Rough Notes®

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FLORIDA SPECIAL REPORT 2022

ADDRESSING FLORIDA'S CHAOTIC, MESSY PROPERTY INSURANCE MARKET

Partnering to fight the effects of excessive and unwarranted litigation

By Rick J. Lindsey

The Florida property insurance market is in free fall, with legislators and insurers looking to enact reforms to keep it from totally hitting rock bottom. Insurers have gone belly up, withdrawn from the state to stop the red ink, or reevaluated their risk appetite to limit their losses. For example, on the homeowners insurance front, many carriers only provide wind coverage to newer and updated homes while requiring increased wind deductibles.

Home owners have also experienced unprecedented rate increases with a rise of 25% to 40% in catastrophe-prone areas. At the same time, state-run Citizens Property Insurance has written "last-resort" policies for nearly 400,000 property owners over the past two years as insurers leave the Florida market. Governor Ron DeSantis expects Citizens to write one million policies by year's end. Ironically, amid Florida's property insurance woes, the real estate market continues to flourish.

On the commercial side, inflation has driven up construction material and labor costs already impacted by supply-chain disruptions, which has resulted in higher claim costs in property losses and increased rates. A legal system characterized by third-party litigation funding, fraudulent claims, aggressive tactics by plaintiff attorneys, and nuclear verdicts also is driving up insurance rates for businesses.

In 2021, a year in which no hurricanes landed on the Sunshine State, insurers operating in Florida reported a collective loss of $1.5 billion of business.

Catastrophes, litigation, and fraud

Catastrophic losses from hurricanes over the years have no doubt contributed to the property insurance market's unprofitability and rate increases. In 2017, insurers paid out $20.6 billion in losses in the aftermath of Hurricane Irma. Hurricane Michael in 2018 resulted in $9.1 billion in insured losses. About two million single-family homes on Florida's coast—totaling nearly $600 billion in value—are at risk of hurricane-related storm surge losses, according to property data and analytics provider CoreLogic.

In addition to natural catastrophe losses, part of the insurance market's problem stems from the excessive litigation in the state. Last year, 116,000 property insurance lawsuits were filed in Florida, as compared to other states, where not one state saw more than 900 lawsuits filed. In fact, although Florida makes up less than 10% of the nationwide homeowners insurance claims, the state is responsible for 76% of all homeowners insurance litigation in the country.


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The plethora of lawsuits is due to the unintended consequences of a slew of laws and state Supreme Court decisions that opened the door for contractors and attorneys to inflate the number and value of claims payments. For example, one of these laws, AOB (Assignment of Benefits), in Florida has contributed to the insurance crisis.

The AOB abuse

The AOB law allows a homeowner to turn over an insurance claim to a third party (such as a contractor) instead of negotiating a settlement with the insurer. It gives authority to the contractor, for example, to file a claim, make repair decisions and collect insurance payments without an insured's involvement. This has unfortunately created an environment in which contractors and attorneys have solicited unwarranted AOBs from thousands of Floridians. Contractors conduct unnecessary or unnecessarily expensive work, then file lawsuits against insurance companies that deny or dispute the claims.

Another state statute, known as "one-way attorney fees," is intended to protect policyholders from legal fees if they sue insurers for failure to pay claims or for inadequate claims payments. When combined with the AOB, however, this has created a gold mine for both contractors and lawyers.

Rampant roofing fraud is a perfect example of an effect of these laws gone awry. In the aftermath of a storm, roofing contractor scammers comb neighborhoods and promise home owners free roofs if they sign the AOB. Many of the roofing claims are for roofs that should still have long lifespans. Even if there is only minor damage, the roofer will file a claim, which results in insurers paying for the full replacement of roofs that only require repairs, as well as significant legal fees if a lawsuit results due to a claims denial or dispute. The same tactic has also been used on condo associations.

Meaningful reform on its way?

In June 2021, Governor DeSantis signed into law Senate Bill 76, with the intent of reforming residential and commercial property insurance claims in order to reduce the financial burdens placed on both insurers and their insureds. Other bills have been introduced and a legislator scheduled a special session to discuss reforming the property insurance market and reining in costs.

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Look to the E&S market for insurance placement

The excess and surplus (E&S) lines market is available for high-risk, high-hazard property locations, including in areas with a high exposure to liability. The key is partnering with a carrier that works with clients and is willing to fight for them in court against plaintiff attorneys who file exaggerated or frivolous lawsuits and demand high settlements.

It's worth the fight, as continuing to allow excessive and unwarranted litigation ends up costing more in the long run and puts the insurance market in jeopardy, as we have seen in Florida.

An E&S carrier committed to tackling today's aggressive plaintiff bar and nuclear verdicts, which have contributed to the underwriting unprofitability and carrier exodus in Florida, is able to achieve a strong combined loss ratio and remain in position to meet its clients' insurance needs. With the right E&S carrier, agents and brokers have an opportunity to find a home for both their personal and commercial clients for hard-to-place risks including in the coastal areas of Florida.

The E&S market can help provide clients with a solution if they have been canceled, denied, or non-renewed insurance coverage in the past or have a claims history. ■

The author

Rick J. Lindsey is president, chairman and CEO of Prime Insurance Company and Prime Property & Casualty Insurance Inc. Rick started his career as a licensed insurance broker. He recognized that many high-risk classes were in distress due to cancellations, non-renewals and, in some instances, simply being misunderstood by the standard insurance carriers. He envisioned a full-service model that has become a reality that fosters a partnership approach with the insured every step of the way through underwriting, risk management and claims.

REC MARINE OR WRECK MARINE?

An unprecedented decade for the recreational marine market

By Christopher Pesce

A transformation has been underway for the past several years in the recreational marine aka "rec marine" insurance industry. It generally encompasses two unique product classes, boats and yachts in one and marine facilities (including marinas, boat dealers and yacht clubs) in the other. Historically, both classes of rec marine have experienced what amounts to a roller coaster ride of underwriting results—profitable in some years, marginal in most and devasting at best in the years when the wind blows, which unfortunately have been many of late.

Boats and yachts

As with so many lines of business, rates for boats and yachts had been persistently falling for the better part of the past 25 years. As an ocean marine line of business (in most states), this class offers a very low barrier to entry. Freedom of form and rate can be an underwriter's best friend and worst enemy at the same time. New programs seemed to pop up annually, many as a rebirth of a failed program before it, but "hey, we'll do it better this time!"

The attritional loss ratios (losses excluding CAT events) were mostly borderline profitable, if at all. The poor results were being driven by many factors, inadequate rate being the most obvious. Then we add soaring cost of construction and new technology-driven enhancements that ballooned repair costs. For example: The cost of a common run-aground claim skyrocketed with the introduction of forward-facing Pod drives that, by design, shear off when the boat has a hard grounding, the cost of which was never contemplated into the underwriters' rating scheme.

> *Social inflation drove liability verdicts higher and higher, and then came the onslaught of storms. Superstorm Sandy was the first shot across the bow … .*

Advancement in technology made boating easier to get into, inviting record loss frequency. The Florida market specifically was plagued by organized crime rings, with record thefts of boats and outboard motors, as well as increased costs associated with lightning strikes.

Social inflation drove liability verdicts higher and higher, and then came the onslaught of storms. Superstorm Sandy was the first shot across the bow—the largest loss of boats from a single storm event ever recorded, with an estimated 65,000 boats lost or damaged. Rates firmed modestly for approximately 18 months following that storm, and mostly were limited to New England risks.

Starting in 2016, we saw back-to-back years of hurricane activity; Matthew, Harvey, Irma, Maria, Florence, Michael and the defining back-breaker of the status quo, Dorian in 2019. Hurricane Dorian was a Category 5 beast of a storm, the most powerful hurricane on record to ever hit the Bahamas and, while it mostly missed Florida, it was a direct hit for many of its insurers and reinsurers. I can name 12 different boat programs that have either completely imploded—ceasing to exist—or withdrawn from the southeast market. In fact, as of the writing of this article, a large national carrier just announced their withdrawal from Florida for all boats under $1,000,000 in hull value. The carnage continues.

The result of all this was a massive withdrawal of capacity for boats and yachts in the southeast and throughout the gulf coast. Rates are up anywhere from 50% to 100%-plus for most risks, with much tighter terms, conditions, and deductibles. We're at a point where we simply do not have an option for certain risks that are getting non-renewed—not domestically, not in London, not for any price or any terms.

We're seeing the entrance of non-rated carriers with foreign capacity being opportunistic given the current rate environment and, despite the risk of your E&O carrier not covering risks placed in an unrated market, brokers are seeking this capacity out of pure desperation.

It's safe to say this market has "corrected" in a material way. The question is, for how long? Marine underwriters tend to have short memories but the reinsurers who ultimately provide the capacity for CAT risks do not. That is the primary reason we have yet to see new capacity enter this market; there's a limited number of reinsurers who entertain CAT risks for boats, and most all have the scars that have not yet healed from daring to dip their toe in these dangerous waters.

Inevitably capacity will slowly return to the market, but will it do so in a responsible, sustainable way? That story is yet to be written.

Marine facilities

While marine facilities haven't seen the same market contraction that boats and yachts have, there's one line of business that's become quite hard: docks. Piers, wharves and docks in the southeast have taken a strong beating—a hard lesson learned by insurers, who tend to model the probability of loss to property based on the severity of a CAT event. What's the amount of loss I should expect for a Category 1 hurricane? Cat 2? Cat 3?, etc. The problem with these models is that the severity of the storm is predicated on wind speed, which most often isn't the leading indicator of damage to docks; it's storm surge, which doesn't always correlate to wind speed.

