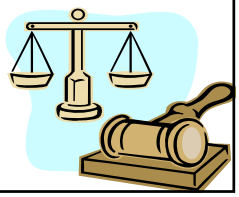
WELCOME TO "I-DAY"

CPCU SOCIETY

CONGRATULATIONS TO ALL NEW DESIGNEES !

TELL ME THE SIZE OF YOUR CLAIM.....

AND I'LL TELL YOU HOW MUCH TO SWEAT THE DETAILS!



CPCU SOCIETY

Don't Get Burnt.....
25 Potential E&O Issues

"ER#!0rs and Om_ i$$ions"

CLAIMS

See You in Court

"A Cost of Doing Business"

"Viewing errors and omission claims as something to be dreaded, and to be protected against only by insurance, is the poorest management posture an agency can take in facing the business risk of malpractice. The risk of loss to the insurance agency from mistakes is a business risk, pure and simple. It is a cost of doing business whether the agency carriers insurance or absorbs E&O claims costs on a full retention basis. Just as the agency must pay electric bills and salaries, it likewise will pay, either now or later, errors and omissions "bills". It is a healthy attitude to expect that at some time or another your agency will have an E&O claim."

Dr. Ronald T. Anderson
Agent's Legal Responsibility

DISCLAIMER

PLEASE BE ADVISED THAT THE CONTRACT LANGUAGE PROVIDED AND ANY DISCUSSION THEREOF, IS FOR INFORMATION PURPOSES ONLY.

I AM NOT AN ATTORNEY AND CANNOT OFFER LEGAL ADVICE, OR ADVICE ON THE POSSIBLE SUCCESS OR FAILURE OF THE LANGUAGE OR DISCUSSIONS PROVIDED.

MOREOVER, THIS LANGUAGE AND DISCUSSION MAY NOT WORK IN ALL SITUATIONS OR ALL JURISDICTIONS. SOME JURISDICTIONS INTERPRET CONTRACTS DIFFERENTLY, AND SOME STATES RESTRICT INDEMNITY AGREEMENTS. YOU SHOULD ALWAYS CONSULT AN ATTORNEY BEFORE DECIDING WHETHER TO MAKE USE OF ANY LANGUAGE PROVIDED OR DISCUSSED.

Claims Made Endorsements

- Adding Claims made Endorsement to Occurrence based CGL policies
  - –Employee Benefit Liability
  - –Professional Liability
  - –D&O Condo Associations
- BE SURE TO KEEP ORIGINAL RETRO DATE !!

Vacancy Policies

- Short Term – 3 month, 6 months
- Policy Period in Agency Management System defaults to 1 year
- CSR misses renewal

Do Agents/Brokers Have to Secure the Cheapest Price for Their Insured's ?

- In the Emerson case, the insured, Emerson Electric Co., utilized the brokerage services of Marsh & McLennan in procuring liability insurance. During the course of the relationship as broker and insured, Emerson paid Marsh to place particular types of insurance with insurers to meet a variety of Emerson's insurance needs. According to the allegations asserted by Emerson, Marsh steered its business to a few insurers that agreed to pay Marsh extra commissions contingent upon the amount of business Marsh sent to those insurers. When Emerson learned of this relationship it sued Marsh, in part, alleging that Marsh had breached its duty of loyalty to Emerson by not purchasing the lowest cost insurance that met Emerson's needs because Marsh steered business to secure the alleged "contingent commissions" from the insurers involved with the ultimate placement.

How Broad of Coverage does an Agent Have to Propose ?

- Insured has owned a vacant warehouse for two years, with no sign of a tenant
- Asks agent to secure coverage
- Agent sends risk to 2 wholesale brokerage firms he has a long standing relationship with
- Both come back with Basic Form, Sprinkler Warrranty and a $5000 premium
- Insured has a freezing of pipes claim for $50,000
- Carrier denies – Basic Form
- Insured sues wholesaler and agent
- Insured produces an expert who immediately presents five carriers who would write Broad or even Special form on vacant warehouses
- How far does an agent have to look for "broad" coverage ?

- Under Missouri law, insurance agents have a duty of loyalty to the insured which is inherent in the nature of the relationship. The Missouri Supreme Court found that while Marsh owed Emerson a duty of loyalty, the duty of loyalty did not include a duty to obtain the lowest cost insurance that met the insured's needs absent a specific agreement to do so. Emerson alleged that Marsh breached its fiduciary duty when it secretly agreed to accept additional contingent commissions from insurers to which it steered business. According to Emerson, this prejudiced Emerson because it prevented Marsh from obtaining insurance meeting Emerson's needs at the lowest possible cost. The Court in Emerson did not address this issue, however, because the Court found that the Missouri Legislature had specifically authorized brokers to obtain commissions from insurers with which the broker placed insurance.
- Emerson argued that even if Missouri statute permitted a broker to earn contingent commissions, the broker's duty of loyalty required it to inform the insured that it was receiving such contingent commissions. The Court rejected that argument as well.

Essentials: Do Brokers Have to Offer the Cheapest Coverage?

INSURANCE JOURNAL

- The question of whether insurance brokers are required to obtain the lowest cost insurance that meets the insured's needs was answered recently by the Missouri Supreme Court in the case of *Emerson Electric Co. v. Marsh & McLennan Cos., 362 S.W.3d 7 (Mo. 2012)*.
- *Plitt is a nationally recognized expert in insurance law. He has authored numerous insurance treatises and articles. He has a national expert witness practice. Email: SP@kunzlegal.com*

- Although the Missouri Supreme Court refused to conclude that the duty of loyalty required the procurement of the lowest cost insurance for the insured, the Court went on to explain that its holding did not mean that brokers were free to obtain insurance that did not meet the insured's needs or insurance that was unreasonably costly or imprudent. The broker still has a fiduciary duty to use reasonable care, skill and diligence in procuring insurance.
- Failure of that fiduciary duty would be legally actionable, not because it represented a breach of the duty of loyalty but because it would constitute a failure to exercise the degree of care required in procuring a policy for the insured generally.
- A duty to obtain the lowest possible cost insurance can be assumed, however, by brokers. A broker by contract or course of conduct can assume obligations beyond the normal duties of all insurance brokers to use reasonable care, skill and diligence in procuring insurance on behalf of insureds.

- The takeaway from the Emerson case is that insurance brokers should be cautious in advertising their abilities to obtain the lowest cost insurance for their insureds because to do so would expand the insurance broker's obligations by that type of course of conduct.
- Oftentimes brokers will advise their clients that the broker has shopped their insurance rates with the insurance companies that the broker represents and has selected the lowest cost insurance for the client which is then recommended in a proposal. The problem with this approach is that there are many parts to a standard insurance transaction in terms of coverages that are being procured, i.e., auto liability, UM/UIM, collision, comp, towing, medical payments, etc. The premium for the policy is a composite of the subpremium charges for each of the component coverages.
- The better approach is for the broker to identify within the proposal the gross premiums charged for the amount of coverage represented by an insurance company with a disclaimer indicating that the proposal only compares the gross premium charge and not the pricing of subcomponents subsumed within the gross premium.

Case Study

- An agency had a welding company as a longtime customer. The client did 100% of its work for Amoco. The agency placed CGL coverage for the welding company with Amoco as an additional named insured. The coverage, however, was not written on a broad form basis. An employee of welding company was bitten by a brown recluse spider, while on the job doing work for Amoco and suffered injury. The welding company's employee's claim against its employer was covered by workers compensation. Amoco, however, was sued by the employee for its negligence for allowing a brown recluse in its facility. Under the policy placed by the agency, there was no coverage for Amoco for its own negligence.

- A better approach is to explain to the customer that the insurance policy being offered is "competitive" focusing then upon the quality of the insurer and why the agent has selected that particularly insurer for the agent's inclusion within the proposal. Representations that the agent got the "best price" for the coverage may give rise to an expanded duty.

- When the claim was denied by the CGL carrier, Amoco was forced to pay out of pocket. As a result, Amoco terminated all of its business relationships with the welding company. The company was forced into bankruptcy and in turn sued its agent. During the course of the lawsuit, the welding company's attorney did an internet search to see if the agent had a website, which the agent did. The site contained such statements as: "Let us be your business partner"; " We will analyze all your business needs"; and, "We Are Your Business Insurance Specialist".
- The welding company's attorney enlarged screen shots of the website and brought them to the mediation in the case. The attorney for welding company proceeded to argue that, contrary to the representations made in the website, the agent in fact put the welding company out of business by not procuring broad form GL coverage.

789 F.2d 172: Beacon Industries, Inc. and Harvard Precision Components,inc., Plaintiffs-appellees, v. xxxxxx Associates, Inc., Walter xxxx, Larry xxxxxx, Carol xxxxxx and Lumbermens Mutual Casualtycompany, Defendants. Appeal of xxxxxx Associates, Inc., Defendant-appellant

- This appeal in a diversity case concerns the duty of an insurance broker to obtain favorable rates for its client. Defendant-appellant xxxxxxxx Associates, Inc., an insurance broker, appeals from the judgment of the District Court for the District of Connecticut (M. Joseph Blumenfeld, Judge) awarding $26,086.11 to plaintiff-appellee Beacon Industries, Inc. ("Beacon"), the insured. The amount awarded, less prejudgment interest, represents what the District Court concluded was an overpayment of approximately $17,000 charged to Beacon for its workers' compensation insurance due to the failure of xxxxxx to obtain a more favorable premium rate. Since we conclude that in the circumstances of this case no duty existed to obtain the more favorable rate, even if it was available, we reverse.
- The broker is entitled to rely on published rate information [NCCI]. Otherwise, brokers will act at their peril in writing any insurance unless they inquire in each instance whether the appropriate rating bureau might be willing to make a new interpretation of existing standards that would benefit an insured. If an insured does not receive that type of service by its broker, it is free to change to a more aggressive broker, as Beacon did in this case, but it does not have a legal remedy to charge the broker for the premium reduction that would have resulted from such persistence.

