Rough Notes®

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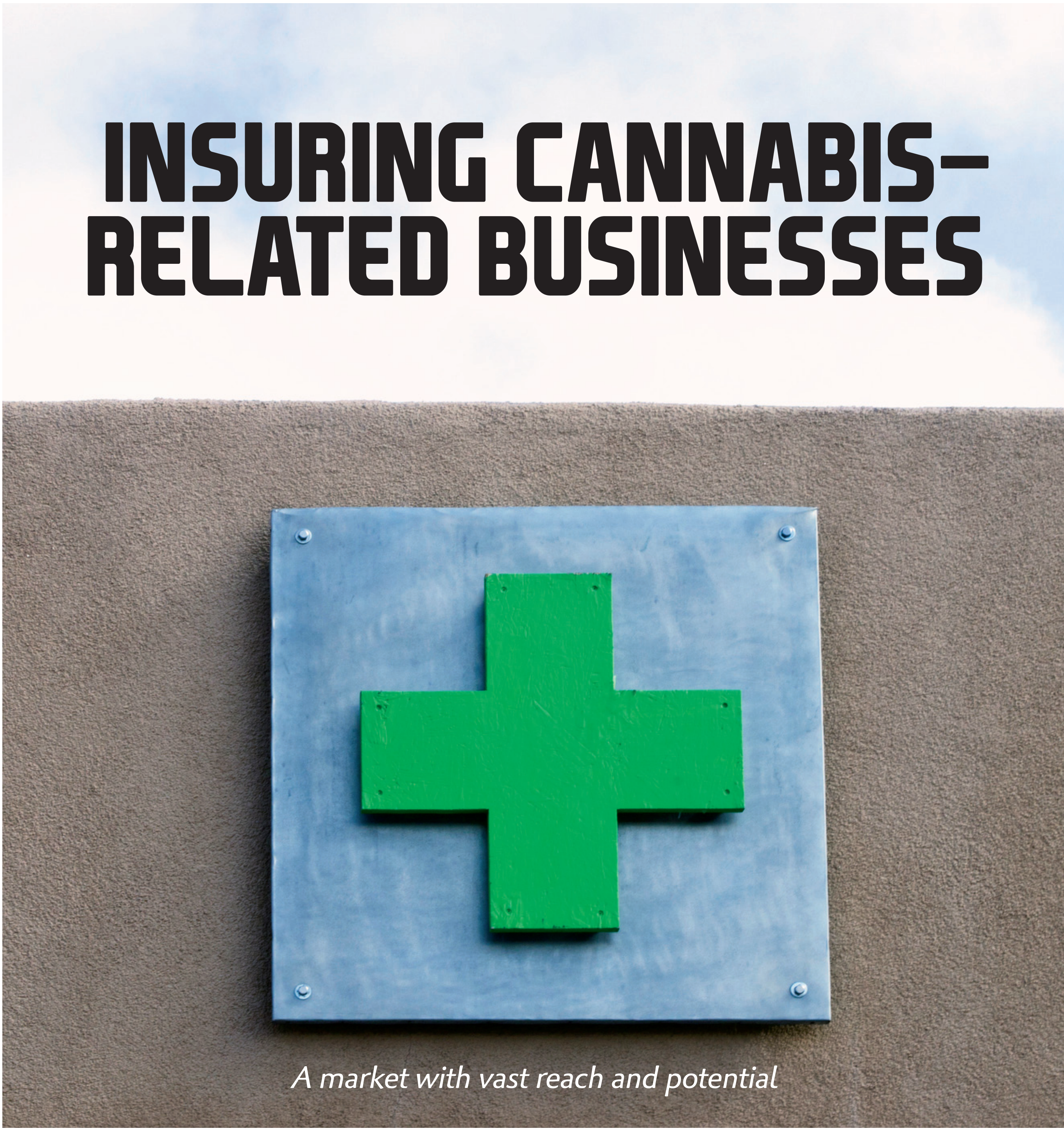
2019 FLORIDA SPECIAL REPORT

INSURING CANNABIS-RELATED BUSINESSES



A market with vast reach and potential

By Trish King

Since the legalization of medical marijuana in Florida in November 2016, the industry has grown rapidly, with sales expected to reach $1.3 billion by 2021. The number of patients in the state who qualify to use medical marijuana has surpassed 168,000. The medical marijuana industry is expected to continue its upward trajectory, particularly since the governor recently removed the ban on smokable marijuana and may also remove the ban on edible marijuana.

Because of this substantial growth, marijuana-related employment is expected to reach 25,000 jobs in the next several years, nearly ten times the number of such jobs in 2017. The increase in the number of jobs associated with the medical marijuana industry comes not only from marijuana growers and distributors but also from cannabis-related businesses that provide services to those growers and distributors, such as testing labs, transportation companies, and security firms.

Tier I marijuana-related businesses (MRBs) are those that manufacture, distribute or dispense marijuana or are involved in packaging and/or transportation. Since the bill legalizing medical marijuana passed, Florida has issued at least 14 licenses to firms planning to sell medical marijuana in cities that have not banned dispensaries. These vendors, known as medical marijuana treatment centers, *Because so many businesses are involved, the medical marijuana industry provides a vast potential market for insurance carriers, agents and brokers.*

are vertically integrated, meaning they are responsible for everything from growing the product to manufacturing, distributing, and selling it.

Medical marijuana treatment centers are much different from the seedy head shops many people imagine when they think of marijuana vendors. The businesses must adhere to strict regulations, and the treatment centers often have high-tech security systems and on-site security guards.

With their mission being to educate consumers and because they are subject to strict oversight, medical marijuana treatment centers maintain a high level of professionalism. All applicants for treatment center licenses must provide financial statements and undergo background checks, and their employees also must undergo criminal background checks.

In addition to Tier I MRBs, many established businesses work tangentially with the industry. These Tier II MRBs, as they're called, do not grow, dispense, or process medical marijuana, but they provide services and products to companies that do. Examples of Tier II MRBs are landlords, staffing companies, medical professionals, transit companies, specialized professionals like accountants and engineers, and more.

Because so many businesses are involved, the medical marijuana industry provides a vast potential market for insurance carriers, agents, and brokers. MRBs need general liability (including product liability) and property insurance to follow best business practices and protect themselves from alleged negligence, product defect, theft, and damage.

The businesses that require general liability coverage are not limited to the Tier I businesses, growers, dispensaries, and processors. Every business involved in the cannabis supply chain—from seed to sale—should have some level of cannabis-related general or professional liability.

For example, when the transit services company picks up and transports cannabis from the warehouse to the dispensary, cannabis-related coverage is needed. A psychiatrist who performs medical marijuana evaluations will need cannabis-related coverage. The firm that provides security services for the medical dispensary will need unique coverage associated with cannabis. Even accountants who prepare tax returns and perform bookkeeping services will need GL coverage related to cannabis.

The list goes on, including firms that sell rolling papers and/or vaporizers and other smoking devices. And if a state legislature legalizes the sale of medical marijuana edibles—one of the most popular products in states where medical marijuana is legal—companies that make those products will need specialty cannabis insurance.

At the National Association of Insurance Commissioners 2018 summer national meeting, California Insurance Commissioner Dave Jones encouraged insurers to provide specialty coverage to businesses involved in the cannabis supply chain. "Cannabis businesses face various insurance gaps—which means cannabis customers, workers and business owners may not have access to insurance to help them recover if there are accidents, injuries, property damage, or any of the things commercial insurance typically covers," he said.