Two great examples of this are Superstorm Sandy, not quite a CAT 1 hurricane, and Hurricane Matthew, which to most was a completely forgettable storm, except to those unfortunate dock underwriters.

When Sandy made landfall, its maximum sustained wind speed was only 80 MPH, just over the CAT 1 minimum of 74 MPH. Yet, the storm surge was spectacular, leading to a massive loss of docks and boat dealer inventories from New Jersey north to Rhode Island. No model predicted that a CAT 1 storm could be so devasting, yet the devastation for the most part was completely related to the surge. If you were not impacted by the storm surge, you likely had very little to no wind damage.

Hurricane Matthew glided along the eastern coast of Florida and barely grazed the coast of South Carolina as a Category 1 hurricane. Again, we found the storm surge generated by Matthew was disproportionate to it size. While this storm won't go down as a notable storm in the history of P-C insurers, it was disastrous for marine underwriters from Florida to North Carolina.

The consistent barrage of storm activity over the past decade has certainly led to a dramatic tightening of terms and conditions as well as rate realignment that better reflects the reality of our exposures as marine underwriters. While this is great, the elephant in the room currently is the skyrocketing lumber and electrical costs that are leaving most insureds dramatically underinsured and, sadly, going mostly unaccounted for by most marine underwriters.

This is what makes me wonder if our industry should rebrand as the underwriters of wreck marine. ■

The author

Christopher L. Pesce was president of Maritime Program Group, the largest recreational marine program underwriter, which is now part of One80 Intermediaries, a growing program and wholesale brokerage specialist. Today, Pesce serves on the One80 Intermediaries executive leadership team and leads the company's Program Division. As an insurance wholesaler and program manager, the privately held firm offers placement services and binding authority for property/casualty, financial lines, personal lines, cannabis, life insurance, medical stop loss, alternative risk, warranty, lender-based insurance, travel/accident and health risks. For more information, visit www.one80intermediaries.com

WHAT'S SO GREAT ABOUT "THE GREAT RESHUFFLE"?

How to adapt and thrive amid a once-in-a-lifetime labor market

By Andrew Widmaier CLCS, CIC

By now you have heard about the massive wave of workers leaving jobs in the aftermath of the COVID-19 pandemic. The number of U.S. adults having departed their jobs for greener pastures since April of 2021 has passed a staggering 33 million. Though the insurance industry does not get the headlines that retail and restaurants do, agencies and insurers have been severely impacted by the current job market climate.

According to the Insurance Labor Market Study, an investigation of hiring trends within the insurance industry produced by the Jacobson Group, "The industry is amidst 'The Great Reshuffle' as professionals waiting to make moves earlier on in the pandemic are now exploring their options and re-evaluating their place at their current employers. This has made recruiting, especially at experienced levels, extremely competitive."

The same study found that 56% of companies in the insurance industry plan to increase staff in the next year, which creates an unprecedented dynamic—and challenge—for insurers and agencies alike: How do you attract and retain top talent when top talent is suddenly so hard to pin down?

It starts with knowing what the people who work for your organization want out of their work arrangements. Agency office staff have been clamoring for more hybrid work and work-from-home arrangements as a part of their employment agreements.

That's not to say that agencies have been caught unprepared by the current trends. Insurance agencies

have been among the leaders in introducing remote work options for their employees. Long before the pandemic began, agency service staff like account managers and customer service reps were already transitioning to more hybrid situations. Producers had already been operating out of their homes as well, as they are constantly on the road and are infrequent office visitors to begin with.

The bigger shift has been among the agency service staff, whose desire to work from home was accelerated by the pandemic. From a service standpoint, everything these team members do is online—from the quoting process to the agency portal. On the agency side, they typically use an agency management system (itself a repository of mass amounts of sensitive data), and a document filing system (SharePoint and ImageRight are among the better known).

Some agencies even use the agency management system itself as a services tool and document/message repository, which can present certain extra exposures. First, allowing people to remotely log in and out can create opportunities for enterprising hackers. Second, because of the sensitive nature of the files (which can include the full book of business, credit card data, proprietary secrets for client companies, etc.), these systems are loaded with security exposures that need to be addressed.

Agency owners find themselves in the position of having to balance the emerging needs and demands of their workforce with the absolute necessity of remaining vigilant about protecting the information stored within information management systems. Letting employees work remotely may be popular, but it creates all kinds of added risk.

How to adapt

Here are three ways your agency can adapt and thrive during "The Great Reshuffle."

1. **Have a clear policy on remote work.** So much of the way offices are structured in the post-pandemic period is the result of decisions that were made during a crisis. As the world shut down in April of 2020, businesses were forced to change policies and offer accommodations simply to stay afloat. Now, two years later, this ad hoc approach to office policy making has left inconsistency and confusion in its wake. Workers want to continue with remote work, while businesses tend to want their employees to return to the office full time.

A clear policy ... should include guidelines on working remotely, including everything from technology considerations ... to maintaining a professional appearance during video meetings.

A clear policy on remote work should include guidelines on working remotely, including everything from technology considerations (the use of a VPN, for example) to maintaining a professional appearance during video meetings. Consider some of these areas of risk that can get you in trouble:

- Pay for hours worked: Remote workers can work longer hours than their normal schedule. Under the Fair Labor Standards Act (FLSA), employers are obligated to compensate nonexempt employees for all hours the employees are "suffered or permitted" to work. A covered nonexempt employee must receive overtime pay for hours worked over 40 in a workweek and the employee should accurately track their hours and report their actual time worked so they can be paid appropriately.
- Reimbursement for business expenses: Employers are not required to reimburse employees for expenses that are incidental to the employer's business under federal law, but some state and local laws may require employers to pay for business expenses. For instance, in Illinois an employer is to reimburse an employee for necessary expenditures or losses during the employee's employment if they are directly related to services performed for the company. In California, expenses for which an employee may need to be reimbursed include personal cell phone time on work-related calls. An employer should establish which business-related expenses may be reimbursed.
- Notice and posting requirements: Another challenge for employers with remote flexibility is that they still need to comply with notice and posting requirements for a worker who is off site. If the remote worker rarely or never comes to the office, the employer still must communicate employment rights. Electronic formats are an option, with required notices and postings included on your company intranet or even incorporated into your applicant tracking system. The U.S. Department of Labor (DOL) provides guidance for employers on federal compliance in this area, but verify any state or local requirements.

2. **Secure your sensitive information/technology systems.** Ask yourself how secure your agency information and customer data is. Have you set up two-factor authentication for your log-ins? Do your passwords expire regularly and get updated? What else could you bedoing to balance the need to safeguard data while also developing a working environment that helps you attract and retain the best people?

We work with agencies of all sizes at Frank Winston Crum—from large agencies with multiple locations to smaller, independent firms. Information security is a challenge for all of our clients regardless of size, but it is a particularly sticky problem for our smaller partners. If you are a three-person shop and someone wants to work from home, that can become a struggle. And when workers remotely access the computer system to perform their duties, it opens the door to outside attacks.

If you are going to allow people to work remotely, it is essential to secure the computer systems those remote workers will be using. The how-to list for securing your agency management system is extensive, but for smaller offices it would be a good start to simply learn about and implement rules around the use of a Virtual Private Network

(VPN) by remote staff and the enabling of two-factor password authentication for added security.

But be careful; you do not want to alienate your workforce by introducing a host of new, technology-driven procedures and ways of doing business and then not fully train the staff that must use these new tools.

Finally, consider purchasing cyber insurance, which has become even more important as businesses rely more heavily on technology. Your data is worth money and deserves to be protected.

3. Get creative about retention. Insurance agencies are set up in myriad ways. Sometimes the owner of the agency owns all the accounts that salespeople bring in, which means if the agent leaves, they leave their clients behind. In other cases, producers own their accounts and can take them with them if they decide to jump to another agency.

No matter how an agency is organized, the fact remains that a great salesperson is always highly prized by their agency. There are not enough great agents to go around, and high performers tend to stay put because they are well compensated.

One way to differentiate your agency, hang on to your talent, and attract top-level agents not currently looking to jump to a new job is to rethink agency splits. Traditionally, these splits have been used to motivate salespeople to bring in new business year after year, and to insulate the agency from loss of business should an agent decide to move on. As such, commissions on existing accounts often decline over time—earning the agency more money but decreasing the agent's incentive to stay at the same time.

Have you considered basing commission splits on account size? Under a program like this (there are many variations), agencies pay higher commission percentages to producers on larger accounts—for instance, those over $100,000 in premium—versus smaller accounts. This incentivizes the producer to go after larger revenue-producing accounts while also helping the agency generate larger profits per account.

What are you doing to get creative with the commission equation to motivate agents to stay put? Combining changes to the pay structure with quotas for new business can drive profits and retention at the same time.

The trick is finding the right commission structure that works for the agency and the agents. Crunch your numbers. You might be surprised by what you find. ■

The author

Andrew Widmaier, CLCS, CIC, is a commercial property and casualty insurance executive with more than a decade of experience in middle market agency and carrier roles. In Andrew's current role, he develops and manages new and innovative casualty insurance products for Frank Winston Crum Insurance Co. Andrew has managed the marketing and placement of $35 million-plus in agency premium, client-facing account management for books of business in excess of $1 million revenue.

CONSTRUCTION INSURANCE

A vibrant but challenging market exists for agents in Florida

By Kyle Flynn

Construction has been booming in Florida over the past couple of years as the population in the state has grown. In fact, Florida is second among all 50 states in growth, adding 211,196 inhabitants from July 2020 to July 2021.