- **Take-away:** In this case, the existence of the website and the representations made therein ultimately tripled the size of the settlement paid to resolve this case on behalf of the agent.
- Agencies should take time to review agency advertising slogans and website information. It's important that websites be reviewed for content on a regular basis. If an agent is ever sued, the promises and representations that have been made will be used against the agent during the course of the suit.
- Proposals-promise you the world, now that you're a client…

The Agents Duty to Advise: Courts get Tough

Think twice about hyping yourself … you could end up defending a big E&O claim

Rough Notes- June 2014

Elisabeth Boone, CPCU

- Tiara is a 43 story oceanfront tower located near Singer Island, FL
- The Association had secured a $50 mil windstorm policy through Marsh, who told them coverage was on a per occurrence basis
- Condo was severely damaged by back-to back hurricanes in 2004, causing $130mil in damage
- Marsh argued the full limits should apply for each loss, but even so, this would have left Tiara $30mil short
- When purchasing insurance the Association's insurance committee sought to reduce its premiums by using a two year old property appraisal
- Marsh typically recommends a new appraisal, but allowed them to use the old one
- At the time of loss, the buildings were underinsured and the carrier threatened to invoke a coinsurance penalty
- Instead they negotiated an $89 mil settlement – over $40 mil less than it had paid to repair the damage
- The Association sues Marsh, which it had retained under contract, which stated – "Marsh would be Tiara's exclusive insurance, risk management, and risk financing advisor and broker". The suit alleged breach of contract, negligent misrepresentation, breach of covenant of good faith and fair dealing, and breach of fiduciary duty
- Marsh argued that its contract disclaimed responsibility for "independently verifying or authenticating information provided by the insured, and that Tiara's insurance committee was comprised of knowledgeable business people, who knew full well what they were doing

E&O Exposure

- Agents and Brokers are under pressure to set yourself apart from your competition
- You create websites, brochures, and proposals that tout your firm as "experts" and "specialists", and professionals who possess advanced knowledge regarding certain industries and businesses
- There is a knock at your door and you are served
- The lawsuit is for a lot of money and alleges you held yourself out to be an expert to a client, but somehow failed to deliver what the client expected based upon your advertising
- You report such to your E&O carrier

- District court denied Marsh's motion for Summary Judgment and the case went to trial
- The court said that by identifying itself as a "risk manager and financial risk advisor", arguably Marsh had a duty to let Tiara know there was a risk that if they used the older appraisals, they would be underinsured, and might suffer a coinsurance penally.
- To the extent that a special relationship existed between Marsh and Tiara, the court said, the fact that Tiara's insurance committee had access to the same information or could read the same policy language as Marsh, "would not relieve Marsh from its obligation to provide a recommendation on what was the most prudent approach to protect Tiara's insurance needs, and to warn of the financial consequences of diverting from that approach.
- The burden was upon Marsh, as the insurance expert in this equation, to share its professional judgment with Tiara and allow Tiara to make an informed judgment on the basis of that advice.
- This decision presents a big problem for insurance practitioners
- In most states, the general rule of thumb is that the broker only has the duty to purchase the coverage the client requested and to do so within a reasonable period of time. As the agent or broker, you generally don't have a duty to advise as to limits, types of coverages, endorsements and similar issues --- UNLESS you enter into a 'special relationship' or there are what the courts call 'special circumstances'.

Tiara Condo Ass'n. v. Marsh USA, Inc.

- Think it couldn't happen to you?
- Think again. Its just happened to one of the largest brokers in the world, and its part of a trend that's gaining popularity across the county with attorney's as courts increasingly hold agents and brokers to a tough new standard in regard to their duty to advise clients
- The case in point was decided in January 2014 by a Florida Federal Court
- Attorney Peter Biging says this case is "a clarion call to agents and brokers that a new world is upon us, and if you promote yourself as an expert and promise 'risk management services', you'd better go in with your eyes open
- This case underscores in dramatic fashion the perils of over-promising and under-performing

Conclusion

- A risk management strategy agents and brokers should adopt, according to Biging, is to use disclaimers in their agreements with clients.
- For example, you can say "it is always recommended that you obtain updated appraisals at least once a year" Note that if you do not obtain updated appraisals, there's a risk that you will not only be underinsured but also may incur a coinsurance penalty".
- Agents and brokers should also include wording similar to: "You are responsible for choosing your limits of liability and for reading your policy".

Lease Requires Civil Assault and Battery Coverage

Will the Tenant's CGL provide this coverage for the Additional Insured Landlord ?

[ASK PIA Database]

- Black's Law Dictionary defines reasonable force as "that degree of force which is not excessive and is appropriate in protecting oneself or one's property. When such force is used, a person is justified and is not criminally liable, nor is he liable in tort."
- Consequently, the CGL coverage simply would be applicable to defense. If a judgment were rendered, then the force necessarily would be deemed excessive, invoking the exclusion. So, by definition, you could not look to the CGL to pay for such a judgment.

QUESTION:

- **One of our clients is leasing a warehouse facility. The terms of the lease have insurance requirements that include "Civil Assault and Battery" coverage.**
- **Is this exposure covered under a general liability policy, since it affords coverage for bodily injury that results from the use of reasonable force to protect property or person?**

- However, I assume the lease is referencing the exposure the landlord has for providing a safe premises. The landlord is seeking assurance that additional insured protection under the tenant's CGL policy will cover negligence in maintaining a safe premises. Landlords are finding that nonstandard assault and battery exclusions are appearing on their general liability policies. In 1997, the United States Court of Appeals for the Second Circuit ruled on one of these exclusions in *Mount Vernon Fire Insurance Company vs. Creative Housing Ltd.* The court found that the exclusion for claims "based on" assault and battery extends to negligence in failing to maintain a safe premises.

ANSWER:

- The obligation to insure civil assault and battery in the lease agreement is very problematic. As you note, the ISO Commercial General Liability Policy (CGL) covers bodily injury resulting from the use of reasonable force to protect persons or property.

- The negligence theory, reasoned the court, cannot be separated from the assault and battery basis of the exclusion. Consequently, the exclusion is effective in denying coverage for the landlord when sued by a tenant who was criminally assaulted in the apartment building.
- These nonstandard assault and battery exclusions require special attention. If the insurer is unwilling to negotiate its removal, be sure to disclose its presence and explain the impact on the landlord's coverage. More and more victims of violence are seeking redress from parties who are responsible for the premises on which a crime occurs.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL EXCLUSIONS AND LIMITATIONS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **In consideration of the premium charged this policy has been issued subject to the following exclusions being added to Coverages A & B:**

This insurance does not apply to:

8. **Failure To Maintain Secure or Safe Premises**

Claims arising out of, caused by, resulting from, or alleging, in whole or in part, any insured or additional insured's failure to thwart, foil, avoid, hinder, stop, lessen or prevent any attack, fight, assault, theft, or crime. The company has no obligation to defend or indemnify any such claims.

Interesting Statistics

- 90% of all Agents and Brokers E & O claims could have been avoided through the application of consistent office practices and procedures.
- The remaining 10% have and will happen regardless of how careful an agency may be in its procedures

Edgar H. Lion, JD
Alpine Risk Management Corp, LLC
IRMI expert articles

AGENTS E&O CLAIM REPORTING

- An agent's client files suit against its carrier for declination of coverage. The client does not sue the agent. Either the client or the carrier's lawyer requests, via subpoena, to take the agent's deposition during the course of litigation.
- An agent receives a department of insurance notice to produce a copy of her file to a state regulatory agency.
- An agent procures coverage for his client. After the carrier denies coverage for the underlying loss, the carrier demands that the agent provide it with an oral/written statement regarding how the agent serviced the account.

27 E&O Procedural Mistakes

Edgar H. Lion
Alpine Risk Management

AGENTS E&O CLAIM REPORTING

- While no one has directly sued the agent in the instances above, the scenarios nevertheless constitute "claims" under most professional liability insurance policies.
- Agents should read their own errors & omissions policies to better understand how "claim" is specifically defined. It is noteworthy that many policies define "claim":
  - as a request to take a recorded statement;
  - a demand for money or services; and/or
  - service of a summons, a subpoena or any other notice of legal process.
- Hence, many policies define claim in a much broader sense than a mere lawsuit filed against the agency in question.

1. Have applications signed and dated. More than 70 percent of the agencies reviewed do not require the insured to sign and date applications for commercial insurance. The producers told our analysts they could not return the application to the insured and ask him or her to sign it. Basically what they were saying was, "We sold the policy, now let's get it issued and go on to the next one." From a defense point of view, it is extremely important to have the insured sign and date the application. If the insured has indicated that he or she has read the application by signing and dating it, the agency has a better defense if a claim arises regarding coverage that was not included at policy inception.

2. Peer review applications. A majority of agencies do not have procedures for double-checking an application that was completed by a producer or CSR. Our analysts found many agencies in which the producer completes the application and sends it directly to the company without having it processed by the CSR.

3. Document coverage rejections. A majority of the agencies reviewed do not have evidence in their files when insureds reject offers of higher limits or other coverages. It is extremely important to document when broader coverage, higher limits, or increased values are rejected by having the insured sign and date an acknowledgement of the offering. Without this documentation, insureds frequently develop amnesia on the witness stand following an uninsured or underinsured loss.

4. Document UM and UIM coverage decisions. Uninsured motorists (UM) and underinsured motorists (UIM) limits usually are lower than auto liability limits. Most agencies keep no evidence that insureds have rejected higher limits. Also, some companies would not write higher limits, but there is usually no documentation that the insured has been so advised and has accepted the lower limits.

Having a Client Sign a Blank Application

Fireman's Fund Risk Mgmnt. Case Study

June 26, 2012

- **Background**

The agent met with his client to gather preliminary information to submit for a quote. During the meeting, the agent had his client sign a blank application. After the client accepted the quote, the agent transferred the information collected during the initial meeting to the blank application. The application was submitted to the carrier, but a copy of the completed application was never sent to the client.

Several months later, the client suffered a loss and submitted a claim. The carrier then discovered that the client failed to disclose he had previously filed for bankruptcy and the policy was rescinded. The client claimed that he did disclose his prior bankruptcy and the agent failed to accurately complete the application. The client never saw the completed application since he signed a blank application during the initial meeting. The client maintained that he was never able to correct the inaccurate information.

