CPCU SOCIETY
INSURING YOUR SUCCESS

Agent & Broker Interest Group

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From the Chair

by Joseph F. Menschik, CPCU

Joseph F. Menschik, CPCU, is the owner of Menschik Insurance Services, in Blauvelt, N.Y. Menschik received a bachelor of business administration in insurance from the City College of New York in 1965 and his CPCU designation in 1975. An active member of the CPCU Society, Menschik has served as a governor, chapter president and a committee member.

The Agent & Broker Interest Group Committee is an expanding group of dedicated CPCU Society members. We would like to make Society membership more meaningful to you, and we welcome your participation in our group in whatever manner works for you. We welcome a more interactive communication of ideas.

Beginning Jan. 1, every Society member became entitled to benefits from every interest group for no extra fee beyond the regular annual dues, including access to their information and publications, and being able to participate in their educational programs and functions. An Interest Group Selection Survey was e-mailed to members beginning mid-November. By responding to the survey, members could identify any of the existing 14 interest groups as being in their primary area of career interest or specialization.

If you did not respond to the survey, please go to the newly designed interest group area of the Society's Web site and indicate the Agent & Broker Interest Group as your primary area of interest. You will also see options to receive your newsletters. Please reach out to CPCUs you know are Society members, and ask them to choose our group. And if you know CPCUs who are not currently members, ask them to join the Society!

At the 2009 Annual Meeting and Seminars in Denver, our interest group will be sponsoring or participating in

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From the Chair

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several seminars. To date, we have finalized two seminars: (1) "Certificate of Insurance Problems," which we will be presenting in partnership with the Independent Insurance Agents & Brokers of America (IIABA), and (2) "What the National Flood Insurance Program Does Not Cover," which we will be developing and presenting with the Professional Insurance Agents (PIA). There are other topics we are considering, and hope to develop as well.

Programs and seminars presented at a CPCU Society Annual Meeting and Seminars are first-rate. If you can arrange to attend the upcoming meeting in Denver, the cutting-edge education and industry networking opportunities you will receive will provide an excellent return on your investment of time and money. I realize we are operating in difficult financial times and in a demanding professional environment, but attending Society Annual Meetings ensures that you remain relevant, effective and competitive in a challenging marketplace.

Given the difficult economic times we are in, I expect a rapid decline in the soft insurance market. I have always thrived in a harder market, where companies I deal with offer more flexibility to people they know, can trust and who demonstrate professionalism. The soft market makes no sense for insurers and agents/brokers alike, unless they are very large and work on a fee-for-service basis.

The decline in agency revenues, caused by severely reduced premium levels, has in some cases come to a point where good people I know have been forced to sell out and retire before they intended. Past commission cuts imposed on us in hard markets have eliminated cushions and made some operations marginal. Contingency compensation packages that used to provide gravy to the industry for richer retirement plans and infrastructure modernization may for some small agencies be needed to maintain profitability. This should not be what our business is about.

The financial collapse we are experiencing affects sound insurers as well as some of the more adventurous ones who went down paths they probably should not have traveled. I hope that sanity and discipline, as well as ongoing accountability moving forward, will be applied as tools at our insurers. We need a stable market to thrive.

■ ***... attending CPCU Society Annual Meetings ensures that you remain relevant, effective and competitive in a challenging marketplace.***

When I first entered this industry, the individual who recruited me, currently the chairman of one of our largest national carriers, gave me his philosophy on insurance which I have paraphrased as follows: There is a price you can write a risk at and make a profit. If you get that price, you write the business. If you do not, you take a pass on it. Insurance is a business that should be profitable from an underwriting standpoint.

Over the years and through the market cycles, I have experienced the rapid collapse of trusted insurance markets. A lot of good people, in and out of those companies, were hurt. I do not want to experience this again. Agencies had to expend resources to replace business, which cut into bottom lines, or understanding relationships that had been developed over years would be lost. I do not want to see us, as an industry, trend toward having one big insurer that will be regulated by one big bureaucracy with people in it who have political agendas and no feel for insurance. If we want to keep regulation to a manageable level, we need to exhibit control and sanity. ■

Editor's Corner

by Ellen M. Clements, CPCU, ARM, CIC, CPIW

Ellen M. Clements, CPCU, ARM, CIC, CPIW, is a vice president, senior client manager, with Willis HRH in Boston, Mass. Her professional background includes senior management, negotiation, placement and service of property and casualty insurance programs, process improvement, quality initiatives, organizational development, and training. She has worked in the insurance industry for 40 years. Clements is on the Board of Directors for the CPCU Society's Boston Chapter and sits on the Visibility Committee. She is also a member of the CPCU Society's Agent & Broker Interest Group Committee and is editor for the interest group newsletter.

In the last issue of our newsletter, I announced the pending acquisition of my then employer — Hilb, Rogal & Hobbs (HRH) — by Willis. I am excited to announce, with this issue, what you probably already know: as of Oct. 1, 2008, HRH completed its combination to form Willis HRH, the new name of our retail brokerage business in North America. I have now come full circle — back to the brokerage I started with in the beginning of my brokerage career.

Highlights of this issue's articles:

We offer two articles by **John Graham,** who offers ideas on how to retain accounts and write new business in this challenging climate, which becomes more difficult every day. He presents great tips, even for seasoned professionals.

For those of us who do not specialize in placing construction accounts, **Arthur Flitner, CPCU, ARM, AIC,** of the American Institute for CPCU and Insurance Institute of America (the Institutes), offers insights on coverage options that are available for construction industry risks.

Kenneth Swymer, CPCU, Ed.D., CFP, CLU, AU, AIS, and **John Cunningham, CPCU, MBA, CIC, AU, AIM,** unveil a new approach being undertaken by Liberty Mutual Agency Markets to develop commercial lines producers by providing comprehensive training in concert with on-the-job experience to create a solid foundation for a successful career. We wanted to share one organization's approach to the development and training of new producers. We would welcome additional points of view and approaches.

An often misunderstood coverage, professional liability, is explained fully within the article presented by **David Sanborn, CPCU,** of Risk & Insurance Education. To understand the distinction between professional liability coverage within a CGL Coverage Form for Bodily Injury and Property Damage and errors & omissions coverage, various professional liability exclusions are explored.

Jennifer Sulla, of the law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC, discusses an interesting Massachusetts case of a parent corporation's liability for an environmental contamination caused by a subsidiary.

David Thompson, CPCU, AAI, API, of the Florida Association of Insurance Agents, enlightens us about the always difficult-to-understand National Flood Program and coverage, or lack thereof, for Other Structures. This is a must-read if you place flood coverage for any of your clients.

As we all know, we are facing turbulent times. With the global economic crisis at hand, and the financial crisis faced by some of the leading insurance carriers around the world, we should all become more familiar with the property and casualty guaranty fund system, put into effect by each state to protect individuals and companies in their respective states should a carrier fail. We are providing information from the National Conference of Insurance Guaranty Funds that will be helpful in responding to customers' inquiries relative to guarantee funds.

The Senior Resource Interest Group provided us with the opportunity to join together to see "Ireland in Depth" in May 2009. The trip has been sold-out … so keep on the lookout for news on the 2010 CPCU Travel Program destination!

Hope to see you all at the Leadership Summit in April! ■

A Memo to Salespeople … Get Ready to Sell More in 2009

by John R. Graham

John R. Graham is president of Graham Communications, a marketing services and sales consulting firm. He is the author of *The New Magnet Marketing* and *Break the Rules Selling,* as well as an upcoming book on sales. His articles appear in business and trade publications, and he speaks at company and association meetings. He can be contacted at 40 Oval Road, Quincy, MA 02170; phone (617) 328-0069; or e-mail j_graham@grahamcomm.com. The company's Web site is www.grahamcomm.com.

Editor's note: With the permission of Graham Communications, this article was originally reprinted in the November 2008 issue of *Underwriting Trends,* the newsletter of the CPCU Society's Underwriting Interest Group.

