

# E&O Claims Advisor

An exclusive risk management service of the  
Big "I" Professional Liability Program



Winter 2010

## Big I Advantage® Virtual Risk Consultant a "No-Brainer for Most Agencies"

Hundreds Have Purchased the VRC For Only \$250 Per Year

"I just recently found out about the Virtual Risk Consultant and purchased it. For only \$250, no agency in America should be without this product," says Big "I" member Randy Lanoix of Lanoix Insurance Agency in Lutcher, Louisiana. "Times are tough right now for agencies but purchasing the VRC really is a no-brainer! It is resource that will give our agency a competitive advantage by increasing the knowledge and professionalism of our producers and CSRs and helping us better serve our clients."

The benefits of helping agencies generate increase sales while lowering their exposure to E&O claims have Big "I" members from across the country flocking to purchase the Big "I" Virtual Risk Consultant Powered by Rough Notes ("VRC"). Starting at \$250 a year, the VRC is an easy-to-use agency resource website offering:

### Risk Exposure Analysis Tools

Commercial and Personal Risk Exposure Analysis information at your finger tips with hundreds of industries including narrative descriptions, minimum coverages, and suggested WC, ISO GL, SIC, and NAIC codes. The popular "Coverages Applicable" material, customized questionnaires and E&O coverage checklists are also included.

### Reference and Proposal Tools

Reference materials to make sure agency staff understands the product they are selling and help create winning proposals. Included are access to ACORD forms, PF&M, and a glossary of insurance terms.

### Marketing and Prospecting Tools

Access to articles on various insurance topics that the agency can share with customers, post on their websites, or use to create a client newsletter. There are also hundreds of professionally written building business letters so you can spend more time selling and less time writing.

Gain a competitive advantage by purchasing the exclusive VRC today! Visit [www.iiaba.net/VRC](http://www.iiaba.net/VRC) to learn more and purchase. Click here to see the VRC in action with a limited demo.

Office Routing	

"For only \$250,  
no agency in  
America should  
be without this  
product!"

—IIABA member Randy Lanoix  
Lanoix Insurance Agency  
Lutcher, Louisiana



Agency Size (per state)	Annual Subscription	Four-Year Subscription
Up to 15 users per agency	\$250	\$750
More than 15 users per agency	\$500	\$1500

} Exclusive IIABA member pricing represents an extraordinary value!



A must-read article for agencies with branches in multiple states!

# Do Insurance Agents have a **DUTY TO ADVISE?**

A summary of the law governing insurance agents' obligations to advise their customers.  
By Myles P. Hassett, Esq. and Julie K. Moen, Esq.

*Dave Garner, Senior Vice President of Swiss Re claims, asked the Hassett Law Firm of Phoenix, Arizona to provide a state-by-state analysis of insurance agents' duty to advise so that the standard of care, and any associated liability trends, could be better understood on a national level. To accomplish this, Myles P. Hassett, Esq. and Julie K. Moen, Esq. researched the law in all 50 states and Washington D.C., with assistance from Swiss Re lawyers practicing in each jurisdiction, and produced a comprehensive review of applicable standards. Lucas N. Frank, Esq. of the Hassett Law Firm's Albuquerque, New Mexico, office also assisted in the compilation of the summary.*

Consumers expect independent insurance agents to be knowledgeable and professional, and increasingly rely on those agents to obtain the most appropriate policy based on their insurance needs. States also mandate the minimum level of knowledge and ability their agents must exhibit through statutes and regulations that govern agent licensing, solicitation and sales. Yet despite consumer expectations and a high level of regulation, the law in most states doesn't automatically consider insurance agents to be "professionals" with a duty to advise their customers, similar to attorneys or accountants.

However, in the context of a duty to advise the customer, there is a difference between what the law requires and what best practices dictate. Legal requirements establish minimum standards for agent conduct, while best practices go beyond mere compliance with the law and emphasize a higher level of performance. The duty to advise customers about their insurance needs, when it applies, provides a good example of the difference between legal standards and best practices. As outlined below, different states have established different legal standards for when insurance agents have a duty to advise. However, best practices generally require that independent agents advise customers about their coverage needs so that their choices are properly guided in the increasingly complex world of insurance. As a practical matter, offering coverage to meet all of the customers' insurable exposures helps to avoid E&O claims, while also maximizing potential agency revenue.

# Do Insurance Agents have a DUTY TO ADVISE?

The legal standards for establishing an insurance agent's duty to advise differ from state to state. Some states hold agents to a professional standard of care that includes an affirmative duty to advise. At the other end of the spectrum, a few states use an order-taker standard that imposes only an obligation to procure requested coverage without any duty to advise. The vast majority of states apply a test that requires finding a "special relationship" before any duty to advise will be imposed on the agent. These states can be categorized into jurisdictions that make it more or less difficult to establish the predicate "special relationship" before the duty to advise arises. At right is a map that shows how each state regards the duty to advise.