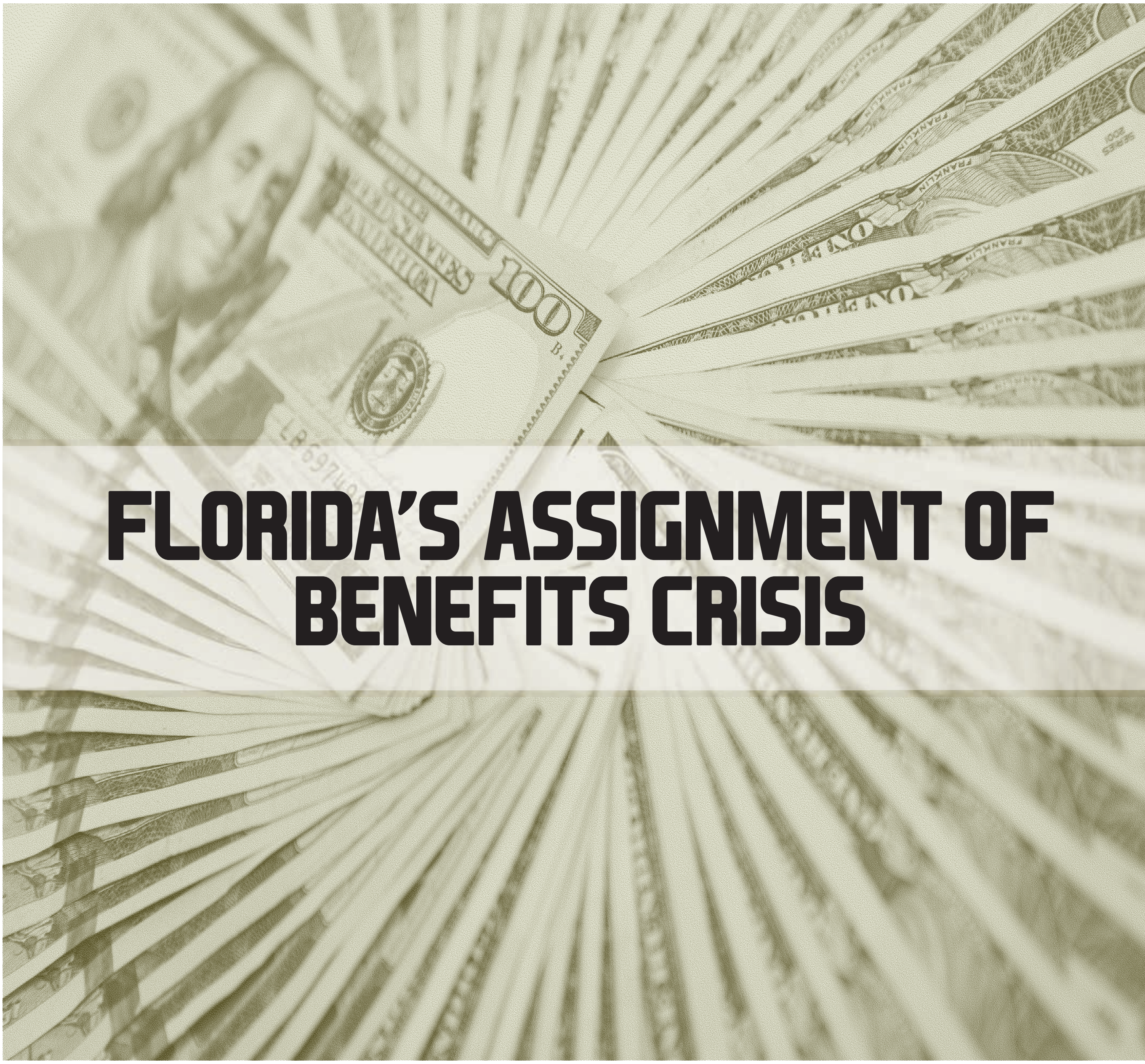
"I will continue to ask insurers to expand insurance coverage for the cannabis industry so that they have access to the same insurance coverage as any other business," the commissioner added. Jones recently helped to increase the availability of insurance coverage for MRBs in California.

Over the past few years, several insurance providers throughout the country have helped bridge the medical marijuana industry's vast insurance gap by offering MRBs seed-to-sale coverage. Aspera, for instance, provides coverage for all stages of the process, including cultivation, harvest and manufacturing, quality assurance testing, prescribing, and dispensing.

Given the medical marijuana industry's rapid growth, Florida insurance professionals will need to determine whether to provide coverage to MRBs, particularly existing clients who participate in the cannabis supply chain and require specialty coverage. Although medical marijuana is illegal at the federal level, which makes insuring MRBs more complicated, I believe it is well worth becoming educated about the industry to meet the needs of a growing market. ■

The author

Trish King, assistant vice president at Aspera Insurance Services, has substantial experience working in property and casualty admitted markets and excess and surplus lines. Aspera Insurance Services acts as an underwriting manager for personal lines and hard-to-place commercial casualty risks. For more information, email marketing@asperains.com or call (804) 774-2101.



FLORIDA'S ASSIGNMENT OF BENEFITS CRISIS

Bill proposed to solve Florida's number one insurance challenge

By Philip Visali

When you think of insurance challenges in Florida, you may think that hurricanes and other natural disasters are the biggest factor in increasing premiums. That's not surprising: Florida currently ranks number one in homeowners insurance costs, averaging $2,000 per year, according to data research firm ValuePenguin. In fact, the real number one insurance challenge in Florida is the assignment of benefits (AOB) claim crisis.

AOB claims have increased 90,000% since 2000, according to the Consumer Protection Coalition. Imagine this scenario: A roofing salesman knocks on your door, "finds hurricane damage," and says he'll fix everything. You don't have to worry about a thing. He'll work with your insurance carrier directly; just sign this AOB document.

The AOB crisis began in south Florida with water damage claims. Shady attorneys and restoration companies abused the system, encouraging consumers to sign over their benefits. The problem has since spread all over the state, and we're now seeing many different kinds of AOB scams. Some examples are roof inspections and replacing car windshields because of hurricane damage.

According to the Florida Department of Financial Services, in 2006 some 405 AOB lawsuits were filed across all of Florida's 67 counties; by 2016 that number had risen to more than 28,000.

AOB abuse risks for Florida consumers include:

- Vendors inflating the scope and cost of claims
- Vendors filing lawsuits against insurers without consumers' knowledge
- Potential for litigation and penalties related to claims consumers never even filed
- AOB lawsuits increasing the overall cost of insurance in Florida

A consumer who signs an AOB is responsible for the attorney fees and litigation costs involved in the contractor's

> *The AOB crisis began in south Florida with water damage claims. Shady attorneys and restoration companies abused the system, encouraging consumers to sign over their benefits. The problem has since spread all over the state, and we're now seeing many different kinds of AOB scams.*

lawsuit. Even when consumers never wanted to sue the insurer or even knew about the litigation, they're responsible for the fees, regardless of the court's decision.

To help resolve this issue, a committee of the Florida Senate proposed legislation in March of this year. Set to go into effect on July 1, 2019, the bill, titled "Agreements Between Service Providers and Consumers," limits the awards of attorney fees in AOB lawsuits.

Recently, 125 people marched on Florida's capitol to push for AOB reform and close the loophole. "We owe it to the working-class people of the state of Florida to do something," said Senator Keith Perry of Gainesville.

AOBs have been part of Florida's insurance industry for more than 100 years and have only recently become highly controversial due to increased fraudulent claims. Florida lawmakers have considered multiple proposals to stop AOB abuse but have not been able to reach an agreement. "This is a pandemic that is slowly beginning to spread across the state," said Senator Jeff Brandes of St. Petersburg.

Here's the full text of the Agreements Between Service Providers and Consumers bill:

Agreements Between Service Providers and Consumers: Specifying limitations and authorized provisions relating to a service provider's right to payment under certain agreements with consumers under urgent or emergency circumstances; specifying requirements, limitations, and prohibited provisions for agreements containing a post-loss assignment of benefits; providing that attorney fees under certain provisions of the Florida Insurance Code may not be awarded to an assignee of post-loss benefits who is a service provider, etc.

It would benefit Floridians to be aware of the AOB bill that is now in the Florida House of Representatives. Know the facts and be vigilant as to how you can protect Florida's home owners and business owners. Express your interest and find your member of the U.S. House of Representatives at www.house.gov/representatives/find-your-representative. ■

The author

Philip Visali began his insurance career in 1997 and opened We Insure Group in 2009. Now it is one of Florida's largest independent agent franchises. Inc. *magazine ranked the company in the top 25% of America's fastest-growing private companies in 2015.*

WRITE HEALTHCARE RIGHT

Identify the best healthcare accounts and work with them so you can write the sector profitably

By Roger Comer and Bethany Moreno

Healthcare is expensive. Workers compensation coverage for healthcare can be expensive, too. Despite seemingly unstoppable growth in the healthcare industry, it can be an intimidating industry to write.

You think construction is risky? More than 20% of all recordable injuries in the private sector occur in healthcare—more than any other industry, with 562,000-plus injuries a year. The next highest is the manufacturing industry, at only 425,700 in 2015. The incident rate for injuries in healthcare is 4.0, far worse than the construction industry. Only sectors like agriculture and transportation have higher rates.

