

Message from the Chair

by Manus C. "Chris" O'Donnell, CPCU, ARM, AMIM, MBA



Manus C. "Chris" O'Donnell, CPCU, ARM, AMIM, MBA, is an administrative vice president of M&T Bank, and is the director of corporate insurance and risk for M&T, which is estimated to currently be the 18th largest commercial bank in the United States. He remains affiliated with M&T's property and casualty insurance subsidiary, M&T Insurance Agency Inc.

Summer is finally here in the Northern Hemisphere.

What a winter!

Mother Nature has strongly reminded humankind that natural risk still exists. Furious earthquake activity in New Zealand followed by the tsunami in Japan punctuated the winter season. All too human errors of the distant past were laid bare in the tragedy still unfolding in Japan.

Only decades after design and construction of nuclear facilities with active, rather than passive safety features, on a well-known fault line with a history of tsunami activity are we realizing those flaws. Similar flaws exist in similar facilities all over the world. Post-tsunami, we realized that a similarly designed plant operates near New York City potentially

threatening millions of people should a disaster occur. As I write this, a nuclear plant in Omaha, Neb., is threatened by rising flood waters.

The historic tornado activity in the spring, worse in reality than imagined by Hollywood, continued to demonstrate Mother Nature's fury. Global climate change, vigorously debated, seems to be a huge contributor to those tragically spectacular weather events. Again, human activity over many decades seems to be the culprit in fostering the conditions leading to the disasters.

Continuing into summer, flooding along the Missouri and Mississippi river systems is destroying entire communities. Decades of government "flood control" efforts through the

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Message from the Chair

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U.S. Army Corps of Engineers management and unwise development on natural flood plains enhanced the magnitude of the destruction.

Who are on the front lines of assisting those impacted by the losses associated with these natural and manmade calamities? The community-based insurance agents and brokers worldwide.

Agents and brokers man the emergency teams and sandbag stackers as volunteers in communities everywhere. Once immediate emergency activities conclude, these same folks, many of whom experienced personal losses in those same

communities and calamities, work to help rebuild and restore lives and livelihoods.

It is at the time of loss that the property-casualty insurance industry can be most visible by financing restoration after the disasters. That is what is expected of us.

That said, we should also redouble our efforts to address more vigorous loss control and safety research and practices in the communities and countries in which we reside. As alluded to earlier in this article, we, humans, arguably magnified the negative impact of otherwise natural catastrophes by unwise and poorly thought-through policies and practices.

Safety and loss control are key features of our industry. We should be in the forefront, as an industry, in working on solutions to the now obvious safety and engineering errors of the past.

We remain uniquely qualified to do this. This is something the industry has done well for decades from UL to company and agency loss control engineers. We need to step it up rather than reducing the efforts as shortsighted expense saves.

Hopefully, we are up to the task. ■

2011 Annual Meeting and Seminars

Oct. 22–25, 2011 • Las Vegas, Nev.

The CPCU Society Agent & Broker Interest Group Presents



Agent & Broker Interest Group Breakfast Seminar

Oct. 22 • 8:30 a.m.–10:30 a.m.

Hear the latest information about health care reform at the breakfast seminar “Health Care Reform II — Updates and How Reform Will Affect the Worldwide Insurance Landscape.” Moderated by **M. Christopher O'Donnell, CPCU, MBA, ARM**, of M&T Bank, speakers include **Anne Buckley, J.D.**; **David Kalm, J.D.**, of RMTS LLC; and **Joel Wood**, of The Council of Insurance Agents & Brokers.

Don't Roll the Dice in Managing Agent and Broker E&O Exposures and Claims — Lessons You Didn't Learn in E&O Class

Oct. 23 • 8:30–11:15 a.m.

If you've seen one E&O seminar, you've seen them all — *until now*. E&O seminars have traditionally focused on mind-numbing statistics with little practical application, general processing and procedural issues, and broad, sweeping loss control recommendations. But this session — presented by **Richard J. Cohen, J.D.**, of Goldberg Segalla LLP, and **William C. Wilson, Jr., CPCU, ARM, AIM**, of the Big “I” Virtual University — will focus on specific areas of agency operations using representative E&O claim files and case law to explore the exposures and problems rarely, if ever, discussed in traditional E&O seminars.

Certificates of Insurance — Sure Bet or Bluff?

Oct. 24 • 1:30–5:05 p.m.

The ACORD 25 Certificate of Insurance has undergone a transformation in the past couple of years. Many people now question whether the certificate can be relied upon anymore. Others question whether it should ever have been relied upon. The presenters — **Stuart Powell, CPCU, CIC, CLU**, of the Independent Insurance Agents of North Carolina, and **William C. Wilson, Jr., CPCU, ARM, AIM**, of the Big “I” Virtual University — will focus on emerging issues with certificates, additional insureds and contractual insurance requirements, given evolving marketplace needs and legal and regulatory constraints.

Agent & Broker/International Insurance/Leadership & Managerial Excellence/Reinsurance Interest Groups Dinner

Oct. 24 • 6:30–9 p.m.

Michael Shackleford, ASA, a gaming consultant, will offer a crash course in gaming, entitled “The Wizard of Odds,” at the combined interest groups' dinner.

Message from the Editor

by Carolyn "Cal" J. Durland, CPCU



Carolyn "Cal" J. Durland, CPCU, is director of member relations for ACORD. With 30 years' experience in the insurance industry, she currently works with ACORD members to ensure that they have a personal connection with the organization and are securing the benefits entitled to their respective organizations. As the facilitator for ACORD User Group Information Exchange (AUGIE), Durland works with the various management system user groups, independent agents, carriers and vendors to address technology and workflow opportunities, and to educate the industry on the business value of working with ACORD data standards and forms.