- **Outcome**

Because the client did not sign the application containing the erroneous information, the carrier could not rescind the policy despite the bankruptcy and had to pay the resulting claim. They made a successful claim against the agent for the damages they had to pay as a consequence.

- **Key Take-Away**

When a carrier discovers the information in the application is incorrect, chance are high they will rescind coverage and the agent will likely face a claim from their customer for unpaid loss. In other instances, when the customer claims they provided the agent with the correct information, but never saw the application, the carrier will honor the claim, but then make a claim against the agent to recover the loss they had to pay, stating that had they known the correct facts, they would not have issued a policy to the customer.

- **Lessons Learned**

The client should complete and sign the application even if the insurer does not require a signed application.

If the application is completed by the agent, the information should be obtained directly from the client, with the application signed by the client after review for accuracy. The agent should never sign on behalf of the client (or have the client sign a blank document).

Send a copy of the completed application to the client for them to carefully review and to respond with notification of any errors, even if the actual application is submitted to the carrier electronically.

Circumstances can change from year to year. Verify with the client that information provided on a renewal application continues to be correct, instead of simply transferring information from the prior year's application.

1. Have applications signed and dated. More than 70 percent of the agencies reviewed do not require the insured to sign and date applications for commercial insurance. The producers told our analysts they could not return the application to the insured and ask him or her to sign it. Basically what they were saying was, "We sold the policy, now let's get it issued and go on to the next one." From a defense point of view, it is extremely important to have the insured sign and date the application. If the insured has indicated that he or she has read the application by signing and dating it, the agency has a better defense if a claim arises regarding coverage that was not included at policy inception.

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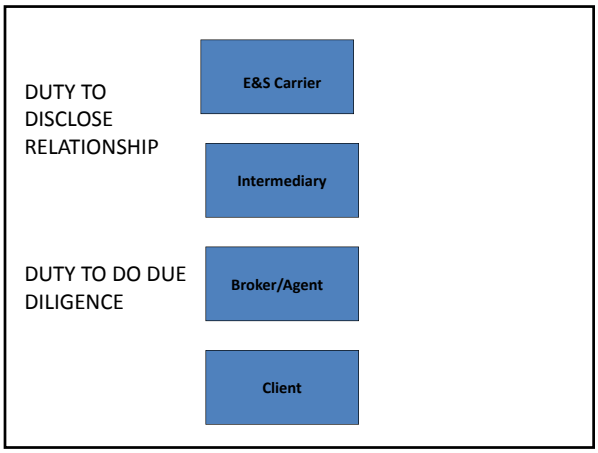
4. Document UM and UIM coverage decisions. Uninsured motorists (UM) and underinsured motorists (UIM) limits usually are lower than auto liability limits. Most agencies keep no evidence that insureds have rejected higher limits. Also, some companies would not write higher limits, but there is usually no documentation that the insured has been so advised and has accepted the lower limits.

5. Document the source of property values. On many occasions our analysts found that the agencies have accepted the insured's estimates for values on buildings or contents. Ninety-five percent of the agencies studied fail to note in the insured's file when the insured establishes the property values to be insured.

6. Inspect insured properties. More than 75 percent of the agencies reviewed have no established procedures for personally inspecting the property risks they insure. In fact, these agents told our analysts that they had never personally seen the properties.

7. Establish umbrella claims reporting procedures. In many agencies, there are no established procedures for notifying excess or umbrella insurers when a bodily injury claim is reported under the primary coverage. Even small BI claims can balloon beyond policy limits, and late-reporting claim denials are very possible when the umbrella or excess insurer has not been notified. For example, one of our analysts was involved as an expert witness in a case where the excess insurer was not notified and the primary insurer refused an offer to settle within the primary policy limits. The case went to trial and the award was for $345,000 above the primary limits. The excess insurer sued the agent for breach of contract.

8. Establish defined procedures for placing business through a surplus lines broker. Eighty percent of the agencies we reviewed do not have any standardized written or automated procedures for qualifying or placing business through a surplus lines broker. Also, the majority do not determine whether the surplus lines broker carries E&O insurance in limits at least equal to its own E&O limits. Furthermore, the overwhelming majority of the agencies had neither thoroughly examined nor analyzed the written contracts they had signed with surplus lines brokers. As a result, the agencies were unaware of hold harmless clauses and other restrictive wording in contracts.



9. Establish an internal quality control program. Eighty-five percent of the agencies reviewed do not have any type of a standardized internal quality control program. They have no internal audit procedures to make certain that all personnel were following established agency procedures. This is extremely important, especially when agencies are adding staff. Too often a new CSR will bring his or her own favorite way of doing something from a previous job. Soon, everyone is doing his or her own thing, and standardization and procedural consistency goes out the window.

10. Review company financial ratings and notify insureds of changes. Eighty-five percent of agencies reviewed have no established procedures for regularly monitoring the financial ratings of the companies with whom they place business. Most agencies also do not have a standard procedure for notifying their insureds of changes in their insurers' ratings. A strong argument can be made that agents have a duty to notify their insureds when their insurers' ratings are lowered.

11. Execute contracts with independent contractors. Many agencies classify producers as independent contractors rather than employees. However, there often is no written contract between the agency and these producers, and when there is a written contract the arrangement probably would not withstand a close inspection by the IRS without a clear explanation of the producer's duties. In other words, the existing arrangements often do not comply with the generally accepted common law factors of independent contractors as confirmed by the U.S. Supreme Court in Nationwide Insurance v Darden or the IRS 20 Rule test for establishing employment relationship.

Excess & Surplus Lines Due Diligence

1. Written statement establishing agency point person
2. Work with reputable, well-established brokers
3. Check with other agents, references
4. Obtain copies of all States relevant licenses
5. Written contract indicating who is responsible for S/L taxes, filings, compliance
6. Lexus litigation search

12. Include a "procedural observance" clause in the contract. The contract you use with producers you consider to be independent contractors should contain a paragraph covering "procedural observance" requiring the independent contractors to follow the agency's procedures. The majority of audited agencies have at least some producers who do not follow established agency procedures. These "loose cannons" substantially increase E&O risks.

13. Establish agency automation procedures. Ninety-five percent of the agencies that are fully automated have no written procedures to assure compliance with federal and state laws regarding the admissibility of their automated data and no standard procedures to audit the accuracy of the data entered into their systems.

14. Eliminate needless duplication. During recent internal reviews of agencies that were on transactional filing, CSRs told analysts that some producers do not like or accept the procedure of transactional filing and require the CSRs to photocopy everything they place into the T-file so the producers could keep it in their own files as well. This practice can lead to problems beyond the obvious waste of time. For example, these producers may file information in their own files that does not get into the T-file. In the event of an E&O claim, where all information concerning the insured is subpoenaed as evidence, the plaintiff's case is immediately strengthened if there is a discrepancy between the two files.

15. Execute brokering contracts. Our analysts found that many of the agencies reviewed place business for other agents and that virtually none of them had written contracts with the other agents. As a result, the placing agent has no evidence of the originating agent's errors and omissions policy, nor is there a hold harmless agreement between them to protect the placing agent against an error by the originating agent.

Excess & Surplus Lines Due Diligence

7. D&B report, Check with your Dept of Ins.
8. Sample of all coverage forms
9. Copy of Brokers Binding Agreement with all placing carriers
10. Copy of Brokers E & O coverage certificate
11. Visit the Brokers office

16. Document cellular phone conversations. While most agencies have a procedure for recording phone messages in the office, more than 90 percent have no procedures for keeping records on cellular phone conversations.

17. Develop E&O claims reporting guidelines. The majority of agencies reviewed have no defined written or automated procedures for reporting a claim to their E&O insurers, and most do not have established procedures for follow-up on the status of the incident or claim if it is reported.

18. Provide access to company binding authorities. Among those agencies that have automated systems, more than 90 percent do not have their companies' binding authorities entered into the system for all personnel to access before binding a risk.

19. Retain fax transmission verifications. An overwhelming majority of the agencies neither attach fax transmission verification sheets to original documents nor maintain records of fax transmissions.

20. Secure claims drafts. In the majority of agencies that have claims draft authority, the unused claims drafts are stored in unlocked desk drawers.

21. Promote good interoffice communication. In many of the larger agencies, there is a complete lack of communication among departments. In one particular agency, our analyst found that producers in different units actually compete against each other with different insurers on the same accounts, and CSRs in many smaller agencies voiced similar complaints.

22. Standardize your agent/broker of record letter. Many agencies do not have a standardized agent/broker of record letter, and CSRs are drafting their own. The majority of these letters do not contain a clause wherein the insured holds the new agent of record harmless for any errors or omissions on the part of the former agent/broker. Such a provision can prevent major E&O headaches.

23. Establish a confidentiality policy. More than 90 percent of the agencies reviewed have no established procedure or policy concerning the confidentiality of a customer's file. In many agencies, for example, someone calling to claim they or their client had been involved in an accident with the agent's insured would be provided with the insured's policy information. This is a disclosure of privileged information! Under no circumstances should any information be given to another party without the prior express written permission from the insured.

24. Teach producers about new product offerings. Failure to teach producers about new types of coverage results in both lost sales opportunities and E&O claims. For example, with the exponential increase in claims against employers, agents should be aggressively marketing employment practices liability insurance (EPLI) to all commercial insureds. However, our analysts found that more than 85 percent of the agents interviewed are not selling EPLI or offering it to their commercial insureds. Their explanation for this omission: "We don't sell it because we don't know anything about the coverage."

Failure to Document Can Be Costly Error

National Underwriter
2/1/2010

25. Don't "baby-sit." Many agents will call their direct-bill insureds following receipt of a notice to cancel for nonpayment and remind them to pay the premium before the cancellation takes effect. This practice, referred to as "baby-sitting," is acceptable if you follow up with all insureds who receive a cancellation notice. This is an expensive practice, and it presents a potential E&O problem if the agency misses calling a customer and there is an uninsured loss. By adopting this practice, the agency develops a "special relationship" with the insured and can be held to a higher standard of care by the courts. To safely cease this practice once it is established, notify all insureds that you will no longer be following up on cancellation notices for nonpayment of premium.