Even though the economy is in serious trouble, nothing has changed. You still need to make sales. Whatever your industry and whatever else is happening, one task remains: closing sales.

Here's the problem: Even though you may know your products and have the right selling skills, that may not be enough to get you where you want to be in 2009. If your job is demanding in good times, what do you think it will be like in the year ahead? So, here's the question: What do you need to add that can help you meet your numbers?

That's what the next 1,250 words are all about. Just so you'll know, they are based on 25 years of working with sales professionals. If that doesn't grab you, stop now and have a nice day. Otherwise, get ready because what's coming may be irritating. At least I hope so. Here goes:

(1) **Get over seeing an "executive when looking in the mirror."**
Get the idea out of your head that you're some sort of "sales executive" or that wearing a suit makes you special. It doesn't. You sell and you'll get farther if you think of yourself as a "working stiff."

Playing executive messes up your head. Before you know it, you get the idea that work is for everyone else in your company and particularly for those on what you euphemistically call "my support team." Get over it. Selling is no longer about picking the so-called "low hanging fruit." That's over and done. Now, it's about managing your job. And that means lots of work.

(2) **Maximize your visibility.**
"In this business it's better to be seen," comments an editor of a well-known publication. But not like "yesterday's salespeople," who thought "schmoozing" was what it was all about. They may love you, but that doesn't mean you're going to get the business.

It's time to invest in yourself. Look around and figure out what needs to be done. Start looking and acting like a leader. Oh, yes, take a stand. Too many salespeople are so fearful of offending someone they are little more than well-dressed wimps.

(3) **Become a total producer. OK, so you see yourself as some sort of "specialist."**
Perhaps you harbor the fantasy of "executive sales" or some other equally meaningless euphemism. That's fine, unless it blinds you on how to go about building a solid business. (Remember, you are in business for yourself.)

Your customers (that's what they are; not clients) want less stress. You're in the perfect position to help them simplify their lives. In fact, make that your primary product. Figure out how to make it easier and more convenient for your customers. If that seems like too much work, try doing something else.

(4) **Go after as many accounts as possible.**
Stop thinking small accounts are beneath you, no matter where you are in your sales career. If you're just chasing "the big ones," forget it. Keep it up and you're on the way out.

Sure, you should be ready when one comes along, but spending your time dreaming about winning the big account lottery distracts you from the business you could be writing.

The more happy customers you have, the closer you get to the big ones, which will probably drop in your lap!

(5) **Be an ardent customer advocate.** Far too often, salespeople are focused on the sale and not the customer. It doesn't take too many smarts to understand that you're working in an environment fraught with dangers and that your customers are on edge. They need help. Your help. What they want is someone they can trust and count on to be on their side when a problem arises. But, come to think about it, that takes a lot of effort. "Cozying up" to a customer is more fun.

(6) **Stop trying to sell something.** Let's cut to the chase: Selling is getting more difficult by the day. If your sales manager doesn't believe it, suggest that he/she go out and make a few sales calls.

The problem is that "the buying mindset" has changed. You're up against customers who flatly refuse to be your "prey." All the cunning of the greatest "hunter" won't help you "bag" the customer.

Why? The answer is awesome: The customer is now the "hunter" and you're the "prey." Your job is to help the hunter bag you (what you're selling). Trying to grab the customer is gone; now the task is helping the customer grab you.

Here's the sales task: Figure out and then focus on what your customers care about. Nothing else matters today. Nothing. That's what will draw them closer and closer to you. When you see them smile, close the sale.

(7) **Blow up your Web site.** It's not an act of terrorism; you will be doing yourself, your customers and the World Wide Web a favor. Everybody else, too. At least 99.99 percent of Web sites have no value. Actually, they have a negative impact.

Here's the point: They fail to make the case why a visitor would want to do business with the company. Oh, you give great service? Isn't that nice. Every business says that, including the people they are doing business with now who can't do anything right!

Stop thinking about how long you've been in business and start thinking about what it will take to get customers to want to do business with you.

Here's an idea: As a salesperson, you may want to think about having your own Web site or blog. Waiting for your employer to get the message will only cost you sales.

(8) **Talk to customers about what matters to them.** Although it takes commitment and work, it's so easy today to communicate with customers. You have so much that can really make a difference and connect with those you work with: showing customers how to reduce costs and increase productivity, for example. As a salesperson, you have actual case histories of how you have benefited your customers.

Message: Let customers know you listen and care. It also keeps their attention on you as their advisor and not just another sales rep.

(9) **Manage your business.** No matter whom you work for, you're really [insert your name here], Inc. You're a business owner and need to do everything any other business owner does. You are in charge of marketing, administration, follow up and sales. If this isn't clear, let's put it this way: If it's going to get done, you're going to do it. So, stop whining that the company isn't giving you the support you need to be successful.

(10) **Act like you're in charge.** Never let customers get the idea that you're going to "hand them off" to someone else, ever. When that happens, they get the message that once the sale is made, you're on your way. When that happens, it undermines your relationship with the customer.

Even when it's appropriate to hand off a task, customers want to know you're in charge and involved. That's what trust is all about.

(11) **Avoid meetings.** Your job is about having time to do what needs to be done making sales and that's the reason most meetings are your enemy. They steal your time, causing you to cut corners in serving customers.

The rule is never to attend a meeting unless it will benefit you directly. Meetings kill time and drain energy; they are interruptions in your work day. Your job is selling and your performance will improve in relation to the number of meetings you miss.

At this point, you may think that all this is unrealistic and places too heavy a burden on salespeople. My response is simple: the problems you can solve for your customers with the products you sell deserve the effort, unless, of course, you would rather be an executive. ■

Fifteen Ways to Win More Business in 2009

by John R. Graham

Editor's note: This article is reprinted with the permission of Graham Communications.

How fast things change these days! It seems like just yesterday Starbucks was pouring it on opening new stores. Then, before you could down that luscious latte, they're closing them.

Up until a few minutes ago, baby boomers were getting ready to retire. Now they're trying to hang on to their jobs as their retirement savings evaporate. Last year, we worried about our competitors; now we're concerned about our own company.

All this is enough to make us wonder what 2009 will be like. Some businesses are worried about getting through the storm, while others are considering new possibilities.

The year ahead will be demanding and not always friendly. However, it can be a good year for those willing to make the right effort. Here are 15 marketing and sales concepts that can drive success in the year ahead:

(1) Get your customers thinking about possibilities.
Disney got it right with its "Celebrate" promotion. They didn't attempt to lure visitors by pouring on the discounts. Their mission was to capture the imagination with thoughts of celebrations — Birthdays, True love, Triumphs, Reunions and, yes, Your First Visit.

Rather than telling us to buy, buy, buy, the "Celebrate" eBulletin involved visitors in creating a memorable experience. With excitement driving interest, it was Disney at its best — and marketing at its best, too.

(2) Demonstrate strength.
The most serious mistake a company can make in the present economic environment is *weakness*. It was a lack of consumer confidence in General Motors, Ford and Chrysler that drove customers away, not just gas guzzling trucks and SUVs. No one wants to do business with a company that they perceive as weak or shaky — or about to go out of business.

Don't let your company be perceived as a bad bet to do business with. Make sure you're visible, demonstrate strength and let it be known that there will be a tomorrow for your customers.

(3) Craft a clear and compelling message and stay with it.
General Motors has major problems, but the Cadillac division gets the message right for its CTS-V '09 sedan. In fact, it's truly memorable: "When you turn on your car, does it return the favor?" That will pull in the customers — perhaps those who may, for the first time, begin rethinking their admiration for "the ultimate driving machine."

(4) Think performance.
There's no room for excuses. Good intentions are gone. It's results that count. Unfortunately, it appears that a substantial portion of the workforce — including top executives — didn't read the memo.

Twenty-five percent of employees spend about one-quarter of their work time doing "personal stuff" online, according to network security consultant VOCO. At that rate, the cost to American business is more than $200 billion a year.

