

MISSISSIPPI AGENT

VOLUME 40 • NUMBER 3

SUMMER 2020



2020-21
IIAA CHAIRMAN

Tatum Brown

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VOLUME 40 • NUMBER 2

SPRING 2020

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Ashton Polk

Stephanie Spahn

DEPARTMENTS

Meet IIAM Chairman Tatum Brown5

IIAM's New Officers, Board and Executive Committee Members7

From the Commissioner.....9

FEATURES

News & Noteworthies.....13

E&O: What You Do and Don't Do

When a COVID-19 E&O Suit Arrives17

IIAM Convention Memories From the Past Decade.....22

Lessons Learned:

Vacant Building Policies and the Need for Proof

of Timely Delivery of Policies to the Insured29

E&O Exposures: Increased When Working from Home?36

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MEET IIAM CHAIRMAN

Tatum Brown

Tell us a little about yourself.

I was born and raised in Oxford, MS by my parents Tommy and Paula Brown. I have a younger brother Hugh. I attended Northwest Community College and North Alabama University where I played baseball as a pitcher and received a degree in business administration. After college, I moved back home to Oxford where I officially began my career in the insurance industry. I currently still live in Oxford with my wife Lain and our two daughters, Georgia and Tindall. When I am not working, I enjoy being outdoors playing golf, hunting, fishing, and spending time with my family.

Another hobby that I enjoy is being a collegiate football official. I currently officiate for the Mississippi Association of Community Colleges and Great American Conference (DII). IIAM has been a tremendous part of my life and it truly is an honor to have the opportunity to give back to the association by serving as your Chairman.



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



I am 3rd generation in the agency that my grandfather R.L. Brown started. I grew up watching him and my dad run the business. It was an easy decision to get into the insurance industry when I had the opportunity. When I was in college I worked in the agency over the summers, and I feel that gave me invaluable experience to all aspects of the day-to-day operation. Insurance has been my entire career and I enjoy servicing people in the town of Oxford with their insurance needs.

continued on page 11...

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Amy Smith
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Ray Collins
New Albany
Treasurer



Shaw Johnson III
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Josh Smith
Brookhaven
Past Chairman



Megan Cannada
Jackson
Young Agents Chairman



Bradley Tyler
Kosciusko



Gwen Jolly
Aberdeen



John Morgan
Mims
Meridian



Jon Pointer
Southaven



Seldon Van Cleve
Indianola



Terry Pendley
Hazlehurst

New Board Members Elected in 2020



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Brandon



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Columbus



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FROM THE COMMISSIONER

by Mike Chaney
INSURANCE COMMISSIONER



our legislative goals. I'd also like to thank the Senators and Representatives who supported our proposals.

Here's a brief overview of some bills passed this session.

- **HB 95** authorizes the Commissioner to resolve certain disputes between providers and insureds regarding balance billing.
- **HB 408** provides requirements for credit for reinsurance.
- **HB 773** exempts certain lines of commercial insurance from rate and form prior approval requirements and grants the Commissioner discretion to determine which property and casualty rate filings must be submitted to an actuary for review. This is a step to deregulate commercial insurance.
- **HB 1253** designates the State Fire Academy as an authorized medical first responder training program.
- **SB 2227** revises the MS Life and Health Insurance Guaranty Association Act to include HMO subscriber contracts and certificates and to require life insurers to share in assessments for long term care insolvencies.
- **SB 2230** is the Uninsured Motorist Act which provides coverage for claims involving vehicles owned or operated by persons protected by sovereign immunity under the Mississippi State Tort Claims Act. This is a major piece of Legislation to protect consumers, who because of case law have been unable to recover damages under their uninsured motorist coverage.

- **SB 2301** addresses auto insurance and removes the repealer on the statute requiring repair businesses or lienholders to be added as payees on claim checks.
- **SB 2709** addresses insurance premium discounts for hurricane or windstorm damage mitigation to include commercial property.
- **SB 3049**, entitled the "Mississippi Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act", was passed as lawsuits were filed, across the country against business and healthcare providers related to COVID-19 spread.

Speaking of the Legislature, two of my good friends have retired. Our long time House Insurance Chairman Gary Chism announced his retirement effective June 30, 2020. Senator Videt Carmichael did not seek reelection. Gary and Videt were excellent Chairmen and we are grateful for their service to our industry. Senator Walter Michel is our new Chairman in the Senate, following Senator Carmichael. Walter is a friend and has proved to be a very capable Chairman in the Senate.