26. Create an employee handbook. Seventy percent of the agencies reviewed do not have an employee handbook outlining their personnel practices. When the analysts asked why, they were told, "We're a small agency and we work like a family. All our employees know what our rules are." Not having standard rules in writing and applying them fairly to all staff increases exposure to employee claims.

27. Prepare written job descriptions. More than 80 percent of all agencies did not have written job descriptions outlining duties and responsibilities for each workstation or job position. This, too, increases exposure to employee claims.

If any agents or brokers doubt how expensive the simple act of not documenting a client's requests can be, all they need do is review a recent case in California where one brokerage is facing a $5.8 million judgment. In that case—*Williams v. Hilb, Rogal & Hobbs Insurance Services of California*—the Court of Appeal of California in Los Angeles upheld a lower court's decision that the broker failed to secure workers' compensation insurance for its client.

According to court papers, the court had to decide if the broker was negligent "in advising on, procuring and maintaining an insurance package for a new business venture" that did not include workers' comp.

In the court's decision, John Daniel Williams and Steven Stuart Simon opened a business—Rhino Linings of Santa Fe Springs, Calif. (Rhino SFS)—that sprayed protective lining onto the beds of pick-up trucks. In 1999, Mr. Williams, who was responsible for securing insurance for the company, was put in touch with Robyn Thaw of the insurance agency Robert F. Driver Company. She represented herself as knowledgeable about the product and had a "custom designed insurance package" for their operation.

When the policy was secured, Mr. Williams reviewed it and believed everything was in order. Not being experienced with insurance, he was not aware the policy lacked workers' comp coverage.

In 2001, an employee of Rhino SFS was severely burned in a spraying accident. Subsequently, the company discovered it did not have workers' comp coverage. The employee sued and won a judgment for more than $11 million, of which Rhino SFS was responsible for half. After the jury award, Williams and Simon sued HRH for negligence.

Broker of Record Letter

To whom it concern:

This is to advise that effective 6/1/14, *(Your Agency)* is appointed Broker/Agent of Record for *(Insured Name)* with respect to it's *(Type of Insurance)* Insurance Program, hereafter "insurance." This appointment rescinds all previous appointments, if any, and the authorization contained herein shall remain in full force and effect until canceled in writing by us.

***(Your Agency)* is hereby authorized to negotiate with any insurance carrier as respects the insurance referenced above; however, (Your Agency) shall not be responsible for any deficiencies in or any return premiums and/or commissions due on any insurance coverage not placed by *(Your Agency)*.**

This letter also constitutes authorization to any underwriter to furnish *(Your Agency)* representatives with all information pertaining to any and all insurance contracts, rates, rating schedules, surveys, reserves, retention or other data they might require as respects the insurance.

It is hereby acknowledged and agreed that *(Your Agency)* has made no representation as to the availability of insurance coverage, the reasonableness of the terms thereof or the financial solvency of any carrier.

Sincerely,

Ms. Thaw testified that she thought the client understood there was no workers' comp coverage and would secure it elsewhere. However, there was no documentation or memorandums stating that the plaintiffs were aware of the absence of the coverage, which is required by California law. There were procedures in place at the agencies to ensure proper documentation, but Ms. Thaw apparently did not follow the procedure, the court papers indicated. The court found that Ms. Thaw "acted as more than an ordinary agent" regarding the Rhino product, and created new insurance packages for the clients, never including workers' comp coverage.

Mr. Williams and Mr. Simon, Judge Birney said, made a reasonable assumption that they had the proper coverage and relied on Ms. Thaw to secure all necessary coverage. He found their statements on the issue more credible than the broker's.

The appeals court upheld Judge Birney's finding that HRH is responsible to pay $5.83 million, plus interest and court costs.

"The file should speak for itself. People's recollection is fallible, and in the face of a $5 million claim, may be viewed by a jury as untrustworthy. A written confirmation can be persuasive evidence of what actually occurred." As far as what producers should do to avoid such issues, "document your file," Mr. Garson suggested. "Confirm in writing what services you have agreed to perform. If you get in the habit of sending a confirming e-mail as a matter of practice, you can avoid some of these claims, and better defend others."

He added that the *Williams* case "teaches that documenting a decision by your client not to obtain certain coverage may be as important as documenting the terms and conditions of any offer."

Legal Duties Beyond Clients

Are Agents/Brokers Liable to Third Parties ?

PIA Magazine November 2011
Robert Sullivan, Esq.

New York

In New York, the rule is clear that an allegedly injured party, other than the agent or broker's own client, does not have standing to bring a claim against the agent or broker due to the agent or broker's negligence in failing to procure requested insurance.

New Jersey

In a New Jersey case,[1] another patron of a bar was injured when she slid off of a barstool at a marina. The marina's liability policy had lapsed, leaving the patron without a viable source of recompense for her injuries. She brought suit against the broker for the marina due to his alleged failure to ensure that the marina's policy remained in force. The Appellate Division of the Supreme Court, in contrast to the holding of the Connecticut Court discussed below, held that the patron could sue the broker based upon theories of both contract and negligence. The court held that an injured patron is someone whom both an insured and a broker intended to benefit from the contract to procure insurance. Moreover, in support of the negligence claim against the broker, the court applied two well-established rules of

Connecticut

In a Connecticut case,[7] decided by the Connecticut Supreme Court, again at issue was a certificate of insurance issued by the broker for a home improvement contractor to an owner of premises where the contractor was doing work. Unknown to the homeowners, the policy was canceled due to non-payment of premium and a loss occurred due to the negligence of the contractor. In its holding, the Connecticut Court, like New York, rejected the right of the homeowner to bring suit due to the absence of any cognizable relationship between the broker and the homeowner. Moreover, the court rejected the homeowner's claims because of disclaimers contained in the certificate regarding liability for the failure to provide notice of cancellation and reliance upon the certificate itself. In another case,[8] a

New Jersey law. First, that a broker is liable to its own insured for the failure to procure coverage. Second, a broker stands in the shoes of the insurer that would have issued the policy had he not been negligent since a direct claim can be brought against an insurer. Accordingly, as the court ruled, there would be no impediment to a direct action against the broker.

AGENCY E&O ISSUE

Coverage Rejections

Utica Mutual- E&O Carrier

UM/UIM Example

(could be any rejection)

- Some states mandate an insured execute a waiver for rejecting UIM/UM coverage or a waiver to disallow stacking of limits.
- There is a corresponding reduction in premium if an insured decides to waive coverage or stacking.
- In the past, waivers were collected by agents and filed by carriers. In the interests of budget streamlining, carriers now are mandating their agents keep waivers on file, which places a burden on agencies to maintain those documents. Without a properly executed waiver on file, the exposure to agencies when a UIM/UM claim is made increases greatly.

UM/UIM EXAMPLE

- Without any proof the rejection was properly executed, the claim by the carrier was settled for $250,000.
- While it may be easier to merely send a form to an insured for his signature, the agency is exposing itself when a signature is challenged well after the fact.
- All UIM/UM waivers should be signed in the presence of an agent to avoid any confusion, challenges or claims against the agency.

UM/UIM Example

- Take, for example, the case where an agency's client was seriously injured, and made a claim for Underinsured Motorists following the accident.
- There was a signed rejection of UIM in the agency's file, and the carrier initially denied coverage based on the rejection.
- The law in that state was clear: If an insured rejects the coverage, he cannot collect.
- However, in this particular case the injured insured *denied* signing the rejection form, and claimed the signature was not his. He sued the carrier for $500,000, alleging there was no proper rejection on file.

Builders Risk E&O Claims

- Insured long time client of the agency, purchased an expensive home and was having major renovations done to it before occupancy.
- Builders Risk policy placed
- Extensive Fire Damage
- BR paid for work to date plus materials that were to be part of the structure
- No coverage for existing structure – no other policy in force
- Insured claimed $1.8M in damages
- Agent admitted at deposition that he thought BR covered existing structure
- $700,000 E&O Payment

UM/UIM EXAMPLE

- The law in that state was clear on this issue: Without a signed waiver, coverage is deemed to be in place.
- The carrier had a handwriting analysis performed by an expert, and the expert concluded it was not the insured's signature on the rejection. The insured's intent as to whether or not he wanted UIM coverage became a moot issue. All he had to show was that there was no properly executed rejection on file in order to collect.
- The carrier paid $500,000, and sued the agent for not obtaining a proper signature. The agent claimed he did not sign the form, but could not say who did sign the form. The form had been mailed to the insured and returned with a signature, per the agent.

Commercial Property
Builders Risk: Covered Property and Additional Coverages

- **Excluded Property**
  - Existing property
    - Some forms may extend coverage to existing buildings, additions, alterations, or repairs
      - Subject to sublimit
      - Insulates GC's liability policy from responding
    - **During renovation work, existing building not covered under builders risk forms**
      - Owner, GC rely on permanent property policy
      - Commonly waivers of subrogation are required
      - Valuation Issues RC vs. ACV / Perils Concurrent

Builders Risk Claims

- Renovation of former school gymnasium being converted into apartments
- Work to be done in two stages: demolition followed by renovations
- BR secured by contractor
- Agent and Owner spoke and owner gave agent rough estimate on anticipated completion date, upon which agent would place a property policy
- At end of Demo phase, owner (client) secured additional financing and asked for proof of insurance from agent.
- Agent misunderstood and thought project was complete, and knowing BR would not properly protect client, placed a property policy----on a gutted unoccupied building.
- Fire destroys building 2 weeks after property policy placed
- BR only covered completed work plus materials and supplies on site and to be installed. However phase II (reno) had just begun.
- Property carrier tries to deny claim for unoccupancy, but ultimately had to pay $2.6M.
- Property carier sues agent for wrongfully binding them on a risk—the agent knew—or should have known—was not eligible to be written
- E&O Carrier paid in excess of $2M

Course of Construction Policy a/k/a/ Builder's Risk

- Insured's and Interests - Who buys the policy?
- Inland Marine vs Property
- Covered Property – usually on premises only
- Covered Perils – Theft, AIA / AGC call for "All Risk"
- Off site storage / In transit / While being installed
- Property of others
- Occupancy prior to completion
- Riggers liability / Installation Floater
- Soft Costs / O & P
- New Construction vs. Renovation (existing bldg)
- Collapse issues CP 1120 Collapse during Construction
- When does coverage Start / End
- Completed Value / 100% Coins / Reporting Forms
- Exclusions- Testing, BOL, Dishonesty, Boiler, Flood, Quake, Design Error, Faulty Workmanship, Existing Structures**

