



the Demotech *Difference*

Winter 2023/Vol.9, No.1

Tracking the Pace of Change

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Not Being Idle ...
Understanding Bad
Faith

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Change and Longevity Bring Some of the Finest Innovations

By Barbara Albert

Whenever you see a successful business, someone once made a courageous decision.

— Peter F. Drucker

This winter proved to be interesting and a challenge for many parts of the country. While business slows over Christmas and New Year's, it's good to get moving again. This issue follows some of the tracks of change happening in insurance.

In February, the month of love, we're excited to showcase longevity stories we love in the magazine. This issue features the long career of Stephen Korduckie, retired from his position of vice chairman at BMS Re after 50 years in various segments of the industry, where he stepped into open doors following many of the major shifts and changes in this business.

Another longevity story involves the roadside stops beloved by travelers for decades — Stuckeys — where weary folks could find refreshment in snacks and drinks to sustain them on the road. The granddaughter of the founder of Stuckeys, Stephanie Stuckey, tells the story of bringing her grandfather's dream back to life.

Mary Jo Hudson and the team at Squire Patton Boggs update us on changes after the 2022 midterm elections and the results of a December Florida special session of the Florida Legislature to address the state's property and casualty insurance market place. Also in

the updates are cyber security regulation changes for New York, the December meeting of the NAIC, and continuing work to defend COVID-related business interruption claims.

Two new columnists, Scott Simmons and Alan Lambert, take a deeper look at what is meant by fair and unfair claims handling practices. Michael Maglaras and Sally Johnson discuss the use of risk management grant programs to create realistic approaches to risk mitigation. Elizabeth Martini explores the challenge of keeping pace with changes in technology while still allowing space in the industry for innovation.

Several articles look at changes requiring employers to rethink the recruitment, development, and retention of employees as the landscape of the workforce shifts.

There is reason to appreciate both the movers and shakers, and those who have spent their lives building the legacy of their years in the field. Once can't exist without the other, and both have a part in the changes and shifts in the industry over time. At Demotech, we honor both!



The Demotech
Difference 
Serious About Solvency®

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SERIOUS ABOUT SOLVENCY®



From the President's Desk

By Joseph L. Petrelli

All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident.

— Arthur Schopenhauer

A variety of issues associated with Florida residential property insurance has kept Demotech, Inc. in the headlines as well as in the sights of some. As facts become known and presented, I expect Arthur Schopenhauer's quote on the three stages of truth to be applicable. In the interim, we rely on informed third parties, including Steve Acunto, Chairman of CINN Group, Inc. and Beacon International Holdings. Each company in the groups occupies a strong position in media, insurance,

and capital markets. With his permission, Acunto's observations on the situation in Florida are reproduced in this issue of The Demotech Difference.

Demotech and I, through The Demotech Difference and our presentations in 2023, look forward to providing our readers with details on how the research emerging from our thought leadership on litigation will energize corporate enterprise risk management efforts.



Save the Date

March 23, 2023 - 2:00 PM Eastern

Webinar registration at https://us06web.zoom.us/webinar/register/WN_YbeQ3oVjSW6KQ1VKMX1dPQ

How did Florida's 8% of homeowner claims (U.S.) become 80% of the litigation (U.S.)?

Is your state next?

MSO®, Inc. (The Mutual Service Office, Inc.) was incorporated in 1944 as a private venture by a group of New Jersey mutual insurers who wanted an alternative to the sole stock bureau in New Jersey at the time. Today, they are a national service provider for mutual and stock companies.

Todd Kozikowski is an accomplished tech entrepreneur, founder, and strategist to multiple purpose-built organizations over the past 25+ years. Todd has lead enterprise software organizations helping to scale over \$5 billion in market value across multiple industries including insurance, healthcare, data analytics/machine learning, as well as the building and construction market.

Todd's focus has been driving actionable insights for insurance and healthcare by integrating innovative analytics and incentives that can motivate and empower change for organizations. Todd actively supports several healthcare insurance boards, technology innovation centers, and advises insurance organizations on how to leverage the latest digital innovations.

Joseph L. Petrelli is the President and Co-Founder of Demotech. In 1989, having been the first successfully secured acceptance of Demotech's Financial Stability Ratings® from Fannie Mae and then Freddie Mac, Demotech became the first to review independent, regional and specialty insurers. Today, Demotech reviews, rates and follows, more than 460 insurers writing virtually all lines of insurance in every state, DC and Puerto Rico. In Florida, the 30+ insurers that Demotech reviews and rates write approximately 55% of the residential property insurance marketplace. In terms of uniquely rated carrier count, in the United States, Demotech is the second largest rating agency. Joe spearheaded Demotech's registration with the U S Securities and Exchange Commission Office of Credit Ratings. Demotech is the tenth nationally recognized statistical rating organization – insurance companies, a registration shared by A. M. Best, Fitch, Moody's, S&P and five others. Demotech is registered as an NRSRO in the class of ratings for insurance companies.



Kozikowski



Petrelli

A large, reddish-brown seahorse-shaped coral is the central focus of the advertisement. It is set against a vibrant blue background that resembles clear ocean water. The coral's form is highly detailed, with many small, spiky protrusions and a distinct spiral at its base. The text "Standing out from the herd for over 75 years" is overlaid on the right side of the coral.

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Fall '22 State Regulatory Update — Midterm Election's Impact and Florida Special Session



**By Mary Jo Hudson, Doug Anderson, John Kirtley, Pat Hatler,
Mike Mullaly, and Bevan Blake**

2022 Midterm Elections and Florida

The outcome of the 2022 midterm elections (the Midterms) should not alter the national landscape of insurance commissioners materially. However, several appointed commissioners will likely see changes in 2023.

The Midterms included four insurance commissioner races and a total of 36 gubernatorial races. After all the votes were counted, all four incumbent insurance commissioners were elected or re-elected. Insurance commissioners winning their 2022 elections were

- California — Ricardo Lara (D)
- Georgia — John King (R)
- Kansas — Vicki Schmidt (R)
- Oklahoma — Glen Mulready (R)

Commissioners Lara, Schmidt and Mulready were all reelected. Commissioner King had been appointed to the position in 2021 to complete the term of convicted Georgia Commissioner Jim Beck. The 2022 election was King's first time on the ballot, where he won the race with 54 percent of the vote compared to his opponent's 45 percent of the vote.

The Midterms saw 36 total gubernatorial elections. Of those races, only 31 occurred in states where the winning governor is responsible for appointment of the state's insurance commissioner. After the Midterms, nine states elected new governors. These are the states where changes in insurance commissioner appointments are most likely, due to administration change issues, even if the same party remained in office.

Four of the states electing new governors, Arizona, Massachusetts, Maryland and Nevada, saw a change of

party, with three states (Arizona, Massachusetts and Maryland) moving to a Democratic governor, and Nevada moving to a Republican governor. The remaining five states electing new governors, Arkansas, Hawaii, Nebraska, Oregon and Pennsylvania, all elected new governors from the same party as the prior governor who did not stand for re-election. In at least two of these states, Arizona and Maryland, the insurance commissioner is appointed for a term defined in the insurance code. In these instances, transitions often occur but may take several months. While no resignations or new appointments have been announced as of press time, we will follow up with news in the next issue.

Gov. Ron DeSantis' landslide re-election in Florida was one of the midterms' leading headlines and it had followed the governor's plan to convene another special session of the Florida Legislature to address the state's failing property and casualty insurance marketplace. As promised, the Florida Legislature met in early December passing landmark legislation in Senate Bill 2-A that comprehensively overhauls many aspects of the Florida P&C insurance regulatory regime. Some of the most significant changes:

- Creates the Florida Optional Reinsurance Assistance (FORA) Program for the 2023 hurricane season creating an optional hurricane reinsurance program that insurers can purchase coverage through or receive free Reinsurance to Assist Policyholders (RAP) coverage instead.
- Reduces claim-filing deadlines from two years to one year and, for supplemental claims, from three years to 18 months, and provides additional requirements for the timing and detail of claims communications.

- Provides the Office of Insurance Regulation with authority to revoke previously approved property insurance policies with appraisal authority terms if OIR finds that the company has engaged in a pattern or practice of engaging in unfair appraisals, and requires OIR to report any insurers found to have engaged in such practices to the Florida Legislature.
- Specifies that insurers may use electronic methods to adjust claims, and details records that the insurer must maintain regarding its claims investigation.
- Limits mandatory arbitration clauses unless they meet new statutory guidelines, including a premium credit, policyholder opt in, and a requirement that the policyholder must be offered an alternative without mandatory arbitration.

Gov. Ron DeSantis' landslide re-election in Florida was one of the midterms' leading headlines and it had followed the governor's plan to convene another special session of the Florida Legislature to address the state's failing property and casualty insurance marketplace.

- Disincentivizes excessive litigation by:
 - Requiring a successful breach of contract claim before permitting a bad faith claim, eliminating one-way attorney's fees, and reviving an offer of judgment statute.
 - Prohibiting assignment of any post-loss insurance benefit under any residential or commercial property insurance policy on policies issued after Jan. 1, 2023, and making such assignments void, invalid and unenforceable.
- Strengthens the Citizens Property Insurance Corporation by, among other things, raising premium rates and thresholds for eligibility. The Florida Policyholder Bill of Rights law was amended to require insurers to deliver a loss estimate within seven days after it is generated.

Unrelated to the midterms but no less significant to the homeowner's insurance industry is the Federal Housing Administration's authorization of private flood insurance for FHA-backed mortgages. Effective Dec. 21, 2022,

homeowners with FHA-backed mortgages may purchase private flood insurance instead of being required to do so from the National Flood Insurance Program (NFIP). This long-overdue announcement by the U. S. Office of Housing and Urban Development closes the loop on requiring lenders to accept private flood insurance, regardless of the financing source. In 2012, Congress adopted the Biggert-Watters Flood Insurance Reform Act, which mandated that lenders accept private flood insurance in lieu of NFIP-backed insurance. Biggert-Watters excluded FHA from its mandate. In 2019, all federal financial regulators, including the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration, issued combined rules to enact Biggert Watters. The HUD regulations, amending 24 CFR Parts 201, 203 and 206, provide welcome closure to this long outstanding issue.

New York Cyber Security Regulation

The stakes in data privacy and cyber security risk management could not be higher for New York financial services companies after the New York Department of Financial Services proposed a significant enhancement to its data security compliance protocols. Under the proposed regulation, enhanced board of directors' oversight of information security, incident response plans, and annual penetration testing are just some of the mandates that are forthcoming for the country's largest financial services marketplace.

The DFS took a data-driven approach to amending the operable regulation to ensure that regulated financial services companies address new and increasing cybersecurity threats with, in DFS's view, the most effective controls and best practices to protect consumers and businesses. The updated regulation features:

- The creation of a three-tier company hierarchy with regulations specifically tailored to each tier, including annual independent cybersecurity audits at the largest firms.
- Enhanced governance requirements at the board of director and C-suite levels including annual approval of cybersecurity policies and more regular and detailed reporting from the chief information security officer.
- Enhanced access controls for technology systems including limiting access to only those employees whose job demands it and the mandated utilization of multi-factor authentication.
- Regular risk and vulnerability assessments and demonstrated, written planning policies around

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The Importance of Not Being Idle ... Understanding Bad Faith



By Scott Simmons & Alan Lambert

What Is 'Bad Faith'?

The term “bad faith” is widely used to highlight a perceived weakness demonstrated by an insurance company during the process of handling a claim relating to a policyholder. Described as an allegation of “bad faith,” it can also be explained as a perceived “lack of good faith” shown by the insurance company. Insurance companies have a legal duty to handle claims efficiently, effectively, and fairly. That duty should be in line with an insured’s expectation and the policy contract between both parties, in addition to claims handling guidelines set by government lead organisations and state regulators. When insurance companies fall foul of that, the allegations and claims roll in.

A bad faith allegation (depending upon venue and claim) has the potential to explode, and insurance companies should ensure they understand their obligations and potential exposures to policyholders that can multiply exponentially above policy limits.

Scenarios

The following are all possible scenarios that can lead to an allegation of bad faith against an insurance company.

- Refusal to pay a valid claim.
- Failure to conduct and complete an investigation.
- Deceptive claims handling practices.
- Unreasonable delays.
- Failure to settle a claim in a timely manner.

Insurance companies can face severely expensive lawsuits that relate entirely to their own handling of the claim(s) in question. For those companies involved, they will often look to the insurance market for professional liability/errors & omissions coverage that offers protection to them from such claims.

Policy forms differ in the way that they address such exposures. Some forms stay silent on the matter of defining extra contractual obligations and allegations of bad faith, and others clearly define. A bad faith allegation (depending upon venue and claim) has the potential to explode, and insurance companies should ensure they understand their obligations and potential exposures to policyholders that can multiply exponentially above policy limits.

The threat of being exposed to punitive, exemplary, and multiplied damages remains very real, rendering the size of the policy exposed to bad faith as somewhat irrelevant.

Those small policies can develop into incredibly expensive litigious minefields for carriers. To ignore that very threat has potential catastrophic consequences.

The definition of “professional services” within a policy could also hold the key to coverage debates. Insurance companies can provide a vast range of services for a fee to policyholders, customers and clients. Services evolve, technology develops, and companies seek outside third-party service provider solutions. Having clarity around which services are covered removes any assumptions that could lead to claims being specifically excluded.

The timing and reporting provisions within policies provide a fundamental factor as to whether a claim is covered or not. Claims first made and reported to insurance companies could develop into a bad faith scenario in the future. Companies handle those claims according to their own claims handling guidelines that are likely to be based upon state specific guidelines. Failure to report such matter to your E&O carrier within a timely manner or reading the red flags that will lead to the bad faith allegation can lead to claims being denied.

Location is key ...

Navigating a successful path through handling a claim involves a deep understanding of very specific guidelines

and claims scenarios that insurance companies can face in relation to the lines of business they write, and often more importantly, the jurisdiction those policies are written in.

Bad faith exists in different formats in different states, and the onus can switch between an action (or lack of) in most states that can trigger an allegation of bad faith immediately, or an implication that every policy should demonstrate “good faith” and allegations claiming otherwise should be substantiated (such as New York).

Solid Foundations ...

Organisations such as the National Association of Insurance Commissioners created a model designed to explain what is meant by fair and unfair claims handling practices. Although adopted by most states, variations differ, and it's intended to be a guideline rather than a regulatory framework. The model is known as the “Unfair Claims Settlement Practices Act” and is used by most insurance companies to ensure a structured and fair process is in place and followed by claims staff.

Beware the trap ...

Insurance companies should avoid pitfalls and set ups. The most successful companies deploy training programmes relevant to the states they operate in. Carriers write business in multiple states, and it would be a grave mistake for any adjuster to handle a claim the same in Florida as in North Carolina, for example.

Plaintiff's attorneys are well known for attempting to “set up” insurance companies by using tactics to force insurance companies into a position whereby they commit an act of bad faith. The pot of gold for the attorneys and plaintiffs involved includes extra contractual damages which potentially open a policy to sums in excess of the policy limits. An example of a set up would be a situation whereby the insured is backed into a position whereby



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Organisations such as the National Association of Insurance Commissioners created a model designed to explain what is meant by fair and unfair claims handling practices.

they refuse to settle a tort claim within policy limits and have a strict, often unreasonable timeframe (referred to as a policy limit demand). Insurers like to have all the facts before making such offers, and plaintiff's attorneys know and understand that.