There has been much going on outside of the legislative session at the department. We assisted those affected by the spring tornadoes in south Mississippi by setting up emergency response locations in Bassfield, Collins, and Prentiss. Our Consumer Services division staffed those locations for two and a half weeks and provided information to people with damage.

With hurricane season underway, now is the time to take proactive steps to protect your property from hurricane loss. Please advise your clients to take an inventory of personal property, such as clothes, jewelry, furniture, computers and audio/video equipment. The MID website (www.mid.ms.gov) has several tools that you can use to create such an inventory.

The Department continues to work diligently to provide the proper regulatory response regarding insurance related to the COVID-19 pandemic. Our telemedicine bulletin was recently extended to allow for the use of telemedicine through September 2020. You can find that update and many others on our website.

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MEET IIAM CHAIRMAN TATUM BROWN | *(continued)*

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

I have always had a competitive nature, and that does not change in selling insurance. Being an independent agent gives me the opportunity to be competitive every day. It is also great to be able to provide a service where your friends and family have the peace of mind that they are taken care of with the necessary part of protecting their personal and business assets.

Lightening Round:

1. **What is your favorite app on your phone.** - The Weather App, because it is always right!
2. **Favorite IIAM memory.** - The annual convention and trade show in Destin! I grew up attending the convention with my family for family vacations. However, by far my favorite convention was the year I met my beautiful wife, Lain! It is extremely special we now get to bring our children and let them share the memories I have!
3. **Advice you would give to your 22 year old self.** - Every decision from here on out can last you the rest of your life. Live in the moment with the future in mind.



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NEWS & NOTEWORTHIES

FCCI Insurance Group Plans Expansion Into Pennsylvania



Courtney Hart, senior vice president of the Mid-Atlantic Region for FCCI Insurance Group

quartered in Richmond, Va., and also operates in Maryland and Washington, D.C. The company's move into Pennsylvania demonstrates FCCI's ongoing commitment to maintain strength

Sarasota, Florida-based property and casualty insurer FCCI Insurance Group (FCCI) is again expanding its geographic reach, announcing it will begin writing commercial insurance in the state of Pennsylvania as of September 1, 2020. The Pennsylvania operations will be coordinated through FCCI's Mid-Atlantic Region, which is head-

and stability while leveraging new market opportunities.

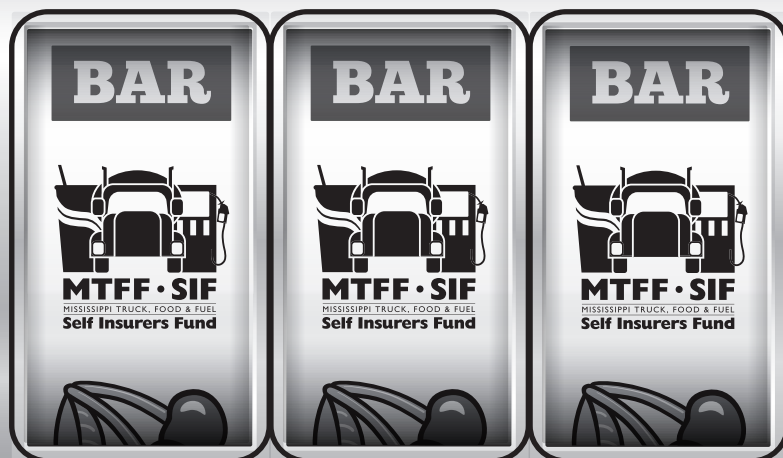
Sales and marketing efforts in Pennsylvania will be led by senior business development specialist Scott Hillegas and supported by an experienced group of insurance professionals under the direction of Courtney Hart, who is senior vice president for the Mid-Atlantic Region and a resident of Pennsylvania. With 37 years in the insurance industry, Hart brings a wealth of knowledge and leadership to the market.

"We are confident Courtney's experience in regional operations, product development, target marketing and strategic planning – along with the solid relationships he has built with key agency partners – will support successful growth in our newest state," said Christopher S. Shoucair, interim president and chief executive officer of FCCI Insurance Group.