Sample Builders Risk Additional Coverages

- **Debris Removal Coverage**—Coverage for the cost of removal of debris of covered property damaged by a covered loss
- **Pollutant Cleanup and Removal Coverage**—Coverage for the cost to extract pollutants from land or water at the construction site, when the release of the pollutant results from a covered cause of loss occurring during the policy period
- **Preservation of Property**—Coverage for loss to property that is moved to protect it from loss by a covered cause, in transit and for a specified number of days at the temporary location
- **Fire Department Service Charges**—Coverage for service charges imposed by the fire department for responding in the event of a fire
- **Fire Protection Equipment Recharge**—Coverage for the cost of refilling or recharging fire protection equipment. In some forms, this coverage applies even if the discharge of the equipment was accidental, and the cost to repair faulty valves or controls is covered as well.
- **Valuable Papers**—Coverage for the cost to research and restore lost or damaged valuable papers and records

continued

Commercial Property Builders Risk: Soft Costs Coverage

- Delay in Construction / Delayed Completion
  - Costs associated with the construction project other than the cost of labor and materials are commonly referred to as "soft costs"
    - Hard costs refer to labor and materials
  - Due to financing agreements and construction contracts requirements, time element related loss exposures are commonly required to be insured

Sample Builders Risk Additional Coverages (cont.)

- **Expediting Expenses**—Coverage for costs incurred to speed up repair of damaged property, such as overtime wages and express transportation charges
- **Automatic Increase in Insurance**—Automatically increases the limit of insurance by a specified percentage, or in accordance with a particular published increase factor
- **Ordinance or Law Coverage**—Coverage for increase in covered loss resulting from the enforcement of laws or ordinances regulating repair, demolition, and reconstruction of damaged buildings
- **Trees, Shrubs, and Plants**—Coverage for loss from a few specified causes to trees, shrubs, and plants
- **Site Preparation Costs**—Coverage for the costs of site preparations, such as excavation, grading, and backfilling, which are incurred as a result of a covered loss
- **Paved Surfaces**—Coverage for loss to sidewalks, parking lots, streets, and other paved surfaces, which are incurred as a result of a covered loss
- **Testing/Hot Testing**—Coverage for loss resulting from start-up or performance testing, usually of machinery and equipment, in connection with the construction. Testing coverage may or may not extend to hot testing, which generally refers to testing a newly constructed processing facility (such as an oil refinery or power plant) by running the substance that the facility was designed to process through the system, to determine whether the facility meets specifications.
- **Contract Penalties**—Coverage for penalties imposed in the construction contract (typically for failure to complete the project by a specified date) when owed because of a covered loss under the policy
- **Claim Preparation Costs**—Coverage for costs incurred in preparing a proof of loss as required under the policy.

AAIS - Delay Costs

Certain costs arising from a delay can be insured, however, under a new AAIS "Delay in Completion Coverage Part." This new coverage part introduces a distinction between "additional construction expenses" and "additional soft costs" that clarifies the difference between two types of costs incurred during a construction delay. For both of those categories of costs, recovery is limited to expenses over and above those that would have been incurred had there been no delay. The additional "construction expenses" are limited to the following:

- **Additional advertising, public relations, and promotional expenses;**
- **Additional fees for architects, designers, engineers, and other advisers;**
- **Additional non-interest costs for financing, such as commissions and loan fees;**
- **Additional costs for renegotiating leases;**
- **Additional fees for accountant and attorney services that were being provided before the loss occurred; and**
- **Additional fees for renewing or replacing construction permits and licenses.**

"These costs are usually incurred in lump sums during the delay in construction, the length of the delay has little if any impact on these costs." For that reason, the additional construction expenses have a single per occurrence limit, and are subject to the basic builders' risk dollar deductible.

AAIS – Soft Costs

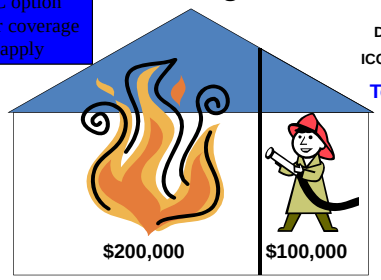
Soft costs, long a loosely used term in the industry, are a carefully defined and delimited set of expenses under the new coverage part. Soft costs include:

- **Additional interest for money borrowed to finance the construction work;**
- **Additional real estate taxes incurred during the period of delay;**
- **Additional costs to extend leases for construction equipment and temporary office space; and**
- **Additional costs of insurance premiums to renew or extend coverage.**

"These costs grow with time," says Guevara. "Therefore, in addition to its own per occurrence limit, the additional soft costs coverage is subject to a limit per 30-day period." As a true time element coverage, the coverage for additional soft costs can be subject to a waiting period deductible, if so indicated on the schedule that accompanies the policy.

$300,000 Building Coverage

Must have RC option for coverage to apply



Damaged Part Paid

Structure-$200,000

Demolition-$5000*

Debris Removal-$10,000*

ICC-$10,000* **(*up to policy limit)**

Total Paid $225,000

Undamaged Part-NOT Paid

Structure- $100,000

Demolition-$2500

Debris Removal-$5000

ICC-$10,000

Out of Pocket- $117,500

Newly Acquired Buildings

a. Newly Acquired Or Constructed Property

- **(1) Buildings**
- *If this policy covers Building*, you may extend that insurance to apply to:
  - **(a)** Your **new** buildings while being built on the described premises; and
  - **(b)** Buildings **you acquire** at locations, other than the described premises, intended for:
    - **(i)** Similar use as the building described in the Declarations; or
    - **(ii)** Use as a warehouse. (Bldgs being built by you elsewhere?)
- The most we will pay for loss or damage under this Extension is $250,000 at each building.

Commercial Property Other Important Provisions

- **Agreed Value**
  - This provision suspends coinsurance provision
  - Requires a signed statement of property values from insured with insurer agreeing to these values
    - Property appraisal or explanation of selected values sometimes required
  - Endorsement expires after 1 year or at policy expiration
    - If insured fails to submit updated statement of values prior to expiration of agreed value provision, coinsurance clause is reinstated

Newly Acquired BPP

(2) Your Business Personal Property

(a) *If this policy covers Your Business Personal Property*, you may extend that insurance to apply to:

(i) Business personal property, including such property that you newly acquire, **at any location you acquire** other than at fairs, trade shows or exhibitions;

(ii) Business personal property, including such property that you newly acquire, **located at your newly constructed or acquired buildings at the location described in the Declarations; or**

(iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is $100,000 at each building.

Leasehold Interest Coverage

CP 0060

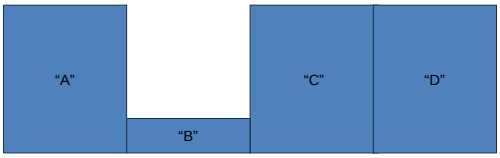
- Leasehold Interest Includes:
  - Tenants Lease Interest
  - Bonus Payments
  - Improvements and Betterments
  - Prepaid Rent
- Example
  - 10,000 square feet @ $4.00 / sf = $3300/mo
  - 10,000 square feet @ $10.00 /sf =$8300/mo

Leasehold Interest Coverage

- Lease effective 1/1/00—12/31/09 (120 months)
- Leasehold Interest: $8300 - $3300 = $5000
- Lease Remaining: 60 months
- Policy inception: 1/1/05
- Factor from Table: 47.5385
- ***Limit of Insurance = $237,693***
- Plus Bonus Payments, I & B, Prepaid Rent

Damage to Premises Rented
a/k/a Fire Legal Liability

Landlord: $1,000,000 PROPERTY ---$250,000 each store



Tenant "B": BOP/CPP $50,000 BPP and $1,000,000 CGL and $50,000 DPR

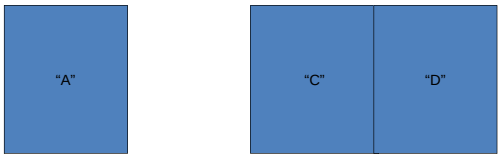
Damage to Premises Rented
a/k/a Fire Legal Liability

Landlord: $1,000,000 PROPERTY ---$250,000 each store

Tenant "B": BOP/CPP $50,000 BPP and $1,000,000 CGL and $50,000 DPR

Damage to Premises Rented
a/k/a Fire Legal Liability

Landlord: $1,000,000 PROPERTY ---$250,000 each store



Tenant "B": BOP/CPP $50,000 BPP and $1,000,000 CGL and $50,000 DPR

Reminder to Policyholders: Verify Application Information Provided to Insurer

Merlin Law Firm
June 4, 2013

Reminder to Policyholders: Verify Application Information Provided to Insurer

- This past week, in *American Way Cellular Inc. v. Travelers Property Casualty Company of America*,[1] a California appellate court held an insurer does not need to pay for fire damage because the policyholder's property lacked the automatic sprinkler system required by the policy.
- In *American Way*, the policyholder, through its insurance broker, submitted a commercial insurance application to Travelers. In the box entitled "FIRE PROTECTION (Sprinklers, Standpipes, CQ/Halon Systems)," the application indicated the policyholder had "SMOKE DETECTORS/FIRE EXTING./SPRINKLERS." The application was prepared by the broker based on information obtained from one of American Way's principals. The owner claimed he was never asked if his business had sprinklers. The policy contained a "Protective Safeguards Endorsement," which required the policyholder to maintain an automatic sprinkler system on the premises as a condition for coverage.
- Following a fire loss and after an advance payment had been made to the policyholder, the insurer learned the premises did not have an automatic sprinkler system, and Travelers subsequently issued a denial letter. At the trial court level, Travelers successfully brought a summary judgment motion and obtained a judgment which included reimbursement of the advance payment.

- The U.S. Court of Appeals for the Eleventh Circuit has ruled that a policy's "Protective Safeguard Exclusion" barred coverage where the insured's maintenance employee knew that the building's sprinkler system had been turned off.