In this edition, we provide information on the ACORD Certificates and industry efforts to improve efficiency and sales through personal lines and Excess & Surplus lines. We've provided a piece on ERISA fidelity bonds and fiduciary liability coverage; we've included pieces on what to expect from our markets in 2011 and how to develop programs that produce positive results. We also provide you with another story of how the CPCU designation has impacted an individual's career. If you have a story you'd like to share, please send an email to cdurland@acord.org

Manus C. "Chris" O'Donnell, CPCU, ARM, AMIM, MBA — Our chair shares his thoughts on how agents and brokers help their customers through this difficult winter.

Michael Carroll — In this edition, we're providing you with information on the change that has been made to the ACORD Certificates of Insurance, and opportunities on lines of business you should consider in growing your book of business and education.

ACORD has coordinated an education initiative to help the industry understand the clarification that has been made to the Certificates of Insurance. RIMS wrote a white paper that is referenced in an interview by **Ann Henstrand**, chief compliance officer at ACORD. Article — http://www.acord.org/about/newscenter/news/pages/20100104_certificateschanges.aspx

- FAQ — http://www.acord.org/standards/forms/Documents/ACORDCertificatesFAQ_201004.pdf
- RIMS — http://www.acord.org/about/newscenter/news/pages/20110223_rims.aspx
- PIA — http://www.acord.org/about/newscenter/news/pages/20110302_certed.aspx
- IIABA — <http://www.iiaba.net/VU/NonMember/Certificates.htm>
- There is more if you search for "Certificates" on www.acord.org

Jeff Yates — There are significant industry efforts underway to improve the efficiency of the Excess & Surplus lines markets, but those efforts are at a crossroads. The involvement of independent agents is needed now to push for the acceptance of ACORD applications in this market, as well as for the implementation of automated real-time data uploads and downloads by their general agent and wholesaler business partners.

Richard Gilman, APR, CMP — Now is a great time to take a second look at Personal Lines. The Personal Lines Growth Alliance (PLGA) was formed with a very simple purpose in mind — help the independent agency system's bottom line by increasing its share of the Personal Lines market.

Jerome "Jerry" Trupin, CPCU, CLU, ChFC — ERISA fidelity bonds and fiduciary liability coverage for the fiduciaries of ERISA plans are often confused. Both are important, but they serve different purposes.

John R. Graham — The communications environment is so dynamic today there are no firm marketing answers. Learn how five principles provide guidelines for developing programs that produce positive results instead of wasting money.

Spencer W. Macalaster — What should we expect for 2011? Barring a large catastrophe, which could trigger a sharper reversal of the soft market, rates will likely continue to be competitive. However in our opinion, the marketplace is at best uncertain.

In the final article of this newsletter, I describe the evolution of my insurance career and how the CPCU designation played a role throughout the years.

In our next edition, we'll be providing information about social networking. Thank you for your support of the Agent & Broker Interest Group. ■

ACORD Certificates — Tapping Educational Resources

by Michael Carroll

Michael Carroll is a communications specialist for ACORD. He joined ACORD's communications department in 2003. He is the editor of the *ACORD Weekly Newsletter* and is involved in writing, marketing, collateral development and events for a variety of initiatives. He also handles ACORD's media relations for both editorial and publishing areas. Prior to that, he served as marketing manager for a Wall Street financial software company.

ACORD Certificates have been a topic of discussion in various industry circles for the past year due to changes in some wording. Just how and when you use them is essential knowledge for agents, brokers, and the industry as a whole. This is where several groups have worked to provide certificate education.

Education is an investment that pays big dividends to both you and your company.

The Forms

The forms being discussed include:

- ACORD 20 — Certificate of Aviation Liability Insurance.
- ACORD 21 — Certificate of Aircraft Insurance.
- ACORD 22 — Intermodal Interchange Certificate of Insurance.
- ACORD 23 — Automobile Certificate of Insurance.
- ACORD 24 — Certificate of Property Insurance.
- ACORD 25 — Certificate of Liability Insurance.
- ACORD 27 — Evidence of Personal Property Insurance.
- ACORD 28 — Evidence of Commercial Property Insurance.

Much of the discussion is focused on this changed wording:

Old Text

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail ____ days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

New Text

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Educational Resources

The Risk and Insurance Management Society (RIMS) released an executive report, *Recent Changes to the ACORD Form — Cause and Effect*, that examines the changes ACORD made to its Certificate forms as well as how to maximize their use. RIMS, representing the ultimate customer, wanted to ensure that its members gained the knowledge they needed by providing a step-by-step process for understanding the changes and why they occurred, as well as how to use the current forms to satisfy lenders, mortgage holders and/or contracted parties.

Focusing on their constituency's needs, **Deborah Tauro**, senior manager of Risk Management Services at Regency Centers and author of the report, wrote that "risk managers should also keep in mind that the Certificate does not convey any rights so they need to ensure that they obtain copies of policy endorsements where necessary."

RIMS even went a step further when **Lori Seidenberg**, vice president in the Enterprise Risk Management division of Centerline Capital Group and a member of the RIMS Board of Directors sat down for a video interview with ACORD's **Ann Henstrand**, chief compliance officer, to discuss the white paper. You can see the video at <http://bcove.me/dhoxypdq>.

At the same time the white paper was released, the National Association of Professional Insurance Agents (PIA) announced that it would be working with ACORD and other groups to address concerns regarding P&C Certificates of Insurance. Recently, Henstrand participated along with ACORD Board

Member **Keith Savino** in a webinar held by PIA that drew more than 200 PIA agent members.

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In a release, the PIA stated that it is “committed to working with all interested parties in each jurisdiction to make clear that altering certificates of insurance is prohibited by insurance law and practice. Through making refinements to insurance regulations and/or statutes, we are working to provide resolutions to these situations.”