Add in text messaging, and it paints a troublesome workplace picture, one that explains why productivity continues to drop. Both companies and workers must now pass the even more demanding performance test.

(5) Avoid creating a stream of e-mail "sales pitches."
My 2005 Honda Element is terrific, but why did Honda wait until an economic turndown to let me know the importance of regular maintenance? They need the business is the answer, although they attempt to couch the copy in terms of helping me. Customers recognize such thinly veiled sales pitches. That's when they start looking for someone who can really help them.

(6) Stop the happy talk.
If there was ever a time to get serious, it's now. People are worried, so put away all the happy-go-lucky, "everything's great" stuff. No one wants to hear it.

The only time customers are happy today is when they see that we make their agendas our top priority.

(7) Act like you understand the situation.
When someone inquired about a particular salesperson, the business owner said, "I don't know what we're going to do. He spends his time on the golf course." In good times, that may be the place to be several times a week, but not now. If we aren't spending every possible moment helping customers, we're not doing the job.

(8) Get knowledgeable.
Spend less time on ESPN and more on Bloomberg.com and the *Wall Street Journal*. We all need to understand the larger picture, not just our own product or service. Frankly, most of the salespeople we see are so blinded by their own objectives, they don't have a clue as to what their customers are

facing or the problems they need to solve. They are only interested in selling something. That's a formula for failure today.

(9) **Do what the customer wants.** It's time to clear our minds of such nonsense as "It's our policy" or "I am not sure we can do that." Today, it's all about working with customers to make sure we make doing business with us as easy for them as possible. Ask customers what they want ... then give it to them. Of course, there will be exceptions, but they should not be allowed to be the rule.

(10 **Build your database.** One of the major weaknesses in most businesses is contact information that's sloppy, inaccurate, incomplete, and non-existent or poorly managed.

No business can dare minimize the value of a contact information system as a competitive advantage. Yet, *most* fail to recognize that building a proper database is the only way to cultivate prospects and communicate effectively with customers. If we don't know who and where they are, we can't market to them.

(11) **Stop pushing and start pulling.** If you try pushing customers to buy in this economic situation, you're dead. They won't stand for it.

Buying decisions will take longer than they are now — many times much longer. Try to change that rhythm and you're done. Once you understand the customer's particular buying process, spend time figuring out how to fit into it, not change it.

(12) **Change can be disastrous.** For 20 years, "It's Everywhere You Want to Be" powered VISA's marketing. Compelling and memorable, it powered VISA's marketing. Then along came marketers who wanted to make their mark and ushered in "Life Takes Visa," a wimpish tagline if there ever was one.

Don't do things just because they're different, even if the CEO suggests it. There's no room for mistakes and there's no room for whim and personal preference. It's easy to lose your way. Just ask VISA.

(13) **Professionalize your communications.** The weakest link between a company and its customers is its communications. For the most part, the letters, e-mails, memos, newsletters, and reports are so poorly written, confusing and incomplete that they damage customer relationships. Many don't make any sense at all. This is where differentiation and branding begins. When communication is done well, it pleases customers and increases loyalty.

Take a lesson from Microsoft, when you complete a call for support, the person assisting you always concludes with this question: "Is there anything else I can help you with?" They don't assume communication is complete until the customer is satisfied and actually says, "No."

(14) **Have a plan and stay on it.** Most annual business plans are little more than window dressing and are quickly shelved. Everyone knows they're a useless exercise, except those who put employees through the annual painful exercise.

The annual business plan fails to deal with what's needed to make it work: *a process to assure follow through*. This is why the weekly "Staff Meeting" should be transformed into the weekly "Business Meeting" with a focus on one question: "Who's doing what to whom and when?" That makes a difference because it's accountability with teeth.

(15) **Plant the seeds of tomorrow.** Too many salespeople view prospecting as nothing more than lining up the next sale. That's a fallacy.

In reality, prospecting is a process in which customers make the decision to do business with you. Few buyers move quickly today. Many won't make a decision until their backs are against the wall.

This means that no one ever knows when a "no" will become a "yes." It happens when it's least expected. When that happens, the business goes to whoever is there. It could be you, but it may be your competitor.

If we think longer term and stay close to prospects, as well as customers, it will be a good tomorrow.

So, here they are — 15 ideas for making the most out of 2009. These are legs that strengthen your sales and marketing tools. They're practical and can help us get our arms around the issues that will make a difference. ■

Coverage Options Worth Exploring

by Arthur Flitner, CPCU, ARM, AIC

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Editor's note: Reprinted with the permission of the American Institute for CPCU and Insurance Institute of America (the Institutes). Flitner based this article on material published by the Institutes in its CPCU and Associate in Risk Management designation programs.

Given today's litigious climate and certain court decisions, members of the construction industry should carefully research and weigh all insurance options before acquiring the necessary insurance coverages. CGL policies, which provide for a broad range of risks and exposures, provide coverage for commercial property owners and general contractors who face loss exposures such as vicarious liability and supervision of an independent contractor's work, but there are also other coverage options a property owner or general contractor might find worth exploring.

Vicarious liability is a legal responsibility that occurs when one party is held liable for the actions of a subordinate or an associate because of the relationship between the two parties. There are many situations in which a property owner or a general contractor (the "principal") can be held vicariously liable for injury to others resulting from the negligence of its independent contractor during a construction project. In addition, the principal can also be held directly liable for injury to others that results from the principal's alleged failure to properly supervise its independent contractor's work. Some principals see greater benefit in transferring the cost of insuring these types of loss exposures to the contractor.

Three common options a principal may consider for coverage protection are:

(1) Requiring the independent contractor to purchase an owners and contractors protective (OCP) liability insurance policy listing the principal as the named insured.

(2) Requiring the contractor to add the principal as an additional insured under the contractor's CGL policy.

(3) Using a hold-harmless agreement to transfer the financial consequences of liability claims to a contractor that is working on the project. The advantages and disadvantages of each should be considered by the owner when making insurance decisions.

OCP liability insurance, provided by using ISO form CG 00 09, is typically a separate, monoline policy, purchased by an independent contractor, that lists the principal as the named insured. OCP coverage can be purchased by a general contractor to protect the building owner, or by a subcontractor to protect a general contractor. An OCP policy does not protect the "designated contractor" who actually purchases the policy.

OCP policies only cover operations performed for the named insured by the designated contractor at the location specified in the policy. When the work is completed, the coverage under the OCP policy ends. OCP coverage is primary insurance, and the project owner's OCP coverage will pay before the owner's own CGL policy, if any.

The property owner could also ask to be added to the contractor's CGL policy as an additional insured, which is accomplished by adding an endorsement to the contractor's policy that designates the property owner as an insured. Similarly, a general contractor can be named as an additional insured under a subcontractor's CGL policy. There are a number of additional insured endorsements available, although in 2004, Insurance Services Office Inc. (ISO) added more restrictive language to the CGL endorsements that deal with construction-related risks.

Endorsement CG 20 10 is commonly used for naming property owners, lessees, or contractors as additional insureds under the CGL policies of organizations that are entering into contracts with any of those parties. A listed person or organization is an additional insured for liability for "bodily injury," "property damage," or "personal and advertising injury" caused, in whole or in part, by the acts or omissions of those (such as the named insured's subcontractors) acting on the named insured's behalf. The location of the operations must be designated in the endorsement's schedule in order for the named person or organization to be an additional insured for those operations.

The policy limits are available to the named insured and all those listed as additional insureds for the duration of the policy period, but a notice of changes to the policy is sent to the named insured only.

The third option a property owner may consider is negotiating terms of a hold-harmless or Indemnity agreement, which is a contract provision in which one party agrees to indemnify another. This type of agreement can be used to transfer the financial consequences of liability loss exposures from one party to another.

Hold-harmless agreements are not always enforceable, and in some states statutory or common law prohibits one party from assuming another party's liability in certain situations. When hold-harmless agreements are enforceable, the party assuming another's liability can insure itself for this obligation by making sure its CGL policy includes open-ended contractual liability coverage.