In 2017, nursing and residential care facilities specifically had the highest incidence rates of occupational injury and illness cases at 10.9. You would be safer working in a correctional institution, an iron foundry or almost anywhere else.

Do you think hauling two-by-fours is going to give you a bad back? Healthcare workers suffer higher rates of musculoskeletal injuries than workers in any other occupation. Direct and indirect costs associated with back injuries in the healthcare industry are estimated by NIOSH to be a staggering $20 billion annually.

So why would you ever want to provide workers compensation insurance to the healthcare industry?

The paradox is, you can't not write healthcare business, especially in Florida. In 2017, the healthcare industry became the largest employer in the United States, beating out retail and leaving manufacturing in the dust. The healthcare industry's growth is resistant to globalization and automation and is driven by our aging population, with a quarter of the workforce set to be older than 55 by 2025.

In Florida it's estimated that by 2030 more than 32% of the population will be 60 and older. In 2017, we spent about 18% of our GDP on healthcare; that's $3.5 trillion or $10,739 per person.

This trend is unstoppable, and Florida has a larger percentage of those employed in the healthcare industry than the national average. In the Gainesville area, it is more than 20%, Daytona Beach is 17.5% and Pensacola is 16%. At more than 92,000, Florida is in the top three states for highest employment of nursing assistants. More than 16,000 are employed in just the Tampa area.

The question becomes: How do you identify the best healthcare accounts and work with them so you can write the sector profitably?

At MEMIC, we believe we've cracked that nut when it comes to workers compensation insurance. Even though the numbers show that the healthcare industry is more dangerous than the construction industry, we want to write more healthcare, not less. We have developed a formula to beat those numbers. Just for *Rough Notes*, we've simplified our strategy down to four basic rules.

Rules number one and two are "face the risks head on" and "get hands on." Don't cross your fingers and hope for the best. We know where the loss leaders are. Remember the $20 billioncost of back injuries? MEMIC has developed a safe patient handling and mobility program to help our policyholders eliminate the manual patient handling that is the cause of most injuries. We know that if a policyholder follows our formula, we will have great results. We've seen policyholders achieve a 35% reduction in the cost of their injuries, and they love that it improves patient safety as well as employee safety.

We get hands on so that healthcare employees get hands off when it comes to patient lifting. You can't make systemic behavioral change from a conference room. Our loss control experts schedule visits with nursing units to observe transfers in real time. Not only does this help us familiarize ourselves with their existing patient handling practices, it gives us the opportunity to reinforce correct practices and to provide coaching opportunities for improvement.

Rule number three is "speak their language." MEMIC's loss control experts have extensive experience as direct-care nurses. They are physical therapists, certified ergonomists, registered nurses, licensed practical nurses, certified occupational health specialists, and certified safe patient handling professionals with decades of real-world experience. They are sharing evidence-based practices they've learned by working with patients, not just in the classroom. This common language of shared experiences builds strong relationships.

Healthcare workers suffer higher rates of musculoskeletal injuries than workers in any other occupation.

The director of compliance and risk management for a policyholder with 12 long-term and rehabilitation care centers (more than 1,600 staff and 1,390 beds) told us for our annual report, "I remember the first meeting we had with the MEMIC team, I was so excited to learn about their service offerings because we needed them. When they left the room, I said out loud: 'These are our people.' And I continue to say that about MEMIC every day. This is the best I have ever felt about a workers comp company."

That's the kind of relationship we build with our policyholders. We don't want to be the outsider that comes in and tells everyone what to do. That's not a partnership, and it doesn't work. When we've earned a policyholder's trust and the employees see us as one of them, that's the biggest compliment we can get, and that's when positive change can really take off. This brings us to the fourth rule but the one we start with. It may be the simplest, but it can also be the hardest. It's "listen."

Listening doesn't start at day one; it starts before day one. How do you identify a good partner? As we've said previously in *Rough Notes*, before we write an account our loss control experts visit the prospect and observe the level of dedication to safety and commitment to return-to-work for injured workers. If we don't see that commitment, we don't write that account. There is no point in developing a loss control and claims service action plan with this prospect if it's just going to be ignored.

That's our final bit of advice to agents and carriers: Be willing to say no. It takes discipline, but no matter how big the premium is, the loss is going to be even bigger if the client doesn't have the desire for a true partnership. ■

The authors

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COMP FOR CONTRACTORS

Top 10 things to know about writing workers compensation insurance for contractors in Florida

By Karen Phillips

Providing Florida workers compensation coverage for clients in the construction industry can be one of the most challenging aspects of insurance agency operations. Contractors are subject to a lot more regulation from the state than are other kinds of businesses. They also have servicing needs that other accounts don't, such as issuing certificates of insurance on a regular basis.

If your agency serves construction clients, here are the top 10 things you should know about writing workers comp for contractors:

1. What kinds of businesses are classified as "construction?" The Florida Division of Workers' Compensation publishes a list of the NCCI class codes that the state considers to be in the construction industry. It's important to review the list because the state considers some industries that aren't commonly thought of as "construction," like landscaping operations. The complete list is available in the division's rule 69L-6.021, which is available on its website at www.myfloridacfo.com/Division/wc/.

2. In the construction industry, who has to be covered by workers comp? Every person who works on a construction site must either be covered by a workers comp policy or have a valid exemption. Construction businesses must have workers comp to cover all employees. Corporate

officers and limited liability company (LLC) owners are considered "employees" unless they have been issued an exemption by the state Division of Workers' Compensation. Sole proprietors and partners of construction businesses are also "employees" for workers comp purposes because they cannot be exempted from coverage.

3. If a contractor uses subcontractors, who is responsible for the workers comp? Under Florida law, contractors are responsible for making sure all their subs either have their own workers comp policy or have a valid exemption. If they hire a sub without either a policy or an exemption, the contractor will be liable for the sub's workers comp.

Agents and brokers need to make sure their construction clients obtain a certificate of insurance or exemption card from *everyone* they hire or who comes onto the jobsite. And they can't just stop there. Make sure they check the state coverage database to determine whether the policy or exemption is current and valid. If a contractor discovers that a sub is out of compliance with workers comp requirements, it should insist that the sub correct the problem before it can come back to the jobsite.

Also, construction clients should register all of their subcontractors on the state's policy tracking database so they will be notified if one of their subs has its insurance cancelled or its exemption expires. Both databases are available at www.myfloridacfo.com/Division/wc/.

4. Who can be exempted from workers comp? In the construction codes, only business owners with at least a 10% ownership of the company are eligible to be exempted from workers comp, and no more than three owners from one construction company can be exempt at any one time. Non-owner employees are not eligible for exemptions.

5. How long are exemptions valid? In the construction industry, exemptions must be renewed every two years. The state Division of Workers' Compensation notifies all exemption holders when their exemptions are about to expire, but your clients should not wait until they receive their renewal notice from the state. Allowing an exemption to lapse can mean a visit from a state compliance officer and paying premium on the salary that the officer received while the exemption was expired.

6. Is it legal for a construction company to have exempt officers only, with no workers comp coverage in place? If a company has three or fewer owners who all hold exemptions and there are no other employees, that company is complying with all workers comp requirements. However, the minute that company hires a new employee, uses a day laborer, or brings anyone else to a jobsite, it is breaking the law by not having coverage in place.

7. Why is it important for my clients to file their annual report with the State of Florida? Corporations and LLCs must file an annual report with the state of Florida by May 1 of every year. Companies that do not file their annual report are administratively dissolved by the state, and their owners can have their workers comp exemptions taken away.

8. If my client uses a one-person subcontractor that has an exemption, does that affect its ability to have Class Code 5606 (Executive Supervisor) on its workers comp policy? Using one-person exempt subs can disqualify your client from being eligible for Class Code 5606 (Executive Supervisor). The rate for 5606 is much lower than most construction class codes, so some contractors ask to have their supervisors classified under 5606. But this code can be tricky to qualify for because (1) it can be used only for employees who don't go to the jobsite (i.e., who don't "swing a hammer" and (2) hiring a subcontractor with an exemption disqualifies a contractor from this code.

Code 5606 is for employees who are supervising the supervisors on the jobsite. The crucial test is the middle layer of supervision between the jobsite employee and the supervisor. When a contractor uses a one-person sub that is exempt, the subcontractor cannot provide that crucial middle layer of supervision, disqualifying the contractor from using the Executive Supervisor code and getting that lower rate.