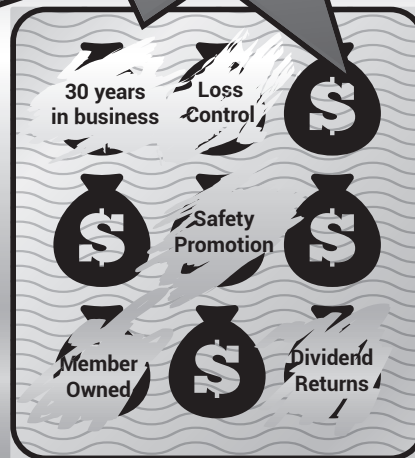
FCCI has been providing commercial and contract surety in Pennsylvania since January 1, 2015. Once FCCI begins writing commercial insurance in Pennsylvania, it will bring the total number of states in which it operates to 20 and Washington, D.C. FCCI began accepting new business sub-

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missions from its appointed agents on June 15.

“With its vast number of diverse industries and dynamic agency professionals, Pennsylvania is a key state in our strategic growth and expansion plans,” said Hart. “This has been a much-anticipated move and we are excited to finally be here to serve our valued agents and businesses across the state.”

Jay Mooney Assumes New Role with Liberty Mutual

Jay Mooney has been promoted as a Southeast Branch Executive for Liberty Mutual. He will now be working in their Atlanta office to help grow and develop Liberty Mutual’s relationships with mid to large size commercial brokers in the states of Georgia and Alabama. Senior Vice President Amy Lochhead states, “Jay brings to the role years of diverse industry experience as a producer and risk manager. He spent the last nine years at Liberty Mutual in a market-facing role collaborating with brokers and underwriters alike.”

We are excited for Jay and his family as they relocate and transition into this new season!



Past Chairman Josh Smith Honored for Service to Association

IIAM was able to change leadership in July at an executive committee meeting. It was at this meeting your 2020-2021 officers were sworn in by Josh Smith. The new officers include: Tatum Brown, (Chairman), Scott Woods (Chairman-Elect), Amy Smith (Vice Chairman), Ray Collins (Treasurer) and Shaw Johnson (National Director).

Tatum Brown presented Josh Smith with a token of appreciation for serving as your 2019-2020 Chairman.

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WHAT YOU **DO** AND **DON'T DO** WHEN A COVID-19 E&O SUIT ARRIVES

- COVID-19 has changed the agent's errors and omissions (E&O) landscape for the next several months. While we can't predict the number of agents who may have E&O claims at this point, the odds are high that if you don't get sued, an agent you know will.
- Proper actions and reactions when threatened or served with an E&O suit arising out of this pandemic are of utmost importance. Once a threat is made or a suit filed, the allegedly improper act or omission has already occurred - don't worsen the situation by making bad decisions. Remember these "dos" and "don'ts" if you find yourself in an E&O situation.
- Let's start with the first MAJOR don't: Do not overreact to the claim. Understand that there is no shame in being accused of an error or omission, especially given the weird aspects of this COVID-19 situation. Even the best practices and procedures may not protect the agency right now. Anger, either toward yourself or others, is counterproductive and serves only to increase the weight of the situation.

DO NOT DO THESE THINGS

- Do not, under any circumstances, alter the client's file. What's done is done. Making changes creates the appearance that there is something to hide. Accept what is there and prepare for what comes next.
- Do not discuss the claim with anyone other than the claims representative, defense attorney or any other member of the office directly involved in the claim. The only individuals who need to be involved in any discussion related to any E&O claim are those personnel directly related to the care of the plaintiff's account and those defending the agency.
- Do not make any admission of liability or wrongdoing; and do not offer or make payment.
- Do not provide any written or recorded statement to the plaintiff without your E&O carrier's claim representative present.
- Do not allow inspection, copying or removal of client files and records without consulting with your E&O claim representative.
- Do not try to manage the claim on your own. The E&O carrier has more experience and is better able to manage the process. Allow those with more experience and resources to manage the suit.



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WHAT TO DO

What should your immediate and ongoing “do’s” be following an E&O claim?

- Notify the E&O carrier of a “claim” or potential claim immediately. Provisions in the E&O policy require the insured to notify the insurance carrier as soon as practicable following the receipt of a “claim” or any indication of a potential claim.
- Listen for “trigger” words or questions. Some words, phrases or questions just don’t seem normal, in fact, they sound like something a lawyer would say. If your client uses terms like “duty,” “breach” or “breach of duty,” assume they have been

talking with a lawyer. Also pay attention to the questions that are asked, does it seem like they are trying to trap you into admitting something? Notify the carrier of a potential claim if words or phrases seem to indicate a lawyer is already involved.