In many instances, insurers restrict contractual liability coverage under the CGL to a few specified types of "incidental contracts" (such as leases and elevator maintenance agreements) that do not include construction contracts, using the Contractual Liability Limitation Endorsement (CG 21 39). Any firm accepting contractual liability under a construction agreement must make sure that this endorsement has not been added to its CGL policy.

The insurance needs of property owners and contractors can be very complicated, and all options should be carefully reviewed. It is important for a property owner or general contractor to understand the nature and scope of all coverages offered, exclusions applied, and any potential problems or pitfalls. ■

A New Approach to Developing Commercial Lines Producers at Liberty Mutual Agency Markets

by Kenneth J. Swymer, CPCU, Ed.D., CFP, CLU, AU, AIS, and
John A. Cunningham, CPCU, MBA, CIC, AU, AIM

Kenneth J. Swymer, CPCU, Ed.D., CFP, CLU, AU, AIS, is assistant vice president of insurance operations training for Liberty Mutual Agency Markets. He is responsible for commercial lines and personal lines products training for Agency Markets employees and independent agents. Prior to joining the organization in 1992, Swymer was an independent training consultant serving the insurance and financial services industries. His research activities in the area of adult learning have focused on underwriting training best practices and the use of the Internet in the underwriting process.

John A. Cunningham, CPCU, MBA, CIC, AU, AIM, is manager of the commercial lines new producer program for Liberty Mutual Agency Markets. He earned a bachelor's degree in psychology and a master's in business administration in business operations from Indiana University-Indianapolis. Cunningham is a member of, and instructor for, the CPCU Society's Central Indiana Chapter's Education and Seminar Committee, a member of the Chapter's I-Day Committee, and a liaison for the Research Committee.

Liberty Mutual Agency Markets' eight regional commercial lines companies are just concluding the pilot year of a new approach to training commercial lines producers. While many carriers confine producer training to short timeframes, usually a few weeks, the Agency Markets' regional companies immerse new producers in a 30-week development program which relies daily on both agency and company resources to provide new commercial lines producers with instruction and the on-the-job experience needed to create a solid foundation for a successful career.

A blended learning approach, which combines online learning, webinars, in-agency activities and classroom training, allows new producers to complete the curriculum with less time away from their agencies and more time to build their books of business. The core elements of the curriculum include:

- The Forum Corporation of North America's Consultative Selling Skills.
- The Insurance Institute of America's Accredited Adviser in Insurance (AAI®) program materials.
- Agency Markets' underwriting and coverage resources.

Participants typically devote 15–18 hours per week on the curriculum and its associated activities. Successful program completers earn the AAI designation.

The Commercial Lines New Producer Program uses the risk management approach to identify exposures and develop a plan to address them through a variety of risk management techniques. By integrating the consultative selling skills process with the risk management approach, program participants take the professional adviser approach to building a book of business.

Insurance Management Group (IMG) in Marion, Ind., was among the first agencies to participate in the Agency Markets' Commercial Lines New Producer Program. According to **Daniel McQuilkin,** vice president and chief operating officer of IMG, "We were looking for some formal coverage training, but this was so much more. The use of the AAI insurance training, in concert with consultative selling skills, has really allowed our producer to grow. The rigorous nature of the program also lends itself to the development of

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A New Approach to Developing Commercial Lines Producers at Liberty Mutual Agency Markets

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effective time management skills. It's a serious commitment on behalf of the agency and our producer, but we're thrilled with the results."

Commencing with an orientation at Liberty Mutual Agency Markets' nearest regional office, the new producer and agency manager receive a program overview and meet staff and training support personnel who will assist them throughout the 30-week development program. In parts 2 through 5 of the program, new producers are instructed in: The Principles of Commercial Lines Insurance; Multi-Line Insurance; Company Products and Services; and Agency Operations and Resources.

Upon completion of the program, new producers will have learned:

- Commercial lines loss exposures, coverage forms and endorsements.
- Risk analysis techniques and tools.
- The Agency Markets regional company's products and services.
- Agency operations and agency management tools.
- Effective sales techniques and approaches to selling commercial lines.
- How to create a sales plan.

AAI program modules are delivered to participants' desktops using the Insurance Institute of America's Blackboard software. Producers log on to the system daily to complete assignments and tests, and participate in online discussions. Agency Markets' Participant Guide and Manager Guide provide a structured timeline for the completion of weekly activities such as sales activities, AAI Blackboard assignments, in-agency exercises, and Web meetings with fellow program participants.

"The content, style of teaching, and interaction between new producers in the Web-based classes are really quite impressive," said **Tom G. Wilcox,** agency principal of Wilcox, Jones & McGrath

Inc. in Tulsa, Okla. "The program presents an in-depth study of commercial forms and policies as well as sales strategy, which greatly enhances the value of the training we do on the job."

Weekly Web meetings, led by the new producer program manager, bring together participating producers from agencies located across the country to create a learning community where knowledge and experience as well as successes and challenges are shared; but new producers also interact person-to-person with regional company staff, including underwriting teams and territory managers, during three scheduled events: the regional orientation, 4 1/2 days of classroom training on company product and services, and a program/graduation luncheon.

Given that the vast majority of adult learning takes place on the job, each producer has an agency mentor who is following the producer's progress in the curriculum and spends two to three hours per week ensuring that the producer is applying the learned sales and technical concepts within the agency's business.

Agency Markets' first graduating class of two dozen new commercial lines producers will shortly complete this unique 30-week development program and earn their AAI designation. The Agency Markets' program is demanding, and requires that an applying producer's agency has the time and resources to complement the training efforts of the new producer program manager and the regional company professionals.

All eight Agency Markets regional companies will be offering the Commercial Lines New Producer Program twice in 2009, in January and again in June. For more information about the program and application process, contact a territory manager for the regional company in your area: America First Insurance — Central Region; Colorado Casualty — Mountain Region; Golden Eagle Insurance — California; Indiana Insurance — Midwest Region; Liberty Northwest — Northwest Region; Montgomery Insurance — Southeast Region; Ohio Casualty — Mid-Atlantic Region; and Peerless Insurance — Northeast Region. ■

Professional Liability Exclusion Endorsements

by David M. Sanborn, CPCU

David M. Sanborn, CPCU, is the president and owner of Risk & Insurance Education Inc., which he founded in 1980. He has been in the insurance and risk management industry for more than 30 years. His current clients include the IIABA, 20 IIABA state associations, AON Risk Services, Marsh, CIAB, Willis, and a number of insurance companies. He can be contacted at (410) 692-0645 or rieed@aol.com.

Years ago (I hate to admit how many), I wrote a series of articles on the confusion of "workmanship exclusions," even now a perplexing area, in both property and liability coverage forms. The articles got a lot of attention. I still remember taking my first insurance class at my first insurance job out of college and the instructor saying, "workmanship-type losses are uninsurable." Well, that is nonsense! What exactly is E&O insurance except coverage for screwing up? Workmanship is insurable. This is an area that still needs constant attention, as people get it wrong all of the time.

I constantly have been perplexed about an area that may be related and is just as misunderstood. There is a real need to clear up what professional liability exclusions on the CGL are really excluding, and, just as importantly, to have a better handle on when they should be used in the first place.

Background

If you want to earn $10 quickly, place a bet on the answer to the question "Does a CGL policy cover professional liability?" with some of your colleagues at your next convention or meeting. Eighty percent will say, "of course not." They are wrong. The basic axiom of liability is that "everything is covered unless it is excluded." You always read a CGL like an all-risk property policy; everything is covered unless it is excluded. There is no professional exclusion on a CGL policy and never has been; therefore, the CGL does cover professional liability!

But … you must think of professional liability as it relates to two major areas: malpractice — the touching of the body (there is an old Groucho Marx joke here, but I will not use it), and errors & omissions (E&O) — the mistake loss or the "How did we screw that up?" loss.