The Independent Insurance Agents & Brokers of America (Big I) also has held numerous webinars, chapter sessions and resources online to help agents better understand and use ACORD Certificates. Its Virtual University has several articles available to provide that agent perspective on the use of Certificates.

Keeping Up to Date

Certificate education is everyone’s business and concern. It’s important to

tap the available resources, ask questions, and keep informed. Associations including PIA, Big I, RIMS and ACORD are all expert sources for this knowledge.

You should also keep up with the changes happening across the industry. Free newsletters, such as the *ACORD Weekly Newsletter*, email updates including the ACORD Forms Notification, free webinars and educational events such as those from the PIA and Big I, and white papers like the one from RIMS, not to mention blogs, Twitter feeds and much more.

Take the time, tap the resources and make sure you’re up to date on ACORD Certificates. ■

2011 Annual Meeting and Seminars

Oct. 22–25, 2011 • Las Vegas, Nev.
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CPCU-Loman Golf Tournament

Oct. 21 • 7:30 a.m.–2 p.m. (check-in begins at 6:30 a.m.)

Support the CPCU-Loman Education Foundation by participating in the Third Annual CPCU-Loman Golf Tournament. All proceeds will support the Foundation’s mission to advance education in the fields of insurance, risk management and risk bearing through programs such as the matching scholarship program. The tournament will be held at the Siena Golf Club in Las Vegas.

More information is available on the Foundation’s website, cpculoman.cpcusociety.org. Click on “CPCU-Loman Golf Tournament.”

The official registration and financial information of the CPCU-Loman Education Foundation may be obtained from the Pennsylvania Department of State by calling toll-free within Pennsylvania, (800) 732-0999. Registration does not imply endorsement.



E&S Market Moves to Enhance Efficiency — Independent Agents Can Be Catalyst for Further Progress

by Jeff Yates

Jeff Yates has been executive director of Independent Insurance Agents & Brokers of America Inc.'s Agents Council for Technology (ACT) since 2001 and works with independent agents, companies, vendors, user groups and industry associations to advance effective technology solutions and improved business processes within the Independent Agency System. ACT also develops information and seminars to help agents take full advantage of technology opportunities. Yates has previously held the roles of general counsel, executive vice president and CEO of Industry and State Relations during his 35-year tenure with IIABA. He is enthusiastic about the future for independent agents and brokers — a future that has been significantly enhanced by advances in agency workflows and technology. He can be reached at jeff.yates@iiaba.net or (703) 706-5402.

Two years ago, ACT, AAMGA, NAPSLO and ACORD banded together to start the E&S Joint Working Group to bring much needed efficiency to the E&S market. We realized that many of the efficiencies we take for granted in the standard market were possible for excess and surplus lines as well, such as — use of ACORD standard applications, real-time uploads of data, downloads and general agent websites with more functionality. We also understood that the E&S market is really important to the independent agent with the mean agency placing 29 percent of its commercial lines revenue and 16 percent of its personal lines revenue with a market access provider, such as a general agent or wholesale broker (“GAs”) (2009 figures, 2010 Future One Agency Universe Study).

The E&S Joint Working Group and industry have made good progress over the last two years, but we stand at a crossroads right now. As I will describe further below, we have developed some standard ACORD E&S application supplements, created “proof of concepts” for real-time upload and download, and published a roadmap for general agents on needed functionality for their websites. Now we need to take these standard applications and technology demos and put them into practice throughout the E&S industry.

This is where the independent agents come in. Independent agents need to get involved and ask their GAs to accept the standard ACORD applications and supplements, rather than requiring a plethora of company unique applications. It also is important for agents to push for real-time uploads and downloads from their GAs. The independent agents were the players who created the momentum for these improvements in the standard market, and they need to be the catalyst in the E&S market as well.

Independent agents and their user groups also should encourage their vendors to implement the new ACORD professional/specialty applications and E&S supplemental applications promptly into their systems, so that it is easier for agencies to use these forms. Below I describe the specific help we ask of independent agents and other E&S stakeholders to make these improvements happen in the E&S market.

Progress to Date

We have 353 E&S industry stakeholders participating in the E&S Joint Working Group — retail agents, general agents, wholesalers, E&S and program carriers, and technology providers. We have four active subgroups: one working on standards and forms, a second on interface (retail agent —

general agent [multiple systems] — E&S carrier — and back), a third on efficiencies with Lloyd's and Lloyd's brokers, and a fourth on communications.

At the recent AAMGA Technology Conference which featured a presentation by the Joint Working Group, the attendance increased by about 100 and the buzz at the meeting was all about the ACORD standards — how to implement them and which vendor systems incorporate them. There was also great interest in the round-trip data interfaces that were demonstrated — from the retail agent's agency management system to the GA's agency management system to the E&S carrier's rating system to the GA's policy issuance system and then back to the GA for download to the retail agent.

ACORD, working with the Joint Working Group, has introduced two new E&S supplemental applications for vacant buildings (ACORD 106) and apartment buildings (105) and is about to vote on two additional supplements — Restaurant/Tavern (183) and the Liquor Liability Section (803).

In addition, ACORD has introduced a number of important professional/specialty lines applications and supplements: Professional/Specialty Insurance Application (825), Directors & Officers Liability Section (807), Employment Practices Liability Insurance (827), Fiduciary Liability Coverage Section (828) and Miscellaneous E&O Section (832).

Also noteworthy at the meeting was the increased contingent of Lloyd's brokers and representatives who attended and indicated their strong interest in increasing efficiencies with their business partners in the U.S. market. To tie all of these positive developments together, the Communications Subgroup unveiled the Joint Working Group's new website (<http://www.esjwg.org/>), which is a

great place for agents and other E&S stakeholders to go to learn more about the initiative and to join the effort.