- Assume every conversation is being recorded. Regardless of the legalities of recording a conversation, assume your answers are being recorded. Pick responses carefully.
- Gather and organize all pertinent records related to the insured and the situation. But when doing this, remember the second “don’t” - don’t alter them. The claim representative



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needs all the information to conduct an investigation and prepare and provide a proper defense.

- Write down all the information known about the incident surrounding the claim. Each member of the team directly related to the client and the incident giving rise to the E&O claim should record all they can remember about the incident or incidents on which the claim is based. This should be a factual narrative statement in chronological order. Leave out opinion and emotion. This is the time to act like you are talking with Joe Friday from Dragnet – just the facts. Who, what, when, where and why is all that should be contained in these accounts.
- Assign one person as the claim leader. One person should be assigned the duty to report, track and manage all COVID-19 E&O claims within the agency.

- Cooperate with the E&O carrier. This includes providing information and facts that look bad for the agency. Hiding or hedging certain aspects of the facts surrounding the situation on which the claim is based creates distrust between you and your insurer; it also makes the agency look guilty. The insurer is on your side.
- Make sure you comply with all policy conditions and requirements. If the agency fails to comply with all E&O policy conditions, coverage may be jeopardized.

HOPEFULLY YOU WILL BE SPARED

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CONVENTION MEMORIES

FROM THE PAST DECADE

Each year, agents and company representatives gather in Destin, FL for the annual IIAM Convention and Trade Show. Convention is a longstanding tradition our association has participated in for over 100 years. Unfortunately for the first time in known IIAM history, our convention had to be canceled due to the public health crisis, COVID-19. We thought that since we couldn't feature our 2020 "Convention Memories" we would reminisce and relive convention memories from the past decade.





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LESSONS LEARNED

Vacant Building Policies and the Need for Proof of Timely Delivery of Policies to the Insured

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

“Lessons Learned” is a recurring article authored 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:

On November 11, 2017, the insured met with the agent to discuss placing commercial insurance for a warehouse. The insured was a personal friend of the agent and, as such, the agent had personal knowledge that the property was vacant during the application process. The commercial insurance application was completed and submitted. The insured claimed to have disclosed to the agent that the property had been vacant since May of 2017. When the agent completed the application, he noted in the remarks section of the application that “building is currently vacant. Tenant moved out 11/1/17. Insured is actively looking for a new tenant.”

On January 25, 2018, the insured suffered a water damage loss at the insured premises. The insured was advised that there was no coverage because the damage was caused by sprinkler leakage due to freezing temperatures. The policy contained the Standard Loss Conditions - Vacancy Provisions, a Vacancy Permit and a

Sprinkler Exclusion. Because of the denial of the claim based on these vacancy provisions, the insured filed a lawsuit against the agent and the insurer.

Facts Giving Rise to the Litigation:

The agent agreed that he met with the insured in November 2017 and completed an application for a vacant building policy on the warehouse. The agent denied being told that the property had been vacant since May of 2017, but was advised that it had recently become vacant and the insured was actively looking for a new tenant. Nonetheless, because the property was vacant, the agent correctly procured a vacant building policy.

As stated above, on January 25, 2018, the insured property suffered a loss due to a sprinkler head leaking as a result of freezing temperatures. There was no heat on in the building. The sprinkler head released water throughout the building. The policy contained a Standard Loss Conditions - Vacancy Provisions. The policy also

had a Vacancy Permit endorsement. The Vacancy Permit provided coverage for the insured's vacant premises for all covered causes of loss other than vandalism and sprinkler leakage. The policy also contained a separate Sprinkler Leakage Exclusion.

The agency received the insurance policy on November 28, 2017, but did not mail it to the insured until January 30, 2018, five days after the loss. Under Mississippi law, an insured has a duty to read their insurance policy and, even if they choose not to do so, they are charged with the knowledge of the terms and conditions of the policy. However, absent proof that the policy was delivered to the insured, this rule does not apply. There was an insurance proposal which was submitted to the insured that clearly listed both a vacancy permit and sprinkler leakage exclusion; however, the terms and conditions of those forms were not set forth in the proposal.

What Happened?

Out of the blue, we received an email from counsel for the insurer advising that it had decided to settle the claim with the Plaintiff and obtained a release on its behalf and on behalf of the agent and agency. Such an action by an insurer is very rare in these times.