9. What are the requirements for out-of-state construction businesses doing work in Florida? An out-of-state construction business doing work in Florida must obtain either a stand-alone Florida workers comp policy or a Florida endorsement to its out-of-state policy to cover its operations in Florida.

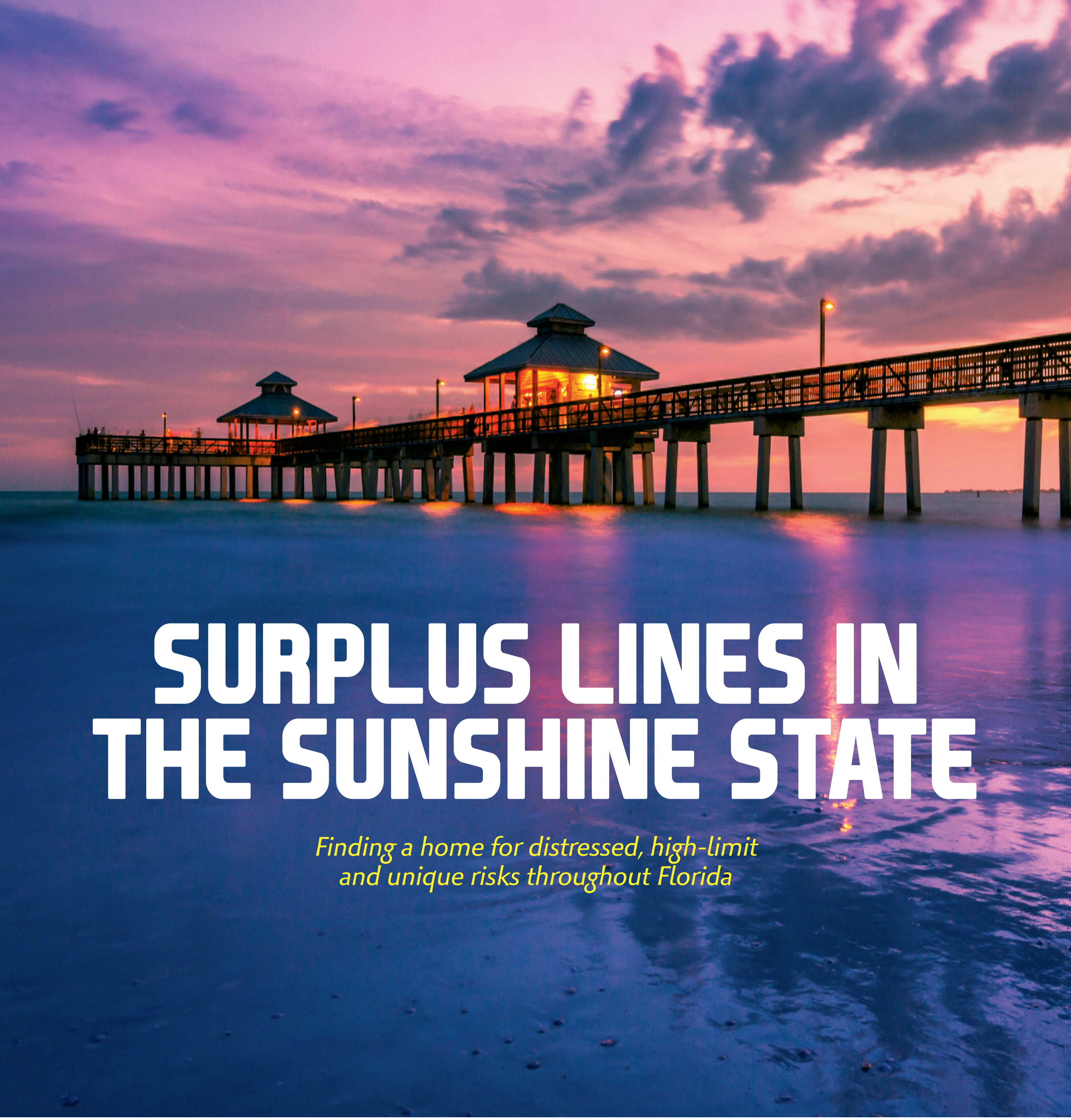
10. Should my construction clients be concerned if one of their subcontractors gets its workers comp from a PEO? It is increasingly common in the industry for subcontractors to lease their employees from a professional employer organization (PEO). In this arrangement, the subcontractor signs a contract with an employee leasing company where the PEO is actually the employer and provides workers comp coverage for the leased employees. The subcontractor does not have any employees (at least it's not supposed to) and has no insurance policy in place.

But here's the loophole: PEOs only provide workers comp insurance to employees they have been given advance written notice of and whom they have accepted as their employees. If your client uses a sub whose coverage is with a PEO and the sub hires anyone, that worker is not covered by the PEO's workers comp policy unless and until the PEO agrees to cover that worker. This means that if your client hires a subcontractor that uses a PEO and that sub hires someone without getting clearance and acceptance from the PEO, that employee now is the responsibility of your client, in terms of both paying premium and any claims that may occur. ■

Contractors are subject to a lot more regulation from the state than are other kinds of businesses. They also have servicing needs that other accounts don't, such as issuing certificates of insurance on a regular basis.

The author

Karen Phillips has been general counsel for Florida United Businesses Association (FUBA) since 1991. FUBA is a statewide business trade association representing small businesses throughout Florida. She provides advice to small businesses on a broad range of state regulatory issues, sales taxes, and employment law. Phillips also serves as general counsel to FUBA Workers' Comp, the sponsored workers compensation insurance services provider for eligible FUBA members.



SURPLUS LINES IN THE SUNSHINE STATE

Finding a home for distressed, high-limit and unique risks throughout Florida

By Kimberly Mask

"Florida Man" memes, Mickey Mouse, grandparents, and sun-drenched beaches … these are the images most people's brains conjure up when they think of Florida.

It's true that we have our fair share of seniors, odd news headlines, and some of the most beautiful beaches in North America. Florida also possesses a quality no other state in the union can claim: It's a peninsula jutting out into the vast open ocean, making it the barrier between the Atlantic Ocean and the Gulf of Mexico.

Much of the land in the Sunshine State is coastal or coastal adjacent. This unique geography makes Florida extremely vulnerable to hurricanes and gives rise to an array of property and casualty insurance woes. As a result, a lot of property in Florida finds its way into the surplus lines marketplace.

What exactly is surplus lines insurance? Surplus lines is a supplementary insurance market within the property and casualty sector. The majority of property and casualty risks are insured in the *admitted* market, but when risks are distressed, unique, or need extremely high limits, the admitted market may not be able to insure them. This is when agents

Imagine that the admitted market is a strainer through which all properties are poured. Those few small particles that fall through the holes would be covered in the surplus lines market.

turn to surplus lines insurance, which is provided by *nonadmitted* insurers.

Nonadmitted insurers are able to provide these coverages because they do not have to adhere to the rates, forms, and underwriting standards that govern admitted insurers. This means they have the flexibility to underwrite these exceptional risks and provide coverage that consumers otherwise might not be able to obtain.

Imagine that the admitted market is a strainer through which all properties are poured. Those few small particles that fall through the holes would be covered in the surplus lines market. The surplus lines arena exists to pick up those particles—or risks—that the admitted market will not or cannot write.

Risks that are insured in the surplus lines market generally fall into three categories:

- **Distressed:** Risks with unfavorable conditions that could cause a high frequency of losses and claims
- **High limits:** Risks that need exceedingly high limits that admitted insurers do not have the resources to underwrite
- **Unique:** Risks that are so unusual that most admitted carriers do not have the expertise to write coverage for them

Although all three risk categories are written in the Florida surplus lines market, the most common category is distressed properties. Because of its unique coastal geography, Florida has an abundance of distressed properties.

The Sunshine State's coastal properties are at almost constant risk of wind damage from storms. The June to November hurricane season is often unpredictable and volatile, making it difficult to assess even inland properties, much less coastal ones. In most parts of the state, winds from hurricanes can destroy entire cities. Just last season, Hurricane Michael ripped through the Panhandle, leveling numerous cities and leaving thousands of Floridians homeless. Back in 2004 and 2005, Florida saw record-breaking hurricane activity with nine hurricanes making landfall, resulting in major damage across the state. These disasters caused billions of dollars in property damage.

The historic 2004 and 2005 storm seasons marked a turning point in the surplus lines marketplace in Florida, and since then the number of risks written on a surplus lines basis has increased sharply. In 2006 surplus lines premium rose to $4.5 billion, a record high at that time, and since then it has not returned to pre-2006 levels. Another tumultuous hurricane season could bring another large increase.