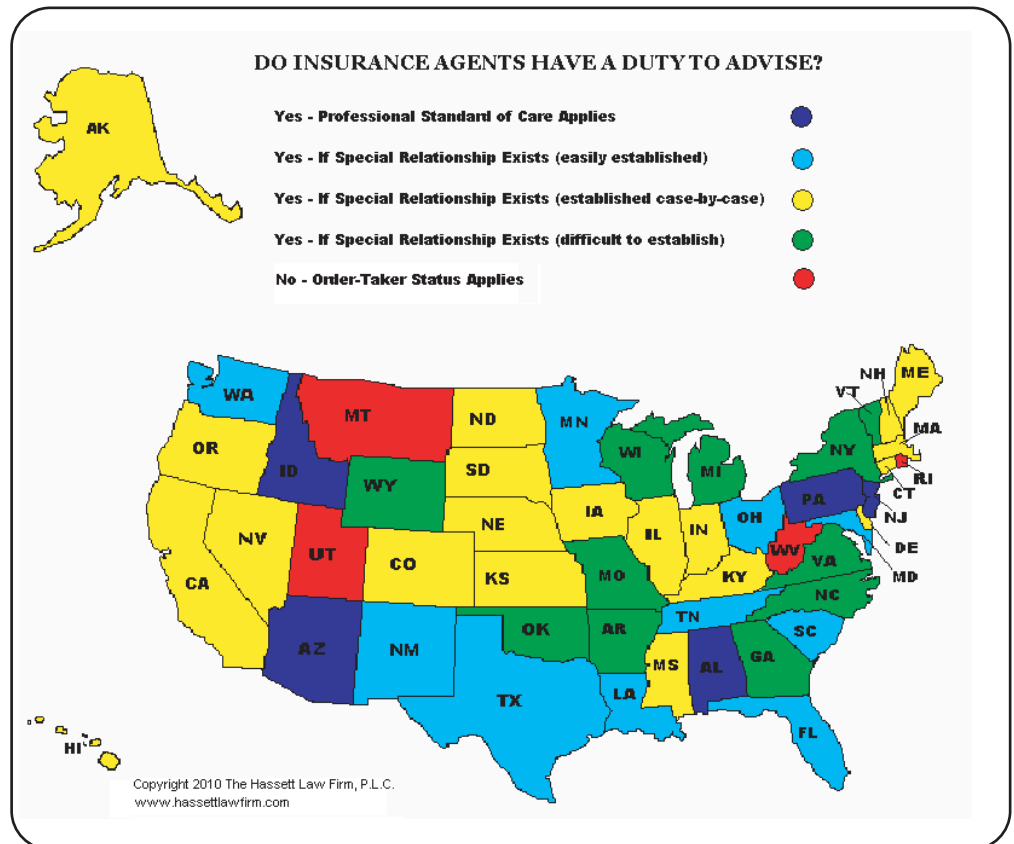
## 1. The General Rule: Agents Must Use Reasonable Care, Skill and Diligence.

A review of the law in the 50 states and Washington, D.C. reveals that agents across the nation have a similar general duty to their customers to use the degree of care, skill and diligence that a reasonable insurance agent would in the same or similar circumstances to procure the insurance requested by the customer. If the agent cannot procure the insurance, the agent has a duty to notify the customer of this fact in a timely fashion.

Absent a special relationship, the general duty of care in most states does not include an affirmative duty to advise customers about additional types and limits of coverage. A customer's request for "full" or "sufficient" coverage rarely creates the kind of special relationship that imposes upon the agent a duty to give advice about the types and limits of coverage available, although some courts require agents to clarify the customer's request in those cases.

## 2. Professional Standard of Care States.

A few states have adopted a relatively stringent standard of care, in recognition of the fact that agents play an advisory role similar to that of an attorney or accountant. In order to comply with the standard of care in Alabama, Arizona, Idaho and New Jersey, an agent must inform the customer about the existence and advisability of additional types and limits of coverage.



To comply with the standard of care in Maryland and Washington D.C., agents must advise their customers about other types of available coverage. However, absent a special relationship, insurance agents have no duty to advise their customers about obtaining additional limits of coverage.

Pennsylvania splits the duty by line of coverage, requiring agents to advise personal lines customers about other types and limits of coverage. But, absent a special relationship, agents have no duty to provide advice to commercial lines customers.

Three states - Maryland, Michigan and Nevada - also divide the duties of various insurance professionals by licensing insurance counselors separately from insurance agents. Counselors are paid specifically to review a customer's insurance and provide information and advice about additional types or limits of coverage that would best suit the customer's needs.

## 3. The "Special Relationship" Test.

Many states agree that to impose a blanket affirmative duty on agents to advise about types and limits of available coverage would reward insureds for taking an "intellectual" gamble purchasing less insurance now (for less money), then later claiming they would have purchased better (and more expensive) coverage if only the agent had advised them to do so. This removes the burden from insureds for determining their own best interests and turns agents into financial guidance counselors. As a matter of public policy most states thus require that the insured first establish from the circumstances that the agent-customer relationship was "special" before any duty to advise can arise.