Pushing for the Use of ACORD Standard Applications

Independent agents were instrumental in getting carriers in the standard market to accept ACORD applications — applications that have the great advantage of being automatically generated by their agency management systems. It is now important for agents to start to press your GAs to accept these ACORD applications where they fit for your E&S business. The GAs, in turn, will press the E&S carriers to accept them based upon the increased requests they get from their retail agents. If the retail agents make this an issue with the E&S community, the E&S stakeholders will get more involved in the ACORD process to generate additional E&S supplements where needed for frequently written lines of business.

To the extent your GA needs additional information beyond the ACORD application to rate a risk or to determine appropriate exclusions, then the GA should follow up with the retail agent to get the needed additional information. Ideally, the retail agency would send the completed ACORD application directly to the GA from its agency management system using Real Time, and if the GA needs additional information, a pop-up would appear for the agent to add the information. Or, the GA can send a real-time activity notification/alert or an email to the retail agent requesting the additional information.

It is also time for retail agents to start to use the new ACORD specialty/professional applications and supplements and the published ACORD E&S supplements with their markets. The best way to get these ACORD forms more broadly accepted is

for retail agents to just start using them. Think of the benefit of completing one ACORD application for a particular risk, rather than having to complete multiple carrier specific applications.

To the extent your agency management system provider has not yet incorporated these new ACORD forms in your system, please urge your vendor and user group to do so. In addition to the obvious advantage of being able to automatically generate the form, your system will now incorporate the necessary fields to store the data required to complete it.

Even if your agency management system does not yet incorporate these new ACORD applications, I encourage you to use them. As an agent, you can access the ACORD static forms by just registering on the ACORD website (www.acord.org). By becoming an ACORD Advantage member at a modest cost, you can access ACORD fillable forms online.

Urging GA Partners to Provide Real-Time Upload & Download

We have seen demonstrations where GAs can accept data from independent agents using Real Time and where GAs are able to download data back to the retail agent. We need to take these examples and make them the common workflows in the E&S market, just as they have become in the standard market. The best way to accomplish this is for independent agents to press their GAs to provide them with this functionality. GAs have a great incentive to provide the upload functionality as well, so that they do not need to re-enter the data on their end and deal with the inevitable errors that will arise as a result. GAs who can provide their retail agents with these ease of doing business advantages will attract more business.

Getting Involved in the E&S Joint Working Group

I encourage retail agencies that write significant amounts of E&S and program business to get involved to help shape the future for this market. Just go to the E&S Joint Working Group's website mentioned above and click on "Contact Us." It is also important, of course, for more GAs and E&S carriers to get involved.

It is wonderful to see the enthusiasm that has been generated among the E&S stakeholders as to the opportunities they have to enhance their ease of doing business with their retail agents, along with the opportunities they have to enhance the integration and functionality of their own systems.

Independent agents will play a key role from this point forward in the evolution of improved efficiencies in the E&S market. If they want to see ACORD applications replace company unique applications and want to have real-time upload and download with their GAs, then they need to start to push for these things with their business partners. Just as we have seen in the standard market, independent agents can make it happen, if they decide to get involved to make a difference. ■

Personal Lines — It's Time for a Second Look

by Richard Gilman, APR, CMP

Richard Gilman, APR, CMP, is currently the executive director of the Personal Lines Growth Alliance. Prior to this new role, he served as vice president of communications at ACORD. He began his career as a trade journalist for the Journal of Commerce and National Underwriter publications. He went on to the Insurance Information Institute (I.I.I.), where he was director of Subscriber Services. During his 12 years at I.I.I., he served as executive director of two other insurance associations.

Social media has changed the way we do business, both as business owners and buyers of products and services. It has empowered consumers and given voice to their demand for access to information where and when they want it. It has also given rise to an expectation of control over that information resulting in an acceptance by consumers of a certain amount of self-service management. This “perfect storm” of cultural events is proving to be perfect for a growth in personal lines business, too.

The traditional approach to personal lines prospecting, sales and service has always been a barrier for many agents who believe the cost of acquisition and retention is too high for the small return. The fact is, many companies using social media and technology today have found that cost cut by 50%.

That's why we believe, now is a great time to take a second look at personal lines.

The Personal Lines Growth Alliance (PLGA) was formed with a very simple purpose in mind — help the independent agency system's bottom line by increasing its share of the personal lines market.

The personal lines sector generates about \$230 billion in annual premiums; that's 50 percent of all property-casualty premiums in the U.S. With national and regional independent agency carriers only capturing about 35 percent, it means \$150 billion in premiums are being lost to the direct writers and captive-agency carriers.

The growth in social media isn't the only reason to set your sights on personal lines business opportunities. The current state of the commercial lines market is another compelling reason. With the economic recovery still struggling to have a positive impact on businesses (hardest hit among them being the small business owner), the commercial lines market is, therefore, also being hurt. Business closures, staff layoffs and expenses going through the roof, are all having their impact on your commercial business.

A recent informal survey of leading insurance company CEOs found that as the economy continues to struggle, so, too, will the commercial insurance market, and, they believe it will extend throughout the year. On the other hand, they believe that personal lines business will continue its positive growth for that same period of time.

The PLGA is made up of people who believe in the American agency system and see value in pursuing a larger share of the personal lines market. Membership is open and free to agents and brokers. Just visit the <http://personallinesgrowth.org> website and click on “Become a Member” link. If you're an insurance company or solution provider that supports these goals, then consider becoming a PLGA Partner. In either case, there is a lot of resources available on the website. And that's the other purpose for the organization — providing access to resources.

There are a lot of terrific organizations within the industry that have all sorts of training and education resources for agents and brokers on a wide variety of topics from sales and marketing to using social media and new technology. Much of what's already out there is relevant to agents seeking to grow their personal lines business. Therefore, PLGA isn't looking to “re-invent” the wheel; where necessary, we will, but for the vast majority of support, PLGA will point to what already exists.

