "Trey has worked in the insurance industry for nearly 40 years and brings a unique perspective and deep understanding of both the agents' and policyholders' needs," said David Tucker, LUBA's Vice President and Sales Manager. "His multi-faceted expertise spans underwriting, business development, agency relations, claims and loss control."

LUBA has grown across the southeast United States through acquisitions and strategic market expansions. It is this model for steady, controlled growth, which has allowed LUBA to cultivate and attract top insurance professionals, like Stone. "I'm excited to have the opportunity to be a part of both the sales and underwriting teams which bring a dynamic and unique approach to the way LUBA does business," said Stone. As an Auburn University alumnus, Stone currently serves as Associate Member Director on the Alabama Independent Insurance Association (AIAA) Board of Directors and is a Past President of the Insurance Marketing Association of Alabama (IMAA).

Ray Collins and Shaw Johnson End Leadership Terms



Ray Collins and Shaw Johnson have ended terms as IIAA Treasurer and National Director. We would like to thank Ray and Shaw for the time and effort they have volunteered throughout the years!

Trusted Choice Continues Partnership with Make-A-Wish Mississippi



Trusted Choice® provided a \$7,500 grant to IIAA to be used as a sponsorship for Make-A-Wish Mississippi. IIAA used the funds to be the presenting sponsor for the annual Make-A-Wish Mississippi Golf Tournament,

which raises funds to help grant the wishes of children with life-threatening medical conditions in Mississippi.

Durr Boyles, Hal Graves, Brian Berry and Scott Gray represented Trusted Choice and IIAA at the Tee-It-Up for Wishes tournament, held on May 21, 2021.



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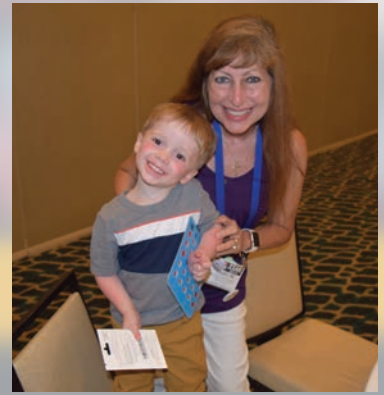
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BEACH



GENERAL SESSION



Adjutant General Durr Boyles leads the group in the Pledge of Allegiance



Chairman Tatum Brown thanks his daughter Georgia for singing the National Anthem.



Insurance Commissioner Mike Chaney gives remarks on the state of MS insurance.



Scott Gray gives away prizes!



The 2020-2021 IIAM Executive Committee.



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(Monday) *Dixie Specialty Insurance, Inc.* and *TPI – Tim Parkman, Inc.*

(Tuesday) "Quench your Thirst" Beach Refreshments:
Berkley Southeast Insurance Group

Beach Chairs: (Monday & Tuesday) *TPI – Tim Parkman, Inc.*

Breakfast Cart: (Monday) *The National Security Group*

Casino Night: *EMC Companies*

Casino Night Prizes: *Summit*

Children's Prizes: *FCCI Insurance Group*

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Fiesta: *Central Adjustment Co., Inc., Commercial Sector Insurance Brokers, and Owens Insurance Agency*

Fiesta Band: *RT - Birmingham*

Four Wheeler: *Imperial PFS*

Frozen Drinks by the Pool: *MMA Insurance Services*

General Session Coffee Breaks: *State Auto Insurance Company*

General Session Grand Prize: *Mathison Insurance Partners, Inc.*

Ice Cream by the Pool: *Eastern Alliance Insurance Group, First Insurance Funding, and Liberty Mutual/Safeco Insurance*

Jazz Brunch: *Travelers*

Keynote: *Liberty Mutual/Safeco Insurance Company*

Kids Nite Out: *FCCI Insurance Group*

Lanyards: *Summit*

Louis Vuitton Purse and Wallet:
Beasley General Agency/BGA Finance

Newsletters: *Mathison Insurance Partners, Inc.*

Past President's Brunch: *Travelers*

"Quench Your Thirst" Cash Award:
Berkley Southeast Insurance Group

Registration Refreshments: *Safeway Insurance Company and Selective Insurance Company*

Taco Tuesday Cocktails: *Builders Mutual Insurance*

Taco Tuesday: *AmFed, Biggs, Pettis, Ingram & Solop, PLLC, Liberty Mutual/Safeco Insurance, and Stonetrust Commercial Insurance*

Teen Prizes: *Combined Benefit Administrators - CBA*

Treasure Chest: *Wright Flood*

Welcoming Cocktail Party: *CRC - Jackson*

Williams-Sonoma Gift Certificate: *LUBA*

Young Agents Corn Hole Tournament and Prizes:
Berkley Southeast Insurance Group

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JH JOHNSON



Major General Janson Durr Boyles was the 2021 recipient of the J. H. Johnson Memorial Award. A lifelong resident of Jackson, he graduated from Mississippi State University with a degree in Engineering. At State, he was involved in the student government, serving as Attorney General of the Senate, and was active in his fraternity, SAE. After a year of law school at Ole Miss, he returned to Jackson where he volunteered with Boy Scouts, coached youth sports, served as President of the Board of the Metro YMCA and was a member of the Board of Trustees at Christ United Methodist Church.