The Case

- Insurers filed a declaratory judgment action in a federal district court after Norman W. Paschall Company, Inc., submitted an insurance claim for a fire loss. The parties filed cross-motions for summary judgment. The district court ruled in favor of the insurers, and Paschall appealed.

The Policy

- The policy's "Protective Safeguard Exclusion" excluded from coverage:
- loss or damage caused by or resulting from fire if, prior to the fire [Paschall]:
- 1. Knew of any suspension or impairment in [the Automatic Sprinkler System] and failed to notify [Insurers] of that fact; or
- 2. Failed to maintain [the Automatic Sprinkler System], over which [Paschall] had control, in complete working order.

Reminder to Policyholders: Verify Application Information Provided to Insurer

- The appellate court, affirming the trial court's ruling, was not concerned how the incorrect information was conveyed to the insurer. The policyholder argued Traveler's had a duty to investigate and verify the information provided in the application. The court, however, held "an insurer does not have a duty to investigate statements made in the application and to verify the accuracy of the representations." Rather, it is the "insured's duty to divulge fully all or she knows."[2]
- The bottom line is that in California and in most other jurisdictions, the policyholder -- not the insurance company -- is responsible for the accuracy of the insurance application. Whether or not an insurance broker assists with procuring the policy, the policyholder needs to make sure the content of the application is accurate. As illustrated in the above, failure to do so can have unfortunate consequences.

- [1] *American Way Cellular Inc. v. Travelers Property Casualty Co. of America*, --- Cal. App. 4th ---, 2013 WL 2358673 (Cal. App. 2 Dist. May 30, 2013)
[2] Citing *Mitchell v. United National Ins. Co.* (2005) 127 Cal. App. 4th. 457, 476.

The Circuit Court's Decision

- The circuit court affirmed.
- In its decision, it found that coverage was barred by the exclusion that applied where Paschall failed to maintain its automatic sprinkler system, over which it had control, in complete working order, because Paschall's maintenance employee had turned off an entire system of the automatic sprinkler system.
- Additionally, it found that the exclusion applied that precluded coverage where Paschall failed to inform the insurers of a known suspension or impairment in its automatic sprinkler system.
- Significantly, the circuit court upheld the district court's application of general Georgia agency law when it found that the maintenance employee's knowledge that the sprinkler system had been turned off should be imputed to Paschall. Because a portion of a sprinkler system being "off" constituted a suspension and/or impairment, and because Paschall failed to inform the insurers about this suspension and/or impairment, the circuit court concluded that the district court properly had found there was no coverage.

- The case is *Chaucer Corporate Capital (No. 2) Limited v. Norman W. Paschall Co., Inc.*, No. 12–10933 (11th Cir. Aug. 2, 2013). Attorneys involved include: Paul Lindsey Fields, Jr., Gregory L. Mast, Fields Howell Athans & McLaughlin, LLP, Atlanta, GA, for Plaintiffs–Counter Defendants–Appellees; Jeffrey Dale Diamond, Diamond Law Office, Atlanta, GA, for Defendant–Counter Claimant–Appellant

Imputing Maintenance Employee's Knowledge to Employer, that Sprinkler System had been Turned Off

FC&S Legal

August 8, 2013

Steven A. Meyerowitz, Esq.

CENTRAL STATION ALARM CREDIT

- Central Station Alarm Discount = 5% credit
- Central Station Alarm Discount Superior Conditions = 10% credit

Central Station Fire Alarm

COVERAGE MODIFICATION

- **A.** As a condition of this insurance, *you* are required to maintain the *protective safeguard* as defined in this endorsement.
- Insurance under Part I for loss caused by, or resulting from, *fire is suspended and we do not insure such loss* if *you* fail to immediately notify *us* when *you:*
  - Know of any suspension of service or impairment in the working order of the *protective safeguard;* or
  - Fail to maintain in complete working order such *protective safeguard* under *your* control.

SPRINKLERED

COVERAGE MODIFICATION

- **A.** As a condition of this insurance, *you* are required to maintain the *protective safeguard* as defined in this endorsement Insurance under Part I for loss caused by, or resulting from, fire is suspended and *we* do not insure such loss if *you* fail to immediately notify *us* when *you:*
  - Know of any suspension of service or impairment in the working order of the *protective safeguard;* or
  - Fail to maintain in complete working order such *protective safeguard* under *your* control.
- *However, if part of an automatic sprinkler system is shut off due to breakage, freezing conditions, leakage, or opening of sprinkler heads but you can restore full protection within 48 hours of such shut off, this insurance will not be suspended and you do not have to notify us.*

Premises Burglary Alarm

COVERAGE MODIFICATION

- **A.** As a condition of this insurance, *you* are required to maintain the *protective safeguard* as defined in this endorsement.
- Insurance under Part I for loss caused by, or resulting from, burglary is suspended and *we* do not insure such loss if *you* fail to immediately notify *us* when *you:*
- • Know of any suspension of service or impairment in the working order of the *protective safeguard;* or
- • Fail to maintain in complete working order such *protective safeguard* under *your* control.

GLOSSARY

Automatic Sprinkler System

Automatic sprinkler system means:

1. Any automatic fire protection or extinguishing system, including any of the following connected parts:

- **A.** Ducts, fittings, pipes, or valves.
- **B.** Pumps and private fire protection mains.
- **C.** Sprinklers and other discharge nozzles.
- **D.** Tanks, including their component parts and supports.

2. When supplied by an automatic fire protection or extinguishing system:

- **A.** Hydrants, outlets, or stand pipes.
- **B.** Non-automatic fire protection or extinguishing systems.

SPRINKLERED BUILDINGS

- As rated by Mutual Service Office
  - Construction Type A/B = 65% credit building / 50% credit contents
  - Construction Type C/D = 50% credit building / 35% credit contents
- If not yet rated, may be tentatively considered as sprinklered if system applies to at least 60% of the entire building area– including basement
- NFPA 13R – Residential Type Buildings (20%)
  - Requirements concern automatic sprinkler system design, installation, and maintenance including component listing, hydrostatic tests, sprinkler temperature ratings, design documentation, above ground pipe and equipment, underground pipe, pre-engineered systems, water supply sources, multipurpose piping systems, and hydraulic calculations.

HOOD AND DUCT REQUIREMENT

COVERAGE MODIFICATION
The Part I Conditions are amended by adding the following:

A. All cooking appliances including their hoods and ducts must have in service, at all times, both a fixed automatic fire extinguishing system and a grease removal system. Such systems must be installed, maintained and routinely inspected in accordance with local codes, NFPA Standards and the authority having jurisdiction.

B. Insurance under Part I for loss caused by, or resulting from, fire is suspended and *we* do not insure such loss if *you* fail to immediately notify *us* when *you:*

- Know of any suspension of service or impairment in the working order of the fixed automatic fire extinguishing systems or the grease removal systems; or
- Fail to maintain in complete working order such fixed automatic fire extinguishing systems or grease removal systems under *your* control.

C. If any changes in the systems are made, *you* must report the changes to *us* immediately in writing.

$7,553,559 Jury Verdict Against Insurance Agent for failure to provide proper coverage

- In this professional negligence and insurance breach of contract matter, the plaintiff alleged that the defendant insurance company breached its insurance contract and acted in bad faith when it failed to honor the plaintiff's claim for loss when his hotel was destroyed by fire. The plaintiff also alleged that the defendant insurance agent was negligent for failing to obtain proper insurance coverage for the plaintiff and his hotel.

The defendants denied the allegations and disputed negligence and damages.

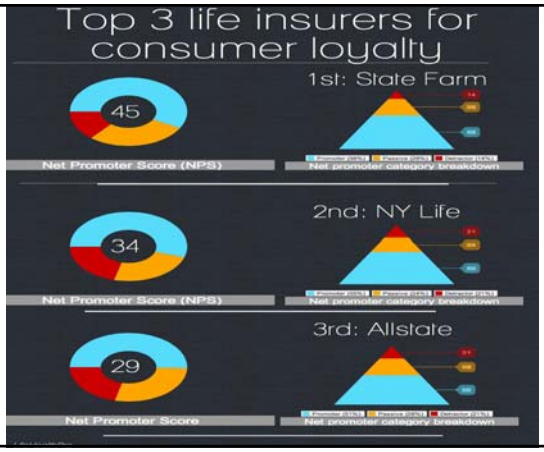
The plaintiff was the owner of the historic Planter's Hotel which had stood in the town square since the 1920s. The building was destroyed by fire. At the time of the fire, the hotel was covered by a $3.1 million insurance policy with the defendant Chubb Insurance Company. The policy had been obtained through the defendant agent's employee, xxxxx. The plaintiff submitted timely claim to the defendant insurance company which was denied based upon exclusionary language in the policy regarding protective safeguards.

Life Trivia Question

WHO ARE THE TOP THREE LIFE INSURANCE COMPANY'S BASED UPON CONSUMER LOYALTY ?

The plaintiff discovered that a few months prior to the fire, a representative of the defendant insurance company was at the hotel to do an inspection and had sent an email of his findings and recommendations to the defendant agent. The agent failed to advise the plaintiff of the findings and recommendations, one of which was that the hotel was very much underinsured and a cost estimate showing the actual reconstruction costs would be in excess of $6.2 million. The defendant offered that it would increase the policy limits to an amount in line with the true value of the property. The defendant agent failed to ever relay this information or the information regarding the protective safeguards to the plaintiff.

The plaintiff alleged that the defendant agent failed to ever discuss the increased insurance opportunity or the recommendations of the inspection with the plaintiff. Indeed, the plaintiff alleged that the defendant took it upon himself to advise the defendant insurance company not to increase the limits of insurance and to change the policy from a replacement cost policy to an actual cash value property. The plaintiff brought suit against the defendant insurance company alleging breach of contract and bad faith and against the insurance agent alleging professional malpractice and negligence.



The defendants denied the allegations. The plaintiff settled with the defendant insurance company prior to the trial and the matter proceeded to trial as to the defendant insurance agency. The defendant agent argued that it was unaware that a policy could be issued for replacement cost and assumed that the policy written for the plaintiff was actual cash value. When he learned that it was not, the agent changed it back to what the agent had thought it was all along, which happened to be inferior coverage.