Carriers in Texas will understand the potential pitfalls of Stowers Demand letters, which have been used against carriers for over 100 years in similar circumstances.

Driven by emotion ...

Business lines with higher emotional connections to them, such as auto and workers comp can often lead to the largest and most complex claims. This is partly due to the underlying plaintiffs, families and estates that have an emotional and moral connection, and partly due to the catastrophic and devastating circumstances that have led to the claim in the first place.

Successful insurance companies invest in legal experts, qualified and experienced people, and technology to ensure that they understand the dangers and exposures faced when handling claims.

Those companies with diversified portfolios that deliver successful underwriting profits also recognize that a well-structured claims handling department is a vital element in delivering profits. And when it comes to handling claims ... they recognize the importance of not being idle. 🕒

Scott Simmons and Alan Lambert are partners and co-founders of Verve Risk Partners, a speciality and market leading MGA set up in 2016 with a focus on professional and management liability products for the insurance industry including insurance companies, captives, risk retention groups, reciprocals, self-insurance trusts, mutuals, insurance agents, brokers and MGAs.

Captive Insurer Innovations: Using a Risk Management Grant Program to Empower Employees



By Michael Maglaras & Sally Johnson

“Every system is perfectly designed to get the result that it does.”

— W. Edwards Deming

Introduction

The great Edwards Deming, who is unquestionably the father of process and quality improvement, illustrates the point about what a process can deliver with the quote shown above.

His cryptic comment is, as is true of all of his comments, filled with double meaning: if the process is a good one, you get a good outcome; if it's a bad one, you get the opposite. In any business, in any endeavor, you get exactly what you're destined to get based on the integrity of the process in place.

Captives are legitimate insurers. They are appropriately licensed in their home domiciles to offer coverage to their parent organizations. They become, immediately upon implementation, part of the fabric of the parent company's asset protection plan.

We know that captive insurance companies have been at the forefront of innovation since the inception of their widespread use in Bermuda in the early 1950s. Captives are by definition liberating mechanisms. Knowledge liberates, as does control ... particularly control over the claims process.

Insureds with captives also learn how to control the underwriting process, as well as the claims management process. They also learn the all-important lessons of how captives can be used to integrate their capacity with excess insurance or reinsurance, creating an overall corporate asset protection strategy.

Captives are legitimate insurers. They are appropriately licensed in their home domiciles to offer coverage to their parent organizations. They become, immediately upon implementation, part of the fabric of the parent company's asset protection plan. But captives can become more than this. They can be used to connect the dots between the claims that are paid and the failures of the business model of the parent. It is in the management of risk, “the making of better insureds,” where captives shine. This is nowhere more apparent than it is in the health care liability captive space, where the management of risk involves a positive or negative outcome directly affecting people's well-being or even their lives.

Captive grant programs are in widespread use in the health care liability space. However, starting a captive grant program that essentially takes every employee and makes each of them a “risk management ambassador,” can be organized by any captive ... regardless of the parent's business.

Why Top-down Risk Management Systems Have Limited Value

The knowledge that captives deliver can empower everyone within the corporate framework. CFOs can understand, maybe for the first time, the concept of total cost of risk (TCOR). CEOs can understand how captive claim performance — captive results — if handled well can enhance reputational awareness and market share. Chief risk officers can also be on the forefront of getting employee buy-in through the effective use of programs that encourage employees to become risk management ambassadors.

Imposing risk management processes from the top down (just like imposing any process from the top down) only goes so far without employee buy-in.

Studies have proven time and again (including those studies created by Edwards Deming) that employees want to work in a place that values the outcomes of their everyday work activity. Employees in the health care space, most of whom are licensed professionals with years of training and specialized skills, want to go to work every day feeling that they can make a difference in people's health, their happiness, and their survival. The health care workers, who have proven to us over more than two years of pandemic distress that they are our true heroes, have ideas, every day of the week, that they want to share with management. They see things that don't work. They see top-down imposed processes destined to fail because they don't reflect boots-on-the-ground experience. Smart chief risk officers in the health care liability space understand that when you empower clinically trained employees, rather than force functioning processes on them, everything gets better. Ideas percolate up from the staff to save money, to save time, and most importantly to improve the safety of the people who walk through a hospital's doors seeking care.

But to be clear, any business, any industry, with a wholly owned subsidiary captive can create a risk management grant program that can empower staff, build out change, and improve business and clinical outcomes.

So What Is a Captive Grant Program?

A captive risk management grant program is a way to solicit ideas and eventually fund those ideas percolating upwards from those employees most in touch on a day-to-day level with the operation of the parent company's business.

That statement is important. Why? Because it reverses part of the top-down risk management process, which

imposes risk management programs on employees and can stifle innovation and prevent good ideas from reaching management's ear, and replaces all of that with a positive upward-turning process that good management can't ignore. Good ideas aimed at mitigating risk. Good ideas to improve product safety. Good ideas to enhance effectiveness and improve reputational standing.

In the hospital liability space, clinical staff are on the front lines of dealing with the public and with the families of patients. Frontline workers can be a good source of ideas for grant programs. Equally, employees who see little of the public may have a perspective on some part of a process that management has never considered, simply because they're not close enough to it. In an inclusive work environment, all ideas for improvement should be welcome.

But to be clear, any business, any industry, with a wholly owned subsidiary captive can create a risk management grant program that can empower staff, build out change, and improve business and clinical outcomes.

Some would ask, "If these ideas are good, why aren't they simply funded by the parent organization?" That question misses the point. Ideas are solicited under the name of the captive ... the entity ultimately bearing the risk of business mistakes. Employees fill out captive grant applications with their ideas. Captive boards see those ideas, which are many times connected directly to a single claim or multiple adverse claims that the captive has had to manage. These grant programs are funded as part of a captive's general and administrative budget ... further connecting the dots between a mitigating expenditure and its positive result. Everything points to incorporating these grant programs into the structure of a captive, including getting them approved annually in advance at the captive's annual meeting, and reporting back the following year to the captive's board about initiative implementation, positive results and process improvements.

Captive boards should be engaged with much more than governance, oversight and managing investment income ... they should understand the parent company's "proxy for risk" and how that risk can be mitigated with sound and constructive ideas coming directly from the people on the front lines of business.



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Regulatory Innovation

By Elizabeth F. Martini

In many industries — the insurance industry included — regulation is viewed as an unnecessary hurdle and cost. Yet, done correctly, regulations can foster a certain degree of open competition in product markets that in turn encourages innovation.

An October 2022 Organisation for Economic Cooperation and Development (OECD) paper entitled “Regulatory Policy 2.0: Viewpoints and beliefs about better regulation: a report from the ‘Q Exercise’”¹ emphasizes that well-thought-out regulation is not necessarily the antithesis to innovation but can actually be a catalyst² for the sustainable development of regulations. “Q” is a method of studying a “population of viewpoints,” as opposed to a population of people, by revealing underlying assumptions and beliefs within the group, rather than testing externally-generated hypotheses on the group.³

Regulators and established companies with legacy systems have had difficulty keeping pace with rapid changes in technology and how to effectively and properly harness those changes to innovate in the insurance space.

Resolution 115 of the American Bar Association also encourages regulatory innovation in order to “increase access to legal services ... in the interest of clients and the public.”⁴ The challenge is how to utilize innovation in strictly regulated environments such as banking and insurance, which are charged with safeguarding the assets of others.

Driven by technological advances and socio-economic trends, the very nature of the business of insurance is transforming.⁵ Regulators and established companies with legacy systems have had difficulty keeping pace

with rapid changes in technology and how to effectively and properly harness those changes to innovate in the insurance space. Consequently, technology-enabled innovations in the insurance industry, or insurtechs, have emerged to offer simpler products and streamlined customer experience. This sector continues to gain momentum and garner attention from venture capitals (VCs), start-ups and established insurers.

In an effort to encourage and foster innovation in regulated industries, some states and countries have developed an approach called a “regulatory sandbox” — a controlled safe space where companies can test and develop innovative products and approaches free from major regulatory barriers, but under regulators’ watchful eyes.

Sandboxes can be created in any regulated market, but the financial services industry is particularly well-suited because technology has become a necessary tool for survival. Insurance companies, financial advisors and other providers of financial services rely on advanced technology, such as artificial intelligence, to compete with smaller, more nimble firms that are pushing the transformation of deeply entrenched traditional markets toward new and innovative digital financial products and services.

In a recent “Champions & Challengers” podcast episode, AI and machine-learning entrepreneur Anthony Habayeb addressed the importance of fostering innovation while maintaining secure regulatory environments. He said, “The most important industries in our lives can improve and make our lives better using data and models in responsible ways.” Habayeb is CEO and cofounder of Monitaur AI, an AI governance and assurance software company. In discussing the work of his company, he believes that by answering questions and diving into regulations around AI and machine-learning, a platform like Monitaur can help “those companies that are innovating build more responsible and governable systems.”⁶

One of the challenges in setting up an effective sandbox in the United States is the dual and complex structure

¹ <https://www.oecd.org/regreform/publicationsdocuments/workingpapers/>

² <https://doi.org/10.1787/ab640ae8-en>

³ Id. at p. 8.

⁴ https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/

⁵ <https://content.naic.org/cipr-topics/insurtech>

⁶ <https://bricker.com/championsandchallengers>

of the regulatory system, with overlapping federal and state authority and competing interests and priorities.⁷ In the U.S. the first regulatory agency to set up a dedicated fintech office to promote consumer-friendly innovation via a regulatory sandbox and “no-action letter” was the Consumer Financial Protection Bureau. However, leaders there recently concluded that these much-hyped tools were ineffective. The CFPB recently rescinded its policy effective Sept. 30, 2022. It will no longer accept No-Action Letter or Compliance Assistance Sandbox applications but will continue to accept and process requests under the Trial Disclosure Policy.⁸ Entities that have made submissions under these former policies will be notified if the CFPB intends to take additional steps on such submissions.

Can a sandbox truly promote innovation, or is it nothing but a loophole big enough to drive a truck through? Sandboxes in general have attracted plenty of scrutiny from consumer groups and regulators, who are fearful that any regulatory wiggle-room would be used to offer harmful products to consumers. SEC Commissioner Hester Peirce said that while talk about sandboxes is welcome, she is still wary of how regulators may challenge these new forms of innovation, and expressed concern that the lack of familiarity could lead to pressures that produce bad regulation.⁹ When a Treasury Department report suggested expanding the concept to more federal regulators in 2018, Maria Vullo, then-superintendent of the New York Department of Financial Services, declared, “Toddlers play in sandboxes. Adults play by the rules.”¹⁰

The National Association of Insurance Commissioners, a non-profit regulatory support organization that helps develop model laws for state insurance regulators, protects insurance consumers by promoting uniformity of insurance laws and state regulations. Composed of various committees charged with particular subject-matter areas, the NAIC Innovation Cybersecurity and Technology (H) Committee was recently formed “to help foster discussions around cybersecurity, innovation, data security, privacy, and emerging technology issues; monitor developments; maintain an understanding of evolving practices and use of innovation technologies by insurers and producers; coordinate NAIC efforts across committees; and [although not a governing body], “develop and recommend regulatory, statutory, or guidance updates, as appropriate.” As of 2022, the states of Arizona, Florida, Kentucky, North Carolina, Nevada, Utah, West Virginia, Wyoming, and most recently, Ohio, passed laws that offer “sandbox” testing grounds in restricted markets, with proposed legislation in North Dakota, New York and Rhode Island.

⁷ <https://www.federalregister.gov/d/2022-20896>

⁸ 84 FR 48260 (Sept. 13, 2019).

⁹ <https://www.sec.gov/news/speech/speech-peirce-050218>

¹⁰ https://www.dfs.ny.gov/reports_and_publications/Statements_comments/st201807311

¹¹ insurtechoh.io/post/omsurtech-ohio-spotlight-with-director-french-and-lori-barron

¹² see fn 9

At the just-concluded NAIC Fall Meeting 2022, (H) Committee discussed acting as an “Entry Portal” for cybersecurity and innovation, in addition to developing a framework for the use of AI by the industry in the form of a Model Bulletin that is principles-based and not prescriptive. The rationale behind this approach is that AI is already subject to existing laws and regulations. As such, the bulletin will focus on governance requirements and AI use protocols and place the responsibility on licensees to conduct appropriate due diligence.

To encourage and continue the development of innovation, “sandboxes” and “entry portals” are not necessarily the sole or even the main avenue to achieve this. Taking a more measured approach than that declared by Maria Vullo, states like Ohio have eschewed sandboxes, but instilled ombudsmen for innovative companies and products. Ohio uses its emerging products initiative “to ensure that Ohio’s insurance industry — driven by advances in technology and data — finds a regulatory environment flexible enough to support the pace of change, while providing the highest-level consumer protections.”¹¹ This approach allows the department to maintain regulatory structure while fostering innovation. Not all states are the same, and different approaches can achieve the same goals.

Commissioner Peirce summed up the effort as follows. “As we sit atop our lifeguard’s stand and survey the beach, let’s not lose sight of the benefits new technology can provide in the area of capital formation, market efficiency, economic growth, and overall societal well-being.”¹² Moving the ball forward calls for a flexible regulatory regime, similar to the principles-based regulations that the NAIC has developed and that have been adopted by states, where the rules of the road are clear, and regulators are willing to provide guidance when uncertainty arises. It remains to be seen how well regulators will respond with allowing (technological) innovation in the insurance regulatory space in positive ways — to better facilitate consumer access to financial products as well as a vehicle to provide financial-related education. 🌐

Liz Martini is a seasoned legal professional who, for more than 30 years, has provided counsel to corporations, and small and large businesses, particularly within the financial services and insurance industries. As someone who has held both leadership and board executive positions, she is known for developing creative solutions and facilitating change for businesses. She is strategic, collaborative and energetic, offering varied and excellent representation.

Stephen Korducki Retires After 50 Years of Leading Through Industry Challenges and Innovations

By Barbara Albert

After some 50 years in the industry, Stephen Korducki retired from BMS Intermediaries at the end of last summer, officially stepping away from the worlds of insurance, reinsurance, accounting and finance. Throughout that time, he has seen many transitions and changes in the insurance industry, as well as his fair share of industry crises that have caused shifts in the way of doing business.

The oldest of 10 children, Korducki grew up in Milwaukee, Wisconsin. His father ran an insurance agency from their home for Farmer's Mutual Insurance Company of Wisconsin. As the family grew, his father left that business, which today is American Family Insurance. Insurance was

My job morphed as the company (Ernst and Young) accumulated insurance accounts, so it was completely random that I was pushed into the insurance practice.

a part of his early childhood, but Korducki later graduated with an accounting degree and joined the CPA firm of Ernst and Young.

"On my third day on the job, I was sent to an insurance company to participate in an audit," Korducki said. "I was on the audit staff, and about a month later, another insurance engagement came up and someone suggested me by saying, 'He knows insurance.' My job morphed as the company accumulated insurance accounts, so it was completely random that I was pushed into the insurance practice."

"As I got to work on audits of a mortgage guarantee insurance company, life insurance companies, health, and property and casualty companies, I found it was a fascinating business. That was in the '70s, before IT departments took hold and made the business more efficient."

Korducki said that the work environment was vastly different then, with large rooms filled with gray desks, and the sound of employees using tabulating and adding machines. They used Sanborn maps with pins indicating where policies were located, and had annual statements compiled in a huge yellow book that companies prepared.