Commercial liability coverage also represents a large portion of the surplus lines business written in Florida. This is likely because Florida has a high population and a sizable economy compared with many other states. These two elements contribute to the Sunshine State having a high number of lawsuits, which means that many businesses must carry high liability limits.

These risks often are written in the surplus lines market. A large number of businesses in Florida would not be insured without the existence of surplus lines carriers. The surplus lines market is what keeps Florida open for business, which drives the state's economy as a whole.

The Sunshine State's high population and large economy combined with its unique geography and unpredictable weather guarantee that the surplus lines insurance market is here to stay. ■

The author

Kimberly Mask is public information coordinator for the Florida Surplus Lines Service Office (FSLSO). Reach her at kmask@fslso.com. FSLSO was created by the Florida legislature in 1997 as an intermediary among the surplus lines industry, the Office of Insurance Regulation, and the Department of Financial Services. Its main purposes are to assist consumers, monitor marketplace compliance and protect state revenue. FSLSO's goal is to facilitate compliance through innovative solutions. For more information, contact agent.services@fslso.com or visit www.fslso.com

CHANGING SYSTEMS OR IMPLEMENTING NEW TECHNOLOGY?

There's a smart way to do it; you just need to know the steps and plan the process

By Erik Finstad

The past few years have proved challenging for Florida's independent agencies. Assignment of benefits (AOB) fraud. Personal injury protection (PIP) fraud. The need for workers compensation reform. These are all affecting the industry today and are resulting in rising rates and unstable markets. Meanwhile, carriers attempt to remain competitive and maintain strong financial positions.

At the same time, the industry continues to use automation as a tool for growth, if not an outright necessity. Florida's agency owners frequently find themselves shopping for new technology providers.

Some agents are dissatisfied and seek alternatives to their current rating, agency management, website, and marketing vendors. Other agents may not have some of these systems in place and are looking to make a first-time purchase.

In both situations, it's important to give your choices serious consideration. Mistakes can result in lost time, missed business opportunities, and unhappy clients.

An agency with a plan from the start will make this important decision more easily and successfully. Here's how to set your agency up for success when it's time for a change.

Step One: What is driving your desire to switch?

First you must identify your motivation for making a change or adding a new system. Recently in Florida, some long-time technology vendors ended support for popular products. Some agents had used these for years. These agents were left with sub-par replacements for those products and were forced to look at alternatives.

Other reasons agencies may look to switch vendors are frequent price increases, billing errors, lack of support and training, poor customer service, and outdated products. Those are all legitimate factors, as are the desires to improve workflow processes and provide clients texting capabilities and portal access.

Younger users in your agency may expect state-of-the-art technology like cloud hosting of data and support for mobile devices. Browser-based user interfaces and compatibility with non-Windows platforms also are desirable.

Step Two: Tracking down missing features

One common lament of vendors is the unnecessary loss of an agency client to a competitor. This is especially true—and frustrating—when a feature was available in the system but the agent never knew it or didn't ask about it before switching systems.

It is worthwhile to first identify the shortcomings of your existing system. Switching systems is a big undertaking. It makes sense to be certain that the switch is even necessary. The missing feature you need may even be part of an upcoming update from your existing vendor.

Step Three: Research products and vendors

If you've arrived at this step, it's clear that a change is necessary for your agency. Adding a new system would save time or allow you to grow your book of business. You must take the time to research the available options.

Years ago, only a few vendors provided rating and agency management systems and website design and hosting. Today many choices are available at many different price points. A wide range of feature sets exists to suit every kind of agency.

Although price is an important factor in any business decision, even more important is the value to be gained by making a decision.

The value of comparative raters, search engine optimization services, and marketing systems can be gauged by the amount of inbound traffic. Sales productivity is likely to increase when these systems are implemented.

The return on investment for agency management systems can be seen via increases in staff efficiency as automated processes improve workflows and free up employee time spent performing routine, repetitive tasks. Employees now can use that time to engage in client outreach and follow up with prospects. You can communicate electronically with carriers, clients, and prospects and enhance those key relationships with more frequent contact.

Choosing a vendor is just as important as choosing a product with the features you desire. This partnership should be long lasting and mutually beneficial, like your best relationships with clients. Research the vendor's reputation with its agent customers and industry partners.

How long has the vendor been in business? How accessible and effective is the customer service? Does the vendor support integration with other technology platforms? Is it big enough to have the resources to be a cutting-edge industry leader? Is it agile and responsive to customer needs and industry trends? Will you be only a number to the vendor, or will you be a valued client it will work hard to delight and help succeed?

Carrier marketing reps are good judges of how vendors are viewed by their clients and industry partners. They know where those providers stand. Don't hesitate to ask their opinion.

Carrier marketing reps are good judges of how vendors are viewed by their clients and industry partners. They know where those providers stand. Don't hesitate to ask their opinion.

Step Four: Prepare for the transition

Finally, prepare for the implementation process and transition. Will your current vendor(s) impose costs for data backup? What about data conversion costs imposed by the new vendor?

Keep in mind that a messy database will end up in your new database with the same problems. Clean up your existing database before the backup. Delete duplicate records and obsolete accounts. By doing this you'll get the best result possible from the conversion process.

Communicate which data and documents will convert and which will not so there will be no surprises. Get a firm timeline for setup, training, and integration with existing platforms. Make sure your staff is on board with the upcoming changes and workflows. Knowing what to ask will help the implementation meet your expectations.

Your plan for success

Whether you're adding a new product or replacing your agency automation system, developing and implementing a plan for a smooth transition will position your agency for optimal growth and success. ■

The author

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FLORIDA FLOOD INSURANCE

A confluence of change and risk for agents

By James R. Watje

The Florida flood insurance marketplace is rapidly changing. Like a passenger on a bullet train racing through the countryside at over 200 miles an hour, you don't have time to see anything for more than a split second as it zooms past your window. What you do see is visible only for a brief moment, and it's easy to be left wondering if you missed something important. What's more, you can process only a fraction of what is racing by; you have no way to take it in, understand it, and know what to do with all that information.

The key for all of us in this incredibly fast-paced world is to understand what to look for, how to focus farther ahead on the track, and how to identify the signposts earlier along the route.

FEMA's National Flood Insurance Program (NFIP) used to be *the* single solution for residential properties in the state. In the last two to three years, however, NFIP has become just one of multiple options available through various distribution channels and platforms.

Changes in the flood insurance marketplace can be attributed to a combination of factors, including enhanced modeling technologies, excess capacity in the reinsurance space, and recognition of NFIP's limited financial resources. Today we are seeing an unprecedented level of interest in flood insurance as a private market offering. Florida, the largest NFIP state with just under $1 billion in written premium, has become ground zero for private flood insurance product development and pricing innovation.

This market shift in large part can be attributed to Senator Jeff Brandes (R-St. Petersburg). In 2014 he sponsored a bill that called for flood insurance rate and regulation flexibility until 2025. The bill was signed into law that same year. It gave underwriters the flexibility to learn about the flood peril and how this peril can best be underwritten, priced, and managed. This easing of regulation, along with continued capital and reinsurance support, is allowing private risk takers to write flood coverages in Florida to an unprecedented extent.

Flood insurance is now provided through a variety of channels: as endorsements to admitted homeowners policies (27 carriers at last count); as stand-alone admitted or surplus lines policies; and even as a new parametric coverage that requires only a triggered event for claim payment as opposed to an actual loss. All of these changes in Florida's flood market have occurred over just the last three years.

These new choices are great for consumers. More players in the flood insurance marketplace translates to lower premiums and easier access to coverage for all. And for forward-looking agents, the choices bring opportunities for growth, increased client retention, and diversification. However, if we continue to focus on where we've been instead of where we are going, we will put both our business and our clients at risk.

Agents must recognize and adapt to a dynamic new flood insurance marketplace. Failure to do so will increase an agency's E&O exposure and also may result in losing clients to competitors who are proactively adapting to the changing landscape.

When offered effectively and consistently, flood insurance can differentiate your agency from your competition. Agency principals and individual agents need to adopt a process for quoting flood coverage for *every* property risk that passes through the agency, not just those in Special Hazard Flood Areas that are required to obtain flood coverage to satisfy a mortgage requirement. The number and severity of devastating floods continue to rise in communities all across the country, not just for those in the

traditional high-risk FEMA flood zones.