The matter was tried over a period of eight weeks. At the conclusion of the trial, the jury deliberated for just short of two weeks and returned its verdict in favor of the plaintiff and against the defendant. The jury entered an award in the amount of $ 7,553,559.00 in damages.

Pension Stripping and De-Risking

Insurance Advocate April 2014 -- Peter Bickford, Esq.

- Corporations, particularly large organizations with massive pension obligations, are always looking for ways to reduce or stabilize these long-term liabilities. One way that seems to be gaining favor is through the purchase of group annuities under which the pension obligations to certain employees is transferred to the annuity issuer.
- The most noted example is the recent transfer of more than 40,000 retired Verizon employees out of their pensions plan and into annuities under a group annuity policy issued by Prudential.
- Despite a hefty up-front premium payment to the annuity issuer, the benefits to a company can be significant including: no longer having to pay annual premiums to the Pension Benefits Guaranty Corporation (PBGC), removing long-term pension obligations from the balance sheet, reducing future pension related expenses, and potentially lowering borrowing costs resulting from improved credit ratings.
- The employees would also seem to benefit from having the assurance of an annuity from one of our leading financial institutions, The Rock!

Know if Your Client has a Multi-State Workers Compensation Exposure

- Claims against agencies sometimes deal with the lack of Workers Compensation (WC) coverage for an agency client's employee following a loss (12%). Not only is there the usual situation where medical bills and loss of earnings need to be paid, but claims against an agency will often include a claim by their customer for reimbursement of fines the customer had to pay to a state regulatory authority because of a lack of coverage. It goes without saying that these types of claims can be expensive.

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Overview of Parts 3A and 3C

3.A. Workers Compensation Insurance	3.C. Other States Insurance
Provides WC benefits according to the WC law in the states listed under 3.A.	Provides WC benefits according to the WC law in the states listed under 3.C.
Provides coverage for known operations in that state but only if listed under 3.A.	Provides coverage for unknown or unexpected operations for that state only if listed and if operations begin after the effective date of the policy.
After the effective date, you must notify the insurer at once if you begin operations in any state not listed in 3.A. or 3.C. If not listed, then no coverage for that state.	Must notify the insurer if you begin work in any state listed in 3.C. (Crucial to notify the insurer by the renewal date or at the latest within 30 days of the renewal date).
Problem: If a state is listed under 3.C. and NOT under 3.A. and there are existing operations at the inception of the policy period, then there is no coverage provided for that state unless the insurer is notified within 30 days of the renewal date.	

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c. Item 3.C.: Other States Insurance

1) List states that are unknown or unexpected at inception or within 30 days of inception/renewal

2) States must be listed in Item 3.C. for Part Three Other Insurance coverage to apply

3) Suggested wording for Item 3.C.

   All states, except North Dakota, Ohio, Washington, Wyoming, and states listed in Item 3.A. of this Information Page

4) *Some state laws (i.e. New York, Florida.) require their states be listed under Item 3.A. in lieu of 3.C.*

5) Coverage will be provided until the coverage form expiration date only. Critical to notify carrier at renewal of any operations in states listed in Item 3.C., so they can be named in 3.A.

Short Quiz – 3C

1. The Insured: **Donaldson, Inc.**
2. The policy period is from **April 1, 20XX** to **April 1, 20XX** at the insured's mailing address.

2. A. Workers Compensation Insurance: Part One of the policy applies to the Workers' Compensation Law of the states listed here: **NEW JERSEY**

B. Employers Liability insurance: Part Two of the policy applies to mark in each state listed in Item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident	$ **500,000**	each accident
Bodily Injury by Disease	$ **500,000**	policy limit
Bodily Injury by Disease	$ **500,000**	each employee

C. Other States insurance: Part Three of the policy applies to the states, if any, listed here: **All Other States except NOW and those shown in 3A, Puerto Rico and US Virgin Islands**

D. This policy includes these endorsements and schedules:

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6. Problems

a) Over reliance on Item 3.C. to provide automatic coverage

b) Insured should notify company *at once* if work is begun in any state listed under 3.C.

c) If operations exist on the effective date in any state not listed in Item 3.A., coverage will not be afforded unless notified within 30 days of the effective date

d) Challenge of regional carriers and state funds, not licensed or unwilling to write in all states

- **Donaldson, Inc. is a small but growing business with operations in two locations in New Jersey. They have a Workers Compensation and Employers Liability Insurance Policy with NJ listed in Item 3.A. on the Information Page.**

- 1) Does Donaldson have coverage for injury to a worker in New Jersey on May 22?
- 2) Donaldson begins operations and hires employees in Connecticut starting September 12. Does Donaldson have coverage for a worker injured in CT on September 30?
- 3) A lucrative opportunity presents itself in Wyoming, so Donaldson, hires employees in Wyoming and begins operations in Wyoming on November 1. Does Donaldson have any coverage for injury to a worker in Wyoming on November 30 under his Policy?
- 4) Business is very good, so Donaldson expands again, this time hiring employees and beginning operations in Utah on February 10 of the next year. Does Donaldson have any coverage for a worker injured in Utah on May 23?

Short Quiz – 3C

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2. The policy period is from **April 1, 20XX** to **April 1, 20XX** at the insured's mailing address.

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Bodily Injury by Accident	$ **500,000** each accident
Bodily Injury by Disease	$ **500,000** policy limit
Bodily Injury by Disease	$ **500,000** each employee

C. Other States insurance: Part Three of the policy applies to the states, if any, listed here: **NONE**

D. This policy includes these endorsements and schedules:

Asking Questions- Personal

- What other structures are on your property?
- Do you belong to a Home/Property Owners Association?
- Do you have a Time-Share?
- Do you own any Recreational Vehicles- boats, ATV's, motorcycles, golf cart, etc.
- Do you or any family member have a company car?

- **Donaldson, Inc. is a small but growing business with operations in two locations in New Jersey. They have a Workers Compensation and Employers Liability Insurance Policy with NJ listed in Item 3.A. on the Information Page.**

- 1) Does Donaldson have coverage for injury to a worker in New Jersey on May 22?
- 2) Donaldson begins operations with his NJ employees in Connecticut starting September 12. Does Donaldson have coverage for a worker injured in CT on September 30?
- 3) Donaldson begins operations and hires employees in Connecticut starting September 12. Does Donaldson have coverage for a worker injured in CT on September 30?
- 4) A lucrative opportunity presents itself in Wyoming, so Donaldson, hires employees in Wyoming and begins operations in Wyoming on November 1. Does Donaldson have any coverage ?
- 5) Twice a month Donaldson delivers product customers right across the G.W. Bridge in NYC. His driver is injured. Coverage ?

Asking Questions-Personal

- Do you have any business operations from your home? (contractors)
- Are you sure you are insured to value?
- Do you know that Identity Theft will take about 60 hours to fix-are you insured?
- Do you ever travel outside of the country?
- Canadian ID Cards
- Do you have adequate liability/excess limits?

Asking Questions- Personal

- Are you aware of Flood / Water Damage limitations in your Homeowner policy?
- Is anyone living with you who is not a family member ?
- What are your hobbies?
- Do you conduct any farming activities ?
- Do you own any items that would raise eyebrows at the "Antique Roadshow" ?

Asking Questions-Commercial

- Named Insureds / First Named Insured
- Multiple structures / locations
- Delete location or property / when does your lease expire?
- Do you have adequate Liability/Excess Limits?
- Fire Legal Liability (DTPR) Exposure ?
- Any Changes in Operations / Entities?
- Are all vehicles on a CAUT policy? Full Drive other Car / Broadened PIP/ APIP ?

Asking Questions- Commercial

- Are your values/payroll/sales updated ?
- Be careful with out of state operations- Workers Compensation- 3C / Monopolistic
- Do you have Foreign Liability exposures?
- Building, Ordinance and Law Coverage?
- Earthquake, Flood-NFIP and Excess, DIC
- Nasty Endts / Data Breach Network Security

Review of Insured's Contracts

- While the Agency's business needs often make it impossible to refuse these requests, great care must be taken
  - Agents often have no formal training in contract review
  - The request is often made to a CSR or similarly trained person

Customer Service Facts

- One Million homes per year undergo major renovation
- 40% who have renovated don't increase homeowners insurance coverage
- 32 million households have not received a review of their insurance coverages in over 2 years
- 42% of families had a young driver move away and haven't updated their auto policy

Review of Insured's Contracts

- If your agency takes on these tasks, you should be very clear about the scope of your undertaking
- The following is a possible form of disclaimer letter that you should seriously consider using in such situations

Customer Service Facts

- 85% of people who use their car to carpool have not increased their liability limits
- 5% of your clients will get divorced this year!
- 9% will marry
- 5 million unmarried couple households
- 25 million people Conduct a Business from home, 50 million work from home
- 2012 almost 50% will work from home

Review of Insured's Contracts

- "Our Agency has, upon your request, reviewed the contract indicated above. Specifically, we reviewed only the insurance requirements in Section __."

Review of Insured's Contracts

- "The scope of our review was to determine if the current insurance program which you have placed through our Agency addresses the types and amounts of insurance coverage referenced by the contract.
- We have identified the significant insurance obligations, and have attached a summary of the changes required in your current insurance program to meet the requirements of the contract.
- Upon your authorization, we will make the necessary changes in your insurance program. We will also be available to discuss any insurance requirements of the contract with your attorney, if desired."

Schenck, Price, Smith & King, LLP – 10 Washington Street – Morristown, NJ 07963 – 973-539-1000

Changing Named Insured

- CGL: Steve Lyon T/A Lyon Contracting
- January 1, 1995 to April 12, 2011
- CGL: Lyon Consulting Contracting, LLC
- Effective April 12, 2011
- Who has all the rights under the policy?

Review of Insured's Contracts

- "In performing this review, our Agency is not providing legal advice or a legal opinion concerning any portion of the contract.
- In addition, our Agency is not undertaking to identify all potential liabilities that may arise under this contract. This review is provided for your information, and should not be relied upon by third parties.
- Any descriptions of the insurance coverages are subject to the terms, conditions, exclusions, and other provisions of the policies and any applicable regulations, rating rules or plans."