Courts generally define "special circumstances" as including one or more of the following factors: 1) the agent agrees to advise the customer; 2) the agent accepts additional compensation beyond the premium for the advice; 3) a (long-term) course of dealing between the agent and customer in which the agent is on notice that the customer seeks and relies upon the agent's advice;

# Do Insurance Agents have a DUTY TO ADVISE?

4) the agent holds himself out as an expert and the customer relies on that representation; 5) the customer specifically requests advice; and 6) the agent makes representations about the coverage upon which the customer relies. The states with no affirmative duty to advise, absent a special relationship, fall into three subcategories: states that tend to find a special relationship, states with no clear preference and states that rarely (if ever) find a special relationship.

## A. States That Tend to Find a Special Relationship Between Agent and Customer.

The courts in Florida, Louisiana, Minnesota, New Mexico, Ohio, South Carolina, Tennessee, Texas and Washington liberally interpret the facts with the intention of finding a special relationship. South Carolina also requires agents to explain the coverage and limitations to customers.

Some Louisiana cases assume a limited fiduciary duty between an insurance agent and the insured. But Louisiana has not held that insurance agents have a “spontaneous” duty to advise, absent an agreement by the agent to advise the customer or the agent holding herself out as an advisor.

In Tennessee, an agent cannot omit or reject coverage because he thinks the insured does not need it or will not benefit from it. Instead, the agent must offer the coverage to the insured, advise of its usefulness (if any) and allow the insured to decide.

## B. Independent View of the Special Relationship Test.

There are many middle-ground states with no clear preference for finding or not finding a special relationship. These include Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, North Dakota, Oregon and South Dakota. Illinois has a

statutory duty of care that requires agents to use ordinary care to procure, renew, bind, or place coverage for an insured.

Nebraska and Oregon require agents to explain coverage and limits to customers, but Oregon has not yet ruled on whether agents must advise customers about which coverages or limits to purchase.

## C. Conservative View of the Special Relationship Test.

Some states have conservatively set a high bar for finding a special relationship, rarely finding that the facts establish a special relationship. These states include Arkansas, Georgia, Michigan, Missouri, New York, North Carolina, Oklahoma, Vermont, Virginia, Wisconsin and Wyoming. In fact, New York courts have yet to find the existence of a special relationship establishing an agent’s duty to advise his customers.

These states also generally require the insured to have specifically requested the insurance she claims the agent failed to procure. A request for “full” or “adequate” coverage, or the “best coverage available,” does not generally create an obligation for the agent to seek out or procure a specific type of insurance for the customer.

## 4. Order-Taker States.

Some states do not impose an affirmative duty to advise and make no exception for the existence of a “special relationship.” Instead, the agent’s only obligation is to procure the coverage requested by the customer and timely notify the customer if the agent cannot obtain the insurance. Even the existence of a fiduciary relationship imposes no additional duty, so that the agent is still only responsible for procuring the coverage requested by the insured. These order-taker states are Montana, Rhode Island, Utah and West Virginia. Even in these states, however, agents may be liable if they provide incorrect or misleading information.

## 5. Conclusion.

Our research indicates that the general trend is moving toward the imposition of professional standards of care by the courts, guided in many instances by the use of a predicate “special relationship” test before imposing an affirmative duty to advise. Prudent agents are responding to this trend by promoting best practices and awareness of the insured’s needs. Independent insurance agents should accordingly not content themselves with minimally-compliant conduct that merely satisfies legal standards, but should instead aim to provide service that exceeds these standards, consistent with the goals of earning and keeping customer trust and confidence.

## About the Authors

*Myles P. Hassett, was originally admitted to practice in Ireland and is licensed in Arizona and California. For over 20 years, Mr. Hassett’s focus has been on litigating the defense of claims against insurance agents and brokers. He has appeared as lead counsel in numerous Arizona Supreme Court and Court of Appeals insurance cases, and has established leading precedent insulating agents from third-party liability.*

*Julie K. Moen earned her law degree from the University of Arizona in 2005. Ms. Moen practices with the Hassett Law Firm primarily in the area of insurance litigation and regulation. She is a member of the Arizona State Bar and the American Bar Association.*

*The Hassett Law Firm, P.L.C. ([www.hassettlawfirm.com](http://www.hassettlawfirm.com)) is an AV-rated civil litigation law firm with offices in Phoenix, Arizona and Albuquerque, New Mexico.*

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*For a list of the each state’s most pertinent cases, visit the Big “I” Risk Management Website [www.iiaba.net/eohappens](http://www.iiaba.net/eohappens) and click on “Standard of Care.”*

## How Workers Compensation Experience Rating May Save You an E&O Claim AND Make You Money



By Bill Wilson, CPCU, ARM, AIM, AAM  
Director of Big "I" Virtual University

What do these numbers have in common: \$30,000. \$16,000. \$23,000. \$199,957? Answer: They're all real-life examples of premium overcharges due to workers compensation experience mod errors. In each case, a bidding agent was able to take these accounts away from an existing agent who was not vigilant in monitoring the insured's mod and catching errors on the experience rating worksheet.