Recent events demonstrate the growing threat of flood—from earlier this spring in the Midwest, where over 1 million acres flooded, to recent events in North and South Carolina, Hurricane Harvey in Texas, and Hurricanes Irma and Michael in Florida. Most industry studies reflect that more than 70% of properties damaged by significant flooding events did not have a flood policy; and in some cases, like Hurricane Florence in North Carolina, more than 90% of properties damaged were uninsured.

Each of those consumers sustained flood damage without having coverage in place. Unless an agent can prove that the coverage was offered and declined, he or she is exposed to an E&O claim. Quoting flood on every risk allows the consumer to understand what is available to protect the property while simultaneously providing invaluable E&O protection for agents.

In addition to consistently offering flood coverage to all clients, agents must be mindful of the compliance requirements and best practices for the new flood insurance marketplace in Florida. Regulations were eased in 2014 to suspend "diligent effort" requirements (F.S. 626.916) for residential flood insurance in surplus lines markets. Prior to this exemption, introduced by the Brandes bill mentioned earlier, an agent was required to obtain three declinations from admitted carriers before placing coverage in a surplus lines market (F.S. 627.715 (4)).

While this new flexibility brought additional surplus lines players into the market and eased the paperwork burden on agents, we are now seeing significant growth and expansion of admitted flood products in Florida. The increasing availability of admitted carriers and products places Florida at a turning point in the flood insurance marketplace.

Because nonadmitted carriers are not subject to pricing regulation, they can change rates and eligibility requirements without notice. This often results in significant pricing volatility. For instance, within days after Hurricane Harvey, one surplus lines market raised its rates in excess of 400% above NFIP rates. To put this in context, when the product was introduced before Harvey, the pricing was significantly lower than NFIP rates. The impact of this dramatic price surge was felt by both policyholders and their agents, as home owners dealt with the damage from the event and agents dealt with the fallout from substantial price increases and unhappy clients.

The temporary suspension of a diligent effort search requirement for surplus lines flood coverage was set to expire on July 1, 2019. Competing bills in the House (HB 357) and Senate (SB 538) are pending in this year's legislative session. At least one of the bills is likely to pass and potentially will push the current expiration date to 2023 or later. Even with the diligent effort exemption, the expectation is that agents will quote and offer admitted products before going to the surplus lines market. The agent's obligations are outlined in Florida Statute (F.S. 626.916):

The following conditions must exist to export a risk to the surplus lines market in Florida:

- *The risk is not procurable from admitted insurers*
- *The premium rate shall not be lower than the premium in the admitted market*
- *The policy is not more favorable as to coverage or rate than under similar contracts on file and in use in the admitted market*

By default, if a risk qualifies for an admitted and approved flood product in Florida, the agent is obligated to place that risk with the admitted carrier.

Forward-thinking agents in Florida will be able to take advantage of the

[F]or forward-looking agents, the (new flood insurance) choices bring opportunities for growth, increased client retention, and diversification. However, if we continue to focus on where we've been instead of where we are going, we will put both our business and our clients at risk.

recent innovations and flood insurance market changes while mitigating the risk for their policyholders and simultaneously reducing their exposure to E&O claims.

We are in a new and changing environment that makes residential flood insurance a true differentiator for prospects and clients. To execute on this strategy, agents will need to establish and nurture strong and dependable relationships with financially secure carrier partners that offer the NFIP program with superior service, training, and sales support and that offer innovative flood coverages, including customized protection to fortify structures with water-resistive materials.

Agents should develop relationships with providers that are strong product and sales partners—providers that have what your agency needs to make residential flood coverage a key component in client acquisition and retention. These partners should understand and help you see signposts in this fast-moving opportunity in the flood insurance marketplace as it evolves and develops over time.

Even on a bullet train, you can see where you're going, but you have to look farther up the tracks to prepare for what is around the bend. ■

The author

James Watje joined Wright National Flood Insurance Services, LLC, in 2018 as senior vice president of private flood. He handles oversight and management of existing private flood products and development of new products; coordinates the management of private market flood partnerships; and is responsible for achieving growth and premium objectives of Wright's private market flood division. Wright National Flood Insurance Services, LLC, provides private flood insurance products in 11 states and plans to expand. It provides federal flood insurance, excess flood coverage, and private flood alternatives. For more information, call 1 (800) 449-8842 or visit www.wrightflood.com

KEEP BEAUTY RISKS FROM TURNING UGLY

Attention to risk management is important for Florida's salons and spas

By Sean Brownyard

The Sunshine State is bright with opportunity for beauty professionals. According to the Bureau of Labor Statistics, Florida ranks second in the United States for employment of hairdressers, hairstylists and cosmetologists. In many of Florida's metropolitan areas, their nail technician colleagues—the people who do manicures and pedicures—can expect to command higher wages than their counterparts in the rest of the country.

In a state lined by 663 miles of beaches, the beauty industry almost seems like a safe bet for a business venture. Year-round warm weather gives Florida salons and spas an edge over those in the northern half of the country. This strikes up a rosy mental image of vacationers flocking into nail salons to replace their sand-worn pedicures, and of the state's thriving hospitality industry playing host to ritzy day spas.

Yet salons, spas and barbershops everywhere face ugly realities—even in Florida and other vacation destinations. Claims against salons and spas are relatively common and sometimes involve bodily injury to patrons. Though most salons and spas operate with attention to health and safety, all can focus more on risk management. For these often small and privately owned businesses, a big lawsuit can mean the difference between success and failure.

Exposures facing salons, spas and barbershops

In some ways, salons, spas and barbershops face predictable exposures. Like any brick and mortar business, they often experience slip and fall claims. In addition to typical hazards (like wet and sandy floors), hair clippings, slick beauty products and equipment cords create potential for slips, trips and falls.

Not all the exposures are so mundane. Salons and spas are one of the few settings where we routinely allow strangers without a medical license to touch us with sharp objects and caustic chemicals.

In hair salons and day spas, patrons sometimes experience adverse reactions to hair dyes, dye removers, hot wax and skincare treatments. This can cause mild dermatitis or more serious, scarring burns and hair loss. Not only does this cause serious harm to a customer, but these claims are often some of the largest experienced by a salon or spa.

Nail salons need to worry about nicks, cuts and infections. Sometimes patrons arrive with suspicious-looking nail damage, and sometimes the salon environment is not maintained to a sanitary standard. In either case, patrons can contract an infection with their mani-pedi. Any kind of infection is potentially life threatening, and even a mild one can turn into a costly lawsuit and large claim.

Many salons and spas also offer massage services. The most common claims we see against massage therapists are related to muscle injuries incurred during a vigorous massage. Over the past several years, massage franchises in Florida and elsewhere have also fielded allegations of sexual misconduct and harassment against massage therapists.

In recent years, we have seen services broaden in salons and spas of all sizes and types. These businesses are no longer offering only cuts and color changes. In today's world, they offer a full pampering experience, including elements such as free alcohol and an engaging social media presence. These amenities may entice new customers to try the salon, but they also expose the salon to additional risks, like overserving drinks to a patron.

Loss control: The ideal scenario

Salons, spas and barbershops can—and often do—address these exposures with routine loss control practices that create a clean, safe environment. Sanitation plays a huge role, well beyond soaking combs in the blue jar of Barbicide.

Best practices dictate:

- Services are performed only by qualified employees and contractors who are trained and licensed for the services they perform.
- Nail technicians protect patrons by using gloves and pedicure tub liners to minimize transmission of bacteria, fungus and other germs.
- Instruments are thoroughly disinfected or disposed of.
- Nail technicians and estheticians avoid working on irritated skin or nails and refer patrons with suspicious cracks or bumps to their physician.
- Hair stylists employ patch tests on small areas of skin before applying hair color to someone's entire head.
- When using chemicals prone to causing irritation or giving off fumes, beauty professionals wear gloves and masks.
- Salons and spas have specialty ventilation systems and properly maintain all equipment.
- A central filing system or database stores records of all interactions with patrons, from routine appointments to major accidents.

Coverage considerations

As in any business, good intentions—like trying to follow best practices—sometimes give way to bad habits, and accidents happen. That's why the right insurance coverage is important.

Salons, spas and barbershops should carry property, professional and general liability insurance. Most salon and spa professional liability policies cover all employees of a business. However, many salons and barbershops have few employees. Instead they operate on a booth rental system where the stylists and barbers operate as independent contractors and therefore are not covered. Business owners should require all contractors to carry individual professional liability insurance to protect themselves and prevent claims from pulling in the salon owner.