Lessons Learned:

- Always promptly deliver the insured their entire insurance policy.
- Always create documentary evidence that you have delivered the insured their insurance policy. Having this evidence is critical to the defense of most errors and omissions claims.
- Losses to vacant buildings are the source of a good number of lawsuits. Insureds typically think they are getting the same coverage as an occupied building, but that it is just more expensive because it is vacant. When insuring vacant buildings, let the insured know that coverage for vacant buildings is typically not as broad as coverage for occupied buildings. Document that discussion. If the policy is delivered to the insured by the agent, document that delivery. It is a very good practice to advise the insured, in writing, that they should read their insurance policy to understand what is covered and what is not covered.

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E&O Exposures: Increased When Working from Home?



Focus is key! From an errors and omissions (E&O) perspective, agents cannot lose focus during this disrupted work setup. Working from home does not change the fact that all procedures and processes that apply in the home office also apply at the “home” office.

From now until we are released from our lockdown and able to return to normalcy, we must remember that every action or inaction has consequences – good or bad. There are a few simple rules or guidelines agencies and agents should follow during this unprecedented moment in time to avoid or lessen the effects of an errors and omissions claim.

Rule #1: Document! Document! Document!

Franklin D. Roosevelt may be the most famous cheerleader of all time (other than Toni Basil). It’s true. As a student at Harvard he was a cheerleader for home football games.

Some years later, he led the country through World War II, using his fireside chats to calm America’s tensions and fears. He was still a cheerleader. Given the

tensions and even insecurity some feel as we live through our current pandemic panic, we need a cheerleader and simply a leader to keep us calm and to keep us focused.

Roosevelt was a forward thinker; he actually wrote a cheer to help agents remember Rule #1 for working from home.

*Are you Ready? OK!
Document day;
Document night;
Document left;
Document right;
Document, document, document!
Yea, document!*

OK, so maybe this isn’t a Roosevelt original, in fact it’s a pure fabrication – but the point is no less relevant. Even when working in a non-traditional space, remember to document every conversation, text, email, yell, whatever. When it involves a client, document it.

Rule #2: Keep the Schedule You Had at the Office

No, this isn’t limited to “open” and “close” times; this refers to regularly scheduled staff and team

meetings. Not being in the same room is no excuse for ending activities necessary for the successful operation of the agency.

Basically, if it was important for the agency and the teams leading up to the disbursement, it still is.

“We have our normal commercial lines staff meeting on Mondays at 10. We go over new and renewal business, lost accounts, cancellations, claims, accounts with issues, industry news and current events and any issues that popped up that need to be addressed,” reports one agent. “We also have individual team meetings for personal lines and employee benefits.”

Another agent tells us, “Zoom is our new contact method for client meetings and for meetings with staff. We have ‘Town Hall’ meetings every Friday afternoon with all employees; producer meetings every Monday morning; the commercial lines, personal lines and employee benefits teams have staff meetings once per week; and the Leadership team has probably had Zoom meetings 10 times over the past three weeks.”

Keeping everyone connected and informed is paramount when everyone is in the office. But when there is no office “atmosphere,” keeping everyone connected and informed is even more important.

A cornerstone of these meetings should be policies and procedures. Pick one errors and omissions topic and remind every person on the call of the office procedure relevant to that topic. This conversation does not have to take more than three or four minutes. One topic, one reminder - this keeps the staff on course.

Rule #3: Keep “Them” Close and Informed

Your clients and your carriers are living in this same altered reality in which you are living. Any sense of normalcy is welcomed.

Stay in contact with your clients and keep them informed. As their agent, your insureds will likely turn to you more now than in the past. News reports, press releases and the problem of “someone told me” will certainly spread a lot of misinformation among your customer base.

To manage and hopefully end the spread of misinformation, you need to know the correct information. Know policy language, know the carrier’s processes and plans, know the insurance regulations, and know when to say “No.” From an E&O perspective:

- ▶ Never answer a coverage question without the insured’s policy in front of you. Even the most “common” policy has “uncommon” endorsement you may forget were attached.
- ▶ Not every carrier is the same; in fact, no carrier is like any other carrier. Know the underwriting guidelines and what can and can’t be done for the client. Don’t



promise something until after you know it can be delivered.

- ▶ Don’t practice outside your licensure. As a licensed agent, your job is to procure and manage the insurance program with and for the client. You are not licensed or qualified to offer an opinion on contract wording or other legal matters.