It is a proven fact that knowing how to decipher a mod worksheet and how to identify and correct worksheet errors can help you retain existing clients and book prospective clients whose agents are not as knowledgeable or diligent as you. Perhaps more important, being able to explain experience rating to a customer and assist them in avoiding overcharges due to errors and the delayed closings of open claim reserves may save you an insured and an E&O claim.

Can the failure to identify and correct mod worksheet errors result in an E&O claim? In an age where an insured may sue for a \$100 difference in a collision and comprehensive deductible, of course this can happen. Will such a lawsuit be successful? That's debatable and fact dependent, but nothing may stop someone who feels aggrieved from seeking compensation. This could cost you time, money, your E&O deductible, loss-free credit, and more.

And, again, aside from potential E&O implications, understanding experience rating can put money in your agency's pocket by enabling you to provide a value-added service that many agents are unable or unwilling to provide. Errors are often found in payroll, coding, and loss data on the worksheet. Another type of "error" involves an open reserve that is closed sometimes days after the cut-off date for reporting workers compensation data.

In your agency, I bet it is common practice to review renewals 7-9 months in advance, right? Right! (He says sarcastically.) Well, if the workers compensation is experience rated, there are some things that may need attention that far in advance. Such vigilance may save your insured BIG bucks.

An insured's actual workers comp claims are shown in columns 7-9 of the NCCI experience rating worksheet. The

amounts shown are based on those reported by stat cards submitted by carriers to NCCI and are usually based on a stat card cut-off date SIX MONTHS prior to the renewal date of the policy. These reported losses include both paid claims and outstanding (open) reserves for both medical and indemnity payments combined. These reserves are typically based on insurer judgment except for paid medical and permanent total disabilities.

In column 8 of the NCCI experience mod worksheet, each claim in excess of \$2,000 will include either an "O" to indicate that a claim reserve has been established but the claim is still Open, or an "F" to indicate that the claim has been closed with a Final settlement.

One of the most common inaccuracies on the worksheet involves reserves. Although carriers must follow up with NCCI by filing subsequent unit stat cards that include open claims (see timeline in the downloadable "Monitoring the Mod" chart below), sometimes reserved claims have been closed with little or no payment but the carrier failed to file a corrective stat card or the claim was closed after the stat card cut-off date. I've personally seen claims closed 1-3 days after the cut-off date, fully six months prior to renewal. Therefore, the original reserve amount may still show up on the worksheet with an "O" beside it. Here are several real-life examples:

- ▶ After reviewing a loss run, an agent discovered that a \$60,000 open reserve shown on the worksheet was actually closed prior to the stat card valuation date. The mod on the worksheet was 1.26 and should have been 0.94, but the correction could not be made until the next reporting period according to NCCI rules.
- ▶ A \$35,000 open reserve was shown on a worksheet with a 1.17 mod. Although the claim had been proven to be fraudulent, the company had failed to file a corrective stat card. The mod was ultimately corrected to 0.89, reducing the insured's premium by almost one-third.
- ▶ In another instance, the carrier never filed corrective stat cards with NCCI on open claims closed as far back as two years ago. When recalculated, the mod dropped from 1.24 to 0.93.
- ▶ A loss was originally reserved at \$22,000 almost three years ago and this value was continued on each subsequent stat card even though the reserve was reduced several times. After the valuation date of the last stat card, the claim was closed at \$4,800. The mod would have been 1.15, rather than 1.21, but NCCI cannot reevaluate the mod until the next rating period according to their filed procedures.

As shown in the first example above, a claim may have been closed PRIOR to the mod promulgation date of the (Con't)