Not every service performed in a salon or spa is covered by a typical businessowners policy or specialty insurance program. Some services, like microblading, permanent makeup and laser skincare treatments, edge toward the medical malpractice side of esthetics. Salon and spa owners should talk to their agent or broker and find out what is covered in their policies, especially if they have expanded their services.

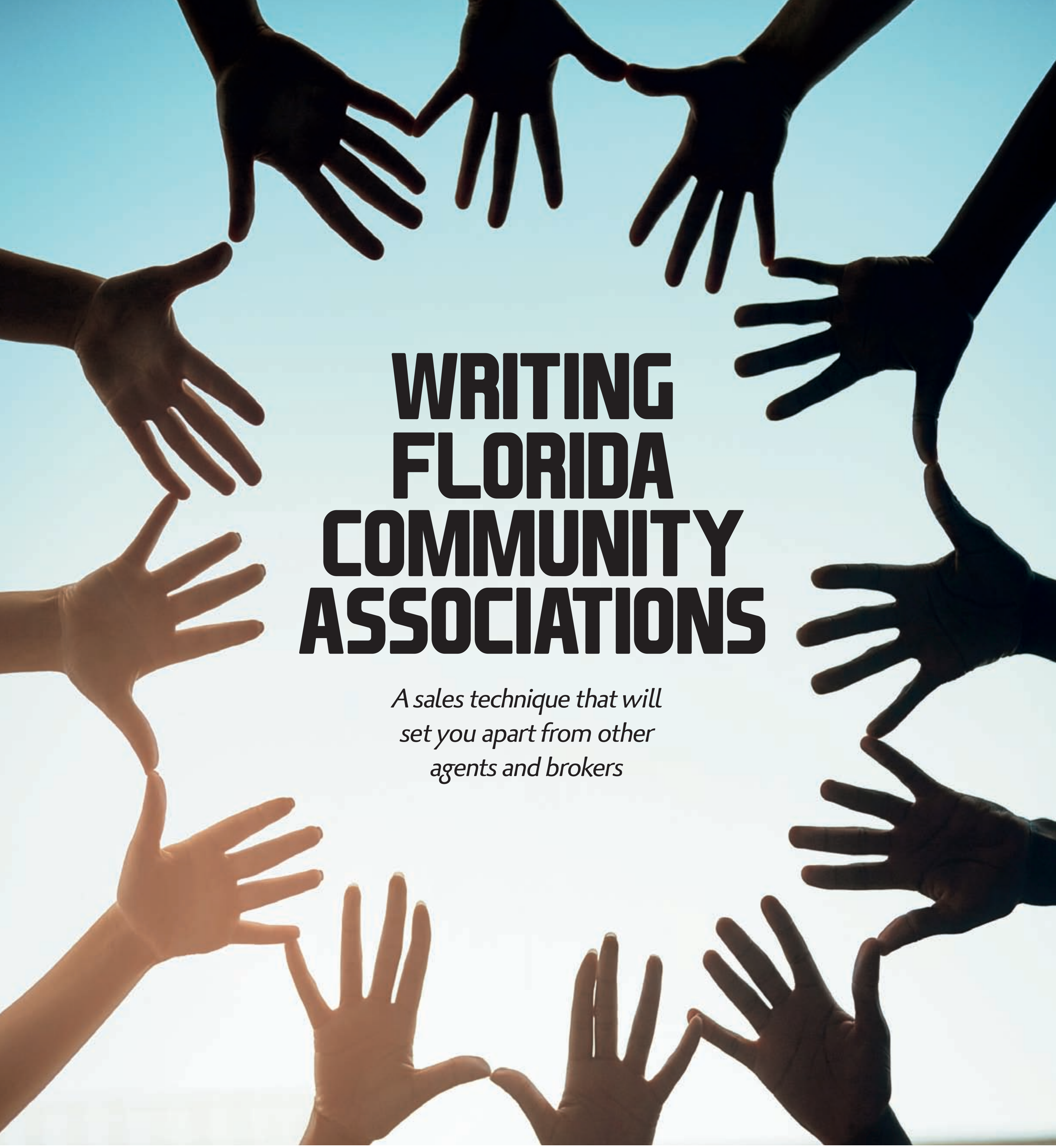
Salons and spas are one of the few settings where we routinely allow strangers without a medical license to touch us with sharp objects and caustic chemicals.

As we have learned by attending beauty industry trade shows, many beauty professionals are not sure what their insurance covers. Others admit to not having professional liability insurance. Still others were not sure when to file a claim.

There's an opportunity for my colleagues in the insurance industry to educate the beauty industry on how effective risk management can reduce their exposure to the worrisome problems outlined above. The beauty industry is growing—and is certainly a major fixture of life in Florida—so agents and brokers can look to their neighbors in the salon and spa business for opportunity. ■

The author

Sean Brownyard is senior vice president of operations for Brownyard Group and is responsible for managing its SASSI® (Salon and Spa Specialty Insurance) program. For more information, visit sassiagency.com.



WRITING FLORIDA COMMUNITY ASSOCIATIONS

A sales technique that will set you apart from other agents and brokers

By Jeffrey Tirado

Insuring homeowner associations (HOA), condominium associations or other community associations can be a lucrative line of business for Florida's agents and brokers. Instead of writing one condo policy for $1,000, for instance, you can write a master policy on 250 units netting $250,000 of premium.

Brokers typically compete in the property and general liability (GL) arena where coverages are fairly standard. In such situations, it all comes down to who can offer the best price.

Here's a suggestion for your sales presentation: Lead with directors and officers (D&O) liability. Compared with property and GL, D&O is not an expensive policy. But the coverages can vary significantly from carrier to carrier. If you can identify a potential gap in the association's current coverage, you're probably going to get the sale.

Let's look at three often-overlooked D&O coverages you can use to help get an association board's attention.

Americans with Disabilities Act defense costs

The Americans with Disabilities Act (ADA) states that public areas like restaurants and swimming pools must be able to accommodate persons with disabilities. Community associations have enough public areas to make them vulnerable to ADA complaints.

With many people retiring to an HOA or condo in Florida and a portion of these retirees having disabilities, ADA-related suits are on the rise. With 1,941 filed in 2018, Florida is ranked third behind California and New York for the most ADA suits in the U.S.

Indeed, one Florida attorney has filed over 800 ADA-related lawsuits against Florida businesses, including resort condominium associations, for complaints such as:

- Failure to make pools wheelchair accessible
- Wheelchair ramps that are too steep
- Paper towel dispensers that are located too high
- Entrance doormats that present dangerous obstacles
- Handicap parking spots that are not wide enough to accommodate a wheelchair van.

While this attorney has received criticism for the number of lawsuits he has filed, he is not the only one litigating ADA violations. News stories give accounts of HOAs hit by ADA suits that involved:

- Barring a family from building a therapeutic sunroom for their two Down syndrome children
- Failure to accommodate a family's RV for their developmentally disabled daughter
- Lack of ramps and sidewalks for a disabled veteran in a wheelchair.

Does the D&O policy you're offering include defense costs for ADA claims? Many don't, but some do. If you're in a competitive battle over price and you need to differentiate your P-C package, being able to offer D&O with defense costs can help you make the sale.

If the HOA loses in court, a D&O policy will not pay to remediate the situation or for settlements or judgments, but it will pay for legal defense costs. At $350 to $500 an hour to hire an attorney to defend these kinds of claims, D&O coverage that includes defense costs can help reduce the association's out-of-pocket expenses.

Punitive and exemplary damage coverage

Community association board members are volunteers and sometimes are not screened. In some communities, getting on the board can be a popularity contest whereas when it should be reserved for people who have a business background or experience running a nonprofit organization.

In some communities, getting on the board can be a popularity contest when it should be reserved for people who have a business background or experience running a nonprofit organization.

When board members don't rely on their property manager or attorney for advice, they can sometimes make egregious decisions or behave in a manner that puts the entire community at risk for litigation.

For example, a board member slanders or defames a community member because he or she didn't adhere to the bylaws. If the person insulted is a public figure like a politician or a physician who feels his or her reputation has been damaged, it may result in a lawsuit and potentially punitive damages.