This is great news for the construction industry, which makes up about 5.4% of Florida's $58 billion gross domestic product. Not only does population increase mean more demand for new construction of residential homes, but also more demand for commercial buildings and infrastructure, like hospitals and schools.

The construction demand led the state to issue the nation's second-highest number of building permits in February 2022; only Texas issued more. In addition to population increase, the high permit numbers might also be due to the large construction presence in Florida. The construction industry has made itself a home in the Sunshine State, with 13% of U.S. construction firms residing in a state that houses 6.5% of the nation's population, based on 2017 statistics.

The risks

While the construction boom is good for business, it can highlight or even intensify the risks in an already risky industry, making it even more difficult for contractors and their insurance agents to find affordable and appropriate coverage.

High demand can mean tight deadlines, which can lead to mistakes and defects. Tight deadlines can require companies to push through projects, even during periods of bad weather. During hurricane season, from June 1 through November 30, Florida faces greater risk from severe weather than any other state. When companies take on projects within the Atlantic hurricane season, there's increased risk of weather damage while building is taking place, including weather damage that can impact the structural integrity of the building well after the storm has passed.

Changes to the landscape of the job market due to the pandemic have brought a major gap between people able and willing to work and employers seeking to hire. A recent survey found that 74% of construction firms throughout the country plan to hire new people.

Since the Florida construction industry is outperforming many other states, firms here will likely take on new hires, but because of this worker shortage, construction companies are hiring workers with less experience or making do with fewer hands on site. This can lead to both an increased likelihood of accidents on site as well as the potential for lower-quality work.

In addition to hiring issues, construction companies are facing higher material costs, increased healthcare costs, increased technology demand and cost, and increased costs of labor. With expenses like these increasing day by

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day, making room in the budget for insurance, especially in higher-risk situations or after a loss, can get more and more difficult.

Construction firms in Florida face several unique challenges, including extra building codes designed to ensure structures withstand hurricanes, land elevations at or below sea level, and an abundance of marsh or wetland. This can make it challenging to find an area with firm enough ground for a building's foundation, and changing the landscape to make it easier can be very costly.

Additionally, Florida's high annual rainfall makes waterproofing a high priority and has led to major disasters previously in Florida's construction industry. When done incorrectly, poor waterproofing leads directly to water damage, which causes rot, degradation of concrete, and even structural collapse.

The response

Specific construction-related insurance challenges exist for managers who have experienced a loss, as well as those who take on higher-risk work.

Since 2016, Aspera has found commercial casualty insurance solutions for construction risks in Florida. We work with our markets to craft coverage for professionals within all levels of the industry, ranging from artisan contractors, new residential and commercial construction, renovation and remodeling, and 100% paper contractors, by adjusting premiums and coverage to suit individual needs. Our goal is to make the hard-to-insure easy to please.

For instance, one particular account brought to us was a construcZtion manager who began a crane operation. The existing insurance carrier was uncomfortable with covering the crane operation element of the business, so the agent reached out to us for help and we were able to find coverage. We worked with our carrier to return a quote for this account to the agent in less than 24 hours; the account was bound within another week and we recently renewed it for a second year.

While there are challenges with insuring construction companies, the need for insurance is high. Construction companies can be a good market for insurance agents to tap into, particularly in Florida, where growth is significant. Many of the associated risks, however, require creativity and experience to put together affordable and reasonable solutions that make sense for each client, and a solid underwriting manager/wholesale brokerage can help with the process. ■

The author

Kyle Flynn, commercial insurance division manager at Aspera Insurance Services, has over 10 years of experience in excess and surplus lines underwriting. Aspera Insurance Services acts as an underwriting manager for personal lines and a wholesale brokerage for hard-to-place commercial casualty risks. For more information, email marketing@asperains.com or call (804) 774-2102.

YOUR REACTION TO CHANGE DRIVES YOUR GROWTH

Partnerships impact how your insureds are nurtured and serviced when they most need it

By Alyssa Rivera

How has insurance made a difference in your community? What about the difference it has made in the lives of your insureds?

As insurance professionals, we are a metaphoric safety net for the insured. When insureds endure an unexpected loss, it helps if they have a strong relationship with their retail agent, who can support and guide them through the claims process. Of course, agents bring value other than just after a loss. The insureds' sense of security is solidified once their policy is assumed to have been placed with a reputable carrier by their trusted retail agent.

With the insurance market constantly changing, retail agents are given an ultimatum of to grow with these changes. The partners you choose through times of change can affect your growth. How will you react to these changes?

Stand on the shoulders of giants

Change strikes the marketplace as soon as we think we have a handle on the insurance market and the appetite of the carriers your agency can access. Retail agents find themselves on a quest for new carrier appointments that can meet the needs of their customers. The fact is that some of these markets are not easy to access directly, especially for retail agencies.

Some agents prefer accessing markets through an MGA or broker because of their relationships with carriers. It can be an extensive process to gain access to admitted markets. Many carriers seek specific qualifications from retail agencies that become valuable only with time, such as credibility and proof of consistent productivity. It is okay that your agency cannot immediately access their desired markets, or at least not alone.

This concept is commonly known as standing on the shoulders of giants. To overcome hurdles, you may have to access brokers to attain the growth and success on the other side of these obstacles. Accepting that you may need a giant to stand on can get you and your agency to support your overall growth and offer the insured a range of essential coverages that suit their needs.

Pivot your mindset

Whether the market hardens or softens, carrier appetites are constantly changing, and your insured's needs change; change is your opportunity for growth. The presence of change should not be viewed as a potential threat, but as an opportunity to flourish in ways you have never accomplished before.

Pivoting your mindset can be a challenge; however, it is necessary for you to guide your insureds through risk management strategies and to offer suitable coverages unique to the insured. Every insured is different, which calls for comprehensive solutions. Choosing a partner who can offer advice from their experiences will help steer you toward success.

Strategically choose your partners

An agency's core competencies must be satisfied in its partnership decisions. The relationships and partners you choose will determine how efficiently you maintain these connections. These relationships impact how your insureds are nurtured and serviced when they most need our support. For instance, some agencies may hit a roadblock when attempting to access admitted markets; therefore, it is critical to choose a partner that can sustain relationships with carriers so you can concentrate on building rapport with the insureds.

A well-known Greek philosopher said, "The only constant in life is change." Build, maintain and nurture your client relations and partnerships. A few solid and consistent relationships will do more to drive the growth of retail agencies than attempting to maintain many relationships that do not meet your insureds' needs.

Avoid spreading your agency too thin by having too many partners to please; this can lead to losing relationships, eventually diminishing your efficiency and productivity.

Growth is continuous

There will always be a challenge associated with change. Change is inevitable, and independent insurance agents are forced to confront them while navigating the marketplace. Many of us can find ourselves at eye-level with the insured. In some instances, we are the insured in our own lives.

If our reaction is to stay adaptable to any forces that the insurance marketplace throws our way, we will be able to achieve growth. With change comes the opportunity to expand our knowledge and engage in new possibilities. Be eager to learn amid the countless modifications that you will face throughout the insurance industry.

Your reaction to change ultimately drives your growth. ■

With change comes the opportunity to expand our knowledge and engage in new possibilities. Be eager to learn... .

The author

Alyssa Rivera is the marketing assistant at Halcyon Underwriters, a wholesale insurance broker that offers retail agencies access to some of the top admitted carriers in the insurance marketplace. Alyssa has a bachelor's degree in marketing from the University of Central Florida and joined Halcyon in late 2019. Alyssa has written over 20 articles posted on the Halcyon website and their exclusive newsletter, The Intelligent Broker Newsletter.

FLORIDA PROPERTY INSURANCE— A MARKET ON THE VERGE OF COLLAPSE

Dealing with a deluge of frivolous, claims-related litigation activity accompanied by egregious trial attorney fees

By Robert Ritchie

Although its moniker is the Sunshine State, Florida is legendary for its storm activity. Hurricanes, floods and tornadoes are just a few of the natural disasters Floridians can expect—and prepare for—when Mother Nature sends them our way.

But Florida has experienced a torrent the past few years that is unexpected, impossible to mitigate, and entirely manmade—a deluge of frivolous claims-related litigation activity accompanied by egregious trial attorney fees, creating a disaster that has Florida's property insurance market teetering on the verge of collapse. Only decisive and meaningful legislative relief can help prevent the market from falling into an abyss of complete and utter destruction.

While this may sound pretty dramatic, here are a few statistics that illustrate how and why Florida's property insurance market finds itself in such dire straits:

- 75% of all Florida roof claims end up in litigation.
- 70% of total litigated claims in Florida are roof-related.
- Florida had 85,000 or so industry-wide lawsuits in 2020 and 117,000 in 2021. The 49 other states had an average of around 730 lawsuits during the same time span.
- More than 380 lawsuits are filed per day in Florida, versus a countrywide average of two lawsuits filed per day in every other state (some individual states have a higher daily average).
- Between 2013 and 2020, Florida's property insurers paid out $15 billion in claims costs. Only 8% was paid to consumers, while 71%—more than $10 billion—was paid to attorneys.

That's not all. The market is rapidly drying up in the Sunshine State. Consider this:

- Five Florida property insurers have been placed into liquidation in the last three years—two so far this year (with others on a watch list).
- Three carriers have been downgraded by rating agencies (with others on a watch list).
- Six have suspended new homeowners writing in Florida in the last six months.
- Several insurers have non-renewed thousands of policies, leaving customers scrambling for coverage.

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- Another year of $1.5 billion underwriting losses for the industry; only three companies have a cumulative positive net income in the last five years out of 52 residential carriers.
- Citizens Property Insurance Company, Florida's "market of last resort," is the fastest growing company in the state. It is expected to swell from 800,000 policies in force in February 2022 to over a million customers by year's end.