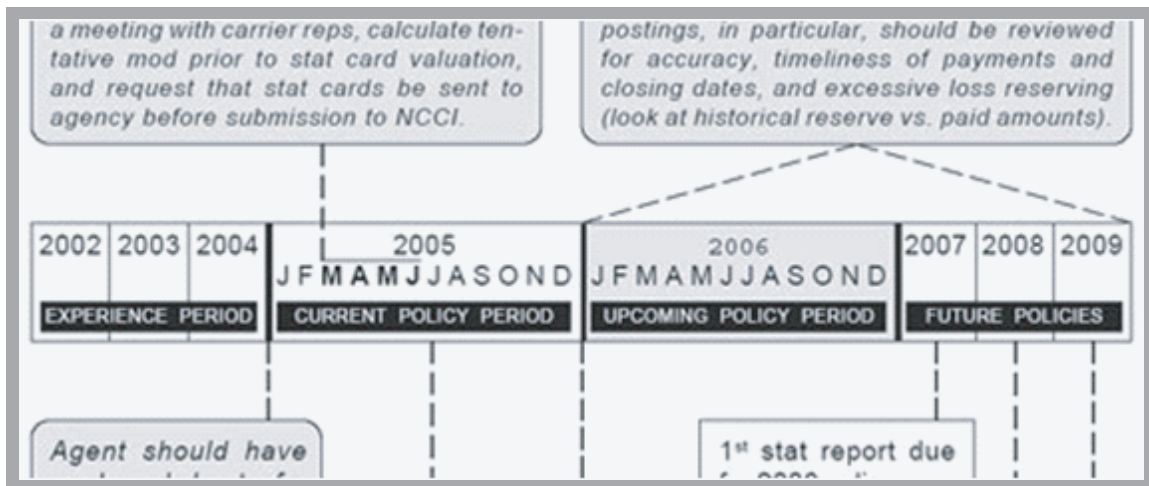
upcoming policy period, but AFTER the date of the last stat report (i.e., six months prior to renewal). According to NCCI, the open claim reserve shown on the stat card will still be included in the mod calculation and shown on the worksheet applicable to the upcoming policy period, even though it has actually been closed. A few states have exceptions to this rule but only a few.

As demonstrated by the last example above, in addition to failure to file stat cards on closed claims, reserve amounts may have been lowered over time, but not changed on the worksheet. Unfortunately, the failure to follow up on open claims may mean that the insured is stuck with a mod that could have been lowered considerably if the claim/reserve was more diligently tracked.

Finally, remember that reserves may be based largely on judgment, so it is not inappropriate that a reserve amount be challenged if it appears excessive. If, as the agent, you have reason to believe that a carrier has established a pattern of over-reserving (which some feel happens, particularly in residual markets), keep a file of reserve activity to present to your insurance department, labor department, and/or workers compensation commission.

As mentioned previously, a reserve amount cannot be modified on a worksheet, due to judgment reconsiderations, after the stat card has been submitted to NCCI. From a preventative standpoint, open claims should be reviewed at a minimum of 7-9 months in advance of the policy renewal date since such losses are valued on the stat cards at intervals of 18, 30 and 42 months after policy inception.

For a complete timeline of what an agent can do (and when) to ensure that open claims are closed by the stat card valuation date, download our "Monitoring the Mod" chart which is excerpted here:



In January, the Big "I" Virtual University delivered a two-hour comprehensive webinar on workers compensation experience rating. That webinar – both audio and PowerPoint – has been archived and is available here. The webinar also includes a complete manual with appendix and dozens of examples, copy of the PowerPoint presentation, a frequently updated Q&A document, and a free trial subscription to ModMaster experience rating software from Specific Software Solutions.

Visit [iiaba.net/VU](http://iiaba.net/VU) today.

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# Agency Shield Program™ - Protection Moment

## “If You Build It, He Will Come”

### Agency Shield Program Demonstration Webinar Inspires Agents

*Field of Dreams* is one of my favorite movies of all-time. Ray Kinsella, played by Kevin Costner, is a novice farmer in Iowa who hears a voice whispering to him “If you build it, he will come” and sees a vision of a baseball field. With blind faith, Ray makes the choice to plow under his corn and build the field at the risk of the farm’s bankruptcy. Eventually, Shoeless Joe and other members from the 1919 Black Sox team (only visible to Ray’s family) appear and begin playing but Ray is still hearing voices which leads him on a pursuit to understand why he was destined to build the field.

So what does this story have to do with agency E&O risk management and the Agency Shield Program™ (or “ASP™”)? Well, in early December IIABA and Swiss Re/Westport staff invited a targeted number of member agents from across the country to join a webinar demonstrating ASP™. If you haven’t heard about ASP™, it is

an E&O claims reduction program that provides agencies with a simple online tool to review their current processes and procedures as well as easy to follow steps to improve office efficiencies while reducing E&O claims exposure. Select agencies that had their E&O policy expiring within the next six months, wrote between \$10 and \$50 million in gross written premium over the last year, and may have experienced prior E&O incidents were invited to join the webinar. Agencies fitting this profile can really benefit from the completion of the Agency Shield Program™.

Approximately 45 agencies joined the 30-minute webinar which demonstrated how ASP™ works from the agency’s perspective. Following the webinar, an ASP™ Coordinator from Swiss Re contacted the participating agencies to answer any additional questions, set up appointments to talk further, and provide instructions on how to

purchase the product.

The response was overwhelming! One in three participants purchased ASP™ following the webinar or set an appointment to gather more details on the product. It goes to show you that “if you build it, he will come” or at least if agencies understand the benefits ASP™ provides, they will enroll in it.

As was the case with Ray in building the Field of Dreams, more “agencies will come” to experience the benefits of the Agency Shield Program™. As Terence Mann, another character in the movie, says on why people will come to a small farm in Iowa, “for it’s money they have, and peace they lack.” ASP™ can bring peace of mind and a better understanding of your agency’s operation so you know you will be prepared should an E&O claim occur, all while saving you money on your E&O insurance.