"When I was there about my fifth year, after a promotion, I started working in the company's educational department, and spent some of



Steve Korducki has over 45 years' experience in insurance and reinsurance accounting and finance. He has spoken frequently at industry conferences, including the IASA, and has provided services to a number of leading reinsurers, insurers, insurance departments and intermediaries over the course of his career.

Steve is a CPA and currently holds the Series 7, 24, 63, and 79 FINRA licenses.

my time teaching seminars," Korducki said. "I found I had a real knack for teaching and loved it. Shortly after that, I got an opportunity to join a company in North Carolina called Boone and Company, which was primarily an employee benefits consulting firm, but they had a small insurance services division and a seminar program on insurance company financial

statements, as a service to their clients. I was asked to lead it and grow it.

"I've always had an entrepreneurial desire and drive, so I said I would consider it. The company flew me from Wisconsin to North Carolina on a cold day in February of 1981 to see the company. That may have swayed my thinking to join Boone and Company."

Korducki, just married, found the company a good fit for the next 12 years. The seminar program expanded greatly, and served clientele that included regulators, most of the large reinsurers, reinsurance brokers, and a number of large insurance companies. He remembers the '80s as an interesting time in the business.

"At that time, there were the first real investment issues with the run-up of interest rates, and those rates expanded dramatically," Korducki said. "Companies' bond portfolios were underwater. There was the liability crisis in the '80s when the medical malpractice market fell apart, and smaller companies were popping up everywhere, and they weren't being rated. That gave rise to a demand and a need for new rating mechanisms or agencies, one of which happened to be Demotech, who stepped up to fill that void."

"We were innovators in a way then. My last year there was 1992. The annual statement was a really tedious production — companies had to do the numbers and then type the statements and send them to a printer. We wanted to try to automate that process, so we bought a small company in Iowa and worked with them to develop software that enabled insurers to prepare statements electronically. I was chided for pushing that acquisition at the time, but Boone software is still going and is used by a third of the property and casualty and life companies in the country. We joked that our Iowa brethren were insurtech before insurtech."

Around the same time, the company was acquired by Aon. Korducki's seminar division was a small part of Boone and Company, but he said that Aon ended up keeping the Boone name for the seminars only, and those seminars still exist today. One of the reinsurance clients at Aon, EW Blanch Company, in Minneapolis, Minnesota, eventually offered Korducki a position. He arrived after Hurricane Andrew decimated southeast Florida, and found a real dearth of property and catastrophe reinsurance coverage, leaving the Florida market in what Korducki described as disarray.

As large carriers exited the market, and the state of Florida was trying to set up a way to have a state-run reinsurance company, Korducki and others worked to find property and catastrophe reinsurance capacity.

We had real icons (in the industry) and getting to meet them was invigorating. They built from the ground up, had underwriting discipline and had a much broader vision.

"Crisis creates opportunity, and those opportunities ultimately find capital," Korducki said. "The whole Bermuda marketplace opened up. There was a flood of new well-capitalized companies starting in Bermuda to underwrite property cat protection. We eventually wound up administering the Florida Hurricane Catastrophe Fund, and were involved in the initial placement of reinsurance for the California Earthquake Authority, because right after Andrew, we had the Northridge earthquake. I think it was the first billion reinsurance placement in the marketplace."

Korducki was recruited to be the CEO of Florida Select Insurance Company, which he said was the first Florida "take-out" company Demotech rated. He said he believes Demotech's ratings fostered the growth of that business, because, based on company size, they were unable to obtain ratings from any other rating agency at that time.

A stint at Guy Carpenter and Company working on the reinsurance side was next for Korducki, where he experienced a new wave of reinsurers formed in Bermuda, after 9/11, and then again after particularly bad hurricane years for Florida and New Orleans. From there, he ran Sunshine State Insurance Company and worked to turn the company's underwriting results around for the better.

Korducki joined BMS Reinsurance in 2014, spent seven years helping to build up the Florida market again, and then became president of the company in 2017, and CEO in 2019. He spent two additional years as vice chairman before he retired.

Korducki sees his career as quite interesting, and, when looking back, he recalls legendary figures in the industry that shaped his success during his career.

"You had Hank Greenberg at AIG, Jack Byrne, and Pat Ryan at Aon — legendary individuals I had a chance to meet," Korducki said. "Some of my best memories are the few hours or the dinner I had with those folks. Getting to meet them was invigorating. They built from the ground up, had underwriting discipline and long-term visions."

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Changing the Story and Saving the Family Business

By Stephanie Stuckey

“You’ve never even run a lemonade stand. What makes you think you can run Stuckey’s?”

That was the question my father posed to me in October of 2019 when I approached him about buying our family’s business. It was one of those tough love moments. And my father was right. At age 53, having spent my career as an environmental attorney and advocate, I had zero business experience. What made me think I could revive a company that was six figures in debt?

Stuckey’s ... the roadside oases known to generations of travelers along America’s highways and byways, their sloped teal roofs and brightly painted billboards beckoning weary drivers like a carney barker to pull over, pull over, pull over. My grandfather, Sylvester, who I knew as “Bigdaddy”, had built the business from humble beginnings, selling pecans in a roadside shack along Route 23 while my grandmother made pralines, divinity, fudge, and the now iconic pecan log roll. At their peak, there’d been 368 stores in 40 states, supplied with confections made at the Stuckey’s candy plant and run through the Stuckey’s distribution center, shipped to the stores via a fleet of company-owned trucks, with billboards created in the company sign shop.

Stuckey’s ... the roadside oases known to generations of travelers along America’s highways and byways, their sloped teal roofs and brightly painted billboards beckoning weary drivers like a carney barker to pull over, pull over, pull over.

My grandfather built a national brand synonymous with the American road trip. It was a classic Horatio Alger tale, but — unlike some other entrepreneurs of his day like Ray Kroc and Harlan Sanders who brokered in burgers and buckets of fried chicken — he made his money hawking snow globes, seashell windchimes, smoking monkeys in fez hats, Mexican jumping beans, and wiener dog book ends. But — most of all — he packaged up at an attractive price point the dream that weary travelers could find an oasis of fun served up with pecan log rolls, pimento cheese sandwiches and ice-cold Coca-Colas.

Stephanie Stuckey

Stephanie Stuckey is CEO of Stuckey’s, known for generations as a highway oasis serving up pecan log rolls and kitschy souvenirs. Founded in 1937 by her grandfather, W.S. Stuckey, Sr. in Eastman, Georgia, Stuckey’s grew into over 350 stores nationwide by its peak in the 1970s. The company was sold in 1964 and sadly declined for decades under a series of corporate owners. Fortunately, Stuckey’s returned to the family in 1985 under the leadership of W.S. Bill Stuckey Jr. and is now being continued with Bill’s daughter, Stephanie.

The company acquired a pecan shelling and candy plant in Wrens, Georgia in January of 2021 and has been scaling production of the Stuckey’s branded snacks and sweets — including the iconic pecan log roll — to be sold in almost 5,000 retail stores nationwide. Stuckey’s also operates a distribution center in Eastman, Georgia, a fundraising business, a corporate gift program, and has an online store.

Stephanie received both her undergraduate and law degrees from the University of Georgia. She worked as a trial lawyer, was elected to seven terms as a state representative, ran an environmental law firm, served as Director of Sustainability for Atlanta, and taught as an adjunct professor at the University of Georgia School of Law. Stephanie purchased Stuckey’s in November of 2019 and assumed the role of CEO. Stephanie’s achievements include being named one of the Most Admired CEOs of 2022 by the Atlanta Business Chronicle, 100 Most Influential Georgians by Georgia Trend Magazine and a graduate of Leadership Atlanta. She serves on the corporate board for Bealls, a Florida-based retailer with more than 550 stores.

The Stuckey’s story has been featured recently in the New York Times Sunday Business Section, the TODAY Show, and The Washington Post.

When she’s not running Stuckey’s, Stephanie enjoys traveling by car to explore the back roads of America and pulling over at every boiled peanut stand and the World’s Largest Ball of Twine.



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But he'd sold out to corporate America and became wealthier than a poor farm boy could ever imagine. Bigdaddy once boasted to my mother that he'd made more money than her children could ever spend. Well, we managed to spend it.

And, over the years, after decades of mismanagement by outside owners and heirs who lived off of dwindling trust funds, all that remained of my grandfather's roadside empire was a handful of decrepit stores and family members who bore his name but not his business.

Who in their right mind would think it was a good idea to revive such a failing business?

I had no business background and had never balanced a budget other than 14 years in the Georgia Legislature. Fighting over pork projects for your district isn't exactly a master's course in financial management. I'd spent the last decade doing do-gooder public service work on behalf of tree-hugging liberals. I thought EBIDTA was a Swedish rock band and didn't have the first clue about how to run a company.

It was risky. My grandfather's stores had become an eyesore. It might cost my life's savings. It would literally be a detour off the highway of life I'd been travelling on for decades.

What made me think I could run Stuckey's? The answer is simple: I loved my grandfather.

For anyone who has treasured memories with a grandparent, you can relate. I recall as a child walking the floor of the candy plant with him and seeing him flush with pride as he introduced me to the ladies making brittle, greeting them each by name. The aroma is still palpable today, the sweetness in the air as the molten confection was poured on the cold marble tables, breaking into pieces. Bigdaddy would let me sneak a taste and studied my face to make sure I was genuine in my praise. One of

my other favorite memories was visiting the Stuckey's in Eastman — store #1 — where they had a talking myna bird that would greet customers by squawking, "My name is Corky, and I'm not for sale." I loved all the quirky novelties we sold and pecan confections we sold, just as I loved my grandfather. This self-made man who traded harnessing a mule for hawking candies and souvenirs was my hero.

But that store today — like so many others — is in disrepair, the teal blue color on the shingles fading and filled with second-hand junk sold by a flea market vendor. The Stuckey's candy plant once bustling with activity and the smells of freshly made caramel is now populated by cobwebs and smells of mildew.

How often does a family lose its business and get it back? That almost never happens. I've had the chance to re-write our story. It's not going to end with our stores fading like memories on the side of the road, my grandfather's visions buried with him at the cemetery in Eastman, the Stuckey's logo on his headstone meaning nothing to passersby.

We all have the power to change our stories. My decision to buy Stuckey's was for my grandfather, whom I loved.

We all have the power to change our stories. My decision to buy Stuckey's was for my grandfather, whom I loved. But it was also for the other family businesses out there that have lost their way, taken over by large corporations valuing balance sheets over branding.

But it was also for the other family businesses out there that have lost their way, taken over by large corporations valuing balance sheets over branding.

When I think of family businesses, I think of Town Topic Hamburgers, its neon blinking sign — an anachronism in downtown Kansas City — yet it continues to fire up its grill day in and day out for generations of locals. And of Doumar's in Norfolk, Virginia, where the founder's grandchildren still serve up hundreds of ice creams daily on the world's first waffle cone maker. Nobody casts an appreciative nod at the 10,000th Dollar General store and comments, "Boy, that place brings back such memories." Yes, these chains offer discounts and convenience that we

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For Attorney Greg Lestini, Good Public Policy is Always First Priority

Demotech had an opportunity to speak to Greg Lestini, an attorney with Bricker & Eckler, about his time with the firm, and the roles he serves to provide leadership and to help shape legislative efforts that affect the insurance industry and consumers.

The Demotech Difference (TDD): Greg, you have been a lawyer for 20 years; what was your initial motivation for this career path?

Greg Lestini (GL): I really never planned to be an attorney at a big firm like Bricker & Eckler. I started my legal career in public policy and politics and found my way to Bricker through my professional network. I was lucky enough to practice with many great mentors early in my career at Bricker. I sometimes kid that no young law student dreams to be an insurance attorney, you just fall into it. While that was definitely my path, it is a wonderful practice with infinitely complex issues. I have very much enjoyed not only servicing our clients, but being involved in the insurance community — through NAIC, NCOIL, IEC, and the ABA Tort Trial & Insurance Practice Section. I am really looking forward to serving on the IEC Executive Committee.

I think the really unique thing about NCOIL is its function as a depository for new insurance regulatory ideas and a laboratory for how certain laws might be implemented and function across North America.

TDD: Tell us a bit about the Bricker firm's capabilities.

GL: Bricker & Eckler's history is rooted in the insurance industry. Legend tells that when then-retired U.S. Senator John Bricker decided to start his firm in 1945, one of the first calls he received was from an old friend at a life insurance company looking for someone to represent the life insurance industry before the Ohio General Assembly on legislative issues. The Association of Ohio Life Insurance Companies is a client to this day, and I have the honor and



Greg Lestini is a partner at the law firm of Bricker & Eckler LLP. There, he serves as the chair of the Financial Services/Insurance Industry Group. In that role he leads the strategic direction of the insurance practice and sits on the firm's executive committee. Greg is also a registered lobbyist and represents clients of all types and sizes before the Ohio General Assembly, the governor's office, local governments and Ohio's congressional delegation. Greg has worked as a legislative aide at Columbus City Council and in the Ohio Legislature, ultimately serving as chief of staff for the Ohio Senate Minority Caucus.

privilege of leading the internal team representing that client. In addition, our stellar alumni like Tom Workman, Faith Williams and Kurt Tunnell created a world-class insurance practice that ranges from regulatory to complex litigation. We are proud to be able to represent insurers in all of their legal needs.

TDD: You are an active participant at National Council of Insurance Legislators meetings. Tell us a bit about NCOIL.

GL: NCOIL is really the collective voice of insurance-minded legislators around the country. As you know, all insurance in the United States is regulated at the state level, but it is best for the industry and consumers if there is general consistency between all those jurisdictions. I think

that's really the purpose, and the art, of both the National Association of Insurance Commissioners and NCOIL. I think the really unique thing about NCOIL is its function as a depository for new insurance regulatory ideas and a laboratory for how certain laws might be implemented and function across North America.

The IEC also includes entities that engage with insurers, including those involved in pharmaceuticals, automobile repair and manufacturing, and health care providers.

TDD: You are now a board member of the Insurance Education Council. Tell us about the Council.

GL: The IEC was formed for the purpose of educating state legislators about the nuances and intricacies of the insurance law and the industry. The Council's members include many of

the world's largest insurance and financial services companies and trade associations, as well as many smaller firms. We have found great value in membership, both for our attorneys' own knowledge, but also to be on the cutting edge of issues for our clients. The IEC also includes entities that engage with insurers, including those involved in pharmaceuticals, automobile repair and manufacturing, and health care providers. This diversity of membership helps shape positive insurance policies that extend beyond state lines and their accompanying jurisdictions. The IEC really serves to help create good insurance policy across the country.

TDD: Tell us a bit about why you volunteered for the additional time and effort associated with being on the IEC board?

GL: Well, as I mentioned above, we have really seen great value in being a part of this organization. I think as a board member, I can further engage and help shape the direction of the organization and the value it brings to its members and state legislators. As an attorney and lobbyist dealing with insurance issues, good public policy is always my first focus. This is another way for me and for our firm, Bricker & Eckler, to have a hand in helping sharpen legislators' understanding of important issues and the policies that go along with that. 🌊

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Rethinking Employers Approach to Recruitment and Skills Development

By Johnny C. Taylor Jr.

For over a year and a half, 10 million jobs have gone unfilled in the wake of the Great Resignation. U.S. labor participation, which had been on a gradual decline since 2008, plummeted at the onset of the pandemic and has struggled to rebound since. The “Silver Tsunami,” an accelerated retirement of baby boomers, and the steep decline of the U.S. birthrate have weakened the labor force, sending employers scrambling and productivity dwindling. The resulting labor shortage has created a war for talent spawning historic wage inflation and impeded economic growth. How can we resolve the talent shortage and get our economy back on track?