All of this, and virtually none of it is related to hurricane damage.

What, you may wonder, led to the opening of the "lawsuit floodgates" in Florida? Several factors have drastically contributed to a perfect storm in Florida's legal climate:

- **Sebo v. American Home Assurance (2016)**—The Florida Supreme Court shifted to using the Concurrent Causation Doctrine that permits a covered cause of loss (such as wind) to combine with damage caused by non-covered cause of loss, putting insurers on the hook for claims that often are due to wear-and-tear or manufacturer defect.
- **Joyce v. FedNat (2017)**—The Florida Supreme Court overturned a longstanding application of contingency fee multipliers (which allows lawyers to earn up to three times their hourly rate) when determining that those multipliers do not need to be reserved for rare and exceptional circumstances. The Joyce decision is contrary to the U.S. Supreme Court's 1992 decision.

Although the one-way attorney fee statute and claim filing statute of limitations were improved slightly in 2021 with the passage of Senate Bill 76, nefarious actors have already learned how to exploit loopholes in the law. Additionally, an injunction was filed against the provision intended to curb roofing contractor solicitations, rendering that provision moot.

Senate Bill 76 also allowed for a 10-day pre-suit notification process, intended to allow the customer and insurer time to discuss (and hopefully resolve) the claim. Based on 2021 lawsuit volume, that provision has done nothing to stem the flow of claims-related lawsuits in Florida.

In 2022, the Florida Senate sponsored Senate Bill 1728. The bill would have allowed for the ability to mandate ACV (Actual Cash Value) or Roof Payment Schedules (RPS) for roofs greater than 10 years of age on all HO-3 policies. More than 40 states, including those with significant hail activity, have this mandate in place. It passed with bipartisan support in the Senate (a rarity in this day and age).

Despite significant market deterioration during the session, the House refused to allow the bill to be heard, citing the desire to wait another year to see if the "significant" bill introduced last summer (SB 76) would have an impact on rates. Short of a special legislative session, which does not appear to be a possibility at this point, reform will have to wait until mid-2023, at the earliest.

With reform off the table for now, virtually all Florida insurers are taking steps to reduce their exposure. Some companies are entirely closed for new business, and all have restrictions in place based on location, age of home, age of roof and Coverage A (minimum) amounts. Policy cancellations and non-renewals are at an all-time high, while Citizens Property Insurance Company is bursting at the seams. Some have yet to obtain reinsurance, so a few more insolvencies are entirely possible.

Regarding property insurance reform, outgoing Senate President Wilton Simpson said during the 2022 session, "If we fail, because of whatever special interests, then we've only failed our citizens." Sadly, the session adjourned without passing any measures that would improve the market. It is, in fact, Florida consumers who are the ultimate victims.

Homeowners, particularly seniors on a fixed budget, have little wiggle room and are literally making choices between food, medicine and the increased cost of home insurance. It is not uncommon to hear that customers are seeing $200-plus tacked onto their mortgages, simply due to the rising cost of home insurance. In fact, some customers who live in a flood zone are paying more for their home and flood insurance each month than their mortgage. And that's without taking into consideration the assessments that will be tacked on to pay for the outstanding claims associated with the carrier insolvencies we've experienced so far.

Florida's property insurance market conditions are beyond unsustainable. A major hurricane landfall in the Sunshine State this summer could be the tipping point to an unprecedented failure. ■

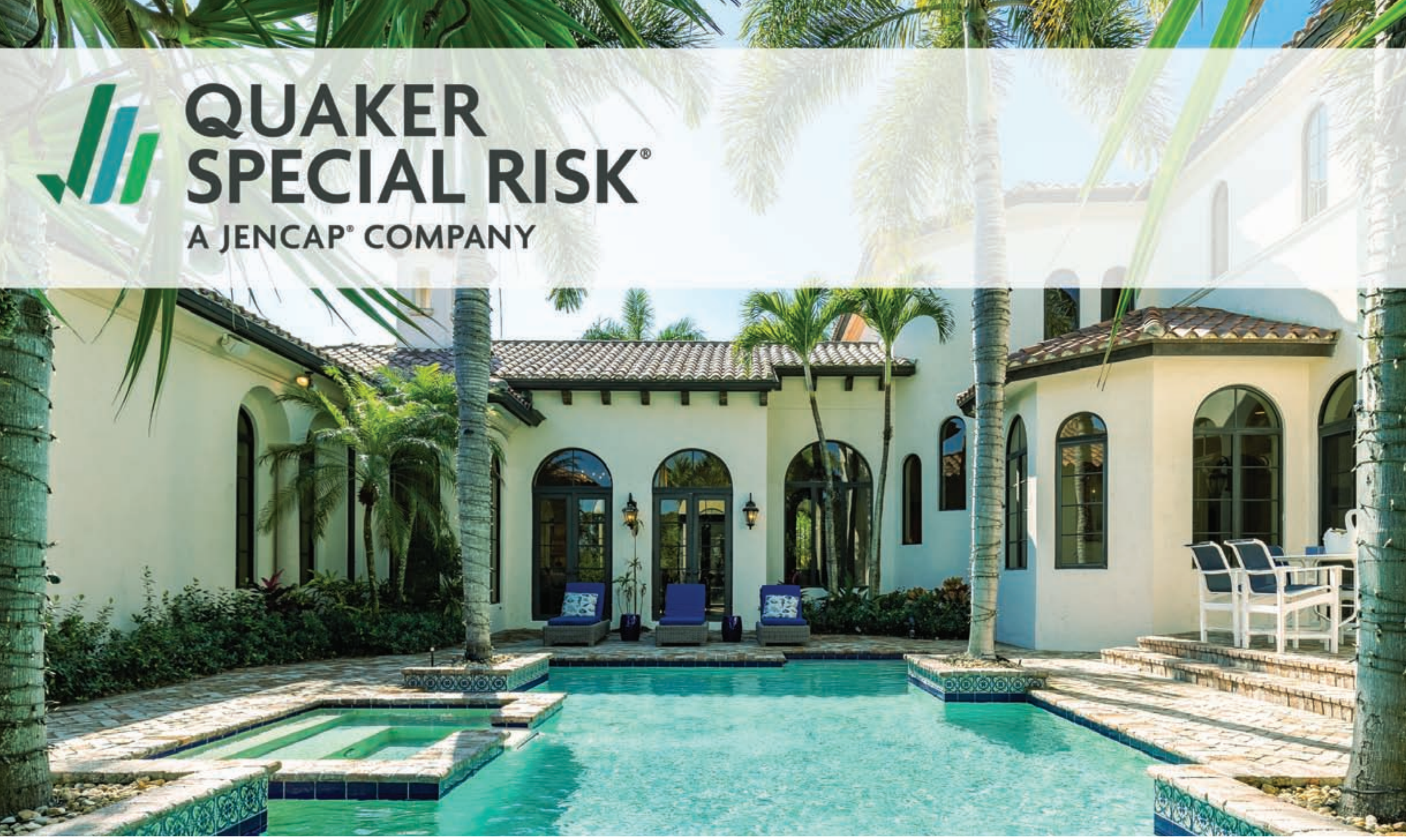
Homeowners, particularly seniors on a fixed budget, have little wiggle room and are literally making choices between food, medicine and the increased cost of home insurance.

The author

Robert Ritchie is president and CEO of American Integrity. An insurance industry veteran with more than 35 years of experience, Bob has built and transformed businesses ranging from startups to large national insurance companies. His vast background includes specialty niche insurers, such as American Modern, national carriers, including AIG and CNA, and conglomerates, including GE Insurance Solutions. He brings this experience to benefit American Integrity and its policyholders. Bob has been at the forefront of shaping and advocating for needed property insurance reform that affects all Floridians.

Bob and his wife, Donna, founded the Ritchie Hockey Foundation after the passing of their son Jason, a lifelong hockey player, to help student athletes discover and reach their potential.

Bob serves on the board of Enterprise Florida, Inc., a public-private partnership that seeks to expand and diversify the state's economy through job creation.



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PREPARING YOUR CUSTOMERS (AND YOUR BUSINESS) FOR HURRICANE SEASON

Before an event occurs, agents can ready clients with a coverage checklist

By Dave Randle

June means the start of Atlantic Hurricane season in Florida. As insurance professionals, this time of year triggers different feelings, from affirmation that we're doing right by our customers to uncertainty as we navigate preparing both our businesses and those of our customers for potential danger. Anticipating the impact of the season, and how companies will respond to disruptions is vital to ensuring that policyholders are well protected and ready for whatever lies ahead.

As a leading writer in the Florida small business segment since 1981, Main Street America Insurance sees hurricane season as another opportunity to deliver on a promise—fully backing independent agents and demonstrating the service and capabilities we have carefully crafted and improved during quiet times.

Each year, storm season serves as a reminder of the commitment we made, and continue to make, to over 20,000 policyholders statewide. Main Street America has stood beside independent agents through some of the most significant storms to affect the Sunshine State.

Through those experiences, we have created a checklist of the most important coverage considerations and other tips to help your customers weather the storm.

Review your coverage checklist

When reviewing your customers' coverage this hurricane season, there are a few important items to remember including:

Business income. Perhaps the most impactful coverage your customers can have, business income restores cash flow for the insured until they can resume normal operations. This coverage can be a literal lifeline for businesses affected by a hurricane. Always ask for actual loss sustained terms. Forms will vary depending on the carrier you work with, so take the time to ensure that you understand all limitations. For instance, does the policy include extended business income to help after your customer reopens their business?