Some recent punitive damage awards involving HOAs are:

- A couple won a $500,000 verdict and $3 million in punitive damages from their HOA when a jury found they had been subjected to harassment and intimidation by board members
- A home owner was awarded punitive damages after the association denied the owner's request for an accommodation for a support animal
- An elderly home owner sued the HOA for failure to remediate a water infiltration issue and received damages for expenses incurred, interest, attorney fees and punitive damages.

Some D&O carriers writing in Florida exclude punitive damages. HOA boards need to be aware of this small but important detail. Punitive damage claims can be exorbitant, and they occur more frequently than you might imagine. Check to see if your HOA clients' D&O policies cover punitive damages and that they pay defense costs outside policy limits.

Third-party discrimination coverage

Community associations rarely have employees. Their property management firm hires employees like landscapers, security guards and maintenance workers.

Should a home owner or board member spot a security guard asleep on the job or distracted by cell phone use and report the person, the board could decide to fire the security firm, and that could result in a third-party discrimination claim.

In a surprising number of cases, the security firm will claim the firing was a result of discrimination. These kinds of claims trigger an investigation by the Equal Employment Opportunity Commission (EEOC). The average D&O claim is resolved within 10 months. An EEOC regulatory proceeding can take much longer.

Not long ago a lawsuit brought by the EEOC for discrimination and sexual harassment of—and then subsequent retribution against—female workers resulted in a $1 million settlement against a condo association and its property management company.

Third-party discrimination claims are common, and like ADA-related suits and punitive damage actions they may not be covered by D&O policies written in Florida. Offering a policy that includes these three important coverages can be a meaningful differentiator when you're pitching your next community association prospect. ■

The author

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FLORIDA MARKET OUTLOOK

Agency valuations continue to grow and the acquisition market is competitive, but is a correction due?

By Andrea Guedes

The insurance brokerage mergers and acquisitions (M&A) marketplace has seen continuous growth over the past few years. Valuation multiples remained at their peak during 2017 and 2018, and the market saw a record number of deals with 611 and 626 respectively, according to an OPTIS report released in early 2019.

Florida has not been left behind in the flurry of activity. Florida brokerages participated in some key acquisitions last year. Seeman Holtz Property & Casualty made its mark with the acquisition of five Florida-based agencies in 2018.

Brown & Brown, headquartered in Daytona Beach, welcomed 23 new agencies across the nation, totaling approximately $323 million of acquired revenue. The firm also completed its largest acquisition by revenue in its 80-year history with the addition of Hays Companies with locations throughout the United States, including several offices in Florida. Other key national players like Marsh & McLennan, BB&T, and HUB pursued opportunities in the Southeast and continue to solidify their presence throughout the state.


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Today's M&A market is competitive because of interest from banks, private equity firms, and pension funds. Historically, major public brokers led the charge with the first acquisition boom in the 1980s. A decade later, banks began to capitalize on the market and complement their operations with insurance offerings.

It was not until the economic downturn of 2008-2010 that private equity entered the scene in a significant way. Today private equity firms lead the acquisitions market with the highest number of deals. The increased competition has driven up EBITDA multiples, which used to hover around six to seven times. Today it is common to see multiples in the double digits for larger deals.

Is a correction coming soon? Nearly half of middle-market companies think so, citing an anticipated economic slowdown in the next two years as one of their major concerns, according to a Citizens Bank report.

An economic downturn could put a halt to the increasingly competitive acquisitions market by lowering the amount of capital available for acquisitions and by forcing acquirers to focus on internal operations. A rise in interest rates, a decrease in acceptable leverage ratios, or an internal correction within the insurance acquisitions marketplace also could slow the momentum we see today.

The industry's leverage ratios (debt to EBITDA) historically have sat at around one to four times for public brokers. Today it is common to see private equity firms with debt to EBITDA ratios at seven to eight times. Even an increase in interest rates by 100 basis points or a decrease in leverage ratios to six times could shift the tide and could hinder the ability to finance new deals and drive acceptable returns at current valuation levels. A rise in interest rates or a downward shift in economic growth would tighten credit markets, reducing the ability of highly leveraged organizations to make acquisitions.

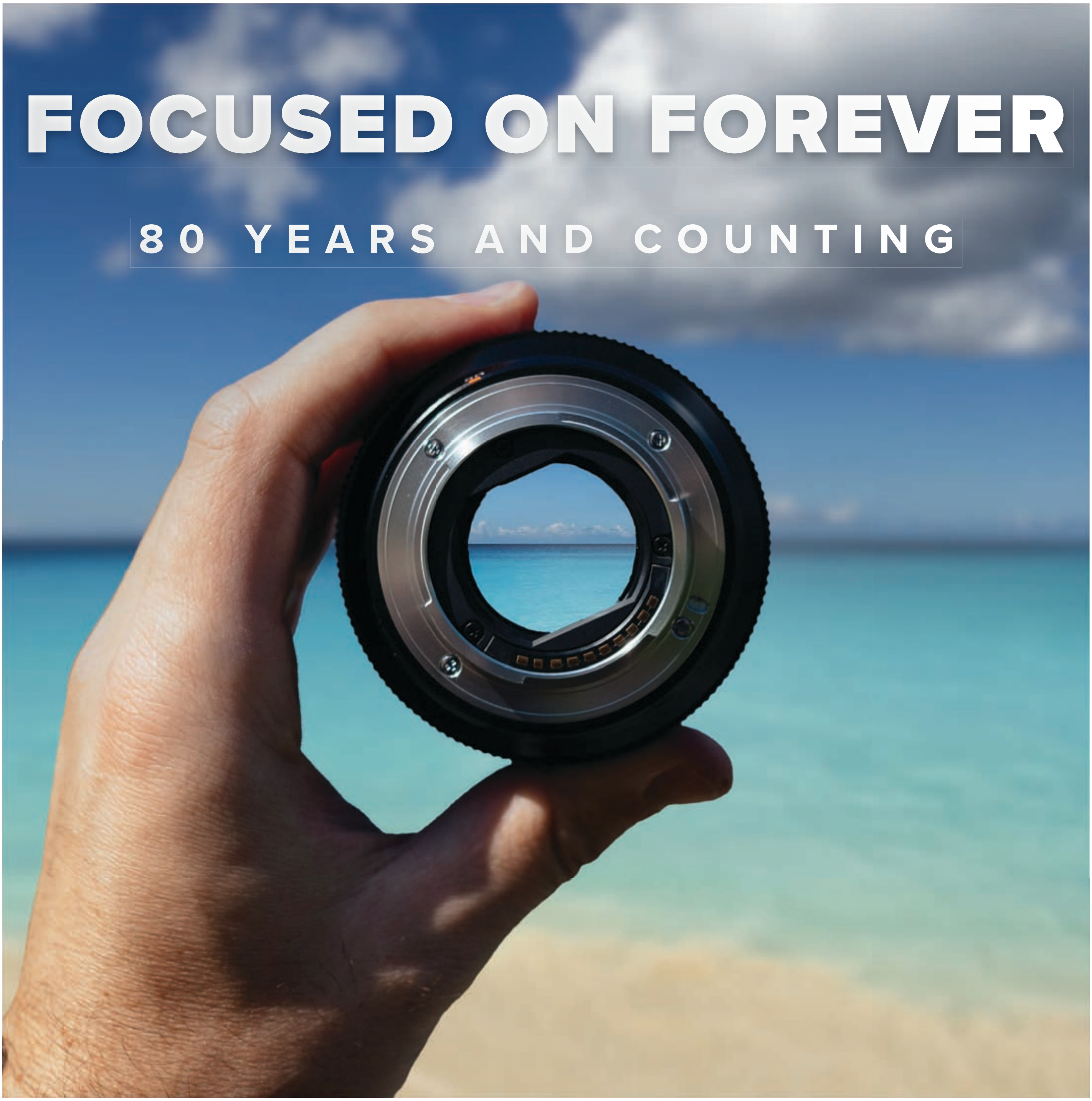
Will the scenarios described above cloud the bright horizon for broker M&A activity? The future is uncertain, and we in the insurance industry know this well because assessing and handling risk is our business.

Agency owners who have been watching the market may want to begin making moves now—before a downturn occurs. This industry is a solid place to invest, and there is no shortage of buyers.

Could the market flatten? Yes. But unless we see a material rise in interest rates, significant tightening of credit markets, or a major recession, it is likely that the time of high EBITDA multiples will be around for a while. ■

The author

Andrea Guedes is a corporate development associate for Brown & Brown, Inc., where she focuses on identifying and driving acquisition opportunities.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