PLGA works closely with many organizations like ACT, AUGIE, AIMS Society, PIA and IIABA to identify those resources that could help its membership. Over the coming months, PLGA will assemble an index of personal lines resources that we believe will help agents and brokers achieve an increased bottom line in personal lines.

There are many different pathways to profits agents can travel. PLGA wants to help you find the ones that make the most sense to you. ■

ERISA Fidelity Bond and Fiduciary Liability Conundrums

by Jerome "Jerry" Trupin, CPCU, CLU, ChFC



Jerome "Jerry" Trupin, CPCU, CLU, ChFC, is a partner in Trupin Insurance Services, located in Briarcliff Manor, N.Y. As an "outsourced risk manager," he provides property-casualty insurance consulting advice to commercial, nonprofit and governmental entities. Trupin regularly writes articles on insurance topics for industry publications and is the co-author of several insurance textbooks. Trupin has been an expert witness in numerous cases. He can be reached at cpcuwest@aol.com.

ERISA fidelity bonds and fiduciary liability coverage for the fiduciaries of an ERISA plans are often confused. Both are important, but they serve different purposes. A quick take on the difference: the ERISA fidelity bond covers embezzlement from an employee benefit plan; fiduciary liability protects the fiduciaries for claims alleging mismanagement of the plan, but not for dishonesty.

Two interesting problems concerning these coverages turned up recently.

ERISA Fidelity Bonds: To Be Combined or Not to Be Combined? That Is the Question. (My Apologies to Hamlet.)

A fellow insurance-coverage nerd questioned my recommendation that the ERISA-required fidelity bond coverage for employee benefit plans be combined with the firm's employee dishonesty or employee theft coverage.¹ His concern: if a loss to both the plan and firm was caused by the same employee(s) and the total exceeded the coverage limit, the firm could be left with an uninsured loss. That may be true, but let's analyze it a bit.

First, when adding an ERISA plan to a firm's employee dishonesty/theft policy, the amount of insurance should be increased by the amount required by ERISA or, if greater, the amount carried in a separate policy covering the plan.

For example, let's assume that the firm carried a \$1 million employee dishonesty policy and the ERISA plan carried \$500,000 of fidelity coverage. The combined limit, using this formula, would be at least \$1.5 million — the \$1 million the firm carried increased by \$500,000 of plan coverage.

Second, if the limit selected is equal to sum of the limits and the loss does not exceed that amount, the insured and the plan will each collect as much as they would have had if there been separate policies.

Third, when the loss to either the firm or the plan is more than the amount that would have been in force in the separate policies, but less, in total, than the combined amount of insurance, the total recovery under the combined plan would be greater.

Here are examples of greater recovery when there is a combined limit of

\$1.5 million instead of separate policies of \$1 million for the firm and \$500,000 for the plan:

- Loss to the plan alone \$700,000. Combined policy pays \$700,000. The separate policy would have paid \$500,000.
- Loss to firm alone \$1.5 million. Combined policy pays \$1.5 million. The separate policy would have paid \$1 million.
- Loss to firm and plan combined in \$1.5 million, \$1.1 million of the loss was from the plan and \$400,000 was from the firm. A Combined policy pays \$1.5 million. Separate policies would have paid \$1.4 million since the separate policy for the firm would have paid only its \$1 million limit.

Fourth, my friend is correct that if the loss exceeds the total amount of combined coverage, the firm may collect less than it would have if there had been separate coverage. For example: Combined loss of \$1.7 million of which \$800,000 pertains to the plan and \$900,000 to the firm. The combined policy of \$1.5 million will pay \$800,000 to the plan and \$700,000 to the firm — the general understanding in the insurance industry is that the ERISA plan's payment comes first. The firm thus collects \$200,000 less than it would have if it had had a separate policy for \$1 million with the plan collecting \$200,000 more than it would have if coverage had been separate.

However, if there were separate policies, the firm might still have a problem. When an outside administrator embezzled funds from a 401(k) plan, the U.S. Department of Labor ordered the firm to make good the shortage. The firm paid more than \$2 million into the 401(k) plus incurring legal expenses that exceeded \$75,000.² (Unless the outside administrator was covered as an agent under the fidelity bond, the bond wouldn't respond. This

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ERISA Fidelity Bond and Fiduciary Liability Conundrums

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firm needed fiduciary liability coverage. One facet of that coverage will be discussed below.)

Finally, the solution for a large embezzlement loss is: ADEQUATE LIMITS. I regularly see incredibly low limits for employee theft/dishonest coverage. I was just asked for an opinion on a large embezzlement from a municipality. At the time of the loss, the municipality had a limit of \$100,000, written on a discovery form. The limit was increased to \$500,000 (a still inadequate limit), but, to make matters worse the new policy was written on a loss sustained basis, so coverage was limited to the \$100,000 in force when the loss occurred.

With an annual budget in excess of \$50 million, a rule-of-thumb for the limit would be at least \$5 million.³ Incidentally, I prefer a loss-discovered form. Under that form, the policy in force when the loss is discovered is triggered. In this case, the municipality would then have at least collected \$500,000 if it had remained with a discovery form policy.

We also want to remember that the minimum required ERISA limits are often dangerously low.⁴ One organization that we consult for has fewer than 50 employees, but more than \$12 million in its pension/profit sharing accounts. For such a situation, \$500,000 is not an adequate limit.

There's another advantage to combining the coverage: broader coverages. In addition to employee dishonesty, the firm and the plan face the risk of check forgery, computer fraud and fund transfer fraud. Well-designed crime coverage for a firm includes these coverages. They could be added to the ERISA bond, but that would increase the cost so they are seldom found in stand-alone ERISA bonds. Combining the coverage gives the ERISA plan the benefit of the broader coverage.