Before you even look at exclusions, however, you must meet the requirements of the Insuring Agreement. A CGL policy only pays for BI/PD-type losses that must be caused by an "occurrence," and it has, of course, exclusions for exposures such as "your work," "your product," "product/work recall" and "impaired property." A CGL policy is a snap, crackle, pop policy; it is a "physical happening" policy. So, with or without a professional exclusion, the CGL does not cover the classic E&O-type loss because of the Insuring Agreement, not the exclusions. If an accountant drops an adding machine on a client's toe, for example, the CGL will cover the injury, but the CGL will not give the accountant coverage if he drops a zero on a tax return. That is the world of E&O.

A good way to "see this" is to take a look at Section II of the policy — Who Is An Insured. If you insure a corporation, directors and officers are insureds under the CGL and always have been. If the CGL policy does not exclude professional liability, why then is it necessary to write directors & officers E&O coverage? The answer: because the CGL at its very best only covers BI/PD losses (which the E&O will exclude anyhow). So, write CGL for BI/PD and E&O for mistake liability.

The Axioms

Axiom #1, which is the most important (and I think most confusing), is as follows: A Professional Exclusion Endorsement is not needed to exclude E&O-type losses; they are "excluded" by the Insuring Agreement.

While it is true that a non-endorsed CGL does cover BI/PD professional losses, this is only true if there are no professional exclusion endorsements attached (and there are many that can be attached).

And what about the endorsements? With a CGL policy exclusion, endorsements start with a "21" or a "22." There is only one "21" that is a professional exclusion — CG 21 16. With this endorsement, the underwriter specifies what is being excluded. Will an endorsement like this be on a hospital's CGL? You bet! But that is OK because the professional/malpractice policy written for the hospital will pick up what the endorsement is excluding, and the two will blend — exactly what is needed and what we want.

When I started in this business (I hate to admit it, but I am using this phrase more and more all of the time), professional exclusions on CGL policies were used most often for exposures such as hospitals and physicians, which is fine! In other words, endorsements were used when there was a major BI/PD professional exposure that the CGL should not cover and the professional policy should and did.

But then things started to change. Professional exclusion endorsements started to show up for all kinds of risks and seemed to be put on the policy because of the fear of E&O-type losses. This is what I call underwriting by computer or by classification number. The rule of thumb became "when in doubt throw it on" instead of "when in doubt leave it out," which is what should happen.

Most professional exclusion endorsements start with a "22." Keep in mind that many "22" endorsements are not professional exclusions, even though many are. (Have you really read your CG 22 48?) The "22" endorsements are only to be used with certain risks under certain circumstances. Herein lies the problem. Many of these endorsements are added too freely. The biggest reason seems to be that carriers/underwriters think that without these exclusions the CGL picks up (or might pick up) E&O-type losses.

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Professional Liability Exclusion Endorsements

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Restating Axiom #1 (just to make sure you don't forget): The CGL does not need to be endorsed to exclude E&O-type losses!!! The Insuring Agreement takes care of this problem, as we have previously discussed. If a CGL covered E&O-type losses, why have companies been buying D&O policies all these years?

Axiom #2: These endorsements exclude BI/PD losses. If the underwriter is afraid that the court might rule that the CGL covers E&O-type losses, these endorsements will not save the carrier anyway, as they do not mention E&O. They exclude BI/PD losses — and this is the real problem and causes the most confusion.

So, if the CGL is excluding BI/PD professional losses, these exposures better be covered somewhere else. Are they? Regarding malpractice, yes — the two key policies "fit." Most E&O policies? Probably not, as they exclude BI/PD. Some E&O policies? Perhaps, but how far and for what?

The industry is slowly addressing some of these changes, but there is a real need to speed up the process. A classic example is construction. When I started in this business (there I go again …), construction generally consisted of ***design* — *bid* — *build.*** Now construction is often ***bid* — *design/build.*** Often, the same company does the work of the architect-engineer (A&E) while also acting as the general contractor.

For years, we always used (and still do) the CG 22 43. This endorsement is OK for a pure architectural and engineering firm, as its A&E policy will "pick up" the items excluded. (A&E is one of the few E&O policies that covers BI/PD as well as E&O.) But does an A&E form cover everything? No! It covers items within the definition of a "wrongful act," which usually pulls it down to "professional services the Named Insured is legally qualified to perform." So, it is covering design situations. What if the loss is just "methods and means of construction" in the Named Insured's role as General Contractor? How far does this exclusion go? If you read the endorsement literally, it goes a long way — and definitely could go beyond what the agent or the insured expects.

■ ***When I started in this business … construction generally consisted of design — bid — build. Now construction is often bid — design/build.***

Key points to note about this endorsement:

- It excludes "any" professional services done by the Named Insured or anyone working for the Named Insured.
- Professional Services are defined very broadly. In fact, you could say they are really not defined at all. Whenever I see the word "include," I read it as "but not limited to." This definition could include many things that contractors do as part of their work, not just a design/build contractor.
- The biggest problem is that the endorsement states what professional services "include," but not what professional services do not include, and therefore would not be excluded by this endorsement!

And, remember, this endorsement is not excluding E&O losses (the Insuring Agreement does that); it is excluding BI/PD losses! So, if 10 people die as a result of your insured's work, the loss "could" fall within the broad parameters of this exclusion, and there is no coverage. Just think what many carriers could do with the exclusion if there was a $10 million multiple BI loss!

Well, doesn't the A&E policy cover everything excluded? I doubt it. While it is true that an A&E errors & omissions policy is one of the few that does cover BI/PD losses as well as E&O-type losses, the coverage must fall within the definition of "professional services;" it does not cover any and all liabilities. No E&O policy covers everything. The definition includes the phrase "legally qualified to perform," which everyone generally agrees includes services for which there is a license, that is, the pure professional exposure as a licensed professional, not necessarily acts of a contractor. You clearly can see the battle lines drawn by the two carriers.

The Good News

Besides me, many professionals have been questioning this problem for a long time. But slowly, changes have been made. In 1996, ISO introduced two new endorsements in this specific area: CG 22 79 and CG 22 80. Let's give credit where credit is due — some good changes here! The CG 22 79 only applies as an exclusion if the Named Insured provides professional services to someone else. The CG 22 80 has made a great contribution. It is the same as the 22 43 except it adds a paragraph No. 3. Paragraph No. 3 states what professional services do not include, and hence would not be excluded by this endorsement. You will note that "methods and means" of construction now are not included within the exclusion. This is a major improvement.

Remember once again (I know I am repeating this again, but ...), with or without any of these endorsements the CGL does not cover E&O-type losses, as the policy only covers, at its best, BI/PD/occurrence losses — snap ... crackle ... pop.

So, by the use of these endorsements, you are getting closer to what we want and need — getting the CGL and the E&O policy to "fit."

If you insure a pure design firm, you can accept the 22 43, as its A&E form will pick up what is being excluded. If, however, you insure a design/build firm, do not accept the 22 43 on the CGL, as there is a "fit" problem. Get the underwriter to add the 22 79 (usually) or in some cases the 22 80. Now you have a better fit with the E&O.

While this may be a problem for insureds such as design/build contractors, at least their E&O covers some BI/PD. Remember, most E&O polices do not. (I bet yours does not.) Most E&O policies flatly exclude all BI/PD, as the policies are designed to just cover "mistake-type" losses and the CGL is for BI/PD/occurrence-type losses. So, if you think this is just a problem for design/build contractors, think again.

If you happen to have copies of the "22" exclusion endorsements (they are probably between your John Grisham and Stephen King novels), start to leaf through them and take a look at the titles. Many, not all, seem to have "E&O" in the title. But that is not what they are excluding. They are excluding BI/PD losses. If the endorsement has been added to remove E&O losses, the endorsement is not necessary. These endorsements are added incorrectly all of the time, and they should be removed. If the E&O policy (if there is one) is also excluding BI/PD losses, where are these losses covered? Good question!