Ordinance or law. What happens when your insured's business sustains damage in a storm and now the rest of the structure must be brought to the current code or entirely rebuilt? When building a policy this is an easy item to overlook, but the issue arises more often than you think and can lead to significant out-of-pocket expenses without the right coverage in place.

Utility service interruption. When it comes to hurricane season, this is one of our most frequently encountered claims. Depending on the storm, history has shown that it can take days, weeks or even months to restore power from off-site damage to the electrical infrastructure. While reviewing your customers' coverage, check to see if coverage is also available for business income tied to utility services.

Building valuations. From the huge increases we are seeing in construction costs to supply and demand issues and other inflationary pressures, building valuations and the cost of repairs are rapidly rising. Buildings are insured based on actual reconstruction cost at time of loss, not market value or the original purchase price of the building. It is also important to remember that coinsurance can be a factor. If possible, look for a business owners policy format for your customer, as it generally will not include a coinsurance provision.

Wind and hail deductibles. Each carrier you work with will handle things such as wind and hail damage a little differently. Because of this, many different formats are available for percentage-based wind deductibles. To ensure a smooth recovery after a storm, get to know each company's unique offerings and be sure that your customer fully understands the coverage and how it works before a loss occurs.

Flood protection. Something many customers don't consider when setting up an insurance policy is flood insurance. The common misconception seems to be that flood coverage is included in a standard business insurance policy. When working with an insured, be sure to explain that flood insurance is a separate piece of their overall insurance protection and point them in the right direction so they can be fully covered.

Outdoor property. When considering property coverage, the insured will certainly be thinking about the building itself and any items inside. But there may be some outdoor property they don't think about, like signage and even outdoor décor and landscaping. Take this opportunity to speak with your customer about extending their business property coverage to include any outdoor property that could be damaged in the event of a storm.

Resources and more

Our longtime partners at the Insurance Institute for Business & Home Safety (IBHS) offer a variety of valuable online resources to help business owners prepare for storms and plan for business continuity operations. You can learn more about IBHS at ibhs.org, and can access their latest resource guide at disastersafety.org/hurricane/commercial-ready.

At the end of the day, the best thing you can do for yourself and your customers is to know your carriers well. By keeping insureds informed about all the coverage options available and ensuring their policy is up to date, you can guarantee greater protection and fewer business disruptions when the inevitable happens.

Hopefully, we won't have to worry about Alex, Bonnie, or Colin—the first named storms of 2022. But if we do, I am confident that, across the industry, agents will deliver for customers and further reinforce all the advantages of working with an independent agent. In that spirit, there is no greater time to reaffirm agency and carrier best practices and be sure that we are ready to take on the essential role of protecting commercial insureds in the coming months. ■

The author

Dave Randle joined Main Street America Insurance in 2008 as a surety development executive in the Bonds department and became a business management executive in the Southeast Region in 2010, where he served agent-customers in Florida and South Georgia. He was promoted to Southeast Region president in 2015, after serving as director of distribution management. Previously, Dave held marketing and underwriting positions at Zurich Insurance Services, Jacksonville. He earned his bachelor's degree in business administration from the University of North Florida, Jacksonville, and his master's degree in risk management from Florida State University, Tallahassee. He holds several professional designations, including Certified Risk Manager (CRM), Certified Insurance Counselor (CIC) and the Chartered Property Casualty Underwriter (CPCU) designation.

RISK RATING 2.0

Changes affecting millions of flood insurance policyholders and stakeholders

By G. Michael Sloane

Risk Rating 2.0–the rating methodology introduced last year by the Federal Emergency Management Agency (FEMA) as part of the National Flood Insurance Program (NFIP)—represents the biggest change to the system in more than 50 years. It's no easy task to implement changes like these; the enormity of the change shouldn't be discounted or unfairly criticized.

FEMA has incorporated new technology to help deliver rates that are actuarily sound, equitable, and easier to understand, and that better reflect a property's flood risk. It has also improved the quoting process, making it easier for the occasional user as well as for the frequent user.

"Risk Rating 2.0 is not just a minor improvement, but a transformational leap forward," FEMA said recently in a statement. "Risk Rating 2.0 enables FEMA to set rates that are fairer and ensures rate increases and decreases are both equitable."

Millions of policyholders and stakeholders are being impacted by the changes. FEMA is working and listening and is engaged and committed to every stakeholder as it strives to hit its "moonshot goal"—the plan it unveiled in 2018 to double the number of properties covered by flood insurance by 2023. It's up to us as Write Your Own (WYO) companies to help FEMA protect U.S. citizens and their properties from the peril of flood.

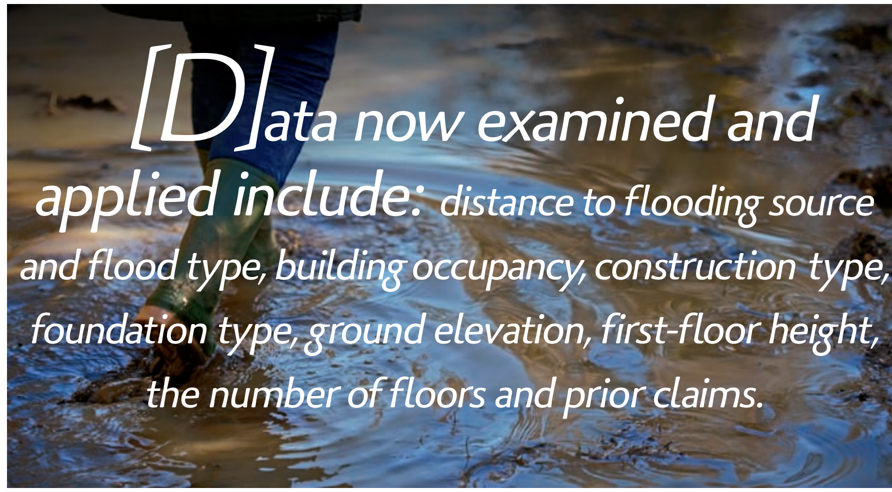
Our mission as WYOs is and will continue to be to educate, train and inspire our partners to engage with their clients. Also, we should work with communities and elected officials to understand the true risk of flood. Protecting against that peril will result in making choices today that will positively impact people's lives down the line.

The nation's mainstay

When you examine the NFIP and its new Risk Rating 2.0 methodology, you'll find that FEMA has undertaken an enormous task. From its very founding in 1968, under President Lyndon B. Johnson, to the cooperative arrangement created in 1983 between the NFIP and the WYOs, the NFIP has been there to offer residential and commercial coverages for nearly every property in the United States.

While I can't cite the exact total insured values currently under the program, it's no doubt in the trillions of dollars. The NFIP doesn't stop writing in ZIP codes, counties or states due to aggregate limits. They don't have that flexibility. They potentially offer—with limited restrictions—insurance to virtually every property. Whether it's a high-value home, a high-rise RCBAP (which stands for residential condominium building association policy and refers to the form used to write condo community associations), a commercial property or a low-value residence, the NFIP has consistently been there.

As our country has grown and developed since 1968, FEMA has been the significant and consistent backstop for the program and the protection of policyholders. In fact, when you look at the original transmittal from President Johnson to Congress in 1966, it was the very realization of growth and development that he cited as the need to create the program. He pointed out that, from



the 1930s to the 1960s, $7 billion was spent on flood control. That translates to $60 trillion today.

Now, more than $1 billion in losses is incurred annually. The population in 1966 was 198 million people, compared to 332 million today. Development has grown and coastal exposure has increased, but the NFIP has been there.

Risk Rating 2.0 methodology

The new methodology now rates policies based on the utilization of the following factors:

- FEMA-sourced map data
- Additional data sources
- Cost to rebuild
- Rating variables
- Broader range of flood frequencies
- Fees and surcharges

Now, such things as rate maps and new threat considerations that will better quantify the real risk to a structure are being used. To do this, FEMA has integrated automated datasets into the rating structure.

The building replacement cost is a new rating element for all properties and is determined using a tool that's part of the rating engine. That engine determines the replacement cost based on the information provided on the application. Additionally, the replacement cost tool isn't used for RCBAPs, but the RCV (replacement cost value) will be captured during rating. The agent will be able to enter a figure using the appropriate documentation.

When it comes to the rating variables, data now examined and applied include: distance to flooding source and flood type, building occupancy, construction type, foundation type, ground elevation, first-floor height, the number of floors and prior claims.

Standardized rating tables are no longer used, and rates are calculated using an algorithm. The flood zone and Base Flood Elevation (BFE) aren't used in the rating either, but elevations are considered for all properties.

Premium increases are limited by federal law to no more than 18% annually, but some policyholders are seeing decreases under the new methodology.

Is private insurance the option?