Combining adequate limits for the ERISA plan and the firm in one policy gives the insured better coverage and the most flexibility in the event of a loss. But remember to carefully estimate the exposure.

ERISA Fiduciary Liability — Even IBM Can Have Insurance Coverage Problems

IBM and a pension plan that it provided for some of its employees were sued in a class action alleging that a plan amendment violated the age discrimination provisions of ERISA. The case was settled and IBM sought compensation from its insurers for the legal fees it incurred.

The insurance company denied coverage. It argued that the policy covered “wrongful acts,” which were defined as any breach of the insured’s responsibilities as a fiduciary of an employee benefit plan.

In a decision worthy of Solomon, the court agreed with the insurance company.⁵ It differentiated between “fiduciary duties,” which would be covered, and business-judgment type decisions, “settlor duties” in legalese, which are not covered because they are not fiduciary in nature.⁶

There is broader fiduciary liability wording available in the marketplace. One policy includes coverage for:

- (3) any other matter claimed against such Insured solely by reason of their service as a fiduciary of any Sponsored Plan.

Depending on the exact facts, if the policy definition of wrongful acts contained this wording, IBM might have had a claim for coverage.

This case is one reason private companies should carry directors and officers liability — almost every public company has the coverage. Private companies often say that they don’t need D&O coverage because they don’t have stockholders. But stockholders aren’t the only ones who can sue directors and officers.

As always, exact policy wording is a key factor in determining coverage.⁷ ■

Endnotes

- (1) See: Jerome Trupin “Fulfill ERISA Bonding Requirement with Employer’s Dishonesty Policy” IRMI Risk Tip, Jan. 6, 2010. Available online at: <http://www.irmi.com/newsletters/irmiupdates/2010/0219-risk-management.aspx#subject2>
- (2) “Private Company Fiduciary Loss Scenarios” Chubb Insurance <http://www.chubb.com/businesses/csi/chubb3825.pdf>
- (3) A common rule-of-thumb for setting the limit for employee dishonesty coverage for governmental units is 10 percent of budget.
- (4) ERISA requires a fidelity bond at least equal to 10 percent of plan assets to a maximum of \$500,000 unless any of the plan’s assets are invested in securities of any sponsor or contributing employer (other than in a pooled investment such as a mutual fund). In that case, the maximum required limit is \$1 million. This may indicate that the Department of Labor is confusing fidelity bonds with fiduciary liability policies. It’s hard to see how the employee dishonesty/theft risk increases because funds are invested in the sponsor’s securities. The fiduciary liability risk does increase, but that’s a separate coverage not required by ERISA.
- (5) See: *Federal Insurance Company v. International Business Machines Corporation*. <http://www.courts.state.ny.us/courts/ad2/calendar/webcal/decisions/2010/D28918.pdf>
- (6) Examples of actions that would be considered settlor functions are: choosing the type of plan or options in the plan; amending a plan including changing or eliminating plan options; requiring employee contributions or changing the level of employee contributions; terminating a plan or part of a plan, including terminating or amending as part of a bankruptcy process. See: Mark Johnson, Ph.D., J.D., “ERISA: The Distinction between Settlor, Fiduciary, and Corporate Functions” <http://www.hgexperts.com/article.asp?id=5138>
- (7) An insured should seek legal counsel to determine exactly how specific policy provisions would apply to its situation.

Don't Mess Up Your Marketing — Getting the Most from Your Investment

by John R. Graham



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While driving down Boston's Massachusetts Avenue one Saturday afternoon, it dawned on me that every bus stop shelter along this popular main artery sported advertising signage for Apple's iPad 2. Assuming that many bus riders were not target customers for a product selling between \$500 and nearly \$900, the two of us in the car thought that spending advertising dollars at bus stops seemed like a waste of money.

We were wrong. Just get on any type of public transportation and what do you see? *Almost everyone is clearly a prospective iPad customer.* Thumbs are going at incredible speed, while others are talking on their cell phones, playing games on a smartphone or watching movies on a hand-held device. And with white earbuds everywhere, it was all about music. Rather than a marketing mistake, bus stops can be a perfect advertising venue for promoting the iPad.

Contrast all this with the huge number of businesses that don't have a clue about marketing. Feeling desperate to do something, they sign up after hearing the latest sales pitch offering a magical means for getting more customers. Rather than doing nothing, they write a check — and nothing happens.

The truth is that the communications environment is so dynamic today there are no firm marketing answers. This makes it incredibly important to avoid wasting marketing dollars. Here are thoughts that may be useful:

- (1) **Don't get mauled in the discount trap.** One of the unintended consequences of the recent recession is a discounting mindset that continues to shape consumer behavior. Groupon, as well as its imitators, thrives on consumer demand for discount deals and, as might be expected, there are apps for managing them.

One retailer, who had just signed up for a Groupon-type deal, was attending a meeting and constantly checking sales on an iPad. He was only interested in the number of sales, rather than the impact they had on his bottom line, even though the net was rather small.

As a *Harvard Business Review* article pointed out, "...Merchants should be cautious and skeptical about these innovations. Even when sweetened with incentives for repeat purchasers, jazzed up with time- or item-specific discounts, or offered through location-aware mobile devices, all daily deals are simply price promotions.... A steep price promotion can make consumers permanently price sensitive by lowering the reference price they expect to pay, and price promotions can distract customers from products' benefits, causing irreversible damage to brands."

Making an intense effort to portray the value of a product or service can create value without cutting the price.

- (2) **Stay away from "ego-driven" marketing.** When he answered the phone, the owner of a service company was immediately fascinated with the idea of having a 30-second video commercial — not to mention being the "star." Too much to resist, it was a slam-dunk deal, if there ever was one, even though there was no plan for using it.