The “Silver Tsunami,” an accelerated retirement of baby boomers, and the steep decline of the U.S. birthrate have weakened the labor force, sending employers scrambling and productivity dwindling.

To start, employers must be extra intentional, creative, and resourceful in resetting their approach to talent acquisition, skills planning and development.

For decades, employers mandated college degrees for work that doesn’t really require them. We’ve been so focused on eliminating candidates that we’ve overlooked what potential prospects can bring to the table. This exclusionary mindset has essentially wasted the potential of a generation of workers. We’ve mistaken a college degree as a proxy for smart and capable. In reality, we’ve ignored plenty of smart and capable workers and missed opportunities to add value to our workforce. If we are to meet the needs of the shifting enterprise landscape and thrive amid an economic downturn, we’ll need to leave no stone unturned.

Indeed, college degrees are valuable and needed in many fields, but we must rely on more than traditional credentials to meet our talent needs. The rising cost of higher education creates an artificial barrier for many who simply can’t afford tuition. Conversely, graduates saddled with exorbitant student loan debt hold unrealistic earning expectations. When asked, 2022 college graduates, on average, expected to earn about \$104,000 in their first post-graduate job. This is in stark contrast to the actual average starting salary, which is closer to \$55,000.

Additionally, college degrees can take four to six years to materialize, which does not help fill the skills gap in the short term. Higher education helps build skilled, qualified professionals, but it is too inefficient and inaccessible to

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The Anxiety of Insolvency — A Perspective From Retail and Wholesale Distribution Channels

By Rick Bersnak

From the retail perspective, a declaration of insolvency is an agent's worst nightmare. Policyholders will be looking to you to find replacement coverage for their home, auto or business assets and liability. That's if they have not already fired you and gone into the marketplace looking for a new agent. Their lending institutions will also be contacting the agency to verify that you have replaced coverage which will comply with their loan requirements. This should occur within a 30-day extended period granted in most states for the replacement of coverage.

As we tell our clients, the best alternative is to plan for the possibility of an insolvency and hope it is a plan you never have to deploy.

Once the state has declared a company insolvent, a liquidator/receiver is appointed who controls the assets and liabilities of the company until the run-off has been completed. This can take years to accomplish depending on the classes of business underwritten and the corresponding tail.

In the best of circumstances, the agent is also a victim as a result of the declaration of insolvency. The 30-day window closes pretty fast in the scramble to replace all policies placed with the now-defunct insurer. However, once cancellation notices have been sent, the agent will hopefully have other underwriters who will step up and assist in a book transfer or account by account roll-over. The southern and coastal states are especially vulnerable following a major storm.

As we tell our clients, the best alternative is to plan for the possibility of an insolvency and hope it is a plan you never have to deploy. Listed in the following sub-paragraphs are the building blocks for an insolvency plan.

- 1) Depending on the line of coverage, placement circumstance, uniqueness of the coverage, and status (admitted vs. non-admitted) of the insurer, be

sure to disclose the financial ratings, the insurer's financial strength, surplus, and the insurer's Financial Stability Rating^R (FSR) in your new business proposal or renewal summary. Insureds may not be interested in an FSR, expecting you to place their coverage with a sound underwriter, but at least protect yourself and the agency from an E&O allegation by addressing the issue.

- 2) Make sure you have done your due diligence representing the underwriters you place business with directly. "A" rated insurers have fallen hard and quickly over the years, all of whom held A ratings at the time they were taken over by their domiciled states. Legion Insurance in 2003, Credit General in 2000, Reliance in 2001, and the AIG bailout in 2008 were labeled by some as "too big to fail." Some industry executives referred to the action at the time as a "bail-out."
- 3) Refer to your own E&O policy to see if there is an insolvency exclusion in the exclusion section of the policy or in a separate special exclusionary endorsement or limitation. Many companies will offer an insolvency carve out for the insolvency exposure for a reasonable additional premium. This is money well spent.
- 4) Be willing to pay a higher premium for a policy that covers insolvencies. The two top rating agencies for Property and Casualty insurers, A.M. Best and Demotech, are often an exception built into the policy exclusion section or an alternative manuscript endorsement carving back coverage for FSRs at the time the policy was issued.
- 5) Beware of affinity programs and RPGs who offer E&O plans which only cover wrongful acts, errors and omissions on business sold through the sponsoring company. Programs like this need to be disclosed to your primary E&O broker and underwriter.
- 6) If your current insurer cannot provide the insolvency buy-back coverage needed, search for a non-rated insurer-sponsored insolvency program. Many non-rated or newly rated companies will sponsor or fund insolvency coverage for their appointed agents.



7) Do not take lightly the signing of an E&S due diligence placement disclosure and what it means to an insured in the event of insolvency. Explain clearly to your clients your efforts to place their account with an admitted insurer and their need to understand placement issues. Wholesale brokers do an excellent job monitoring and demanding signed and completed documents before the policy is delivered.

8) All retail agents should have an internal policy, procedure or team to review the financial stability of admitted and non-admitted insurers. This should be considered an effort to stay one step ahead of an insolvency as opposed to reacting to one after it has occurred.

Regulatory — the reality of dealing with the aftermath of an insolvent insurer

Every insolvency event is different, and every receiver or liquidator manages their duties based on the domiciled state statutes and their own industry experience. Many are former regulators themselves.

Remember, our industry is regulated state by state with very little federal oversight involved unless federal laws have been broken.

It would be impossible to outline the regulatory oversight responsibilities for DOIs or their states' respective

Department of Financial Institutions. An excellent resource for any agent, broker or agency is The National Conference of Insurance Guarantee Funds. Their website (www.NCIGF.org) provides a wide range of regulatory information specifically for the liquidation of an insurance company. The introduction is an overview of the liquidation process granted to a regulator — a very good explanation of the process, and a very easy and concise read.

Important sections are outlined state by state with respect to:

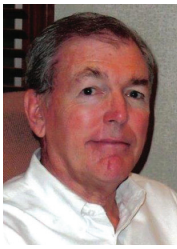
- 1) A general overview of the process facing regulators.
- 2) State by state laws and summaries — easy to review for your domiciled state.
- 3) Fund “triggers.”
- 4) Net worth maximums — which apply to entities and individuals.
- 5) Claim maximums and deductibles.

Remember, the liquidator/receiver exists to protect the consumer and stand behind the contract that was sold by the agents on behalf of the insurer.

From the wholesaler's perspective —

The wholesaler is the person in the middle on the sales side of the equation. Brokers, as part of their best practices and due diligence, typically rely on their own internal procedures

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“Quiet Quitting” Makes a Comeback

By Tom Harvey

In school or in business, there have always been those who choose to work less intensely than others, and who sometimes get a reputation because of it. But as George Orwell observed, “Each generation imagines itself to be more intelligent than the one that went before.” So today, they call themselves quiet quitters who are just “setting boundaries.”

Quiet quitters do the minimum amount of work necessary and do not work beyond what is specifically spelled out in the job description. So, no volunteering for an extra assignment or pitching in to help a colleague. Employees who do the bare minimum justify it, saying they’re “doing their jobs” and don’t want to “do more because they’re not paid for more.” Some claim they are burned out. According to Gallup, quiet quitters make up as much as 50 percent of the U.S. workforce.

Why the comeback?

The COVID-19 pandemic brought quiet quitting into focus as working remotely affected most of the work force. Inexperienced management caused remote workers to feel alone and isolated. Regular support and praise that made employees feel valued and connected to their employer was often lost. People began to re-think their careers.

The most disengaged are Gen Z employees and younger millennials. Many in this group are probably victims of “student-centered” education, where individual happiness and satisfaction is the primary objective. Stress is to be minimized. Since fewer students like to read, assignments became easier and shorter. Some students find it hard to concentrate, so lectures are given in small chunks with lots of videos. Most students find exams stressful, so exams are shorter. New York University recently fired a prominent chemistry professor because students complained that he was “too hard.”

These tactics, coupled with grade inflation and loose deadlines, insulated students from significant challenges and failed to stretch their capacity. Many experienced little feedback or guidance about how to improve. As two educators stated in an article in Times Higher Education by authors Rebekah Wanic and Nina Powell, “By meeting students where they are we kept

them where they were.” It’s no wonder “quiet quitting” is widespread among younger workers who find their individual happiness and satisfaction is not the primary objective of their employer.

The average daily roundtrip commute in the U.S. takes close to an hour. Over the course of a week, that’s almost 5 hours of extra time for remote workers. One study tracked how they spent this new spare time, and it revealed that most of that time went toward sleep and personal activities. For example, those working from home could now squeeze in

It’s no wonder “quiet quitting” is widespread among younger workers who find their individual happiness and satisfaction is not the primary objective of their employer.

an extra round of golf. This resulted in an increase of more than 20 million such rounds in 2021.

Regardless of the causes, quiet quitters may not have submitted resignations, but they have dialed back their commitment to their jobs. Rather than give their best, they’ll be doing as little as they can get away with.

Impact of quiet quitting

Quiet quitting affects both the company and other employees. Most jobs require some periodic extra effort to support coworkers, meet management goals, or serve expanding customer demands.

Quiet quitting is more than employees setting boundaries or knowingly avoiding work. It can metastasize from a quest for more free time to a cancer that eats away at an organization and the quiet quitters themselves. People who intentionally withhold their best performance and stop expanding their skills leave a trail that may haunt them later.

Because quiet quitting can be contagious, it can impact a significant percentage of the staff, causing an entire company to slip into decline. A struggling employer may have to resort to layoffs. The quiet quitter risks being near the top of any list for downsizing.

When it's time to look for a new job, an applicant is likely to be more favorably considered coming from a successful

Working hard on a consistent basis requires toughness and perseverance. Neither skill comes from standing on the sideline and both are needed for personal growth.

company with strong personal references, than from a failing employer providing lukewarm references.

While their mediocre performance undermines the quiet quitters themselves and their employers, it also hurts colleagues. Coworkers often have to work extra hours to pick up the slack. This impacts the morale of others who take their responsibilities and their company mission seriously.

In addition, when someone quietly quits, fellow workers may label him or her a “slacker” as management shifts additional projects away from the quiet quitter. Colleagues will remember him or her as an underperformer.

Being known as a quiet quitter would be problem enough in prior eras when reputations spread primarily by word of mouth. But as more recruiting is outsourced and employee information is shared digitally, a reputation for slacking off can follow a person forever. Work-life balance may be

important, but the risk of carrying a negative label is more important, especially for those early in their career.

A reluctance to work seems to be spreading. Bloomberg author Alexandre Tanzi reported in October that recent census data found 6.8 million able-bodied Americans admitted they don't want a job. U.S. Bureau of Labor found “labor productivity” dropped during 2022, a 6 percent decrease from 2021.

Time for ambitious employees to act

Getting ahead in any organization usually involves volunteering to take on new assignments, making friends by offering to help co-workers, standing out as a “can do” type and team player, being accountable, and asking intelligent questions and making helpful suggestions, as employees build rapport with their colleagues and their managers.

Working hard on a consistent basis requires toughness and perseverance. Neither skill comes from standing on the sideline and both are needed for personal growth. Taking on new and different things stimulates creativity, making employees more capable. When employees go the extra mile, they learn to use difficulties and even failures for personal development. Avoiding new challenges may be a more comfortable route, but employees who “quiet quit” are passing up chances to learn, to grow, and to become more valuable.

Arianna Huffington, founder of The Huffington Post and CEO of Thrive, observed “Going above and beyond doesn't have to mean allowing ourselves to be burned out. Pushing ourselves beyond the bare minimum is how we grow and expand our possibilities.”

Time for smart management to act

In late 2022, 91 percent of 1,000 managers surveyed reported taking action against quiet quitters, according to ResumeBuilder.com. One in three reported firing quiet

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The Ghosts of Titles Past

By Jessica Seale

“**B**ut Mr. Scrooge,” the attorney entreated, “please listen to me. Every real estate transfer should have a policy of title insurance to protect your investment. It only affords coverage to the policyholder and cannot be transferred. A subsequent owner must buy their own title insurance policy. If you transfer the property to your company, the title insurance you purchased when you acquired the property will not afford the company any protection.” Ebenezer shouted, “bah humbug” and stormed out of the office into the falling snow, grumbling under his breath, “just trying to get my money ... thinks I was born yesterday ... I’m no fool! If the title was good when I bought it, then it’s still good now ...”

Every real estate transfer should have a policy of title insurance to protect your investment. It only affords coverage to the policyholder and cannot be transferred. A subsequent owner must buy their own title insurance policy.

As the sun went down and the night grew thick, Scrooge donned his sleeping cap and closed his bed curtains, settling in for a long winter’s nap. As the clock struck 10, the bed curtains rustled as a cold draft blew through his bedchamber. “Who’s there?!” Scrooge shouted. As he peeked through the curtains, he saw a ghostly apparition that said, “I am the ghost of titles past, and I have come to warn you of the error of your ways.” In a flash, Scrooge and the ghost were transported back to the day before he was to purchase the property. Standing outside of a local title company, they peered through a window. “Why, that’s Marley, my old title attorney! He examined the title for my purchase!” exclaimed Scrooge. “And that’s his assistant Cratchit. Marley didn’t keep him on for long due to all the title issues the boy missed. Wait, what’s that?! Marley gave the title to Cratchit to examine! He said he had reviewed it himself!” Scrooge bolted upright in his bed, drenched in a cold sweat.

“Oh my, what a horrible nightmare. But surely Marley reviewed Cratchit’s work.” Scrooge dismissed the dream and drifted back to sleep.

As the clock struck 11, another cold draft awoke Scrooge to find a different ghost in his bedchamber. “Who are you?” he asked. “I am the ghost of titles present, and I have come to warn you of the error of your ways.” This time, Scrooge and the ghost were transported to the office of his current attorney, Tim, where he sat burning the midnight oil drafting the documents transferring ownership of the property Scrooge had purchased several years earlier to his company. As he worked, Tim muttered, “Why can’t the old fool have the title reviewed and get a policy of title insurance to protect the company? The property is worth half a million dollars; surely that’s an investment worth protecting?! Who knows what someone may have missed.” “Bah humbug,” said Scrooge to the ghost. “If the title was good then, the title is good now.” Again, Scrooge awoke to find himself safely in his bed. Returning to his slumber, he muttered, “It is a valuable property ... nah, he just wants the insurance premium!”

As the clock struck midnight, a powerful wind blew open his bedchamber door and windows and a fierce specter loomed over Scrooge in his bed. “Who are you?” he queried as he shook with fright. “I am the ghost of titles future,”



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the spirit bellowed, “and I have come to show you the devastation the errors of your ways will cause.” Instantly, Scrooge found himself again looking into the window of Tim’s office. “Why, that’s me,” he said, “but why do I look so old? And why am I crying?” The specter replied, “It is several years after you transferred your property to your company, which was going to sell the property for a large profit.” “What do you mean, ‘was going to sell the property’?” questioned Scrooge. “You see,” explained the ghost, “when you purchased the property, Marley did not review the boy Cratchit’s work. The property had originally been acquired by Mr. & Mrs. Fezziwig. When they passed away, it was inherited by their five children as shown in the judgment of possession. One of the children had left home several years ago and has not been seen or heard from since. The first paragraph of the judgment of possession places each of the four children who stayed into possession of one-fifth of the property. The final paragraph places the remaining one-fifth of the property into the possession of the missing fifth heir.