His career in insurance began in 1984 and spans almost 40 years, including many years as president of his family co-owned agency. His achievements include Mississippi Business Journal's Top 40 Under 40 and the National Top 40 Under 40. In 1993 he received the CPCU designation. He has served on numerous industry boards, including MetLife's National Agents Council. He has served as National President of the Mississippi State Alumni Association and is now serving as chair of the Mississippi State Insurance Council. Heavily involved with the IIAM in numerous positions, he served as Chairman of the Association in 2016-17 and continues to serve as our newly elected Treasurer. For many years, he has taught insurance principles for Mississippi Property/Casualty Licensing and at Mississippi State.

While he is a very successful independent agent, Durr Boyles manages to maintain dual careers. He joined ROTC while attending State and joined the Mississippi Army National Guard after college. He received his master's degree in strategic studies from the United States Army War College in 2005. In the same year, as the Deputy Commander, 168th Engineer Group, he managed the engineering response to Hurricane Katrina in Mississippi. In 2008, he deployed to Afghanistan as Deputy Commander in support of Operation Enduring Freedom and was appointed Chief of Staff at NATO Headquarters in Kosovo in 2015.

Upon his return from Kosovo, this soldier was appointed Adjutant General of Mississippi by Governor Bryant in 2016 and was reappointed by Governor Reeves. He serves as the Commanding General of both the Mississippi Army and Air National Guard. He is responsible for providing the state of Mississippi and the United States of America with a ready force of over 12,000 Citizen Soldiers. His military awards and decorations are too numerous to list. He led his troops in their outstanding response to the Covid-19 testing and vaccinations, which was recognized as one of the most efficient Covid-19 programs in the U. S. Durr has continued to maintain a strong presence in the independent insurance industry, all while commanding the National Guard Joint Forces for the great State of Mississippi.





9 E&O CLAIMS FROM **PAST HURRICANE SEASONS**

Nine ways your agency could be vulnerable to an errors & omissions claim this hurricane season.

BY MATTHEW R. DAVIS

If you've forgotten what's coming this month, you can be forgiven. COVID-19 has been front and center in our lives for so long that it's difficult to look beyond it. But now's the time you need to be thinking about hurricane season. And if you are an "inland agency," this article applies to you, too, so keep reading.

We all know it's tough to find homeowners coverage for a burning house. Likewise, you're not going to find hurricane coverage for a customer once a tropical storm is "in the box"—the area northwest of 15° North Latitude and 65° West Longitude, roughly defined as the Virgin Islands.

2020 was an extremely active year for Atlantic tropical storms and hurricanes. The four preceding years were also above average. According to climate scientists, this suggests that 2021 will be an active year as well. And once those storms appear, especially those that are in the box, you and your customers will likely find yourselves with few good options.

Many states technically have an "order taker" standard of care, which means that if your customer didn't purchase coverage to deal with a devastating storm, they have to live with the consequences. However, we all know that courts often find that a "special relationship" exists between you and your customer, which gives rise to a duty to advise.

9 E&O CLAIMS FROM PAST HURRICANE SEASONS

(continued)

Even if there's no such duty, there's always the desire to help a customer in a time of need, which will usually involve higher commissions for additional coverage.

So, what should you be wary of when it comes to hurricane coverage? Here are a few examples of recurring errors & omissions claim scenarios from past hurricane seasons:

- 1) **FAILURE TO ADDRESS THE \$500,000 PERSONAL LINES LIMIT UNDER THE NFIP.** If you think it is unlikely that a hurricane would cause in excess of half a million dollars in damage, refer to some of your colleagues in the New Orleans area to set you straight. It's not that difficult, especially if power is out for a while.
- 2) **ABSENCE OF OFF-PREMISES POWER OUTAGE COVERAGE.** If power is knocked out for an extended period of time, but the storm doesn't directly damage your customer's home or business, coverage depends on the wording of individual policies. You may need to explore options to obtain separate coverage for power outages.
- 3) **MISSING DEPENDENT PROPERTY COVERAGE.** Similarly, if your customer's business is not directly affected, but its customers are, including locations where your customer stores its business equipment, you may need to find coverage that will protect your client from losses.
- 4) **LACK OF COVERAGE.** Generally speaking, a single policy will not provide all necessary coverage. For homes in coastal or low-lying areas, you may need to place homeowners, wind and flood policies separately. You may also need a fourth policy for excess flood.
- 5) **INADEQUATE LIMITS.** What are the limits on each of the homeowners, wind, flood and excess flood policies? Do they match up with, or exceed, the homeowners limit? If not, your customer is likely to claim that they wanted that homeowners limit on all policies. If you cannot make that happen, or if your customer doesn't want to pay for the higher limits, document that conversation.
- 6) **COVERAGE NOT OFFERED TO INLAND CLIENTS.** Yes, high wind and storm surges along the coastline cause a lot of damage. But significant losses

have been caused by storms that wreak havoc for miles inland where the storm drops epic amounts of rain, pushes the storm surge into low-lying areas or drives rivers and creeks out of their usual shorelines.

- 7) **INCORRECT INFORMATION.** That flood map you're using—how old is it? Flood maps are updated regularly, and if you're not using the most recent one, you may find yourself flooded with claims. The same goes for the temptation to fudge elevation certificates. What's a few inches among friends? Answer: An E&O claim waiting to happen.
- 8) **FAILURE TO EXPLAIN COVERAGE.** Claims often stem from the failure to explain the policy that you procured. Did you point out that flood policies typically provide little or no coverage for that portion of the property that is "below grade," such as basements? Did you explain that flood coverage typically is actual cash value and not replacement cost on personal lines policies?
- 9) **INSUFFICIENT AGGREGATES.** Let's not forget your coverage. Are the aggregate limits on your E&O policy sufficient to deal with a catastrophe in your community? A single claim is unlikely to broach your limits, but what about in the aggregate? In the wake of Hurricane Katrina, we saw several agencies hit with 50+ claims. If you do not have adequate limits, that catastrophe may be an extinction event for your agency.

Some E&O policies provide catastrophe extra expense coverage to help your agency recover from severe weather events and keep providing service to your customers when they need it most.

Inlanders, are you still reading? Our focus has been on hurricanes, but all of you should consider other CAT events that may strike your customers, too: wildfires, earthquakes, tornados, droughts and hail. 2020 saw a record 22 weather and climate disasters that incurred more than \$1 billion of damage, and most of those were inland events, according to the National Oceanic and Atmospheric Administration.

Plus, every year, claims are made against inland agencies that placed coverage for their clients' boats and vacation homes along the coasts, often with several of the errors noted above.

Whether your agency is located on a sunny beach or miles inland, don't wait for the sirens to herald the arrival of the next billion-dollar storm. Now is the time to act.

9 E&O CLAIMS FROM PAST HURRICANE SEASONS

(continued)

Matthew Davis is a vice president and claims manager at Swiss Re Corporate Solutions, working out of the office in Kansas City, Missouri. Insurance products underwritten by Westport Insurance Corporation, Kansas City, Missouri, a member of Swiss Re Corporate Solutions.

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LESSONS LEARNED



*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.

ALLEGATIONS OF INSURED:

The insured sued his agent and insurer for damages based on the agent's advice that the maximum amount of coverage he could obtain on a builder's risk and homeowners policy, for a home being constructed on the beach, was \$200,000.00. The insured had previously advised the agent that he wanted \$400,000.00 in coverage. A total fire loss occurred. The \$200,000.00 limit did not cover the loss. The insured sought to hold the carrier liable under a theory of negligent training of the agent. The insured sought actual and punitive damages against both the agent and the insurer.

FACTS GIVING RISE TO THE LITIGATION:

The insured initially contacted the agent seeking builder's risk and homeowners insurance for a home he intended to build on

the beach. During their first conversation, the insured indicated that he wished to obtain \$400,000.00 in coverage. The agent then provided the insured with a non-binding quote from an insurance company for that amount. About a year after they initially made contact, the insured contacted the agent again and told him he was ready to begin construction and wanted to finalize his insurance policy. The agent then sought out quotes from another insurance carrier and the Mississippi Residential Property Insurance Underwriting Association (MRPIUA). The parties dispute what happened next.

The insured testified that the agent informed him that the only insurance option available to him at the time was the MRPIUA policy which had a maximum limit of \$200,000.00. He testified that the agent had told him, "no other insurer would write

coverages for properties on the beach, and that the maximum amount of coverage that could be obtained under any circumstances was \$200,000.00.” According to the insured, the agent advised him that the first quoted carrier would no longer provide the \$400,000.00 insurance because of the house’s location.