Let's look at one endorsement in detail: the CG 22 75 — Professional Liability Exclusion-Computer Software.

Back when I started writing this article, I used Microsoft Word 2001 for MAC (an old system). Actually, I used a newly acquired copy of Word 2001. I had to return my original copy because the program kept "quitting" and interesting flashes kept streaming across the screen. Something was drastically wrong with that piece of software. The store exchanged the software quickly and happily. No major problem.

Let's just say instead that I had purchased a new software package to run my complicated manufacturing equipment. Microsoft employees came to my plant, designed specific software for my needs, and guaranteed its functionality to me. Because the software program was not designed properly, my machinery did not work and I suffered a large loss of income. I sued Microsoft. Should that type of a loss be covered under their CGL? No! Is it covered by their CGL? No! Is the CG 22 75 needed to exclude this type of loss? No! The Insuring Agreement excludes the loss; and yet 95 percent of the time, the reason given for attaching this endorsement is the type of loss just described. This endorsement is not needed for this type of loss. And that is OK because Microsoft's E&O policy will pick up this kind of a loss.

Here's a slightly different scenario: For some strange reason, the Microsoft-designed software caused an electrical short in my computer (or the manufacturing equipment), which caused my computer to blow up in my face. I sue Microsoft. Is this loss now covered by Microsoft's CGL? Yes! Is it covered with the 22 75 attached? I say no! Note that the exclusion even excludes BI/PD losses arising out of manuals for goodness sake. Is this type of loss covered under Microsoft's E&O policy? Microsoft's policy perhaps, but not for most designers, as the E&O policy of most designers totally excludes all BI/PD. There is just something fundamentally wrong here.

Underwriters might say (but I bet they did not initially) that the type of catastrophic loss I described with the manufacturing equipment is exactly what they wanted to exclude with the CGL. Well, then it better be covered somewhere else — and it generally is not.

This is just one example. In some cases, perhaps, the exclusions are warranted, but in most they are not. Exclusions such as these are just not understood by the agent, underwriter or client. There is a real hole here that needs to be closed. I have had at least five calls in the last three years where a BI/PD loss was being denied by both the CGL carrier and the E&O carrier. In two of those cases, both the CGL and the E&O were with the same carrier. Try explaining that to an insured.

What should you do? Your top three choices, in order of preference, are as follows:

(1) Try to get the exclusion removed from the CGL and remind the underwriter that the E&O policy will cover the "mistake" loss. Send the underwriter a copy of that policy, if necessary, and underline its BI/PD exclusion.

(2) If the company flatly will not remove the exclusion, see if it can be amended to get away from words like "any" and "all." Narrow the exclusion down.

(3) See if the E&O underwriter will give you some BI/PD/occurrence coverage for the professional services covered under the E&O.

I apologize, but I have to say this one last time: With or without any of these endorsements, the CGL does not cover E&O-type losses, as the policy only covers — at its best — BI/PD/occurrence losses ... snap ... crackle ... pop.

Summary

Who is to blame for all of this? No one! It is important to remember that insurance (especially liability insurance) is a "work in progress" and always will be. Don't make the presumption that we know what we are doing all of the time, because we do not. (Think about the way we rate a CGL policy. Does that really make sense to you?) We are getting better at all of this, but it is amazing how far something can go when its basic premise is misunderstood. This area is also more complicated because most E&O forms are not ISO forms. They are not standardized. There is a need for more standardization in this area, especially because E&O is no longer thought to be exotic. We need to take more steps to get the CGL and the E&O policy to "fit." ■

Parent-Subsidiary Liability Issues

Massachusetts Supreme Judicial Court Holds Parent Corporation Not Liable Under Massachusetts Superfund Law for Contamination Caused by Subsidiary and Holds Plaintiff Potentially Liable for Defendants' Attorneys' Fees

by Jennifer Sulla

Jennifer Sulla, an attorney in the Boston office of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC, is a member of the firm's Environmental Section. Her practice includes both litigation and regulatory compliance.

Editor's note: This article first appeared in the August 2008 newsletter of the CPCU Society's Consulting, Litigation & Expert Witness Interest Group.

The Massachusetts Supreme Judicial Court (SJC) has held that a parent corporation is not liable under M.G.L. c. 21E, the Massachusetts Superfund law, for the liability of a subsidiary that the parent did not own or control at the time the subsidiary released hazardous materials and sold the contaminated site. The SJC has also held that plaintiffs are liable for defendants' attorney's fees in a Chapter 21E lawsuit if there is no "reasonable basis" for the claim against defendants. *Scott v NG U.S. 1, Inc.*, 450 Mass. 760, 881 N.E.2d 1125 (March 7, 2008).

In *Scott*, the plaintiff discovered contamination on his property in 2002, allegedly coming from property owned and operated as a gas works by Salem Gas from 1850 to 1890. Starting in 1926 — 36 years after Salem Gas sold its property — a series of stock purchases led to Salem Gas becoming a subsidiary of NEES, the corporate predecessor to defendant NG U.S. 1, in 1947. NEES consolidated the operations of Salem Gas with those of two other gas companies and later sold the stock and assets of the consolidated corporation. Salem Gas was dissolved in 1998.

The SJC followed the United States Supreme Court's decision in *United States v Bestfoods*, 524 U.S. 51 (1998), in which the Court held that CERCLA, the federal Superfund law, does not override the fundamental rule of corporate law that a parent corporation is not liable for the acts of its subsidiaries except in limited circumstances. Nor does CERCLA override the equally fundamental rule that a parent's corporate veil may be pierced when otherwise the corporate form would be misused, e.g., to accomplish fraud. Under *Scott* and *Bestfoods*, a parent is liable under CERCLA, or Chapter 21E, for its subsidiary's contamination only when: (1) The parent "manage[s], direct[s], or conduct[s] operations specifically related to pollution" (direct liability due to the parent's own acts), or (2) The corporate veil may be pierced (indirect liability).

As for direct liability, the Appeals Court in *Scott* had held that NG U.S. 1 and its predecessors could not be directly liable as an operator for the contamination resulting from Salem Gas' operations at the gas works because only present operators are liable under M.G.L. c. 21E § 5(a)(1), and the contamination did not occur on their watch. The SJC agreed.

As for indirect liability, the Appeals Court stretched the concept of veil

piercing to hold that NG U.S. 1 and its predecessors should be held liable in order to fulfill one of the primary aims of Chapter 21E — the party that caused the contamination should be responsible for the costs of the cleanup. According to the Appeals Court, even though the release occurred before 1926, the ensuing contamination and harm to the public and the environment continued for over 100 years, during which time there was "almost overwhelming" evidence of "pervasive control" of Salem Gas by NG U.S. 1 and its predecessors.

The SJC disagreed, stating that "control, even pervasive control, without more, is not a sufficient basis for a court to ignore corporate formalities." Thus, the corporate veil can be pierced to hold a parent responsible for a subsidiary's actions only if the parent exercises "pervasive control" and there is some "fraudulent or injurious consequence;" or there is "confused intermingling with 'substantial disregard of the separate nature of the corporate entities.'" As stated by the SJC, "control, even pervasive control, without more, is not a sufficient basis for a court to ignore corporate formalities."

In *Scott*, NG U.S. 1 and its predecessors had not had any direct involvement in the site during the relevant time period. In looking at whether there is "control" or "intermingling" so as to allow piercing the corporate veil, the SJC held that the proper focus is on the events giving rise to liability such as owning or operating a facility at the time of a release of hazardous materials. Because NG U.S. 1 and its predecessors had had no interest in, or control of, Salem Gas or the gas works property at the time of the release, it did not matter whether they had such control after 1926.

The SJC reaffirmed in *Scott* the fundamental principle of parent/subsidiary separateness, although on relatively easy facts. Indeed, in *Bestfoods* and in the state law cases referred to by Scott, the parent-subsidiary relationship existed at the time of the subsidiary's acts giving rise to liability. In contrast, in Scott, the parent-subsidiary relationship did not exist until long after the subsidiary's acts. So the SJC did not need to address whether the control that NG U.S. 1 and its predecessors did exercise over Salem Gas would have been sufficient to pierce the corporate veil if the release had occurred during that period of control.