Remember also, you are not licensed to help complete federal forms unrelated to insurance. Direct the insured to the proper professional; don’t create an E&O problem by being too helpful.

Your underwriters need to hear from you as well. In fact, they may want to hear more from you now than in the past because they may be lonely. Kind of a weird thought, but many underwriters are used to working in an office with other humans; being alone is hard on them. Even field underwriters who normally work at home are accustomed to meeting with and talking with agents face to face on a regular basis.

Keep the underwriters informed when something new is learned

about a client. Talk with them about unusual situations or unusual requests made by the insured. You and your underwriter may be able to find creative solutions that best serve your client and the carrier. You also want to know what the carriers are thinking and planning in regard to renewals. Are there new endorsements coming that may limit coverage? Find out during these “keeping in touch” calls, it may help avoid an E&O situation.

Many insureds are concerned about money as a result of state-mandated lockdowns. Commercial lines clients may essentially be out of business, personal lines clients may be out of a job; the result is the same for both clients - fear. The fear of having to choose among feeding their family, paying the bills or paying insurance premiums. When this question arises, this is a conversation that involves both your insured and your insurance carrier. Everyone must be informed.

When the specter of policy cancellation appears, address it directly and appropriately.

- ▶ Know if your state has enacted any temporary measures regarding cancellation for non-payment. Current information is available [here](#).
- ▶ If a regulation is in place, advise your client of the regulation and give them a copy of the wording.
- ▶ Advise your insured to never cancel any policy and document the conversation.
- ▶ If the insured insists on cancelling any policy, make use of a cancellation notification letter.

Contact between you, your clients and your underwriter is extremely important, especially during this period of separation. But solid E&O avoidance guidelines must still be followed.

Rule #4: Recognize Potential Weaknesses

"One of my E&O concerns is our new producers and what they are telling prospects and customers. Are they writing the correct coverages on new and renewal accounts? We do have mentors for each of the new producers and we hope nothing is falling through the cracks," reports one agent.

This agent's concern is probably the same as many other agents, what are the new, less experienced employees doing? Are coverages being written correctly? Are questions being answered correctly? Do they know and understand the agency procedures well enough to properly protect the client and us?

These are valid concerns. One drawback of working from home is the loss of "quick confirmation." Generally, employees have the ability to quickly check their understanding of the policy language, an underwriting guideline or anything else with someone in the office; all they have to do is walk to someone's desk and ask for help.

Well, unless there is an open-line Bat Phone there is no one to ask and get an answer from quickly. Emails, instant messages and/or phone calls have to be made to get the answer. Some agents feel like the insured is unwilling to wait for an answer and will just "wing it" and hope they are correct, or that if they are wrong, nothing will happen to highlight the error.

Make sure every employee understands this is NOT OK. It is never acceptable to "wing it," and



the current situation does NOT change that fact.

Train every employee, not just the new employees, that it is acceptable for them to explain to the client that they don't know the answer or that they want to confirm the answer. Rarely is the insured unwilling to wait for a correct answer. "Mr. Insured, that is a great question. Let me confirm the answer and call you right back. I would rather give you the correct answer the first time."

Then, do what you promised. Get the answer as quickly as possible and call the insured back as soon as possible. The insured will be satisfied and you will be able to sleep well. (Oh yeah, don't forget to document the conversation and follow up in writing with the insured.)

Last Rule: Don't Forget Your Upbringing

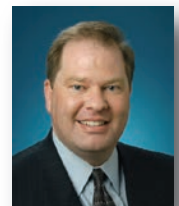
As my kids got old enough to go out with friends and on their own, I would always say, "Remember who you are; whose you are; and who you represent." My goal was to impress upon them that their actions affected more than just them.

Every employee's actions affect the agency – positively or negatively. It is necessary to remind your employees, often, that what they do matters; not only does it matter to them, it matters to everyone in the office.

Train them, retrain them, and train them some more on E&O avoidance. Make it part of the fabric of the agency. Make it important. When it is important to the leadership, it is important to everyone.

Now that they are "out on their own," in some respects, training will show. That statement should bring you comfort, not scare you. If it scares you, let's talk.

*Christopher J. Boggs,
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A smiling couple, a woman in an orange top and a man in a light blue shirt, are looking at a tablet together. The woman is holding the tablet, and the man is pointing at the screen. They are both smiling and appear to be in a professional or business setting.

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