*To learn more, visit [www.iiaba.net/EO](http://www.iiaba.net/EO).*

### The Simple Math: How to calculate your agency’s actual savings?

Agency Size	ASP Cost	Breakeven Premium
1 person	\$250	\$833
2 – 7 people	\$600	\$2,000
8 - 20 people	\$800	\$2,667
21 – 50 people	\$1,200	\$4,000
51 or more	\$2000	\$6,667

What’s your agency’s E&O premium? If your agency is paying a yearly E&O premium of this breakeven premium or more then ASP will pay for itself!

### Breakeven Analysis: ASP Cost vs. 3-year 10% Premium Credit Saving

Step 1: Input your agency’s annual premium:	\$ _____ Annual Premium
Step 2: Multiply your annual premium in Step 1 by 10%:	\$ _____ Annual Credit Savings
Step 3: Multiply your annual credit from Step 2 by 3:	\$ _____ Three-year Credit Savings
Step 4: Using the above chart calculate the ASP cost based on your agency size and insert:	\$ _____ ASP Cost
Step 5: Subtract the ASP cost input in Step 4 from the three-year credit saving	\$ _____ TOTAL SAVINGS



## Creating a Social Web Policy for Your Independent Agency

By the ACT Web 2.0 Work Group

➔ Looking for disclaimer language for your agency's voice mail, email, website, or using RCV software? Visit the Big "I" Risk Management Website at [www.iiaba.net/EOhappens](http://www.iiaba.net/EOhappens).

There is growing acceptance that agents and brokers can benefit from effective use of the social web. Yet, the opportunity presented by the social web is not without risk. There are traditional concerns surrounding such issues as privacy, errors and omissions, security, and protecting proprietary information, and new issues surrounding the concepts of transparency and personal vs. company brand.

Some organizations have chosen to avoid the social web altogether by blocking any access and/or banning use in the work place. On the other end of the spectrum, there are companies with very open policies that encourage employee participation in the social web and have guides as simple as "act intelligently" when engaging in the social web. There is no one size fits all. Your company culture and management philosophy will to a large extent determine the detail of your guidelines and the level of the restrictions placed on the behavior of employees using the social web.

In December of 2009, the Agents Council for Technology ("ACT") created a report entitled Creating a Social Web Policy for Your Independent Agency. This excellent report focuses on providing agencies with guidance on establishing an appropriate social web policy customized to their needs. The full report can be found on the ACT website at [www.iiaba.net/ACT](http://www.iiaba.net/ACT). Several areas from the report relate to agency E&O risk management and are worth highlighting.

### Agency E&O Highlights:

1. Your social media policy is likely to incorporate several of your other agency policies - such as in the areas of professional conduct, security, protection of intellectual property and confidential information, compliance with laws against defamation, discrimination, etc. - your social media training provides a great opportunity to reinforce these broad agency policies and procedures with your employees as well.

2. It is increasingly easy to connect individuals to their employers, and it is sometimes difficult for readers to know where you've drawn the line between your personal and professional lives. If there is any possibility of ambiguity, your personal sites, blog posts, etc. should be required to make clear that they reflect an employee's own views and not those of the agency. The agency may also want to consider if it wants to restrict employees from taking positions on any social media that conflict with or could undermine the agency and its employees.

3. Employees should incorporate a disclaimer in business use of social media that coverage cannot be bound or written using social media communications, just as a disclaimer would be used on voicemail, email or the website. The disclaimer should further state that the information provided is intended to be related to general situations and that questions relating to specific risks and individuals need to be assessed individually using the agency's regular workflow for such individual consultations.

*Agencies should give careful thought to the agency's business goals and how social media tools can support them. Social media is not a goal in itself; rather it may be integrated with your traditional marketing strategies or even replace some of them. Some of your business goals may be building agency awareness, generating leads, establishing the agency's expertise, building agency relationships, increasing client "touches," enhancing agency service and being prepared to send mass communications in catastrophe situations. Each of these goals can be supported effectively by various social media practices.*

4. Employees must comply with the agency's policies and legal requirements regarding privacy and protection of information. Employees should respect the privacy of all other employees and customer information and not use personally identifiable information on social media.

5. To avoid libel and defamation claims, employees should keep their comments accurate, truthful, positive and professional; and focus on issues not individuals and organizations; and respect the privacy of others.

*We encourage you to review the rest of ACT's report found at [www.iiaba.net/ACT](http://www.iiaba.net/ACT). Remember as you implement or incorporate your social media policy and procedures, it's important to continually monitor them to make sure they are being followed invariably by all agency staff.*



# Producer and CSR Tips

In today's marketplace everyone is trying to save money. Independent agencies across the country are shopping accounts and in the current soft market getting paid less to do more work. As these accounts are shopped, producers and CSR's are increasingly working with customers on the completion of applications. As these transactions occur the risk of a mistake or omission increases bringing on more exposure to a potential E&O claims. Here are some tips when working with customers during the application process.