It should be noted, moreover, that *Scott* does not absolutely shield corporate parents and successors. For example, although *Scott* makes it very difficult to impose liability on a corporation for a subsidiary's contamination that pre-dates the acquisition, the SJC left open the possibility that "very special facts" could lead to piercing a parent's veil even if the timing of the parent-subsidiary relationship is as in *Scott*.

Likewise, *Scott* will not protect a surviving corporation in a corporate merger in which the surviving corporation is deemed to be liable for the liabilities and obligations of the constituent corporations.

Scott also addressed another significant issue in Chapter 21E litigation. The defendants sought attorneys' fees under M.G.L. c. 21E § 4A, which requires a court to award fees and costs if a plaintiff does not participate in pre-suit negotiations in good faith or if a plaintiff has no reasonable basis for claiming that the defendant is liable.

■ ***The SJC reaffirmed in Scott the fundamental principle of parent/subsidiary separateness, although on relatively easy facts.***

In one of the very few reported court decisions involving Section 4A, the SJC held that the standard for determining whether attorneys' fees must be awarded is whether, at the time of filing the complaint, application of the facts to existing law made it "reasonably clear" that defendants were not liable. Because the trial judge had used the wrong standard — the standard governing motions to dismiss, a relatively easy one for plaintiff to meet — the SJC sent the case back to the trial judge.

Thus, not only has the plaintiff failed to find anyone to pay to clean up the century-old contamination on his property, he may find himself paying the defendants' attorney's fees as well. ■

Other Structures Coverage and the NFIP

by David A. Thompson, CPCU, AAI, API

David A. Thompson, CPCU, AAI, API, is an instructor with the Florida Association of Insurance Agents in Tallahassee, Fla. He travels extensively throughout the country presenting continuing education seminars.

Insurance professionals, especially those dealing with homeowners insurance, are familiar with the "other structures" coverage provided in many insurance policies. In the homeowners program, the industry standard HO-3 policy typically provides 10 percent of the dwelling limit that is available for other structures on the residence premises. This is additional coverage, and applies for a variety of structures, such as a detached garage, fence, shed, guest house, pool house, detached pool and carport. On the commercial side, the other structures coverage is more limited, but can be found in many businessowners policies.

When looking at the National Flood Insurance Program (NFIP), the other structures coverage is so limited that it might almost be thought of as, "There isn't any." To adequately protect other structures under the NFIP, a separate policy per building is required.

Below is an analysis of the other structures coverage (or lack thereof) provided in each of the three NFIP coverage forms:

- **Residential Condominium Building Association Policy (RCBAP).** Designed to cover residential condominium buildings (not commercial condominium buildings), the RCBAP provides absolutely no other structures coverage. A separate policy is required for each building. For example, a condominium association consisting of three separate residential buildings requires three separate RCBAP policies. If there are other non-residential buildings on the premises, such as a detached garage, clubhouse or utility work building, then each of those buildings requires a separate policy using the NFIP General Property Form.
- **General Property Form.** Buildings, such as offices, restaurants, hotels, apartment houses with five or more units and retail strip-shops, are written under the General Property Form. There is no other structures coverage in this form, and a separate policy per building is required.
- **Dwelling Form.** The Dwelling Form is used to cover one to four family dwellings, townhouses, row houses and single residential condominium units. This is the only place in the NFIP that other structures coverage is found, and it is very limited. The Dwelling Form provides 10 percent of the building limit as other structures coverage, but ***only*** for a detached garage. This is ***not*** additional coverage (it reduces the building limit), and the coverage does not apply if the garage is used for any residential, farming or business purpose. Any other structures on the premises, such as a guest house, pool house, or utility building affixed to a permanent site, require a separate policy, and are written under the General Property Form.

  Example #1: Joe's house is covered for $200,000 under the Dwelling Form, and he has a detached garage valued at $40,000 on his lot. The garage is used only for parking of automobiles. He also has a guest house on the premises. The policy provides up to $20,000 for coverage for the garage, but no coverage for the guest house. If both the house and garage are totally destroyed, the policy pays only $200,000. To properly protect himself, Joe needs three separate NFIP policies — a Dwelling Form for the house and two General Property Forms for the garage and guest house.

  Example #2: Joe's house is covered for $200,000 under the Dwelling Form, and he has a detached garage valued at $12,000 on his lot. The garage is used only for the parking of automobiles. Only the garage is damaged in a flood; $20,000 is available. Had both the house and garage been damaged, a maximum of $200,000 is available because the other structures coverage is not additional coverage. To properly protect himself in a worst-case scenario, Joe needs two policies — a Dwelling Form on the house and a General Property Form on the garage.

  Example #3: Joe's house is covered for $200,000 under the Dwelling Form, and he has a detached garage valued at $40,000 on his lot. Within the garage is a studio apartment. Additionally, Joe has a small utility building on his lot valued at $8,000. The Dwelling Form provides no other structures coverage. Joe needs three NFIP policies — a Dwelling Form for the house and General Property Forms for the garage and utility building.

Remember, under the NFIP the policy deductible applies separately to each building and separately to the contents. If Joe has three NFIP policies on his house, garage and utility building and all buildings are damaged, then a separate deductible applies for damage to each building plus the contents in his home. In this case, a total of four deductibles applies.

Insurance professionals should be familiar with the structures owned by their clients; an on-site visit is the preferred method to reveal these exposures. Once a proper risk analysis has been conducted, adequate NFIP coverage can be recommended to the customer. ■

Insolvencies ... An Overview

by The National Conference of Insurance Guaranty Funds (NCIGF) Staff

Editor's note: This article is reprinted from the Web site of the National Conference of Insurance Guaranty Funds (NCIGF) with permission. The NCIGF is a non-profit, member-funded association that provides national assistance and support to the property and casualty guaranty funds located in each of the 50 states, Puerto Rico and the District of Columbia. You can find links to useful resources on the NCIGF Web site: http://www.ncigf.org/public-links.asp.

The following information is intended to provide only a basic overview of the insolvency process and guaranty fund laws. It is not intended to provide individual or legal advice on a specific situation. For questions about your specific situation, please consult with your state guaranty association and/or legal counsel.

Introduction

Businesses and consumers purchase property and casualty insurance to protect themselves from financial losses arising out of a variety of risks and perils, including such things as fires, accidents, natural disasters, worker's compensation injuries, or liability to third parties due to negligent acts. What happens, though, when the company responsible to pay those claims becomes impaired (operating in a financially hazardous manner) or becomes insolvent (its assets are not sufficient to pay its policy claims), and as a result cannot meet its policy obligations?

Troubled Companies

Each state has a regulatory agency, usually called the State Department of Insurance, which is responsible for monitoring the financial health of companies authorized to do business in the state. When the Commissioner of Insurance determines a company is in financial trouble, he is empowered by law to take appropriate steps to protect the policyholders and claimants of the company. Depending upon the severity of the problem, the Commissioner can take a variety of corrective actions. These may include an *Order of Supervision*, an *Order of Suspension*, an *Order of Rehabilitation* or an *Order of Liquidation*.

In an *Order of Supervision*, the Commissioner can require the company to take specific corrective steps, or to obtain the Commissioner's approval before it undertakes certain transactions. Usually, an Order of Supervision alone does not result in changes to policies issued by the company or the payment of claims.

Using an *Order of Suspension*, the Commissioner can order the company to stop all or a portion of its business in the state.

The Commissioner may request a state court to issue an *Order of Rehabilitation* in situations where the problems are more severe or where the Commissioner believes it appropriate for the protection of the policyholders and creditors. In these situations, the Commissioner is appointed as the Rehabilitator of the company, and is given the authority to manage the company until the problems are corrected. In his/her capacity as Rehabilitator, the Commissioner takes ownership and control of the company's books, records and assets, and assumes all powers of the company's directors, officers and managers. The Commissioner has broad discretion to take whatever corrective actions he/she believes appropriate, subject to oversight by the court. Once the problems are resolved, control can be turned back over to the company.