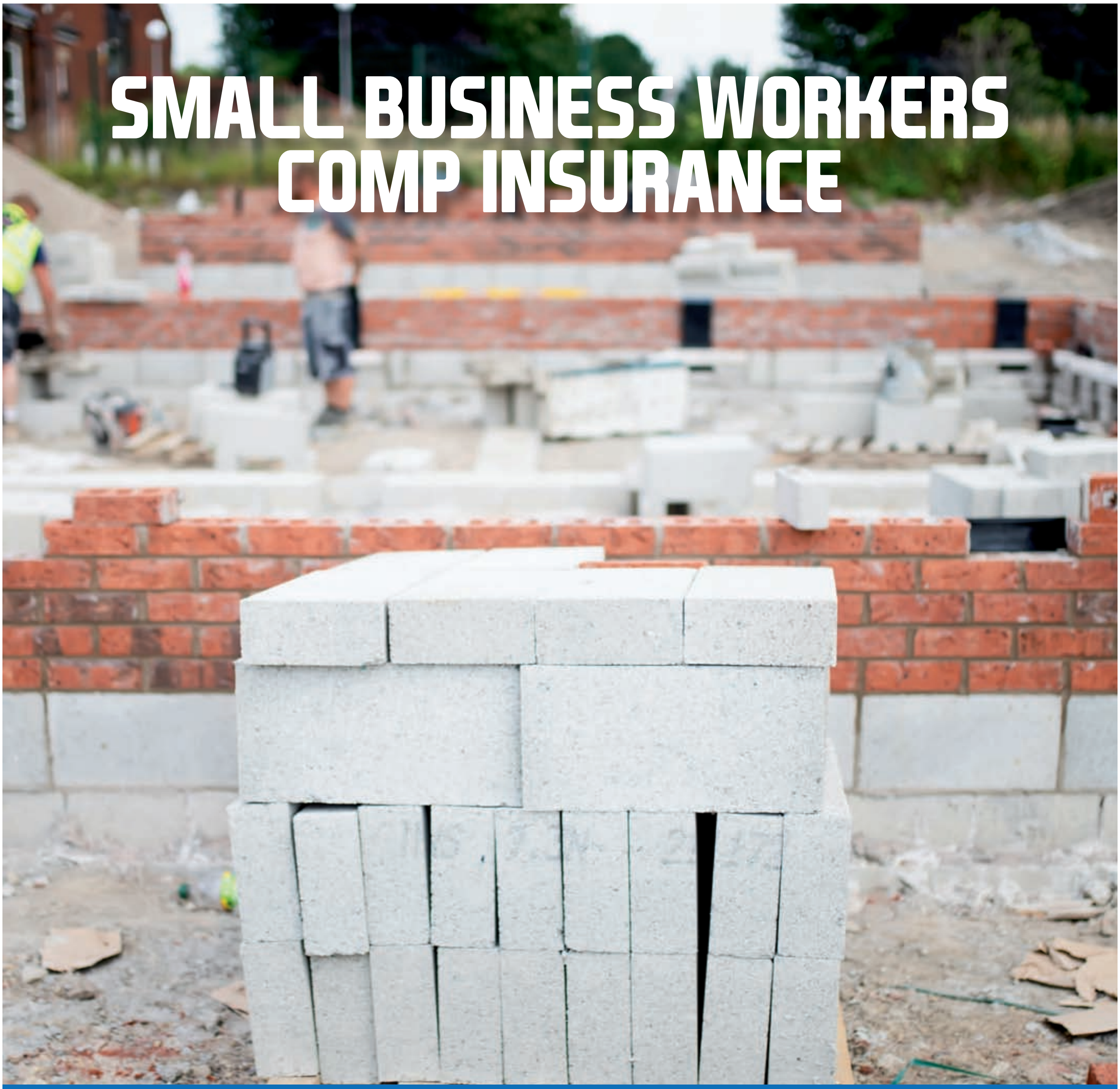
Private flood insurance certainly has a purpose and a mission—as does our entire insurance industry—to enhance and improve consumer awareness and understanding. By creating that awareness, consumers will be knowledgeable about their exposure to flood.

Private flood should be seen as a method to augment the NFIP, not necessarily to replace it. Private insurance can attract new clients and new business. It can provide unique coverages and capacity, while also delivering solutions to standard and complex risks.

Its ultimate goal is growing the number of potential insureds, working in unison to assure sustainable communities. Together, public and private flood insurances are a partnership with a common goal and mission. ■

The author

G. Michael Sloane is the executive vice president and chief marketing officer for Wright Flood, the largest flood provider in Florida and in the United States. For more information, visit www.wrightflood.com.



SMALL BUSINESS WORKERS COMP INSURANCE

Myths, markets and must-knows for independent agents in Florida

By Dax Craig

Workers comp is an incredibly complex type of insurance. Many states require all businesses to carry workers comp, and Florida is no exception. Yet, just because it's required doesn't mean it's easy to navigate, especially for your small business clients. Historically, small businesses have been neglected by traditional insurance companies, making it cumbersome and expensive for small businesses to get covered. This, in turn, makes it difficult for you to find coverage that meets your clients' needs.

The more you know about workers comp, the better you'll be able to educate and serve your clients. Whether you currently offer workers comp insurance to your small business customers or are interested in learning more, there are some key myths, markets and other must-know details to have in your back pocket.

Workers Comp 101

What is workers comp? Workers comp insurance was created to protect business owners and their employees. Before workers comp legislation came to the United States in the early 1900s, workers injured on the job had to fight for compensation for lost wages, medical expenses, and other reparations. To do so, workers had to prove negligence by their employers, which typically meant a long, costly, and disruptive legal fight. Since securing payment was an uphill battle, not many employees received settlements. In fact, even in fatal accidents, only about half of the victims' families received payment, and if they did, it was only about a year's pay.

The first comprehensive U.S. workers comp law was adopted in Wisconsin in 1911. Nine other states also passed regulations that year—and not a moment too soon;

in 1913 alone, more than 25,000 employees were killed in work-related accidents and about 700,000 were seriously injured.

Considered the first type of social insurance in the country, workers comp provisions were rapidly adopted. Thirty-six more states followed suit before the close of the decade. In fact, by 1921, only six states had not authorized compensation for workplace injuries. Eventually, the last holdout, Mississippi, finally passed workers comp guidelines in 1948.

Florida's workers compensation system provides important benefits to more than 448,000 small businesses. These benefits include providing medical payments, lost wages, and disability benefits to employees who are injured on the job. The system may also provide benefits to the dependents of employees who die due to a work-related incident.

In the Sunshine State, employers in non-construction industries must carry workers compensation insurance if they employ four or more workers. However, for employers in the construction industry, workers compensation insurance is required if they employ just one or more workers.

Small business owners should abide by state law in order to avoid paying fines but, more important, to protect their businesses and provide care for their employees. Paying out-of-pocket for work-related injuries can be financially devastating for a small business. As a Florida agent, getting the appropriate coverage for your clients may help small business owners avoid this type of financial loss.

Codes and cost

Every insurance agent needs to know their clients' employee class codes to get workers comp insurance. Class codes are three- or four-digit codes that insurance companies use to estimate rates based on the level of risk involved with the work the employees are performing.

Workers compensation codes are maintained by the National Council on Compensation Insurance (NCCI), an independent organization that gathers and analyzes data on workers compensation insurance. The NCCI establishes and maintains workers compensation class codes for hundreds of thousands of businesses across the United States. Some states have their own rating bureaus with a separate set of workers compensation class codes.

Employers are responsible for paying for workers comp insurance, passing those costs on to consumers or clients in the prices the business charges for its products or services.

When a small business owner purchases a new workers comp policy for their company, the price is estimated based on several factors, including class codes, payroll, location, and claims history. At the end of the policy period, the insurer will perform an audit to ensure that the initial estimate was accurate. Based on the audit, the business will receive a refund or pay the additional premium if there were changes or differences in the business's risk or workforce composition.

Common myths and facts

Some myths are fun—think the Ghosts of the St. Augustine Lighthouse or the Fairchild Oak. Other myths, like the ones surrounding workers comp insurance, are less so. These myths can impact your agency's business if you don't know the facts. At Pie, we regularly receive these common questions from agents and small business owners.

Myth #1: Remote employees don't need to be covered since they work from home. An employee's injury or illness is generally compensable under workers comp if it "arises out of and in the course of employment," regardless of where the injury occurs. Employees who work off site are entitled to workers comp benefits, although they'll need to prove that the injury is work-related. This may be difficult since telecommuters are often home alone while they work. Additionally, employers in Florida and beyond are responsible for providing a safe work environment for remote employees just as they do for workers on site.

Myth #2: Independent contractors don't require workers comp coverage. This popular misconception has caused major headaches for small businesses. If a client hires independent contractors (ICs), even a minor injury may be eligible for compensation. Workers comp insurance is a simple way clients can protect their businesses, even those with relatively no payroll. Contractors and subcontractors should carry their own workers comp insurance and carry a certificate of insurance before starting any job.

Myth #3: Employers don't need workers comp coverage for part-time employees. No matter how many hours they work, all employees need to be covered in most states, including Florida. Companies that are required to carry workers comp insurance but choose not to have it run the risk of incurring heavy penalties and fines. The good news is that having mostly part-time workers will likely result in a lower premium for your client, since the level of risk may be lower, depending on the industry.

Myth #4: My client's business is seasonal, so they don't need small business insurance like workers comp. Whether they operate year-round or only a few months a year, businesses with employees need workers comp insurance during the months they're open. Most carriers will write seasonal business as long as there's a defined open and closed period.

Key comp markets for agents

With the basics covered, you can become an expert in workers comp and let it drive revenue for your agency. One way is to connect with businesses that need your services, and expand into different markets, specializing in one or two industries. That way, you can fine tune your offerings for a particular niche, and your customers will be more likely to recommend you to others in their line of work.

Ultimately, you must decide which market approach is best for your agency. As you research which markets to pursue, consider these industries with a high demand for workers compensation coverage in Florida.

Construction. From plumbers and electricians, to artisan contractors and interior painters, there are varieties of opportunities in the construction industry for insurance agents—especially given Florida's booming real estate market. Employers in the construction industry need workers comp coverage to protect their business and their workers from risks like falling debris, ladder falls, explosions, burns, and electrocution. Moreover, workers compensation insurance is vital for the construction market, as many clients won't work with contractors or subcontractors unless they show proof of insurance.

Landscaping. With sunny weather all year long, Florida landscapers are year-round businesses. Risks for injury from falling branches, heat exposure, hazardous noise, landscaping equipment, chemical exposure, and more make workers compensation coverage essential for the landscaping industry. To help protect their employees and get adequate coverage, landscaping employers need informed, educated insurance agents they can trust.