**E&O Tip #1: Have the insured complete the application.** It makes it much more difficult for an insured to argue that they didn't know they were supposed to disclose certain information, when they have answered the question in their own handwriting.

**E&O Tip #2: Never have the applicant sign a blank application and then fill out the information later.** This makes it too convenient for the insured to argue that they were not aware they were supposed to disclose that information.

**E&O Tip #3: Never sign an application for the applicant.** This is true even if you have the applicant's permission. If the carrier requires a signed application, it will be too tempting for the applicant to forget that he gave you permission. Additionally, if you sign the applicant's name you probably have just committed forgery.

**E&O Tip #4: Be careful when having the applicant "just sign here" or using one of the "sign here" sticky notes.** You want to be able to say that you advised the insured to read the entire application and answers before signing. Having the insured initial every page is also a good best practice.

**E&O Tip #5: Never advise applicants to withhold or exclude information.** It's inadvisable to substitute your judgment for the judgment of the underwriter as to what is relevant or important. If it is relevant to the question, have them disclose it. As agents for the insurance carrier you have an obligation to share any information that may affect the carriers insuring of that customer.

**E&O Tip #6: If working with a pre-populated application with information copied from an old application or out of the file, make sure you've reviewed each piece of information with the applicant to confirm the items that might have changed.** This is especially true when dealing with items that are likely to fluctuate from year to year (such as payroll, income, sales, value of certain items, number and type of vehicles, etc.)

**E&O Tip #7: Don't submit an "old application."** Don't assume that because you solicited a policy for them last year or even last week that all the information that was accurate in the prior application is still true today. Complete a new application.

**E&O Tip #8: Try not to complete an application over the telephone.** But if you do, make sure the original version is signed and dated by the applicant. Each page should be initialed as well. Also, if you do find yourself reading the questions to the applicant do not paraphrase, summarize or skip questions. Read every question and input the entire response.

**E&O Tip #9: Always advise the applicant to review the application for accuracy before signing.** Document every customer's file with the date and time and stating that you did this.

**E&O Tip #10: Carefully input all the information from the application if the carrier requires uploading the application into a computer system.** Pay extra attention to answer every question and not to transpose information.

Remember the more you know about the applicant's operation and exposure to loss the better equipped you'll be during the application process. The Big "I" Virtual Risk Consultant Powered by Rough Notes provides members with information to better understand the operations and exposures of customers along with customized questionnaires to thoroughly gather the appropriate information to complete applications. It also provides E&O coverage checklists for valuable customer file documentation in case an E&O claim occurs. We invite you to learn more at [www.iiaba.net/VRC](http://www.iiaba.net/VRC).

# The Real World: Producer Case Study

## Hook Set, Account Landed

Bill Johnson is the agency's top producer. Last year, while buying some fresh seafood at a local market, Bill discovered an opportunity to work with a clam farmer on a proposal for the farmer's insurance needs. While Bill was a seasoned insurance producer he had never written any type of crop insurance much less coverage for clams. He did however manage to set the hook and land the account.

## The One That Got Away

The following year, the clam farmer provided Bill with all the necessary information for the renewal of the farmer's federal crop insurance policy for clams. However, due to an administrative error from Bill's inexperience with this line of coverage, he failed to timely report his insured's clam inventory value report - required prior to each renewal - to the carrier administering the policy. The report includes the seeding location, the date the clams were seeded, the size and number of those seeded, the policyholder's share of the crop and other information vital to coverage.

Because the submission of the annual clam inventory value report prior to the beginning of the policy period is a requirement for coverage, no policy was issued for the farmer's inventory. While each clam was valued at only 16 cents, the farmer seeded 55,000,000 clams, so the absence of coverage carried catastrophic potential.

The Agriculture Risk Protection Act and Crop Insurance Handbook provides strict guidelines and deadlines for timely submission of applications, including clam inventory value reports, so even though this was discovered prior to a significant loss, the carrier would not reform the policy to add the coverage after the error was discovered. The clam inventory value report is used to determine premiums and amount of insurance and the RMA does not give carriers much flexibility to accept the report after the deadline.

## E&O Claim Leaves Producer Feeling Clammy

A hurricane swept through the area burying some of the clams in storm surge, severely limiting the harvest in that area. Fortunately, less than 10% of the farmers' clams were so affected, though this still led to a large uncovered loss creating an errors & omissions claim for the agent. This result was a six figure claim settlement.

## A Crop of Lessons Learned

First, writing a new prospect with unfamiliar types of exposures, coverages, and specific carrier requirements can be risky. Producers should step back and ask themselves if the payoff is worth the risk. If so, research and finding someone that can share expertise is a must. Specifically, agents procuring any federal crop insurance policy for a client should pay particular attention to the deadlines and information requirements for the inventory value reports. Most crops have inventory value reports similar to the clam inventory value report, with similar consequences for errors such as missed deadlines. Even leaving one of the boxes on the report blank can result in a lack of coverage for the policyholder and an errors & omissions claim for the agent.