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OCCURRENCE FORM ISSUES

- Changing Named Insured's Sole Prop to LLC
- Contractors / Business Retire / Cancel Policy
- Mergers / Acquisitions – Where is Coverage?
  - ABC, Inc is acquired in an Asset Sale by XYZ, Inc on 2/1/08. One 4/1/08 ABC, Inc is sued for product they made in 2006.
    - Asset Sale, seller retains liabilities no coverage if policy canceled / buy Discontinued Prods/Coops
    - Asset and Liability sale, previous entity should be named on XYZ's policy forever
- Joint Ventures

Danger when Substituting Vehicles

ISO
Personal Auto Policy
2005

STATISTICS

- Publsihed in 2007, Harris Interactive® for Martindale-Hubbell® conducted a research study[1] finding that for the last three years, 55% of all adult Americans do not have a will. Only one in three African American adults (32 percent) and one in four Hispanic American adults (26 percent) have wills, compared to more than half (52 percent) of white American adults**.**
- Studies reveal that between 60-75% of Americans die intestate. Intestacy causes the decedent's property to pass to those individuals whom the state government believes the decedent would have wanted to receive the decedent's probate estate upon death.

ANNUAL LIFE INSURANCE LAPSE RATE

- Any Guesses ?

- 1.5 TRILLION

  in Face Value Each Year

Largest life insurance policy bought at $201M

BY EMILY HOLBROOK
MARCH 19, 2014

Many tech executives in the Silicon Valley are worth millions and some have purchased life insurancepolicies to protect those millions once they are no longer there to do so. But one individual went above and beyond the normal scope of life insurance policies. An unnamed Silicon Valley billionaire recently took out the largest life insurance policy ever at $201 million. This whopping policy is for good reason, however.

"The insured probably has assets of sufficient value to draw a sizable tax and justify the need for insurance; most likely that asset is a closely held business which is not ready to be sold or restricted shares of a public company," says Steven Felsenthal, a tax and estate planning attorney at Sugar Felsenthal Grais & Hammer.
"The insured presumably doesn't want his family to be forced to sell the business or the shares at an inopportune time or for a bargain price as a means to raise money and cover the taxes."

Felsenthal explains that the most tax efficient way to purchase the policy would likely be in an irrevocable life insurance trust. "The trust can be constructed in such a way that while the premiums paid for the insurance might be taxable in the trust creator's estate, the death benefit would not be; essentially none of the premiums paid would purchase insurance that would benefit Uncle Sam," adds Felsenthal. "There are techniques that can even avoid taxability of the premiums in the trust creator's estate, such as borrowing or split-dollar arrangements. This planning can be done, even more efficiently, for people who buy insurance policies with far fewer zeros, who have substantial estates but not mega estates."

Previously, the record held for largest life insurance policy was attributed to record company mogul David Geffen for $100 million.

According to the Insurance Information Institute, other high profile policies were purchased by Dale Earnhardt and Heath Ledger.

When Dale Earnhardt was tragically killed in a 2001 NASCAR race gone wrong, his wife Teresa tried to claim his $3.7 million life insurance payout and was promptly denied. Richard Childress Racing had put in place a financial agreement that stated upon Dale Earnhardt's death his wife would receive as much as $7 million from his life insurance policy issued by Omaha Insurance. RCR brought a lawsuit against Omaha Insurance for denying the claim made by Teresa because RCR then became responsible for paying the benefits instead.

When actor Heath Ledger passed away in 2007, his life insurance policy was said to be $10 million. However, the insurance company did not want to pay the policy because his death was ruled suspicious. He died of an accidental drug overdose and the insurance company suspected suicide. Another issue was that they suspected Ledger had lied when he filled out the application for his life insurance, not disclosing his use of prescription drugs.

Legitimate Needs for a "Secondary Market"

- Life Insurance Policy no longer needed or wanted
- Premium payments have become unaffordable
- Owner is considering surrender of the policy
- Policy is about to lapse
- Changes in Estate planning needs or changes in financial / life circumstances (divorce, death, etc)

Regulation of Viatical / Life Settlement Market

- NJ regulates both viatical and life settlement transactions
- NY regulates viatical but not life settlements
- CT regulates both
- NH regulates neither

Don't Make a Celebrity Mistake

Gandolfini's estate-planning errors are far from the only tax mistake among celebrities. Some are basic missteps, like Wesley Snipes having failed to file income tax returns and Nicolas Cage having an unpaid seven-figure tax bill outstanding. Lauryn Hill failed to pay taxes for years, and on Monday began serving a three-month sentence for tax evasion.

Moreover, Gandolfini at least had a will. Many celebs who died unexpectedly, including Jimi Hendrix, Amy Winehouse, and Barry White, didn't have valid wills at all, an issue which can raise a host of other complications and unintended results.

So in reviewing your own estate-planning situation, be sure you've taken care of the following issues:

- **Make sure you have a will.** Doing so is the best way not only to make sure the right people get your property after your death but also to name someone to take care of minor children in your absence. Without a will, long court battles can ensue, and that will not only create emotional stress but also sap financial strength at a most difficult time.
- **There are a number of other vital documents to have.** A living will lets you make your wishes known about life-preserving treatment, while a health-care power-of-attorney will let a loved one act more broadly on your behalf when you're unable to make your own decisions about medical treatment. Similarly, a durable power of attorney will let someone take financial action on your behalf if you're incapacitated, saving a huge amount of complications.
- **Finally, financial planning can be as simple or as complex as you choose to make it.** With the federal estate tax exemption currently at $5.25 million, few people have to worry about tax considerations, although some states have estate taxes that kick in at levels as low as $675,000. Make sure to coordinate your will's provisions with your investments, life insurance, and other financial planning to ensure a smooth transition if something happens to you.

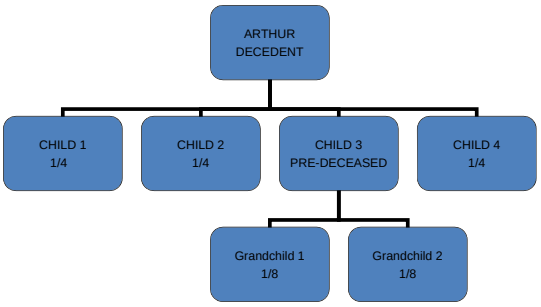
No one likes to contemplate their own death. But the expensive lesson that the IRS is about to teach the Gandolfini family is one that you don't have to learn the hard way, as long as you take some easy steps now to avoid a big IRS bill later.

Effects of Estate Planning (or not)

Name	Estate	Taxes	Net	Shrink
WC Fields	$884,640	$329,793	$554,887	37%
M. Monroe	$819,176	$448,750	$370,426	55%
Clark Gable	$2,806,526	$1,101,038	$1,705,488	30%
Walt Disney	$23,004,851	$6,811,943	$16,192,908	30%
Elvis Presley	$10,165,434	$7,374,635	$2,790,799	73%
Alwin Ernst	$12,642,431	$7,124,112	$5,518,319	56%
Dean Witter	$7,451,055	$1,830,717	$5,620,338	25%
JD Rockefeller	160,598,182	24,965,954	135,632,630	16%

Per Stirpes (by root)

To Arthur's four children to share equally, and to the surviving children of any of Arthur's deceased children, per stirpes

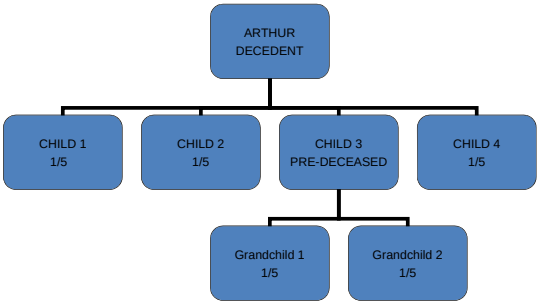


George Steinbrenner

- Baseball pioneer **George Steinbrenner**, owner of the famed New York Yankees' franchise, died from a heart attack on July 13, 2010, at age 80. Checking in at number 341 on Forbes' list of richest Americans last year, the Steinbrenner fortune has been estimated at $1.1 billion.
- Many publications, have pointed out that, tax-wise, Steinbrenner chose a great year to die. Due to a quirk in the federal estate tax law, there are no estate taxes for those who die in 2010.
- Those who died in 2009 paid a 45% tax for every dollar over $3.5 million ($7 million for married couples who did the proper estate tax planning). There are no estate taxes this year, but next year, the estate tax comes roaring back with a 55% tax rate.
- This led to a huge tax savings for Steinbrenner's widow and four children of $500 million (based on 2009 levels) or $600 million (compared to the 2011 limit). Not bad!

Per Capita (per head)

To Arthur's four children in equal shares if they survive him, and to the surviving children of his children who predecease him per capita



Beneficiaries

- Type of Beneficiaries
  - Primary- first in line to receive proceeds
  - Contingent- second in line after death of primary
  - Tertiary- third in line after death of primary and contingent
  - Revocable-can be changed by owner w/o knowledge
  - Irrevocable- can only be changed with benny consent
- Change of Beneficiary
- Who gets paid…If no Beneficiary is named, or all primary and contingent bennys are deceased at the time of the insured's death?
- Proceed are paid to policy owner or if deceased, the estate.

Keep Beneficiaries Current

- Ex-Spouses
  - McCarthy v. Aetna Life Ins Co (read case)
- Former Business Associates
- Creditors to the extent of the indebtedness
- Deceased Beneficiaries
- Wills / Estate Planning

PLEASE SEEK LEGAL/FINANCIAL COUNSEL

ALPHABET?
What's Missing?

A B C D F G H I J K L
M N P Q R S T U V W
X Y Z

The Lowest Bidder

It is unwise to pay too much, but it is worse to pay too little. When you pay too much, you lose a little money—that is all. When you pay too little, you sometimes lose everything, because the thing you bought is incapable of doing what it was bought to do. The common law of business balance prohibits paying a little and getting a lot—it can't be done. If you deal with the lowest bidder, it is well to add something extra for the risk you run. And if you do that, you will have enough to pay for something better"

John Ruskin (1819-1900)