Janitorial and cleaning. This lucrative field includes janitors, maids, house cleaners, commercial cleaners, carpet cleaners, upholstery cleaners, chimney sweeps, disaster cleaning and restoration specialists, window cleaners, pressure washers, school cleaners, and medical cleaners. If you specialize in this market, your Florida clients may appreciate educational resources about how to train employees on safe cleaning practices and how to prevent injuries at work.

Manufacturing. You might also consider specializing in the Florida manufacturing industry. People who work in manufacturing include mechanical engineers, instrument technicians, plant operators, machine operators, assembly line workers, fabricators, metal workers, painting and coating workers, quality control inspectors, welders, and more. There is great demand for workers compensation protection in this industry, making it a promising market if you wish to specialize.

When you do select a market, learn all you can about the intricacies of the particular industry and tune in to how you can satisfy clients' needs through your specialized insurance product offerings. Be sure to work with insurance carriers that have the interest, experience, and drive to work with your niche industry so you can offer your clients the best coverage possible.

As a Florida independent agent, workers comp insurance for small businesses is an exciting market to help grow your firm. While it may have its complexities, it's incredibly important to keep employees and employers safe, healthy, and profitable. ■

The author

Dax Craig is co-founder and president of Pie Insurance. He is responsible for overseeing Pie's sales, business development, engineering, underwriting, product, and analytics functions. Prior to Pie, Dax was co-founder and CEO of Valen Analytics, where he oversaw the company's growth and 2017 sale to Insurity.

NAVIGATING BUILDERS RISK MARKETS

Eight tips for successfully guiding clients to the best protection

By Christopher Reid

Building a high-value home can be an exciting endeavor, but such projects also come with considerable risk. It's essential for agents to understand the risk markets so they can advise their clients on how best to protect their investments.

For example, while the Florida wind season spans just a portion of the year, the state is considered a year-round CAT market with multiple perils that warrant attention. If your client wishes to build a new ground-up high-end home in this state, they'll need their contractor to take certain precautions.

For instance, it is imperative to use the best materials (doors, windows, roofing) and construction techniques. The goal is to minimize property loss and to mitigate the effects of wind, which can be a game changer when it comes to hurricane damage.

Here are eight key considerations for agents in Florida and beyond:

1. Understand lender requirements. If your clients take out a loan for the property and/or project—as most people do—they must comply with the lender's requirements. Florida is a price-sensitive market and clients often gravitate towards the least expensive premiums because policies to insure high-end homes can be expensive.

Advise your clients to look beyond the price point and instead focus on having proper coverage. For example, perhaps your client is trying to choose between a 5% or 10% wind deductible. In many cases, the bank won't allow the 10% wind deductible option, so that's not a feasible option. The client may in fact not even consider their self-insured exposure with the deductible. With a multimillion-dollar home, 10% may represent much more than they are willing to absorb.

Understand what each client's lending institution requires and advise them accordingly.

2. Secure multi-year coverage. There are markets that offer policy terms up to 36 months, which is typically a better choice than getting a policy that must be renewed each year. For most high-end homes—in catastrophe-prone areas like Florida where it's important to protect against hurricane damage—it is prudent to advise your client to get multi-year coverage. Fortunately, high-end home projects are eligible for this option.

Keep in mind, however, that annual renewals come with risks. There are times that an insurance carrier loses its appetite for builders risks. If that happens before your client's annual policy is up, the carrier will not renew. As a result, the client will then encounter a new set of problems, as other carriers typically don't want to get involved in a mid-term construction project. And if you do find another carrier to cover the project, rates will likely be significantly higher because mid-term construction projects have more exposures for replacement carriers to cover.

Help your clients avoid these issues by securing a multi-year term at the start of their project.

3. Consider other types of insurance. The most expensive causes of construction losses over the past five years


Maintaining a safe workplace shouldn't be a daunting task.
Protecting the workforce is what we do at Summit, and we're here to help every step of the way.

Post-COVID supply chain issues have been disrupting the new construction market, with increased costs for materials as well as delays in receiving those products from vendors.

were fire and explosion incidents, which reportedly accounted for more than a quarter (26%) of claims; natural hazards drove 20% of the claims.

It's possible that the insured will need additional types of insurance, especially if the lender requires them. In a CAT-based market like Florida, there are often lender requirements to cover flood exposure; however, not all carriers offer flood. If the original policy doesn't include flood coverage, the insured may be required to purchase a separate policy—at an additional cost—to satisfy lender requirements.

Build location may affect what types of insurance are necessary. For example, constructing a home on the beach in Boca Raton will likely require flood coverage, but a home in the middle of the state—like in Orlando—might not. Consider other types of coverage your clients may need, including earthquake, wildfire, theft of building materials, non-flood water damage, wind, etc. While the wildfires in California and Colorado have been making national headlines, there's exposure in every state, as evidenced by the recent fire in Panama City. Wildfire and other coverages are critical in certain locations, even if it isn't required by the lender.

Private client retail agents should advise their clients about whether they need additional coverage and, if so, what types.

4. Be clear on waivers of subrogation. Insurance advisors must perform due diligence to fully understand insureds' contracts with their builders; of particular importance are waivers of subrogation. If the insured has signed a contract and the builder inserted a waiver of subrogation, it means that if something goes wrong with the project, your client is waiving their rights to sue the builder.

This is important in placing the risk in the market because many carriers won't write a policy if a waiver of subrogation is in place. In fact, there's often exclusionary language in builders risk policies that assumes that a waiver of subrogation *isn't* in place. If there is a waiver of subrogation in place, it must be disclosed to the underwriter, so that it's rated and approved by the carrier.

If the question isn't asked up front and a policy is bound, there will likely be gaps in coverage.

5. Consider possible disruptions/delays. Here's another example of why a multi-year policy term is critically important. There can be numerous causes for project delays, including supply chain disruptions, staff shortages, and weather events.

The increased complexity of some construction projects—along with new sustainability guidelines—can also lead to setbacks. Post-COVID supply chain issues have been disrupting the new construction market, with increased costs for materials as well as delays in receiving those products from vendors. As a result, a project that should have taken 18 months to complete may now take two years or more. A multi-year term policy will cover the insured in case of delays, whereas an annual plan likely won't.

If your client doesn't have longer-term coverage in place and encounters delays in the project, they will have to extend their policy or potentially remarket it mid-term, (as was said) can be problematic and more expensive.

6. Be mindful of sustainability efforts. The goal to move towards a net-zero society means transitioning to more modern building methods, using cleaner materials and processes.

Complying with new sustainability regulations can lead to additional challenges. Timber, for instance, is a sustainable and cost-efficient material, but it has implications for fire and water damage risks. Also, whenever builders choose new methods or materials, there's a learning curve and potential risks associated with this lack of knowledge and experience.

7. Disclose a minimum earned premium (MEP). Even when clients are building a high-value home, they may want to shop around for the least expensive insurance policy. Suppose your client binds a fully earned, two-year policy for $50,000. If the builder happens to finish the project early—in just 18 months instead of 24—the insured should understand that there's no return on their premium. In other words, they won't get reimbursed for the "extra" six months after the project's early completion, and their agent must disclose that.

This is yet another reason why insureds need to work with insurance experts who can guide them through these issues.

8. Know that similar rules apply for commercial builds. The same carriers will offer terms for true ground-up commercial construction properties, for new apartment buildings, condominium projects and mixed-use buildings. The same underwriting practices apply for these projects.

Most important

Above all, provide sound advice. Retail insurance agents who specialize in the high-end private client market should educate themselves on all the issues involved in the builders risk market in order to more skillfully counsel their clients.

As part of these efforts, agents and brokers should be aware of how recent legislation impacts the builders market and work with carriers that can evolve with those changes. It is wise to work only with A-rated carriers or better, as markets without the A rating may offer substandard coverage. Collaborate with underwriting partners that understand the marketplace to help guide clients towards the most appropriate coverage.

Also, keep in mind that agents and brokers can give the best advice but it's ultimately the client who decides which policies to purchase. ■

The author

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TOP SEVEN MISTAKES THAT LEAD TO LAWSUITS

Avoiding common blunders that insurance agents too often make

By Jason Rogers

Earning potential, flexibility and the satisfaction of helping clients make insurance sales an attractive career for many. But with these positives come legal risks. As an agent, when you make a mistake or fail to do something important, clients might respond with legal action. Even if you do nothing wrong, customers can bring litigation against you for complaints more imagined than real.

Managing your legal risks starts with knowing your sources of liability. They often result from the mistakes you make while carrying out your professional duties.

Typical agent mistakes

Not every error or omission an insurance agent makes will result in a lawsuit, which means it's impossible to say which ones lead to litigation. However, there are blunders that agents often make that can be easily avoided and could ultimately save you from a messy lawsuit. Here are seven common insurance agent mistakes you should try to avoid:

1. Claiming an insurance policy has a feature it lacks
2. Not disclosing material information about a product to a prospect or client (for example, failing to mention life insurance or annuity surrender penalties)
3. Not securing the coverage a client explicitly requested
4. Holding yourself out as an agent with special expertise in a product or client-risk type, becoming, in effect, a fiduciary agent
5. Reducing a policy's limits of liability without a client's permission
6. Not sending a client's premium payment to the insurer, resulting in a policy lapse
7. Selling an insurance policy that doesn't fully indemnify a client's loss

By taking preventative measures to elude these common mistakes, you should be more comfortable when working with your clients. You'll also avoid the resulting domino effect from these common gaffes—one mistake often leads to another and makes the chance of litigation much more significant.