However, Cratchit overlooked the final paragraph regarding the wayward son. He mistakenly assumed the first paragraph merely contained a typographical error as to the portions the first four children received and that only those four had inherited the entire property.” The specter continued, “you are crying because you have just been informed that the title insurance policy

issued by Marley when you purchased the property will not afford the company any protection and the only way to proceed with the sale is to locate the missing owner and acquire his interest, for a hefty sum too I might add, as the property has nearly tripled in value since your purchase.” “Nooooooooo!” shrieked Scrooge as he crumpled into the snow.

The first paragraph of the judgment of possession places each of the four children who stayed into possession of one-fifth of the property. The final paragraph places the remaining one-fifth of the property into the possession of the missing fifth heir.

Scrooge bolted upright in bed to find it was morning. “It’s not too late!” he shouted and dashed down to Tim’s office. He burst through the front door exclaiming, “I want a title insurance policy for the company! I want a new policy!” While Ebenezer waited in the conference room as Tim’s assistant arranged for a title policy to be issued to Scrooge’s company, Tim entered his office through

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A WORD FROM YOU... CAN SAVE A LIFE



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- And they do it all with Donated Goods

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For More Information www.RealEstateForRehabilitation.com
or call 1-480-596-5751 ask for JoAnn Callaway

Demotech – The Rating Agency That Stepped Up


An editorial in a recent *Insurance Advocate*, authored by Steve Acunto, editor and publisher, referenced Demotech Inc. as the “rating agency that stepped up in its rhetorical outreach to better a marketplace in which it plays a key role.” Acunto also noted that with the governor (of Florida) and many state leaders calling for another special session prior to year-end 2022, “this implies that the May 2022 reforms were not up to the task.”

The Insurance Information Institute has estimated that since Hurricanes Ian and Nicole made landfall, more than 630,000 claims have been reported in Florida. To date, catastrophe modeling results and initial carrier estimates indicate that direct damages will be well within the reinsurance towers purchased by Demotech-rated carriers.

According to Demotech’s President and Co-founder Joseph L. Petrelli, “When analyzing insurer operating results, the legislative, regulatory, and judicial environment may be considered in Demotech’s review where legislation, regulations, or judicial decisions could materially impact an insurer’s financial position or its ability to operate consistently given the market conditions of a particular jurisdiction. Regulatory practices or regulatory actions may

affect the operating environment of insurers positively or negatively. Such actions may relate to product regulation, financial regulation, or market regulation. In some instances, legislation or judicial decisions may also alter the operating environment or risk exposures of certain insurers by altering the policyholder claims and litigation environment or the insurance regulatory environment. We hope that the efforts of the May 2022 special session, enacted on July 1, 2022, benefit Floridians who have been hard hit by Ian and Nicole.”

About Demotech Inc.

Since 1985, Demotech has served the industry by assigning accurate, reliable, and proven Financial Stability Ratings® to P&C insurers and title underwriters. Demotech was the first to review independent, regional and specialty insurers, 1989. Demotech’s philosophy is to review and evaluate insurers based on their area of focus and execution of their business model rather than solely on financial size. On July 11, 2022, Demotech was registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (NRSRO) in the class of ratings for insurance companies. Visit www.demotech.com for additional information. 

Of Fevers and Thermometers: The Coming Florida Insurance Market Gets the Shivers

*By Steve Acunto, editor and publisher,
Insurance Advocate*

Ian hit Cape Cayo at 155 mph wallop. Too late to start thinking. Too late for “feel good” plans.

In a flash, first responders and insurers were hit with tidal waves that have yet to subside.

But in Ian’s wake, there has been time to reflect for real on the insurance industry’s performance, its readiness, and its future in the Sunshine State. While some domestic insurers, like Centauri among others, fared quite well and served clients amiably and effectively, others are close to insolvency — or there already — for reasons other than the direct impact of Ian.

Thirty years after Hurricane Andrew devastated Florida’s residential property insurance marketplace, many in Florida are — incredibly — blaming the thermometer —

the measuring instruments of insurer solvency — for the fever afflicting the marketplace. In 1996, when the major insurer rating agencies avoided the newly capitalized insurers depopulating the Florida Residential Property and Casualty Joint Underwriting Association (JUA), Demotech, Inc., the insurer rating agency accepted by Fannie and Freddie since 1990, stepped up to rate the insurers that would depopulate the JUA.

Leading up to Ian, Demotech’s warnings in the form of rating downgrades, using their standard of “claims paying ability,” were seen as purely “negative” and destructive, as if the thermometer caused the fever.

Demotech long ago inserted itself into one of the most difficult, catastrophe-prone markets in the world. By doing so, the rating agency grew from rating a negligible market share of Florida’s premium volume to nearly 60% of the homeowners’ volume in the state. Year after year, and hurricane after hurricane, Demotech-rated carriers, many of which were heavily reinsured by the largest and finest reinsurers in the world, paid claims and responded responsibly to the other challenges of that marketplace.

By the time it became well known that Florida's 8% of the unresolved homeowners' claims in the country were responsible for nearly 80% of the litigated homeowners' claims in the country, Demotech had already underlined that a veritable litigation explosion was plaguing insurers, those it reviewed and rated, and others. They were so familiar with the issue that, in March, 2022, when the Legislature adjourned without deliberating legislative reforms, Demotech publicly asked the governor, House and Senate to call a special session to introduce legislative reforms.

Dr. Shahid Hamid, CFA, the Director of the International Hurricane Research Center at Florida International University, published an article in October describing how fraud and litigation are causing insolvencies, not hurricanes.

The governor called for a special session. Legislation was enacted to be effective July 1, 2022. However, in late July, with the crescendo of disparate litigation getting louder and some Demotech-rated carriers failing, Demotech was attacked for asking carriers how they would continue to respond to the increasing levels of litigation. Some stated that Demotech was being obstinate because the legislative reforms enacted did not go as far as its communications had suggested.

Demotech held its ground and argued that the level of litigation and the laws enabling lopsided decisions were destroying insurers. Dr. Shahid Hamid, CFA, the director of the International Hurricane Research Center at Florida International University, published an article in October

describing how fraud and litigation are causing insolvencies, not hurricanes. Having asked its clients for an assessment of the damages associated with Hurricane Ian, a category 4, nearly category 5, event, Demotech has indicated that it appears that all Demotech-rated carriers are within their vertical reinsurance towers. The wild card was litigation ... and still is.

As to the attacks on Demotech related to its failure to consider the impact of the reforms enacted on July 1, 2022, reforms that may not have occurred had Demotech not spoken out publicly to request a special session, the governor and many state leaders are calling for yet another special session prior to year-end 2022. This implies the May 2022 reforms were not up to the task.

Now, just to be clear, Demotech is NOT a lobbying agency; it is a rating agency that stepped up in its rhetorical outreach to better a marketplace in which it plays a key role. Many would consider that quite a decent, well-intended gesture.

A little research reveals that in the nearly three decades that it has factored critically in the resuscitation of Florida's residential property insurance marketplace, Demotech has done excellent public service, right up to its recent advocacy. Yet, often, they have been ignored. Or attacked.

Today, it is clear that they have been judicious, careful, and, above all, right about the solvency of many insurers in the face of a hurricane as serious as Ian and in the disproportionate litigation outcomes in Florida.

In our view, the state of Florida — its top decision makers in Tallahassee in the legislature and in insurance — should confer with Demotech and conference in some of the successful carriers who withstood Ian to set a path forward, while enduring disparate levels of litigation.

The patient, if anything, needs the best measuring devices available to gauge its fever and the progress of its recovery. 🌊



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Company Updates

NCOIL Annual Meeting in New Orleans — NCOIL Unanimously Readopts the Model Act Requiring Competition Among Rating Agencies

Demotech recently attended the annual meeting of the National Council of Insurance Legislators in New Orleans, Louisiana. The legislators at NCOIL addressed a number of important issues facing the insurance industry and, most notably, readopted the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. We offer a few thoughts on some highlights from the conference:

NCOIL reported that the meeting was attended by 393 participants, including 68 legislators and representatives of 17 state insurance departments. The meeting marked the end of California Assemblyman Ken Cooley's term as president of NCOIL. Arkansas Rep. Deborah Ferguson, DDS, was sworn in as the new president of NCOIL.

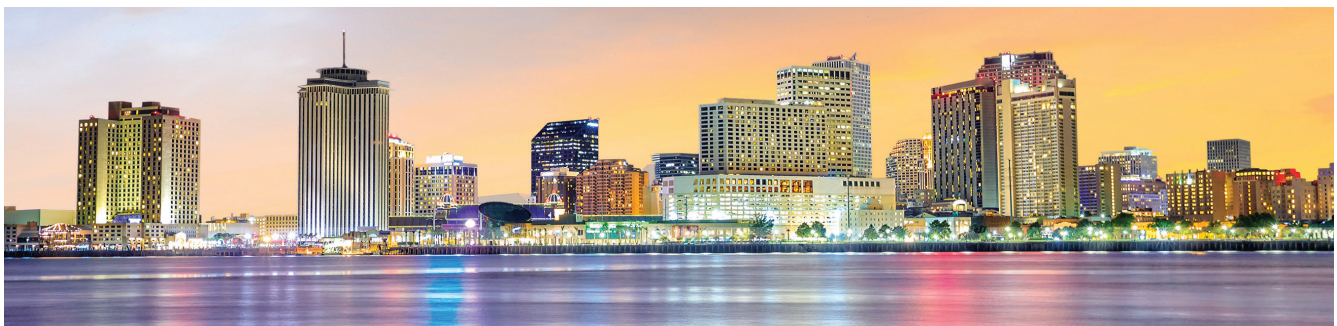
Demotech continues its support of competition among rating agencies, which in turn enhances competition within the insurance industry more broadly and promotes consumers' abilities to work with insurance companies that fit their specific needs.

The NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies, originally sponsored by Rep. Steve Riggs (KY) and Sen. Bob Hackett (OH) and adopted in 2017, was unanimously readopted with amendments sponsored by Sen. Hackett. Demotech is grateful for the leadership of Sen. Hackett and his work in the readoption of this important model act.

Burke Coleman, Demotech's chief regulatory and compliance counsel, expressed Demotech's thanks to Rep. Edmond Jordan (LA), Chairman of the Financial Services

& Multi-Lines Issues Committee, as well as Sen. Hackett and the members of the committee for their diligent work and continued support of competition among rating agencies. The Model Act, as readopted with amendments, broadened the definition of "competent rating agency" by replacing named entities in the Act with all rating agencies registered as nationally recognized statistical rating organizations (NRSROs) and accounting for the inclusion of other nationally recognized rating organizations who meet certain specified requirements. A.M. Best and Kroll Bond Rating Agency expressed their support for the re adoption of the Model Act. The Model Act states, importantly, that states have the sole authority to regulate the business of insurance, that "an unintended yet direct consequence of designating a single, exclusive insurer rating requirement in laws, statutes, bulletins, or other public material is the diminution of 'public regulation by public authority' and an implication of private regulation of insurance," and that multiple, competent rating organizations exist. The Act further states that "[N]o public entity shall bar any competent rating agency in designating the use of insurer rating requirements in laws, statutes, regulations, rules, bulletins, or other public materials." Demotech continues its support of competition among rating agencies, which in turn enhances competition within the insurance industry more broadly and promotes consumers' abilities to work with insurance companies that fit their specific needs.

Consistent with NCOIL's past meetings and significant work in addressing the most timely and important issues affecting the insurance industry, NCOIL adopted two model acts related to property and casualty insurance: one related to insurance for delivery network companies and another related to how considerations for dog breed can factor into insurance underwriting. In addition, valuable discussion was had regarding data privacy laws, the development and use of environmental, social and governance scores in the insurance industry, and the interaction between NCOIL and the NAIC. 🌐



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Petrelli Addresses Review and Analysis Processes with Banco Popular in Puerto Rico

Consistent with the stated goals of national and federal organizations focused on supporting competition among rating agencies or protecting investors, promoting capital formation, and maintaining fair, orderly, and efficient markets, Demotech, Inc.'s application to be a nationally recognized statistical rating organization in the class of Insurance Companies was recently registered with the United States Securities and Exchange Commission Office of Credit Ratings.

As part of our effort to support competition and fair markets, Demotech personnel often attend industry conferences. In December, 2022, Joseph L. Petrelli, ACAS, ASA, MAAA (MBA), President and Co-founder, discussed the review and analysis process applicable to carriers similar to One Alliance Insurance Corporation, with several members of the Banco Popular team at their conference facility in San Juan, Puerto Rico.



Petrelli notes that business models, execution of business models, and the complementary nature of reinsurance programs on a carrier's niche are critical factors in carrier success.

Also attending and available to share his thoughts and expertise at the seminar was Rafael Cedeño Camacho, Chief Strategic Officer and Chairman of the Board of Atrio Insurance Group, the ultimate parent of One Alliance Insurance Corporation. He summarized his thoughts



on how to achieve long-term success. He suggested a proactive approach to meeting client needs.

Rafael Cedeño Camacho is a Venezuelan born public accountant. He graduated from the Santa María de Caracas University with a Global MBA from the University of Miami and postgraduate work in the same specialty at the University of Berkeley, California.

We're growing and you may be one of the professionals that we need

Demotech's Ratings team is seeking experienced, high level administrative support personnel with a financial analysis or paralegal background. The ability to work from home will be limited. A few of the skills required include but are not limited to:

- A related degree or high level credential or certificate
- The ability to communicate and summarize complex issues clearly and succinctly
- A professional approach capable of working with rating analysts, senior management, colleagues and management of the insurers rated by Demotech, Inc.
- Ability to manage time and multiple projects
- Ability to meet deadlines and prioritize effectively
- Knowledge of financial analysis and/or effective documentation.

Our office is located at 2715 Tuller Parkway, Dublin, Ohio 43017-2310. There is ample free parking. You will be assigned a cubicle or an office. Salary will be dependent on experience and expertise. We believe that benefits including Paid Time Off are generous. Send your resume or questions to Inquiry@demotech.com.

The 2022 Vermont Captive Insurance Association Conference Summary

The captive world came to meet in Burlington, Vermont Aug. 8-11, 2022 as the VCIA presented its 37th Annual Conference. This year we welcomed 986 participants worldwide to expand their captive education, network with key industry figures, and be inspired by the opportunities offered in beautiful Vermont. The Conference had attendees from 41 states plus five countries. Roughly 26 percent of the conference attendees were captive owners, and 25 percent were first-timers, attesting to the value of this unique event. Our panelists were from dozens of high-profile organizations and helped to shed light on all the intricacies of captive insurance. Seventy exhibitors were featured. We are deeply grateful to our many generous corporate sponsors.

Overall Results — our expectations to make VCIA shine were met!

The conference evaluations this year provide us with substantive input as well as specific comments. We received 114 evaluations. The results were excellent overall, with 100 percent of those responding to the post-conference survey indicating excellent to good value of the educational content. On a scale of 1-5, session ratings ranged between 4 and 5 with the average score being 4.7. Evaluations tell us that the vast majority of attendees enjoyed the conference immensely, and that it was a good investment of their time and money. Based on feedback, attendees enjoyed the sessions, speakers, and the chance to meet people they work with face to face. The conference had great energy — people were ecstatic about gathering in person after being remote for the last two years.