# The Real World: CSR Case Study

## **D&O Policy Purchased**

Make-o Manufacturing was a regular customer of the Able Insurance Agency and a customer account managed by Mary Smith. Mary was a licensed CSR in the commercial lines department with ten years of insurance experience. At renewal, Make-o wanted to purchase a D&O insurance policy with a \$1 million limit through the Able Agency. Mary was able to place a claims-made D&O policy with an employment practice liability endorsement with Ganex Insurance. The claim notice provision of the policy required the policyholder to provide notice to Ganex of all claims and potential claims as soon as practicable, but no later than 60 days after the expiration of the relevant policy period.

## **This Termination Was Just Plain Wrong**

A couple of months after the D&O policy was purchased, Make-o terminated for cause the employment of John Wayne, who had been with the company for a long time. Subsequently, Mr. Wayne filed two wrongful termination complaints against Make-o with various state and federal regulatory agencies. Make-o's CEO advised Mary at the Able Agency of the complaints but he instructed Mary not to report these matters to Ganex.

## **When Knowledge Hurts You**

Several months later, Make-o completed the renewal application and did not disclose the aforementioned complaints in response to a question on the application that inquired about its knowledge of claims, incidents or facts that reasonably may give rise to a claim under the proposed renewal policy. After the renewal policy was issued by Ganex, Mr. Wayne filed a wrongful termination suit against the Make-o. Notice of the suit was then tendered to Ganex.

Ganex filed a declaratory action seeking rescission of the policy against the policyholder for the misrepresentations made on the application. The carrier also filed an indemnification action against the agency pursuant to an indemnification provision contained in the carrier's agency agreement.

At trial, Mary's knowledge of the prior administrative complaints was imputed to Ganex. Ganex was held liable for all defense fees and a \$600,000 loss payment incurred by Make-o to resolve the wrongful termination suit with Mr. Wayne. Notwithstanding, Ganex prevailed in its indemnification action against the agency because Able's failure to timely report the administrative complaints violated the carrier's guidelines.

## **Lessons Learned**

Able should have been aware of the reporting provisions in the policy and advised Make-o of the need to report the administrative complaints to the carrier in a timely manner or risk the loss of coverage if the matter escalated into a wrongful termination suit. Reporting claims as soon as possible is important with policies written on a claims-made and reported basis, especially if you are changing carriers. Able further compounded its trouble by not reviewing the renewal application and questioning Make-o about the accuracy of the responses to all questions.

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### VRC Facts

#### Active ingredients:

- Commercial and personal risk assessment tools (Exposure identification surveys and coverage checklists)
- Coverage reference resources and proposal tools (PF&M, ACORD forms, insurance glossary)
- Marketing and prospecting tools (Client letter templates and web site content)

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## WHAT'S IN VRC?

### RISK EXPOSURE ASSESSMENT TOOLS

#### Commercial Lines Risk Exposure Evaluation System

- This section includes narrative overviews of operations and exposures for more than 650 businesses.
- Coverage checklists help ensure you have reviewed all pertinent exposures.
- Helps you ask the underwriting and coverage questions needed to build a better product for your clients.
- Explains underwriting criteria and suggests SIC, NAICS, GL and WC classification codes.
- Provides printed E&O checklists and coverage recommendations in an organized fashion.
- Provides a coverage explanation template to accompany your proposal.

#### Personal Lines Risk Exposure Evaluation System

- This section contains narrative overviews for coastal properties, condos, rental properties, single family dwellings, and tenants' exposures.
- Recognizes that not all personal lines risks are the same by outlining a risk specific approach to evaluating diverse exposures, giving you confidence to pursue new and different accounts.
- Every risk changes over the course of the year. Use the pre-renewal questionnaire as a guide to disclose changes that could impact a client's insurance program.

#### Coverages Applicable

- This section identifies the coverages your client needs while supplying a simple and concise explanation of the insuring agreements and the reasons they should be considered.
- Continual updates alert you to new coverage availabilities.
- Risk specific explanations make this resource more valuable than relying on your carrier entirely for direction.

### PROPOSAL AND TECHNICAL RESEARCH TOOLS

#### Policy Forms & Manual Analysis (PF&M)

- Over 7,200 pages of comprehensive yet, easy-to-use ISO and AAIS coverage form analysis and explanation with Commercial Lines Manual interpretations.
- Over 1,000 pages of court cases and decisions.
- Hyperlinks throughout this section make it easy to navigate the abundance of material and allows you to toggle multiple sections.

#### ACORD™ Forms Library

Find all ACORD forms with instructions for proper completion in one central depository.

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Being able to explain industry terms in a manner understandable to someone without an insurance background is the hallmark of a successful insurance professional. Insurance Words and Their Meanings provides glossaries for 11 business categories, enabling producers to comprehend unique terms frequently used in a variety of industries.

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