Sadly, lawsuits from clients don't always result from your errors or omissions. Sometimes producers or insurers do something that angers a customer. Even if an incident was out of your control, your clients might still hold you responsible.

Insurer claim denials are a common example. Believing that their policy should have fully protected them, customers often sue their insurer and their agent or broker to get their claim fully paid. If you become entangled in such a lawsuit, you will need robust errors and omissions insurance to protect your assets.

Differences in liability for brokers and agents

How much legal liability will you face after making a mistake? The answer depends on whether you're an insurance agent or broker. Agents act on behalf of the insurers they represent. They collect information about client risk exposures and then match clients with appropriate insurance from one of their carriers. Since they legally represent the insurer, they have the authority to bind coverage to a client.

Unlike agents, brokers represent their clients in their search for appropriate insurance. They may work with multiple insurers. But they sit on the same side of the table as their clients during the purchase process. Since brokers don't work for insurers, they lack the authority to bind coverage.

A key difference between agents and brokers involves legal exposure. Since agents represent insurers, their legal liabilities tend to flow upward to the insurer. In other words, their actions are often imputed to the insurer they represent. Also, they aren't typically held accountable for failing to recommend the right type or amount of insurance. As long as they act with reasonable care and diligence, they are legally considered to be an order taker (i.e., just executing a client's wishes).

If they establish a special relationship with customers based on their unique expertise, a court may find they have a heightened duty to advise, guide or direct a customer to buy a certain type or amount of insurance. Avoiding this special status is essential to limit your legal exposure.

Brokers aren't liable for recommending appropriate insurance or limits, either. That's because courts assume clients have a deeper understanding of their insurance needs than their brokers do. Also, brokers aren't customarily held liable for notifying their clients when their policies are about to terminate.

However, unlike agents, brokers, by their legal separation from insurers, can't blame their mistakes upstream. They shoulder the full legal weight of their actions.

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How to avoid making mistakes as an insurance agent

To stay out of court, make sure your business is legally compliant and ethically sound. By consistently striving to do the right thing for your clients, you will largely inoculate yourself against expensive litigation. Here are some pointers that will get you started down the right path:

- Always serve your clients' best interests, even if it doesn't make you more money
- Strive to be transparent in how you explain your credentials, business model and compensation
- Always disclose the key features of your products and services, including the risks that affect future performance
- Be realistic about the future returns or policy values clients can expect
- Thoroughly probe your clients' current and future needs so you can make suitable product recommendations
- Respect client confidentiality even when third parties seek information
- Always use advertising and presentation materials that are 100% accurate and legally compliant
- Provide clients with copies of required documents relating to their purchased product or service
- When you encounter a client need outside your skillset or license authority, refer the person to a third party who can respond effectively
- Stay up to date on industry best practices and regulatory constraints
- Always document your client interactions, especially the critical decisions about what insurance to buy or not to buy

Insurance agent errors and omissions (E&O) insurance

Even though courts consider insurance agents and brokers to be order takers, it's common for their behavior to move them to a higher standard of care. In such cases, if their mistake hurts a client, resulting in a lawsuit, it will be crucial to have E&O insurance handle their legal exposures.

What is E&O insurance? It's a contract between you (the agent or broker) and an insurance company in which the insurer agrees to pay for your professional liability claim costs in return for you paying a premium. If you harm a client and get sued for damages, the insurer will cover your attorney fees and legal judgments or settlements, shielding your business and personal assets.

How does E&O insurance work? It will cover you if you make a mistake or forget to do something important that financially harms a client. Based on the policy's insuring clause, the insurer will:

- Provide you with an approved defense attorney at no cost to you
- Assign a claims adjuster to investigate your case and manage the process of resolving the claim
- Pay for your legal fees and court expenses related to your case
- Provide an expert witness to bolster your legal defense
- Cover arbitration, mediation or other alternative dispute resolution services

In conclusion, it's uncommon for insurance agents or brokers to lose an E&O lawsuit. But getting sued is not uncommon. And defending against that suit is expensive. To protect yourself, maintain strong E&O insurance from a provider you can trust. Because now more than ever, peace of mind is priceless. ■

The author

Jason Rogers, senior vice president, has been with NAPA since 2014. He is responsible for the business development team and new program development for the firm. His current scope of responsibilities includes Professional Liability, Cyber Liability, Association Benefits and Affinity Programs. Jason began his career with Hartford Financial Products underwriting public company D&O liability risks. He then went on to Zurich Insurance Group where he had management responsibility for a diverse portfolio of financial institution risks. Jason holds a Bachelor's Degree in Business Administration from Villanova University, where he was a four-year scholarship student-athlete, and also a Master's degree in Real Estate Development from Columbia University. Having E&O insurance is essential for an insurance agent or agency risk management program. Established in 1989, NAPA, the National Association of Professional Agents, is trusted by insurance agents and agencies to provide comprehensive E&O coverage and membership benefits, including access to a free continuing education (CE) voucher, savings and discounts, health and wellness benefits and more. Learn more at www.NAPA-Benefits.org.

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TAKE YOUR SEAT AT THE TABLE

Stop waiting for an invitation; poker gives you the confidence to go boldly

By Deb Franklin

You might be wondering what poker has to do with insurance—or business in general, for that matter. After all, it's historically been viewed as a seedy game played predominantly by men in dark, smoke-filled back rooms.

Yet this game of skill and risk can offer quite a few valuable learnings. Poker teaches you powerful—game-changing—leadership skills like risk-taking, discipline, negotiation, strategic thinking and budgeting and financial management. These are all skills that easily translate to the business world and give you the confidence and courage you need to sit at any table in business and in life.

These skills are particularly valuable for women in the workforce, especially in a historically male-dominated industry like insurance. According to a study conducted by the Women in Insurance Initiative, women account for approximately 60% of the industry, but hold a mere 12% of the top officer positions.

"Most men take a job when they're only qualified for about 50% to 60% of that job," said April Oury, entrepreneur and business investor, during a recent Poker Power Powher Hour podcast. "Most women feel like we have to have 90% to 100% of the qualifications." Instead of taking the risk and filling the gap with on-the-job learning like men do, she says, women have a natural tendency to hold back when they shouldn't.

Leveling the playing field

Poker Power, a PEAK6 company, is working to change that dynamic by teaching women the skills they need to succeed, whether it's at the poker table or in the boardroom. These skills are taught in a fun, safe-to-fail atmosphere that doesn't involve gambling with real money. The success and innovation of Poker Power has not gone unnoticed. Northwestern's Kellogg School of Management adopted a version of the instruction as a co-curricular pilot program to help female-identifying MBA students gain the leadership skills they need to be successful.

Melanie Weisner, poker pro and Poker Power advisory board member, says that keeping your cool under pressure comes down to strategy, execution and adaptability. "I had to be comfortable with being willing to make a mistake if I thought it was the right move," she said.

Erin Lydon, managing director and GM at Poker Power, adds, "The decision on who gets in the boardroom doesn't actually happen in the boardroom. It happens at the poker table. It happens on the golf course. It happens in the hallway. You have to be visible in order to be part of those conversations."

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>
> —April Oury
> Entrepreneur and Business Investor

Applying poker skills to insurance leadership

The applications of poker in the insurance industry, an industry focused on risk, are clear. There's constant shuffling of markets and appetites to balance exposure. Just like in poker, the goal is to minimize risk and maximize reward. That requires skillfully anticipating the potential outcomes of various scenarios and making the best possible decisions with the hands you're dealt. Take, for example, the Florida property market, where agents and insurers alike continue to face a hardening market with dwindling options due to a steep rise in litigiousness over the past few years. Being able to adapt quickly is a necessity in a market like that.

Gaining leadership skills from poker play can help you chart your career path. Do you aspire to climb the corporate ladder faster? Poker can give you the confidence to ask for a promotion and ignite your upward mobility. Raising the stakes, for example, teaches you how to read the room and negotiate like a pro. Bluffing can teach you the discipline to stay calm and keep your composure under pressure.

If your goal is to break out on your own as an independent agent, poker can help you learn how to go all-in knowing that you've made a sound decision. You'll know how to weigh your options and evaluate the potential outcomes to assess the risk properly.

Perhaps you want to be your own boss but still want to have the support of a team as a franchisee. Learning how to play the hands you're dealt helps to hone your strategic thinking and decision-making skills, while placing your bets teaches you to budget and manage financial risk.

Do you hope to mentor other women in insurance? The atmosphere of Poker Power is a great example of how to network with other women, while seeking to learn and grow. Simply put, poker, much like business, is a game of strategy and calculated risk. Even if you have the best hand, it won't do anything for you if you don't know how to play it.

Even if you never intend to actually play a real-life poker game, the skills you learn with poker give you the confidence and fearlessness to take your seat at any table. You don't need an invitation. You can, and should, go boldly. ■

The author

Deb Franklin is the co-CEO of PEAK6 InsurTech, the insurance operations and technology subsidiary of PEAK6. She is an experienced executive with a track record of building and growing sustainable businesses. As co-CEO, Franklin is combining her entrepreneurial spirit and insurance industry expertise to create a new insurance operation within PEAK6. PEAK6 InsurTech recently acquired WE Insure, a franchise operation for independent agents; MacNeill Group, a Managing General Agent; Team Focus Insurance Group, a diverse insurance company with operations across the insurance ecosystem; and National Flood Insurance.

To learn more about Poker Power and sign up for lessons, visit www.pokerpower.com. If you're attending the 2022 FAIA Convention, be sure to join Poker Power and FAIA's women's poker booth brought to you by PEAK6 InsurTech and We Insure.