Here are a few highlights from the survey question “Share one comment that captures your overall opinion of the VCIA conference:” “A forum of great collaboration between industry professionals who are genuine in lifting up the Captive Insurance Industry;” “A phenomenal opportunity for young professionals in the captive industry to become more integrated in the community at large;” “The best organized conference I’ve attended.”

These testimonials also sum up the conference effectively:

“Didn’t realize quite how much I missed the conference after two years of virtual conferences. It was great to be back and didn’t feel like anything had skipped a beat. The educational sessions this year were the most interesting and helpful that I can remember.”



Attendees enjoy the VCIA Annual Conference opening reception in the exhibitor hall. More than 70 companies exhibited in 2022.

“The 2022 VCIA Conference was a fountain of positive energy.”

“Great conference that focused on connecting and collaborating.”

Things very well received:

- Captive immersion.
- Tour for captive owners — Air National Guard.
- Keynote speakers: Michael Weidokal & Admiral Michelle Howard.
- Hotel VT reception.
- Conference app (accessibility to handouts/bios/schedule/engagement features).
- Session quality (significant number of captive owner speakers and fresh faces).
- Electronic CPE Sign-in.
- DFR support with registration and sessions.

Remember to save the date for VCIA’s 38th Annual Conference August 7-10th in Burlington, Vermont! Registration opens May 15, 2023. [📅](#)

The 30th Annual Katie School Insurance Executive Forum Held in Chicago

The 30th Annual Katie School Insurance Executive Forum was held on Thursday Nov. 3, 2022 at the Union League Club in Chicago with a very lively panel discussion amongst senior risk management and insurance professionals. The focus was on “Building Resilience in the Face of Climate Change,” and the audience was completely engaged with the conversation on stage provided by the different perspectives across the market.

The panel discussed the fact that across the risk management and insurance sector, significant challenges are being confronted as the

reality of climate change becomes more and more apparent. Increased property damage, supply chain disruptions, claims inflation, rising insurance prices, more regulatory oversight, and environmental concerns have all resulted directly or indirectly from rising global temperatures.

The panel was moderated by Gavin Souter, editor of Business Insurance, and it included:

Sean Kevelighan — president & CEO of the Insurance Information Institute

Joe Petrelli — president and co-founder of Demotech

Amy Green — executive vice president of Gallagher Re North America

Matt Junge — head of Property Underwriting, U.S. Regional & National at Swiss Re

Jennifer Pack — vice president of Risk Management at Hyatt Hotels Corporation

Gavin Souter — editor of Business Insurance

From Jim Jones, executive director — Katie School, Illinois State University — prior to the forum:

This year is the Katie School's 30th Annual Executive Forum. This year's special forum is on Building Resilience in the Face of Climate Change. Following the destruction from Hurricane Ian, record catastrophes, hardening property insurance markets, and the impending implications of the Southwestern mega drought, this promises to be one of our most timely and relevant forums ever.

This forum takes place in Chicago on the morning of November 3, and is essential for industry professionals wanting to better understand what the insurance industry can do to respond to climate change, and help build resilience. 🌍



David Ocasek, CEO of Surplus Line Association of Illinois, welcoming the audience. L-R: Sean Kevelighan, Joe Petrelli, Amy Green, Matt Junge, Jennifer Pack and Gavin Souter, moderator and editor of Business Insurance.



L-R: Sean Kevelighan, Joe Petrelli, Amy Green, Matt Junge, Jennifer Pack and Gavin Souter, moderator and editor of Business Insurance.

Barton Mutual Insurance Company Partners With Berkley Re Solutions To Launch Nation's First Personal Insurance Product Line for Violent Events

Barton Mutual Insurance today announced a partnership with Berkley Re Solutions to introduce a first-of-its-kind coverage for individuals and families who experience traumatic events. This new coverage is designed to be broad-ranging and address the potentially life-altering impacts on victims of a violent event, and was created with feedback and guidance from carriers across the nation.

Barton Mutual Insurance Company — which provides property and casualty insurance throughout Missouri — will be the first company in the nation to offer this type of coverage to their personal lines policyholders as an endorsement to their homeowner coverage forms. Barton Mutual will begin adding this coverage to homeowner policies starting Jan. 1, 2023.

This new coverage is designed to be broad-ranging and address the potentially life-altering impacts on victims of a violent event, and was created with feedback and guidance from carriers across the nation.

“This dynamic and innovative product offers peace of mind to individuals in today’s trying times, and we are pleased to work with Berkley Re Solutions in delivering it to market,” said Barton Mutual Insurance Company President Brian King. “We are honored to bring this impactful solution to our agents and policyholders. It’s one more way to support customers if they are devastated by such a terrible event.”

Greg Douglas, president of Berkley Re Solutions — one of the nation’s leading developers of insurance and reinsurance product lines for numerous casualty risks — said that for decades, insurance providers consistently have led the way by delivering coverages and services for economic and personal hardships, and this is one more example.

“Barton Mutual’s leadership on this evolutionary coverage is inspiring; we commend Brian, his leadership team and the Barton Mutual Board of Directors for their vision.

People and their families sadly now find themselves in situations where they have to navigate a society where random, violent events are increasingly common, so the need for consumer insurance which provides assistance to them in case the unthinkable ever occurs is essential,” Mr. Douglas said.

The Violent Events coverage addresses the following in the case of such an event occurring:

- Lost wages.
- Travel expenses.
- Pet care.
- Childcare.
- In-home care, provided when the insured can no longer provide care to someone due to injury.
- Mental health counselling.
- Alarm/lock installation.
- Funeral/burial costs.

About Berkley Re Solutions:

Berkley Re Solutions develops insurance and reinsurance solutions for a variety of casualty risks. Berkley Re Solutions is a member of W. R. Berkley Corporation, whose insurance company subsidiaries are rated A+ XV by A.M. Best. Reinsurance products and services may be provided by one or more insurance company subsidiaries of W. R. Berkley Corporation. Not all such products and services are available in every jurisdiction, and the precise coverage afforded by any insurer is subject to the actual terms and conditions of the policies as issued.

About Barton Mutual:

Barton Mutual has provided property and casualty coverage since 1894, extending throughout the state of Missouri from Main Street in Liberal. More than 450 agency locations in the state function as points of sale for Barton Mutual Insurance. Barton Mutual Insurance Company has been assigned a Financial Stability Rating® of A, Exceptional, from Demotech Inc. For more information about Demotech or FSRs, visit www.demotech.com or call (800) 354-7207. For more information about Barton Mutual, please visit <https://bartonmutualgroup.com/>.

Farmers Mutual Insurance Company Changes Name to Eagle Mutual

On Jan. 1, 2023, Farmers Mutual Insurance Company, located in Ellinwood, Kansas, changed its name to Eagle Mutual. Continuing the structure of a mutual insurance company, the company operations remain unchanged with this name change. Company CEO, Justin Lear, discusses the name change as “simply the same great service with a new look.”

For the past few decades, the company’s focus has been on residential exposures and has only recently expanded to cover small commercial exposures in rural Kansas communities.

There have been five previous name changes in the company history, most occurring within the first few decades of existence. Founded in April 1896 under the name of “German-American Farmers Association of Barton County, Kansas.” The company then became the “Union of German Farmers of Barton County and Vicinity, Kansas.” In 1899 this occurred as the company first formally organized to “support, instruct, and promote custom in cooperation with the Farmer in a Mutual Way.” Synonymously through the early 1900s the company was referred to as “Barton County German Farm Insurance Company,” although that name may have never been official, and also the “German Mutual Fire Insurance Company”. In March of 1916 the company first became a chartered corporation with the state of Kansas with records showing the name was changed at that time to “German Mutual Fire and Lightning Insurance Company.” However, in 1918, as WWI was nearing an end, anti-German sentiment was high and rumors spread that the company was sympathetic to the German cause. Therefore, in April 1918 the company name was changed to “Farmers Mutual Insurance Company of Barton County” which remained for many years before the “of Barton County” was dropped in 1987 along with statewide expansion of business.

Even more interesting than the name change is the fact that the original official language of the company, including all records and policies, was German. Therefore in 1918 with the removal of “German” from the name the company



changed the official language to English. Those records of the company were in German up through that vote and became English directly following it.

With the statewide expansion in the 1990s, the company first began to offer liability and packaged homeowners/farmowners coverage. The 1990’s were a challenge for the company with many years of consecutive losses; in the early 2000s the market was in favor of the company with large increases in production and profitability. However, that cycle of a difficult market and loss conditions returned from 2006 through 2009, being some of the toughest years in the history of the company. As a result, the company restructured and laid forth a recovery plan which focused on reducing exposure as more clearly defining a niche to remain competitive within. Consequently, since 2010 the company has written exclusively coverage on a basic or broad form actual cash value basis with great success. Adding to that niche a commercial offering of similar coverage structure in 2018 that focuses on insurance coverage that fulfills the goal of continuing the “Mutual Way” which has always been core to the company philosophy. Lear explains, “The company is focused on a mission that remains to ‘Provide Kansans with insurance protection that is reliable and personal.’”


Even with the name changes throughout company history, the name usually included “Farmers.” Current reality is that the company has moved away from insuring active farmers over the past quarter century. As modern farms and farming equipment needs grew to be successful in farming operations, the farm exposures have increased in value creating a severity of risk which the company could no longer maintain. For the past few decades, the company’s focus has been on residential exposures and has only

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Frederick Mutual Insurance Company Announces Member Approval of Its Reorganization to a Mutual Insurance Holding Company System

On Dec. 15, 2022, on the company's 180th anniversary, Frederick Mutual's members approved the reorganization of Frederick Mutual under Maryland law to a mutual insurance holding company structure. Through the reorganization, Frederick Mutual will become a stock insurer subsidiary of a newly formed mutual insurance holding company, Frederick Mutual Holdings Inc. As part of the reorganization, Frederick Mutual Group Inc. will also be formed as an intermediate holding company for Frederick Mutual. The members' vote to approve the new structure follows approvals by the company's board of directors and the Maryland Insurance Administration.

With this new structure, a Frederick Mutual policyholder's rights and benefits under their insurance policy will remain the obligations of Frederick Mutual while all existing and future policyholders of Frederick Mutual will retain their mutual ownership rights by automatically becoming members of Frederick Mutual Holdings Inc. The structure will allow Frederick Mutual to retain its identity and storied history of mutual ownership while providing flexibility to thrive in today's dynamic and competitive environment.

Frederick Mutual Insurance Company was founded in 1843, is the third oldest insurance company in Maryland, and the ninth oldest in U.S. — celebrating 180 Years in 2023! 

Universal Group Strengthens Alliances Beyond Insurance — Social Responsibility Underpins Their Trustworthy Portfolio


Universal has grown on a rich tradition spanning nearly 40 years, serving Puerto Rico and seventeen States in the United States of North America. This flagship Puerto Rican company promotes social responsibility as a philosophy through action in a drive to vaccinate employees, clientele, and citizens in the community against COVID-19.

Universal launched the Vaccination Center inside its sprawling headquarters in Hato Rey, Puerto Rico, on March 23, 2021. Universal CEO, Josely Vega Maldonado, explained, "We created the center to fulfill a mission to make vaccines accessible to the public to help fight the spread of COVID-19 in Puerto Rico. Our main objective is to ward off infection through immunization of those members of the community who live in the vicinity of the center and those who live in municipalities across the island, especially those who do not have access to the immunization centers due to compromised health" as Universal Group's CEO said.

Universal took its vaccination campaign on the road with mobile units outfitted with state-of-the-art vaccination equipment — portable refrigeration units, freezers to keep vaccines at their required temperature, calibration units, batteries, personal protective equipment, and biomedical articles provided. Those mobile units operate by teams of expert physicians and nurses certified by the CDC and the Puerto Rico Health Department for the effective and safe administration of vaccine doses, both of which have given Universal the highest marks for achieving

excellence in the provision of vaccinations. In October 2022, the insurer was conferred the VOCES Award for its extraordinary work in supporting and driving vaccination efforts against the novel coronavirus in Puerto Rico. The center was recognized in the COVID-19 Vaccination Provider category from among 700 voluntary providers island-wide.

Universal's mobile units have made their way to homes where bedridden patients are now immunized. That drive to help those with special needs extends to other community members through visits to assisted living centers, shelters, schools, churches, community centers, and medical offices. A core tenet central to this campaign is to help the Puerto Rico Health Department make vaccinations accessible to the entire island, including through vaccination fairs. As of November 30, 2022, Universal had surpassed 26,856 immunizations, with the intent to exceed 30,000 vaccinations during the first month of 2023. Some 900 of these immunizations took place in vax fairs across Puerto Rico.

As 2022 comes to a close, Universal made it clear that its commitment to the community goes beyond casualty and property insurance, life and investments with this statement: "In our steadfast commitment to the health and wellness of our employees, families, business partners and the community at large, we are developing a new project focusing on immunization using other vaccines with in cooperation with teams of medical experts in 2023," stated Universal CEO, Josely Vega Maldonado. 

business continuity, incident response, and disaster recovery.

- Mandated investments in employee training on cybersecurity awareness.

Additionally, covered New York firms will have to annually certify to the DFS that they followed the enhanced regulation for the prior calendar year, as opposed to simply filing a statement to this effect. “With cyber-attacks on the rise, it is critical that our regulation keeps pace with new threats and technology purpose-built to steal data or inflict harm,” said Superintendent Adrienne A. Harris. “Cyber criminals go after all types of companies, big and small, across industries, which is why all of our regulated entities must comply with these standards — whether a bank, virtual currency company, or a health insurance company.”¹

NAIC – Tampa in December:

The National Association of Insurance Commissioners held its Fall National Meeting Dec. 12-16, 2022, in Tampa, Florida. At the meeting, the commissioners elected their leadership for 2023. The president will be Director Chlora Lindley-Myers of Missouri, the president-elect will be Commissioner Andrew Mais of Connecticut, the vice president will be Commissioner Jon Godfred of North Dakota, and the secretary-treasurer will be Commissioner Scott White of Virginia. Commissioner Dean Cameron will serve on the Executive Committee as immediate past president.

Solvency regulation has been a key activity at the NAIC for 2022. Key issues discussed throughout 2022 have focused on transparency and proper valuation of certain debt and structured investments. These discussions have occurred through various Financial Condition (E) Committee Task Forces and Working Groups, including the Statutory Accounting Principles (E) Working Group’s work on developing a principles-based definition of bond, and the Valuation of Securities (E) Task Force work on modeling collateralized loan obligations and determining the proper treatment of related party investments.

I. The Bond Project

For the past few years, SAPWG has been working on developing a new principles-based definition of a bond. This project is intended to clarify what type of investments may be appropriately reported as bonds on Schedule D-1. SAPWG’s work in 2022 on this project has included not

only the development of the new definition, but also revisions to SSAP No. 26R — *Bonds* and SSAP No. 43R — *Asset Backed Securities*, along with revisions to the blanks and annual statement instructions to reflect the more granular reporting requirements under the new bond definition. In November, SAPWG released for comment its latest round of edits for both SSAP No. 26R and 43R, with comments due early in 2023, and it is anticipated that SAPWG will release for comment its proposed reporting changes after the Fall National Meeting. At this point, the bulk of the substance of the bond definition has been developed, and the exposures are focused more on determining the implications for specific types of assets. For instance, the latest round of edits is focused on the proper accounting treatment of investments with embedded derivatives. It is anticipated that the new definition and related reporting requirements will go into effect at the beginning of 2025.