If the Commissioner does not believe the problems can be corrected and that continued operation of the company would be harmful to the company's policyholders and creditors, he can seek an Order of Liquidation from a state court. Under the Order of Liquidation, the Commissioner is appointed as Liquidator. The Liquidator will then appoint a Receiver to manage the Liquidation process.

The Liquidation Process

After the court issues the Order of Liquidation, the Receiver and his/her staff take possession of the company's offices, records, equipment and assets. A notice is sent to all policyholders and claimants informing them of the company's liquidation and the steps they must take in order to file a claim against the company's estate. The policyholders and claimants will also be informed that a guaranty association may handle the future processing of claims and that their insurance policy will be cancelled at a specified date.

Guaranty Associations

Guaranty associations are non-profit organizations created by statute for the purpose of protecting policyholders from severe financial losses and delays in claim payment due to the insolvency of an insurance carrier. They do this by assuming responsibility for the payment of claims that would otherwise have been paid by the insurance carrier, had it not become insolvent. However, only certain types of claims are eligible for coverage, and there are certain limits on how much the guaranty association will pay per claim and in the aggregate per policy.

Each state has one or more guaranty associations, with each association handling certain types of insurance. Insurance companies are required to be members of the state guaranty association as a condition of being licensed to do business in the state. Guaranty associations obtain funds for their operations and payment of claims through assessments against the solvent insurance companies licensed to do business in the state and from the recovery of amounts paid on claims from the insolvent estate.

There are different types of guaranty associations. Some guaranty associations handle only claims related to life and health insurance. Some deal only with property and casualty insurance claims. Others address only worker's

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compensation claims or other special lines of insurance.

The remaining information will discuss only property and casualty and worker's compensation guaranty associations.

For additional information on life and health guaranty associations, please visit the Web site of the National Association of Life and Health Guaranty Associations (NOLHGA) or your state life and health insurance guaranty association Web page.

Although guaranty association laws are generally similar from state to state, significant differences do exist. For this reason, it is important to determine which state guaranty association has responsibility for your claim, because this can affect where your claim must be filed, the type of claim that is covered, and the maximum amount the guaranty association can pay for a covered claim.

Frequently Asked Questions

My company is in rehabilitation and my claim has not been paid. Will the guaranty fund pay my claim?
Usually not. The provisions of the state guaranty laws in most states apply only when a state court issues an Order of Liquidation with a finding of insolvency.

If my company is in liquidation, which state guaranty association should I contact with questions regarding my claim?
In most instances, the guaranty association for your state of residence will be responsible for your claims. However, if your claim relates to property located in another state, that state's guaranty association will generally have responsibility for the claim.

Will the guaranty association cover all claims that would have been covered under my policy?
No. Although most policy claims will be covered, certain types of claims, for example, claims for punitive damages, or

amounts in excess of your policy limits, will not be covered. Additionally, the maximum amount of coverage available is capped at a certain amount. This amount differs from state to state, with the most common limit being $300,000. In any event, the amount of coverage provided by a guaranty association will be the lesser of the policy limits or the maximum amount provided in the state guaranty fund statute. Many guaranty associations apply a deductible, usually $100, which is subtracted from the amount paid on a claim. A claim for less than $100 will not be paid in these states.

What requirements have to be met in order for my claim to be covered by a guaranty association?
To be covered by a guaranty association, a number of conditions must be met. At a minimum, the claim must:

(1) Be unpaid, that is, the claim must not have been previously paid by the insurance carrier or other party.

(2) Exist before the insolvency or arise within 30 days after the Order of Liquidation; the claim must arise while the policy is still in force.

(3) Be on a policy written by an insolvent insurer that was licensed to do business in the state, and in a line of business covered by the guaranty association; policies sold by companies that are not members of the guaranty association are not covered.

(4) Be brought by a claimant or insured who is a resident of the state; only claims brought by residents or insureds of the state, or where the claim relates to property located in the state, are covered by the state guaranty fund.

(5) Be filed with the guaranty association before the claims cut-off date; most guaranty associations establish a claims cut-off date. Your claim must be filed before that date in order to be covered.

(6) Not be covered by other insurance; if there is other insurance from which your claim can be paid, you must first exhaust that coverage before the guaranty fund will pay any portion of the claim.

What happens if the amount of my claim is larger than the maximum amount paid by the guaranty association?

If the amount of your claim exceeds the maximum limits of the state guaranty association, you may file a claim for the unpaid portion with the Liquidator.

Do I need to file my claim with both the Liquidator and the guaranty fund?

The claim filing process differs from state to state. In some states, you need only file a claim with the Liquidator, and it is automatically considered to be filed with the guaranty association. In other states, it is necessary to file the claim separately with the Liquidator and the guaranty association. For this reason, it is important that you carefully read all information you receive and follow the instructions you are provided. If in doubt, you should contact your state guaranty fund.

Can I file my claim with more than one guaranty fund?

The state guaranty association system is intended to assign a given claim to only one guaranty association. In rare instances, it may be possible that one association has primary responsibility for a claim, and another state guaranty association has secondary liability. In such cases it may be possible to file a claim with both associations, but in any event, the total amount paid cannot exceed the amount of coverage provided under your policy.

How long will it take for the guaranty fund to pay my claim?

The amount of time it takes for a guaranty association to pay a claim can vary widely depending upon a number of factors, but claim payments usually begin as soon as possible following the Order of Liquidation. A period of 60–90 days is not uncommon. Many insurance carriers have their claims processed by a Third Party Administrator (TPA). If this is true with your claim, the amount of time needed to get all claim information might be extended as files are gathered from TPAs and transmitted to the guaranty associations.

Before my company went into liquidation, it was defending me in a lawsuit brought under my policy. What will happen now?

If the company is already defending the case, the guaranty association will take control of the case and will continue to defend or negotiate a settlement on your behalf. The defense and amount of coverage provided will be on the same terms and conditions provided for in your policy. However, once the guaranty fund pays the policy limits, it may no longer be obligated to continue providing a defense and will not pay any additional amounts above your policy limits.

Am I covered by a state property and casualty guaranty association if I purchased my policy from an unlicensed carrier or a managed care plan?

No. Guaranty associations cover only licensed insurers. Companies not licensed in the state, surplus lines carriers, managed care plans, preferred provider organizations (PPOs), Health Maintenance Organizations (HMOs) and self-insured plans are not covered under the property and casualty guaranty association statutes. If you purchased coverage from one of these entities, and the company is now insolvent, you may file a claim with the Liquidator. There may also be other guaranty associations that may provide coverage for policies issued by these types of organizations. Your State Department of Insurance can provide you additional information.

How can find out if my company was licensed in my state?

Check with your State Department of Insurance. They should have a listing of all admitted companies.

If my insurance company is insolvent, why isn't it in bankruptcy?

Insurance is a state-regulated industry, and many federal statutes, including bankruptcy laws, do not apply to them. When an insurance company becomes insolvent, the company's estate is administered by the Commissioner of insurance, as Liquidator, and overseen by the state court.

If my policy has been terminated as a result of my company's Order of Liquidation, will the guaranty association provide me a new policy?

No. The purpose of the guaranty association is to protect policyholders and claimants from losses due to unpaid claims of policies issued by the insolvent insurance company. Guaranty funds cannot sell insurance policies. To obtain new coverage, you will need to contact a licensed insurance carrier or an insurance agent or broker.

How do I contact my state guaranty association?

A directory of state guaranty funds is available on the NCIGF Web site: http://www.ncigf.org/public-guarantyfunds.asp.

How do I contact my State Department of Insurance?

Contact information for your State Department of Insurance can be found at http://www.ncigf.org/public-claimsquestions.asp. ■

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