When something catches the CEO's fancy, that's it, whether or not it has a role to play in the

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company's marketing. This can be called "ego-driven marketing."

In the same way, questions about the purpose of the ad, the message or how it might be used are pushed aside and deliberately ignored.

Failing to have a marketing plan and to spend time thinking through how each component fits into the overall picture is a tragic and costly mistake. It results in wasting valuable marketing dollars.

(3) All marketing is individual.

The late U.S. House Speaker "Tip" O'Neil held that "all politics is local." Such advice applies to marketing.

For decades, much of marketing was done with a broad brush: advertise in major daily newspapers, network TV stations and national magazines, and then toss in billboards and direct mail to the mix just to be sure.

By 2000, such an approach was dead and technology threw in the last shovel of dirt. The ability to gather, analyze and use enormous amounts of consumer data has pushed the bar to the point where *all marketing is individual*.

With companies empowering customers to manage their individual marketing protocols, it's all about the individual. And will become even more so. Today's customers aren't flooded with random marketing messages. The only messages Amazon.com customers receive are those that fit their profile.

(4) The longer a company has been in business, the more it needs marketing. This runs contrary



to the popular view that the longer a company is in business the less it needs marketing. The assumption is clear: they are well known to their customer and their constituency believes in the brand. Based on that, spending money on marketing is both unnecessary and a waste.

Yet, Coca-Cola, a very old brand, has one of the largest marketing budgets. And what about Heinz ketchup, Levi's and a host of others?

It's a specious argument if there ever was one, since it's easy to forget that the longer a company is in business, the greater the need to replace existing customers. It's also easy to ignore the fact that new competitors come into the picture and many consumers are easily lured by "new and better."

Without marketing, companies can become "dated" in the minds of even loyal customers.

(5) Basing decisions on common sense is trouble. In fact, common

sense is both untrustworthy and dangerous. "We don't need to survey our customers," said the head of the organization, who takes pride in knowing his customers. "If I ask a handful, they'll tell me what we need to know?" When the issue of continuing attrition is raised, he explains it away with such a "common sense" explanation as a downturn in the economy.

As so many marketing professionals know from bitter experience, it's difficult to challenge the marketing views of those who are successful in business with facts, since their success serves to "validate" their views. This is why a book by the principal research scientist at Yahoo!, **Duncan J. Watts, Ph.D.**, is valuable in helping to set the record straight. The subtitle to *Everything is Obvious: Once You Know the Answer* says it clearly: "How Common Sense Fails Us."

Duncan contends, as **Christopher F. Chabris** writes in the *Wall Street Journal*, "Common sense is a shockingly unreliable guide to truth and yet we rely on it virtually to the exclusion of other methods of reasoning." He points out that relying on common sense puts us in the position of dismissing and rejecting out of hand the objective testing of our decisions — including marketing and sales initiatives. When that happens, it can't avoid wasting our marketing dollars.

Far too much of today's marketing is based on what was popular in the past or what worked even a few years ago. These five principles provide guidelines for developing programs that produce positive results instead of wasting money. ■

The Insurance Marketplace in 2011 — More of the Same or Major Change?

by Spencer W. Macalaster

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The insurance marketplace has been characterized throughout 2010 as competitive. Buyers with good loss histories have experienced modest reductions on all lines of insurance throughout the 2010 renewal cycle. Carriers underwriting property and casualty insurance remain reasonably well capitalized with competitive conditions fueled by the recession. Average rate levels for most lines of coverage have been trending flat to lower throughout 2010. Historically the property and casualty market tends to harden when underwriting losses reach their pinnacle (1984, 1992 and 2001). An interesting note to the 2010 soft insurance market is the size and number of global catastrophes that failed to turn the market. Some of the notable catastrophes in 2010 include New Zealand and Chilean earthquakes, Australian floods, the Deepwater Horizon oil rig disaster to name a few. Reinsurance, the backstop purchased by property and casualty carriers, continued to be overcapitalized, with renewal rates softening modestly providing additional fuel to the softening market.

What should we expect for 2011? Barring a large catastrophe, which could trigger a sharper reversal of the soft market, rates will likely continue to be competitive. However in our opinion, the marketplace is at best uncertain. If a catastrophic loss event occurs the pillars holding up the soft market could crumble rapidly. Other factors that could change the marketplace are a double dip to the recession fueled by inflation or increasing interest rates. Recent announcements by the global rating agencies warning of the potential fallout from US and foreign debt could influence economic changes in the marketplace.

Commercial property coverage has led the way in the soft market of 2010 and 2009. The catastrophic (CAT) insurance market has shown some minor signs of rate improvement and new carriers; however renewals for risks throughout wind and flood prone areas remain challenging. Key markets for CAT perils have cut back capacity and are

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carefully analyzing this book of business. Carriers competing for clients outside the catastrophic locations of the Gulf Coast or California created a much more competitive marketplace. Insureds are able in most cases to reduce rates, reduce deductible, and increase coverage all at the same renewal. While the market is predicted to stay competitive in 2011, we anticipate rate reductions will not match those of the last half of 2010. Companies should use the current soft market cycle to complete capital improvements that will enhance the risk in the eyes of the carriers. This will help stabilize your future rates in the event the market changes due to the factors detailed earlier in this article.

Barring a large catastrophe, which could trigger a sharper reversal of the soft market, rates will likely continue to be competitive. However in our opinion, the marketplace is at best uncertain.

Primary Casualty insurance (general liability and umbrella) continued to show signs of softening. The direct correlation between carrier surplus and rate will continue to have a softening impact on the casualty markets through the first half of 2011. Albeit at a modest pace, insureds should expect renewal options to be flat to modest reductions in rate. Favorable loss histories will dictate the outcome of the casualty renewal cycle. Investment in loss prevention along with claims management and contractual controls will enhance your risk in the eyes of the underwriting community.