II. Modeling Collateralized Loan Obligations

Regulators are focused on conducting detailed analysis on CLOs, comparing their proposed analysis of CLO tranches to the analysis that regulators mandated for collateralized mortgage instruments starting in 2010 after the financial crisis. Through VOSTF, the NAIC is working to empower the NAIC’s Investment Analysis Office to lead an investment modeling process to move regulators and the IAO away from relying on rating agency ratings to set RBC values for certain structured investments. VOSTF is utilizing IAO’s authority to render statutory accounting interpretations for the states as the mechanism to avoid any legislative revisions for accomplishing this task and is exposing and enacting changes to the Purposes and Procedures Manual of the NAIC Investment Analysis Office to facilitate this modeling effort.

CLOs are the first structured investment instrument that regulators are addressing in this new modeling regime. However, regulators have been clear that they will focus on other types of investments once the CLO regime is established. The new CLO modeling process is intended to prevent ratings arbitrage, when the sum of the RBC charges assigned to all the tranches of a CLO is lower than the RBC charge that would be assigned to all the underlying collateral of the CLO. VOSTF will be exposing its proposed modeling process at the NAIC Fall National Meeting. Comments and further discussion will proceed into 2023. The modeling process is based on the NAIC’s Structured Securities Group annual stress test. This is the first substantive step in VOSTF’s CLO modeling project and will likely elicit much industry and regulator attention over the course of 2023.

¹ New York State Department of Financial Services. (2022, November 9). DFS SUPERINTENDENT ADRIENNE A. HARRIS ANNOUNCES UPDATED CYBERSECURITY REGULATION [Press release. https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20221109221

III. Related Party Investments

Over the past two years, the NAIC has amended SSAP No. 25, Affiliates and Other Parties, as found in the NAIC Accounting Practices and Procedures Manual to expand the definition of defined presumptions of “control,” as found in each state’s Holding Company Act, to include affiliates holding less than a 10 percent equity interest in an insurance company and the definition of related parties, which may include service providers with agreements with an insurance company. As a result of these amendments to SSAP No. 25, many additional parties and business relationships of insurance companies may come under the scrutiny of domiciliary insurance regulators through their Holding Company Act jurisdiction. Regulators may begin seeking biographical affidavits and Form B Annual Report disclosures for these new affiliates and related parties and may be seeking Form D compliance and approval for their agreements with insurance companies.

The amendments to SSAP No. 25 are now cascading into proposed amendments to the Procedures Manual that VOSTF is considering. The proposed amendments will update Procedures Manual instructions for the evaluation of related party and subsidiary, controlled and affiliated investments, resulting in authority for regulators to direct the IAO to conduct an independent modeling and evaluation of investments involving affiliates or related parties.

These proposed Procedures Manual amendments stem from increased interest at the NAIC regarding investments that involve a related party, regardless of whether the investment is considered an affiliate transaction. The NAIC is specifically concerned with investments in structured securities, which are currently filing exempt, that are acquired from a related party as sponsor, originator or manager even if zero percent of the underlying assets represents credit exposure to related parties. The proposed amendment would give state regulators greater latitude to examine these investments and determine whether they should not be filing exempt.

IV. Big Data and Artificial Intelligence

The Innovation, Cybersecurity & Technology (H) Committee announced that it will begin work on a model bulletin to establish a principles-based framework for use of artificial intelligence by the insurance industry. H Committee Chair, Commissioner Kathleen Birrane of Maryland, made the announcement during the meeting, emphasizing that the decision is supported by the plenary of the NAIC. Birrane noted that the bulletin terms will focus on governance requirements for the insurer’s

protocols for development and use of AI. She also noted that the bulletin terms will not be prescriptive, which was welcome news to many following this issue closely.

The H Committee’s Big Data and Artificial Intelligence Working Group met to review the results of its private passenger auto artificial intelligence/machine learning survey results. Nearly 200 companies were surveyed on their use of big data in car insurance operations. Key findings included:

- 89 percent of companies use or planned to use Big Data, in one or more of the following categories:
 - Claims (80 percent).
 - Fraud Detection (58 percent).
 - Marketing (54 percent).
 - Ratings (40 percent).
 - Underwriting (31 percent).
 - Loss Prevention (15 percent).

The Working Group also commissioned two additional surveys for homeowners insurance and life insurance to address the following issues:

- Need for greater model governance/insurer oversight.
- Consumer data recourse.
- Regulatory frameworks for use of third-party models and addressing third-party concentration risk.

The Working Group addressed the evolving use of algorithms and data analytics in insurance underwriting. Concerns over algorithmic bias and discriminatory outcomes were discussed but also the need for regulatory caution as these nascent technologies have not yet been widely adopted.

Insurers Continue Success in Defending COVID-Related Business Interruption Claims.

Focus on business interruption insurance coverage continues in insurance litigation as many businesses contest denials of their claims for benefits arising from the forced suspension of their respective operations as non-essential during the onset of the coronavirus pandemic in 2020.

Over the course of 2022, the U.S. Court of Appeals for the Sixth Circuit has produced a series of published decisions contributing to insurers’ consistent record of success before the nation’s appellate courts on COVID-19 business interruption claims.² The most recent of these decisions, *Wild Eggs Holdings, Inc. v. State Auto Property & Casualty Insurance Company*, included a noteworthy dissent that will undoubtedly keep policyholders fighting.³

² *Estes v. Cincinnati Ins. Co.*, 23 F.4th 695 (6th Cir. 2022); *Brown Jug, Inc. v. Cincinnati Ins. Co.*, 27 F.4th 398 (6th Cir. 2022); *Wild Eggs Holdings, Inc. v. State Auto Prop. & Cas. Ins. Co.*, 48 F.4th 645 (6th Cir. 2022).

³ *Wild Eggs*, 48 F.4th at 653 (Moore, J., dissenting).

⁴ *Wild Eggs*, 48 F.4th at 647.


The appellant in *Wild Eggs* owns and operates a series of breakfast and lunch restaurants in Indiana, Ohio and Kentucky. In March 2020, at the start of the COVID-19 pandemic, each of the restaurants became subject to state-issued “stay at home” orders that applied generally to all “non-essential” businesses. To comply with these orders, Wild Eggs had to suspend all in-person dining and restrict its operations to curbside pickup.⁴

Wild Eggs made a business interruption claim, relying principally on an endorsement that conferred coverage in the event of “[t]he ‘suspension’ of your ‘operations’ at the described premises due to the order of a civil authority ... resulting from the actual or alleged ... [e]xposure of the described premises to a contagious or infectious disease.”⁵ The insurer denied coverage, prompting Wild Eggs to sue. The district court dismissed the lawsuit, agreeing with the insurer that the state orders necessitating closure of the restaurants did not result from exposure of the restaurants themselves to COVID-19.⁶

Two of the three judges on the Sixth Circuit panel agreed with this analysis, and therefore affirmed dismissal of the lawsuit. The majority wrote: “[H]ere, the proper order is reversed: the States responded to a large-scale threat of disease by mandating that restaurants (and other non-essential businesses) close to prevent exposure. The Stay at Home orders were prophylactic measures intended to curb generally the spread of COVID-19 statewide, not to respond to an exposure of Wild Eggs’s restaurants.”⁷ Importantly, the majority also held that the policy language was unambiguous and that, under Kentucky law, the “reasonable expectations” of the policyholder may be considered only to resolve an ambiguity in policy language that the court already has determined to be present (and not to determine whether an ambiguity exists in the first place).⁸

The dissent in *Wild Eggs* took issue with that interpretation of Kentucky’s “reasonable expectations” doctrine,⁹ asserting that “the doctrine of reasonable expectations is [a]n essential tool in deciding whether an insurance policy is ambiguous.”¹⁰ From that starting place, the dissent remarked that “‘exposure’ has a range of meanings” including, in one dictionary, “the state or fact of being subjected ... to any external influence.”¹¹ The dissent applied the reasonable expectations doctrine and concluded that the policy was ambiguous because a policyholder reasonably

could have expected “exposure” to mean something broader, such that coverage would be provided where “the government shuts down all businesses — including Wild Eggs — because all businesses — including Wild Eggs — are exposed to COVID-19.”¹² The dissent noted its agreement that “causation is required” but identified the “fundamental issue in this case” as “the degree of specificity required” and concluded that, because “[e]ither reading [of the policy] could be correct,” the reasonable expectations doctrine entitles Wild Eggs to coverage.¹³

Policyholders are likely to find encouragement in the *Wild Eggs* dissent and adjust their litigation strategies accordingly. As part of this process, it would be unsurprising to see policyholders devote less effort to resisting causation requirements and instead turn their focus to the interpretation of pivotal words (like “exposure”) that appear in the policy language but are not specifically defined. 

The Squire Patton Boggs Financial Services/Insurance Team includes former senior insurance regulators and insurance company general counsel with decades of experience providing strategic counsel on domestic company and captive formations and expansions; insurance company M&A and holding company transactions; insurance company reorganizations and redomestications; product development, innovation, operational and remedial compliance measures for solvency; multi-line products and claims administration; development and operation of complex distribution networks, data use and privacy; data security; and defense of regulatory examinations. Former Ohio Department of Insurance Director Mary Jo Hudson and former Ohio Department of Insurance Assistant Director Doug Anderson serve as litigation experts. Our team members Pat Hatler and John Kirtley have significant in-house experience with insurance companies and provide clients with interim general counsel services, support for new general counsel, corporate governance and holding company advice, and related training for senior insurance company executives. Michael Mullaly focuses his practice on defense of complex insurance matters, defense regulatory examinations, and public records disputes. Bevan Blake focuses his practice on corporate matters, including company formations and M&A transactions, as well as financial regulation compliance.

⁵ Id. at 648.

⁶ Id. at 647.

⁷ Id. at 649 (emphasis in original).

⁸ Id. at 651.

⁹ To describe the reasonable expectations doctrine, the dissent quoted a Kentucky decision stating that “[t]he gist of the doctrine is that the insured is entitled to all the coverage he may reasonably expect to be provided under the policy” and that “[o]nly an unequivocally conspicuous, plain and clear manifestation of the company’s intent to exclude coverage will defeat that expectation.” *Wild Eggs*, 48 F.4th at 654 (Moore, J., dissenting), quoting *Bidwell v. Shelter Mut. Ins. Co.*, 367 S.W.3d 585, 589 (Ky. 2012).

¹⁰ *Wild Eggs*, 48 F.4th at 654 (Moore, J., dissenting), quoting *Bidwell v. Shelter Mut. Ins. Co.*, 367 S.W.3d 585, 589 (Ky. 2012).

¹¹ *Wild Eggs*, 48 F.4th at 654 (Moore, J., dissenting), quoting Oxford English Dictionary Online (3d ed. 2021).

¹² *Wild Eggs*, 48 F.4th at 655 (Moore, J., dissenting).

¹³ Id.

Empowering Staff ... Creating a Captive Grant Program

The best examples of successful captive grant programs all contain the same characteristics, for they should all embody the same set of general principles. These are:

- **Convincing a captive's board of directors to allocate funds to a captive grant program within a captive's general and administrative budget:** Most captives operate "lean and mean." Some captive grant programs involve total expenditures of \$250,000 annually or higher. (This amount may fund multiple grants, sometimes with a request of \$15,000 or lower). You are asking a captive's board to approve an idea. You will not be successful if you do not link the funds set aside to the possibility of a direct risk mitigation positive outcome.
- **Setting some tough but fair standards governing the kind and quality of grants made and the disbursement of funds:** The best individual grants are those whose need can be understood at every level of the organization. By definition, they should address global risk management concerns that are easily understood and easily implemented.
- **Putting the grant process on a short timeline to ensure rapid, measurable results within a fiscal/policy year:** Show us a captive grant implementation that runs longer than a captive's fiscal/policy year, and we'll show you an ineffective initiative. The team coming up with the idea is awarded the funds to put it together; the idea is up and running within a year's time, under a tight set of expectations.
- **Requiring demonstrable evidence of not only implementation but also measurable improvements as a result of education or training, process improvement or product changes:** Not only do you have to implement within the year the grant is awarded, but you also have to demonstrate how risk is controlled or mitigated. These initiatives work best when the grant has realistic goals and measurements in place.
- **Keeping the individual grant amount small in dollar value; large grant awards don't get the job done. Too much money corrupts what should be a nimble, entrepreneurial, and finite process:** At Stamford Health in Stamford, Connecticut, and under the auspices of Stamford's captive insurer HealthStar Indemnity LLC, the average awarded grant in the last fiscal year was less than \$35,000. We have seen countless examples of effective process improvement, better training, better outcomes, and better solutions

being created with very few dollars and a lot of hard work. We've proven that these initiatives need not be costly on a per-initiative basis.

- **Setting aside real time (not token time) at each year's captive board meeting to report out several key examples of how a captive grant has done what it should have done:** There's little sense in creating a captive grant program if the board doesn't hear about who got the grant, how the money was spent, and how the parent business's risk profile was reduced. We recommend that you do not create a grant program if you won't allocate at least 30 minutes of a captive's annual meeting to explain how the money was spent wisely.
- **Grants should be awarded that will benefit patient or staff safety and/or can enhance clinical acumen:** They should never be used to fund personnel, but only whatever it takes to achieve the stated goal. Grant applications are usually completed by one or two persons working in conjunction ... but if those persons aren't building a team around them to execute the initiative and realize its results, then the danger is that the initiative becomes a "pet project" aimed at the elevation of some individual's position in the organization. "Teamwork" is what makes or breaks any captive grant initiative.
- **Grants directly connected to a response to prior adverse claim experience should get top priority:** You have a claim or a series of claims. The claim becomes a trend. The trend adversely impacts captive financial performance and may undermine reinsurer/excess insurer confidence during difficult market conditions. A captive grant to dig deeply into an emerging trend and an emerging business risk is an ideal use of a captive grant program.

How About an Example?

Let us provide you with an example that will resonate with many readers.

Workplace violence is a national concern, as we all know from news accounts and unfortunately, in some cases, from personal experience. Hospitals are vulnerable places. Why? Because first and foremost they are by definition welcoming places. You're in need of urgent care: you go to the Emergency Department. You're a family member visiting someone who's just had surgery. Getting to that person's bedside should not be an ordeal.

However, the real world has imposed itself on health care facilities, and health care workers are under the same strains and threats as workers in every walk of life.

Stamford Health has strategies in place to address escalating behaviors on our property, including activating “Code Gray” alerts for appropriate security emergencies. But how to de-escalate potentially aggressive behavior? How to train caregivers to spot an escalating situation and use best practices to de-escalate it until assistance arrives or other measures can be taken?

One of our senior nursing quality managers did some deep research and came up with a low-cost, online training module to help train our nursing staff in a user-friendly way to manage escalating behavioral problems on the jobsite by first spotting them and realizing the immediacy of the threat.

This initiative was funded with an approved captive grant of \$9,450.

Soliciting, vetting, and approving realistic approaches to risk mitigation that can be inexpensively implemented and rapidly deployed is part of a modern risk management solution to a complex risk environment.

That’s not a lot of money to spend to help train professionals to deal with escalating behaviors. It’s not a lot of money to spend on a front-line defensive measure, where workers’ compensation, general liability, and potentially domestic terrorism insurance risk may exist, suddenly and without warning, in a place where health care workers, patients, and families may be at personal risk.

The idea for this online course came up through the ranks. It was initiated through the ranks. It was paid for by a captive with workers’ compensation and general liability insurance risk as part of its portfolio of responsibilities. It is the perfect example of what we are speaking.