The agent testified that he provided all three quotes to the insured at the same time, including the quote for \$400,000.00, and that he gave the insured the opportunity to choose the higher quote, but the insured refused and opted for the MRPIUA policy.

The house under construction burned to the ground as a result of a suspected arson attack. After the fire, MRPIUA paid out the policy limits of \$200,000.00. The insured claimed that the fire caused damages far in excess of the \$200,000.00 policy limits.

The agent had an agency contract with the insurer who was on the risk under the MRPIUA coverage. This contract provided that the agent was an independent contractor. The agent operated out of two offices, both of which bore the name of the insurer who was on the risk.

WHAT HAPPENED?

The trial court found in favor of the insurer and the agent, and dismissed the insured’s claims. The insured appealed the case.

The appellate court held that under Mississippi law, insurance agents lack an affirmative duty to advise buyers regarding their coverage needs. However, when they do offer advice to insureds, they have a duty to do so in a reasonable, non-negligent manner. This duty applies to giving advice as to what coverage options exist. The court also held that the statement attributed to the agent by the insured would have had the consequence of leading the insured to purchase the \$200,000.00 policy. Accordingly, the agent had a duty to exercise reasonable care in offering advice to the insured as to what insurance was available.

The agent and the insurer argued that even if there was a breach of duty, that breach did not proximately cause the damages because of the duty to read and imputed knowledge doctrines. Under those doctrines, an insured is charged with knowledge of the terms of the policy upon which he relies for protection, in situations where a

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reading of the policy would have revealed the claimed inadequacy of the coverage. However, because the alleged misrepresentation in this situation was not the type that would have been disclosed by a reading of the policy, the court held that the duty to read and implied knowledge doctrines were inapplicable to this case. The appellate court also held that the agent's statement that only MRPIUA would insure the property established the necessary elements of a claim for negligent misrepresentation under Mississippi law.

The appellate court concluded that the agent was an independent contractor of the insurer under Mississippi law, and that the insurer could not be held vicariously liable for the agent's torts. The court also held that because the relationship between the agent and the insurer was one of independent contractor and principal, and because the insured cited no authority holding principals liable for the failure to train their independent contractors, Mississippi law would not find any such duty.

As for the claim for punitive damages against the agent, the court concluded that at the very most, the evidence revealed ordinary negligence and therefore summary judgment to the agent on the claim of punitive damages was appropriate. Likewise, because the trial court correctly dismissed all of the insured's claims against the insurer, there was no claim for punitive damage against the insurer.

The appellate court upheld the trial court's summary judgment in favor of the insurer, and in favor of the agent as to punitive damages. The case was remanded to the trial court for trial against the agent on the claims of negligence and negligent misrepresentation. After a jury trial, the jury returned a verdict in favor of the insurance agent.

LESSONS LEARNED:

- Even though the jury believed the agent's version of the facts in this case, there are still lessons to be learned. Avoid absolutes when discussing coverages with insureds. If you cannot obtain a particular coverage or a certain limit on a particular coverage requested by the insured, do not advise that the coverage is unavailable in the marketplace. Unless you have contacted every insurer, you cannot make this statement. The more appropriate response would be that you have been unable to identify any insurers you have access to, either through agency contracts or brokerage agreements,

that are willing to write the coverage. That is a true statement and can be supported by your documented efforts at marketing the account.

- Your duty is to use your best efforts to procure the coverage requested by the insured and/or to tell the insured that you cannot obtain the coverage. You do not have an obligation to advise the insured on the type of coverage needed or the limits of coverage needed. Those decisions should be strictly left to the insured.
- It is, of course, acceptable to advise the insured of applicable available coverages that you can provide. However, if the insured rejects that coverage, there should be some documentation that the coverage was offered and rejected. Without documentation, it becomes a swearing match between the agent and the insured. The insured will swear that they sought such coverages, but they were not offered. The agent will testify he or she discussed those available coverages with the insured, and the insured did not want those coverages. How does this affect a legal proceeding? It creates a "genuine issue of material fact," which means the case must be tried to the jury. With proper documentation, the agent should be able to be dismissed from such a case on summary judgment without a trial.
- If you do offer advice to insureds about the coverages and/or limits needed, you are obligated to do so in a non-negligent manner. The standard of care you are held to is that you should exercise reasonable diligence in advising the insured in such a way that a reasonably prudent person would exercise on their own behalf if they had your knowledge of the insurance industry.
- The duty to read and/or imputed knowledge doctrine, which provides that the insured is charged with the knowledge of the terms and conditions of their insurance policy even if they do not read it, has limitations. Those doctrines will only apply if the insured could discover the alleged misrepresentation or lack of coverage by reading the policy. In the context of this case, those doctrines did not apply.



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