Workers' Compensation is the most regulated line of commercial insurance and as such has shown the least volatility. The vagaries of individual state laws and regulatory oversight dictate the

insurance markets response to availability and pricing.

Executive Management Liability insurance continues to show competitive signs. Barring a meltdown due to the sub-prime mortgage dilemma general markets forces should continue to keep softening pricing pressure on carriers. However, we continue to watch this segment closely. Although frequency of claims is down, severity trends of the class action suits continue to increase. Companies with global operations or expansion plans should consult with their broker regarding the evolution of corporate laws expanding the duties of Directors and Officers and shareholders rights in many foreign jurisdictions. Coverage voids may exist for foreign D's and O's at subsidiaries of U.S. parent companies. Purchasing local D&O policies in countries that do not recognize non-admitted U.S. D&O policies might be a prudent option.

Will this be the calm before the storm? No one knows. It will be however extremely important for corporate management to build strong relationships with their underwriters so if the market changes you are able to limit the impact. Strong loss prevention measures combined with claims management and contractual standards are increasingly important, thereby presenting the best possible risk to the underwriters. Building strong risk management relationships with your broker and underwriters creating strategic risk partnerships will assure stable renewals for years to come. ■

Times Change, Careers Change, CPCUs Remain

by Carolyn "Cal" J. Durland, CPCU

You never know where life will take you. You also don't know what will steer the course in life or your career. Over the years, I've changed cities, jobs and direction. One thing became a constant thread running throughout the years ... the CPCU Society.

For me, it's both a business and personal voyage and one that I never expected to be on at all. And knitted into the chapters are the people I've met and worked with through the Society.

Back in 1976, I aspired to become a detective. It never entered my mind during that bicentennial year that I'd be sitting here in my office at ACORD 30-plus years later as part of the insurance industry.

My journey began at Bryant College in Smithfield, R.I., working towards a four-year degree in law enforcement. Two years into the program, a light went off in my head and I realized that I really didn't like guns, didn't want to be near guns, and didn't want to deal with situations where guns have caused damage.

But it wasn't too late and I had the opportunity to make a change. That's when I went for a business degree.

Like most graduates, I was optimistic about finding my first job. I headed to Hartford, Conn., where the man I'd met in college, and had become engaged to, had found a job at the Travelers. After a few months of searching, I got an offer as an entry-level underwriter with a large commercial underwriting company, Industrial Risk Insurers, and accepted it.

While working there, I met a group of people who wanted to take the next step in their careers. They suggested that we form a study group and start working towards completing the CPCU program. We continued to study and pass exams together for a couple of years, securing insurance knowledge that I'd never received in my four years of college.

Six years into my career with Industrial Risk Insurers, I had secured hands-on training on placing and managing large commercial property insurance, had about five CPCU sections completed, and had been promoted to underwriting supervisor. Everything was moving along well with the company.

But as fate would have it, an account executive position became available with Johnson & Higgins in Hartford, and some brokers I knew convinced me to make the move. Now, I'd be a broker versus an underwriting supervisor.

Once again, CPCU was to play an essential role in my life and career. The people at Johnson & Higgins also wanted to broaden their education so we formed a study group and continued to work towards completing the CPCU designation. I stayed in contact with my previous co-workers and we made a pact to complete the program in time to secure our degree together in 1989, in Anaheim, Calif.

In 1987, our first son was born. I remember pushing his carriage up and down our driveway studying my notes for the next section of the CPCU designation. Fortunately, his first word wasn't "claim." In October 1989, just as we pledged, all of us who began studying together for our CPCUs completed our designations.

Just as I received my CPCU, a friend of my father-in-law's told me about an insurance association — ACORD — that had an opening for someone with my background. With my underwriting, broker experience and CPCU designation, he thought I would be a good candidate.

In 1990, I was hired by ACORD to work on its forms. It's now more than 20 years later and my career with ACORD has progressed to be more than forms. I also continued as a member of the Society of CPCU, and those contacts I developed then and throughout my career have been invaluable.

My CPCU has been a thread woven throughout my life and career. While my job and location may have changed, my connections through the CPCU remained constant.

It's 2011 and we raised three sons. I attend the CPCU Society's two major meetings a year, have taken an active role in the Westchester Chapter, and become more active in the CPCU volunteer groups such as the Agent & Broker Interest Group.

My involvement in the Society has broadened my network of contacts. At each leadership conference or Society meeting, I meet new people that I may call upon as opportunities arise. I've taken courses that provide education that expands my value to my company. And most important, I've improved my leadership skills and comfort level in taking leadership roles, as well as speaking with customers and fellow staff.

I also received industry recognition as the 2011 recipient of the Wade S. Dunbar, Jr. Award from NetVU. The Wade S. Dunbar, Jr. Award is presented to a person who has made significant contributions to insurance industry automation. Nominations are solicited throughout the industry and the recipient is selected by a committee made up of past presidents/chairmen and executive committee members.

As for my aspiration to become a detective ... the closest I've come is mining data on the Internet to know my customers ... and having my company theme at one of our events based on "Men in Black."

You never know what will change in life. You may take new paths in your career. You may relocate one or more times. But one thing that will remain is your CPCU and the strong network of people in the Society. ■



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10 Reasons Why You Should Attend the CPCU Society Annual Meeting and Seminars

1. Celebrate with the CPCU Class of 2011.
2. Spend four great days with the best and brightest in the business.
3. Hear exclusive insights from senior-level executives on today's hottest topics.
4. Sharpen your knowledge through the industry's finest array of educational programs.
5. Be inspired by compelling speakers to achieve your goals.
6. Learn new technical skills that you can put to use immediately.
7. Strengthen your leadership skills.
8. Find out how to take control of your career.
9. Network with your CPCU Society peers at special events.
10. Be energized to achieve your personal best!



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