In Summary

The next logical step in helping to mitigate risk within any parent organization, we believe, lies potentially within that organization’s supporting captive insurer. Soliciting, vetting, and approving realistic approaches to risk mitigation that can be inexpensively implemented and rapidly deployed is part of a modern risk management solution to a complex risk environment.

We opened with a quote from Edwards Deming ... we feel we should close with one:

“The aim of leadership should be to improve the performance of man and machine, to improve quality, to increase output, and simultaneously to bring pride of workmanship to people.” 🌐

Michael Maglaras is the founder and principal of Michael Maglaras & Company, an international insurance consulting firm specializing in providing insurance program consulting advice, including self-insurance and captive insurance company feasibility testing and other alternatives to traditional insurance programs for a variety of health care providers and other businesses.

Michael Maglaras has had more than 40 years of captive health care liability program formation and insurance consulting experience. He has been involved in the formation of more than 145 captive insurance companies, including four of the original companies formed after the passage of the Federal Risk Retention Act of 1986, as well as four insurers formed by state medical societies on behalf of their physician insureds in the 1980s and '90s as a result of the medical professional liability crisis in availability and affordability. He serves as an insurance consultant and risk advisor to integrated health care delivery systems, physician groups, and other health care providers nationally. He is a frequent author and lecturer on the subjects of risk financing, risk management, and health care liability insurance issues. He has lectured at the College of Insurance in New York and the London School of Underwriters.

Sally Johnston is the director, Risk Management, at Stamford Health. She oversees the daily operation of the Risk Management Department including identifying potential liabilities to the organization and educating and acting as a resource to leaders throughout the enterprise on risk reduction strategies and patient safety initiatives. Prior to joining the Stamford Health Risk Management Department, she spent over 20 years serving in various staff and managerial roles in perioperative services.

Johnston received her Master of Science in Healthcare Administration in May 2018 from the University of New Haven, West Haven, Connecticut. She received her Bachelor of Science in Nursing from the University of Kansas, Lawrence, Kansas. Johnston is a Certified Nurse in the Operating Room as well as a Certified Professional in Healthcare Risk Management.

Stuckey's

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all enjoy. But the price you pay for the piled high cheap T-shirts is a sense of community, belonging and place.

Family businesses are the lifeblood of this country. I want to be part of something bigger than me or even my grandfather, of an effort to put the family back in family business. When you have a calling like that, that's bigger than you, you have to answer it.

In the three years since that conversation with my father, I've gained a business partner and we've jointly purchased a pecan snack and candy plant in Wrens, Georgia. Stuckey's has gone from six employees to over a hundred, and we're once again making my grandparents' classic confections ourselves — from the pecan log rolls to the pralines, divinity and flavored pecan snacks. While we still don't own the few stores that bear the Stuckey's name, we've restored the company to profitability by changing

the business model. We've had to literally go back to our roots and focus on selling our pecan products to other retail chains in order to grow sales and brand awareness. And it's working: sales have grown from \$2 million to over \$13 million, with 2022 expected to reach \$15 million.

While the journey has been hard, and we're what I refer to as "ramen noodle profitable," there's nothing more rewarding than bringing a company back to life. The connection from generation to generation that is unique to family businesses is special and worth saving. I'm sharing the story of what made me decide to take this leap of faith to hopefully inspire others to revive their family businesses. Whether you sell insurance or pecan log rolls, the rewards make the risks worthwhile.

And now that we're on the road to revival, I'm happy to say that maybe while I can't run a lemonade stand, I can run Stuckey's.

Quiet Quitting

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quitters; another 27 percent denied raises; 23 percent denied promotions; 13 percent demoted quiet quitters; and 12 percent denied quiet quitters paid time off.

As the economy declines and new job opportunities shrink, resignations will be less likely and quiet quitting could spread, especially among companies that constantly require extra effort from their employees yet fail to acknowledge it.

Quiet quitting is also fueled by employees being too self-focused and managers who fail to connect and motivate. A Harvard study found 40 percent of managers were unprepared to manage remote employees. The prevalence and spread of quiet quitters may be the result, suggesting additional management training is needed. Managers must shift to monitoring outcomes and results from monitoring activity, time and physical presence. As employees move back to the office, managers should avoid the temptation to give promotions, raises and growth opportunities mainly to those most visible.


The rise in quiet quitting was concurrent with the increase in job resignations. Many employees who left complained of unclear expectations, few opportunities to learn and grow, feeling unappreciated, and lack of connection to the organization's mission.

Remote work not only can result in isolation, but can strain an already weak management structure. Engagement and development of employees has come up short with the prevalence of a remote work force. Management should be encouraged to foster frequent two-way conversations with each employee, showing

they can listen as well as coach. Recruiting should focus on the quality and character of potential new employees as much as relevant experience. Quality talent can be effective in multiple roles as long as they have supportive managers and adequate training.

It's time for management to revisit job descriptions to accurately define what work is really necessary and what should be considered above and beyond. Recognizing each job's realities might lead to revised compensation and other rewards.

Company leaders would do well to establish a work climate where employees are encouraged to express their ideas and concerns and have these concerns and ideas addressed. Each employee is different, so it's critical that managers get to know direct reports as individuals and interact frequently, not just when there is a crisis.

Companies known for treating employees well are likely to be better corporate citizens, better investments, and better suppliers. They also won't experience the same kind of employee retention and motivation problems as organizations where workers are "quiet quitting." 

Tom Harvey was CEO of Assurex Global, an international partnership of independent insurance agencies. He then joined the business faculty at The Ohio State University. He is currently a mentor to a number of entrepreneurs. Earlier Harvey was a partner with a venture capital firm. He's been intimately involved with more than 30 companies, observing more than a hundred fellow directors and advisors. twharvey@columbus.rr.com.

Farmers

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recently expanded to cover small commercial exposures in rural Kansas communities, therefore, no longer relating well with the use of “Farmers” in the name. Additionally, the similarity of name had become troublesome with agents, vendors, customers and others, often confusing the company with other companies that began with “Farmers ...” or “Farmers Mutual ...” The company then recognized that the similarity of name had led to a loss of individual identity or name recognition, and that had been troublesome.

The company states the reasons behind the name change are primarily to gain, or regain, an identity that the company can engage within. The company wishes to have greater visibility through marketing and promotion under the new name. They seek to have a recognizable image with their agents and policyholders that continues to stand for their core values. In choosing the new name, Eagle Mutual, the company had many factors leading to its selection. Lear explains:


“The Eagle is our local school mascot, and for our subsidiary, an agency that serves the needs of the local community, the name Eagle was the only choice. That entity’s name is now Eagle Insurance Inc. operating as an independent agency serving the local insurance needs of our community, which does add credence to our choice of Eagle Mutual, as with local contributions and involvement the similarity of the name of our company and subsidiary agency is beneficial.

Additionally, the Bald Eagle is the national bird, a majestic raptor who’s the default image of freedom. We feel that our agents and customers have freedom with choosing our company. We offer the freedom to insure at ACV with coverage options that allow tailoring of coverage to suit the

needs of many Kansans. We offer the freedom to restrict or exclude certain known hazards, thus allowing us to offer coverage with flexibility in underwriting due to the age or condition of their property, where other markets may not insure the risk.


Although the color theme may be bright, perhaps even patriotic in the use of red, white, and blue, it’s the colors of an actual eagle that have additional meaning. The black and white eagle is representative of the black and white nature of our policies and coverage, in that we are straightforward explaining that our coverage contains limits and conditions. That clearness is also physically in the black and white of our policies. We would rather define any limitation upfront than to have to settle that condition after a loss. We seek to add clarity at inception of the policy, to provide clear understanding down the road. We owe that precision, that consistency in performance, that sharpness of an Eagle eye to not only the specific risk we are accepting, but to our policyholders as a whole. It is because we are Mutual and that ‘Mutual Way’ is our core.

So why would we choose anything other than this new name; we are ‘Eagle Mutual’!”

Eagle Mutual services consumers in all of Kansas offering insurance coverage through over 200 independent agencies. Additionally, Eagle Mutual also services the local needs of consumers through an independent agency, Eagle Insurance Inc., offering risk solutions for the consumers in the immediate area. Eagle Mutual insures primarily residential and small commercial property, connecting agents and consumers with those coverages from their home office in Ellinwood, Kansas, located in the central area of the state. Go to www.eaglemutual.net to learn more or to contact Eagle Mutual. 

Ghosts

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the back door, took off the specter’s costume and shook the snow from his boots, smiling to himself, “if only people would recognize the importance of title insurance without me having to resort to such theatrics ...” 

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NOLA Title is a full service real estate title company and a leading source and authority on title insurance for tax sale and adjudicated real estate. Licensed and staffed to handle all aspects of real estate transactions throughout Louisiana, our principal services include title abstracting, title examinations, title opinions, defective title curative work, title insurance, notary public services, escrow, settlement, and closing services. For more information, go to: www.nolatg.com.

Rethinking

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be our predominant means of developing the workforce. Only about a third of workers have a college degree. A broader mix of robust learning and development opportunities is needed to meet the short, intermediate and long-term workforce needs.

Frequent changes in workforce demand dictate the need for a more flexible and responsive skill development strategy. Incorporating short-term development vehicles can round out the overall learning and development

Many are starting to balk at the cost of higher education, especially when the return on investment seems to be shrinking and when the programs do not align with real-world job functions.

toolkit. Trade schools and apprenticeships are one avenue we have gotten away from, but we would do well to reinvest in updating those models for 21st-century skilled trades. We are also seeing the rise of skilled credentialing, where workers can be trained and certified in specific skill sets to perform specialized work. Not only can workers gain easier, reliable entry into the world of work, but skilled credentialing also allows employers to source talent from an enriched pool of qualified workers. As workers progress along their career paths, they can continue to compile skilled credentials to expand their areas of acumen. Skilled credentials also ease workers' transitions

to alternate positions to maximize their value in the labor market and their earning potential.

We must reset our recruiting strategies if we hope to overcome the talent crunch. Our recruiting apparatus has leaned heavily toward millennials and Generation Z in the last few years. However, the reality is that Generation X, baby boomers and traditionalists still account for 60 percent of the workforce and that is unlikely to change. According to the U.S. Department of Labor, Americans over the age of 55 will take roughly half of all new jobs created in the next decade. What's more, the biggest leap in labor force-growth in coming years will come from those age 75 and older, where overall employment is projected to nearly double by 2030. So, as we construct our workforce planning models, we need to be as in tune with the needs of the 57-year-old workers as we are with the 27-year-old worker. Engaging today's multigenerational workforce requires a broader, more detailed focus.

With our reliance on college education, students and their families have borne the brunt of that investment. Many are starting to balk at the cost of higher education, especially when the return on investment seems to be shrinking and when the programs do not align with real-world job functions.

Ultimately, the government and business community will need to expand investment in helping build variable tracks to skill development. A robust and skilled talent pipeline ensures the stability and productivity of our economic environment — a net benefit for individual workers, the enterprises they support, and society at large. [!\[\]\(6059a5aa8b4ca7bb793408023d6c6e42_img.jpg\)](#)

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Korducki Legacy

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They weren't really as much disruptors. Looking at the business today, I ask, 'who are our heroes?'"

Instead of identifying the biggest change in the industry over his career, Korducki states that the trajectory of his work life has encompassed a long line of crises and change.

"There was the interest rate crisis of the '80s, the liability crisis in the '80s, and the property issues in the '90s," Korducki said. "It seems like every 10 years or so those issues come up where we suddenly get a major event or

crisis causing carriers and reinsurers to lose substantial money and withdraw capital. This ultimately leads to innovation where creative talent and opportunistic capital sees opportunity where others see challenge. The cycle repeats itself again. It's the nature of the business."

With his wealth of experience and wisdom, Korducki's plan now is to first enjoy his family and grandchildren, but also to continue to be on boards and doing consulting. He also plans to explore ways to help his community.

"I've been blessed," Korducki said. "Any time a door shut for me, another one seemed to open." [!\[\]\(83bbbd261710c59db0214aa27b2edc0d_img.jpg\)](#)

Anxiety

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before entering into a brokerage contract. This includes verifying the insurer FSRs assigned by the rating agencies, contracts language, and binding and rating authority for fast-track products where the broker has some rating and binding authority.

Speaking specifically to insolvency exclusions found in agents' and brokers' errors and omissions policies and programs, there currently exists a broad range of coverage and product availability to consider:

- 1) Standalone agent and broker policies through admitted insurers.
- 2) Standalone agent and broker policies in the excess and surplus lines market.
- 3) Company-sponsored E&O programs tied to the sponsoring insurers products only.
- 4) Company-sponsored E&O programs for insolvency coverage only — premiums paid by the insurer. This could or would apply to captives with acceptable FSRs, specialty program RRGs and RPGs, start-ups, and other forms of risk-bearing entities.
- 5) Master policy concepts where the named insureds can be covered under one policy sharing limits per claim and an annual aggregate.
- 6) Insurer-owned agencies for affinity groups, agency programs, and insurance company professional liability (ICPL) offering including agents E&O.

The broker, applying best practices for the agent, looks at the removal or modification of the insolvency exclusion as a key element in procuring the best possible coverage along with pricing and the broadest possible coverage.

Insolvency exclusions can be baked into the basic policy language as absolute; underwriters can name specific exceptions (carve-backs for Best and Demotech) and name minimum rating assignments, all subject to change quarterly or annually. The rating agency's proprietary rating methods and procedures, re-insurance treaties, and catastrophes can also change mid-year so downgrades may also occur from time to time.

Other considerations for the retailer

The following topics vary from state to state, however they are important for any agent to be aware of. Once again refer to the NCIGF web site for details:

- 1) Covered lines of business — some are excluded, such as bonds and title insurance.
- 2) Unearned premium on cancelled policies — will your client get any un-earned premium back? Is there a maximum or minimum?
- 3) How much coverage is available for claims taken over in the pool?

- 4) What is your state's net worth maximum for policyholders subject to the pool's limits? These can apply to individuals and entities in some states, and they vary from state to state.

Due Diligence, Downgrades and Disclaimers


Our advice, first and foremost, is to never take the financial rating of an insurer for granted and never assume it cannot or will not change at any time. Be diligent when reading industry trade journals, taking notice when underwriting appetite changes with aggressive premium quotes.

Downgrades can occur at any time due to issues within a company regarding the balance sheet: reserve adjustments, general accounting, asset classification, reserve adjustments, surplus adjustments, and new capital infusion or loans from outside entities. These are general business circumstances which agents and brokers should not ignore or overlook.

Include in your proposal and renewal summary proper disclosures and information regarding the difference between an admitted insurer and a non-admitted insurer. The administrative issues which occur as a result of an insolvency are exhausting for the policyholder, the agent, and the broker, not to mention the financial impact it can have on the firm's clients.

Disclaimer:

The overriding purpose of this article is to provide a general overview of the agent and brokers' involvement on behalf of their policyholders when an insolvency event occurs. It is not meant to be a detailed guide to managing an insurance agency through an insolvency and its run-off period. No two insurers are liquidated the same and no two receivers do things the same way.

For a detailed summary and state-by-state information regarding insolvency, contact the NCIGF regarding your state's insolvency statutes or contact your respective state's Insurance Insolvency Association management director. 

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Bersnak has over 40 years as a captive agent, and is the founder of two independent agencies, with six years as a national broker. He has been an expert witness in Common Pleas Court since 1997, and has had testimony admitted at the Federal level relating to Agents Standard of Care litigation.

