

The Massachusetts Agent

Official Newsletter of the Massachusetts Association of Insurance Agents

January 24, 2013

MAIA News:

MAIA Files Complaint Against GEICO with DOI and MRB ...

MAIA has filed a formal complaint with both Division of Insurance (DOI) and the Merit Rating Board (MRB) alleging that GEICO has failed to report at least one at-fault accident to the MRB as required by state regulation. MAIA has reported the specifics of the claim in question to the MRB for review, but the MRB is looking to the DOI for guidance in investigating the matter.

This is not the first time that GEICO has shirked its reporting responsibilities. Previously, GEICO did not report new policy information to the Registry of Motor Vehicles' Uninsured Motorist System. This failure to report new business resulted in the cancellation of the prior policy for non-payment and, in some cases, revocation of the consumer's registration and plates.

MAIA has provided the DOI and the MRB with evidence that GEICO has on at least one occasion failed to notify the MRB of an at-fault accident involving one of its policyholders. A company's failure to report at-fault accident information to the MRB could result in a fine of not more than \$500 for each violation. MAIA has requested that the DOI and the MRB investigate not only the specific case we outlined but also require GEICO to provide proof that, with the exception of this case, GEICO is in complete compliance with the reporting requirements.

In the letter of complaint to the Commissioner, MAIA noted that under "managed competition" some companies have an "accident forgiveness" factor where the policyholder does not receive surcharge points for the first at-fault accident; however, the existence of a forgiveness factor in a company's rate and form filing does not relieve the company from the responsibility of properly reporting at-fault accident data to the Merit Rating Board.

In October 2012, Commissioner Murphy clarified the at-fault accident claim reporting requirements prescribed in regulation 211 CMR 134.04 for collision and limited collision coverages when a "disappearing deductible" is applied to a loss by reiterating that the regulation "requires that insurers report collision and limited collision claims resulting from an at-fault accident to the MRB if there is a claim payment of more than \$500 in excess of any applicable deductible. According to the Commissioner's letter, the reference to "applicable deductible or "vanishing deductible" in this context refers to the deductible option purchased by the policyholder.

MAIA noted that under "managed competition" some companies have an "accident" forgiveness" factor where the policyholder does not receive surcharge points for the first-at-fault accident; however, the existence of a forgiveness factor in a company's rate and form filing does not relieve the company from the responsibility of properly reporting at-fault accident date to the Meriting Rating Board.

The MAIA complaint added that a driving record which is accurate and complete is the one true picture of a person's driving history and policy eligibility. At fault accident involvement and conviction of moving violations are crucial to every company's rating and underwriting process, and every company has a responsibility to report properly.

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Comp. Corner:

"Stop Work Orders" An Issue Again ...

Last spring after a rash of "stop work orders" (SWO) were issued by the Department of Industrial Accidents (DIA) based on not having a secondary location listed on a workers' compensation policy, MAIA and the Workers' Compensation Rating and Inspection Bureau (WCRIB) worked with the DIA to agree on a procedure to be followed by the DIA when faced with a location issue. The procedure appears below:

Part of the discussions among the DIA, MAIA and the WCRIB was an agreement that each location of an insured does not have to be listed on the policy so long as "Massachusetts" is listed in 3A of the policy. If "Massachusetts" is listed, all locations and all employees of the insured are covered under the policy. However, while the DIA agrees with this position, it will "respect the position of the insurer if the insurer denies coverage for an unlisted location." As such, the best advice is to remind your workers' compensation clients that if they open a new location they should advise you in advance so you can have the location added to the policy.

The current DIA enforcement procedures involving secondary, tertiary or other permanent locations of employers operating in the Commonwealth under the provisions of an active Massachusetts Workers' Compensation insurance policy are as follows:

1. The address and location on the policy will always control the decision. This means that the address and location on the policy is the main business premises listed in the policy and therefore employees at that location will be covered. Other locations will be looked at with that basic fact being established. No Stop Work Order would ever be issued without first conducting an investigation.
2. Temporary work sites away from the insured main business premises are not considered to be a different permanent location for the purpose of determining coverage. The "insured main business premises", will be the location listed in Item 1 of the policy information page. A temporary work site is any location, not shown to be a permanent place of work, and from which the workers of the insured will return at sometime in the future.
3. When faced with a potential multiple locations issue the investigator will contact the insurance carrier to determine whether the employees at the additional location are covered under the employer's policy. Contacting the insurance carrier is a crucial part of the investigation and will be done before any Stop Work Order is issued.

In the event the employer at the additional location is a different and distinct legal entity from the employer listed on the policy's information page the investigator shall employ the same procedure on this other legal entity and shall only issue a stop work order to that other entity in the event he confirms no coverage exists for the employees of the entity at the other location. The different and distinct legal entity will have to show coverage under a separate policy of its own or provide proof that it is properly covered by the same policy issued to the employer listed on the policy information page.

If you have any questions about this policy, please contact Frank Mancini, President and CEO of MAIA or Dan Foley, VP of Government Affairs & General Counsel at 800.972.9312 or 508.634.2900 or by email at fmancini@massagent.com or dfoley@massagent.com.

Member Milestones:

G & N Insurance Agency Turns Three ... What's So Special About That?

According to G&N Insurance Agency co-owner Matt Naimoli, LUTCF, A LOT! Here's what Matt had to say about his and partner Zack Gould's young agency: "My business partner and I started our agency from scratch in January 2010 after leaving a direct writer that we worked at for three plus years. We just hit our three-year anniversary for the company and have grown organically very fast. We are the size that many 30+ year agencies are, and we are far from slowing. We have a great group of employees and feel like we utilize technology and social media to continue to push us ahead of the curve. Needless to say, we are very proud of our operation and excited for what the next 3 years have in store!"

Congratulations Matt, Zack and G&N Insurance Agency. Yours is truly a refreshing story to hear, especially during a tough economic climate. We at MAIA wish you many happy returns.

projectcap News:



What's the Deal with Twitter?

written by Dave Wencel

As an account manager with Project CAP I get to talk with independent insurance agents every day about Internet marketing and creative new ways they can use digital communications to help grow their businesses. Without question the most confounding aspect of Internet marketing I hear is how to leverage social media. More specifically, Twitter.

If I've heard it once I've heard it a thousand times: "Dave, I just don't see how Twitter can do anything for us in the insurance industry." (The previous sentence is the maximum length of a tweet – 140 characters.)

To be honest, I've found Twitter to be a hard platform to get my hands around as well. It seems like a place where millions of people are "tweeting" out messages that no one is listening to or cares about. It was with this in mind that I decided to research what people are saying about effective uses of this popular and growing communication platform.

What Exactly Is Twitter?

In a nutshell, Twitter is a real-time micro-blog where people can post short messages up to 140 characters. Its purpose is for people to share (tweet) short thoughts, events, news stories, reviews, information from thought leaders, etc. Tweets you post go out to people who have chosen to follow you (followers), while you receive tweets from people you are following. The greater number of followers you generate, the greater will be your audience.

Think of Twitter as being like a gigantic cocktail party where information and stories are fluidly exchanged. Millions of guests around the world gather and tweet ideas, follow along and share in conversations that interest them. One extremely important thing to remember with Twitter is that it is a two-way street. It's both offering ideas and listening to others. Back to the cocktail party analogy, nobody wants to get stuck with the guy who goes on and on about himself. Help – get me out of here! And at this party it couldn't be easier to step away from the conversation.

People appreciate when others listen to, respect and consider their thoughts, needs and feelings. Same goes with the Twitter community. You will find the more you listen and make mention of others' ideas (tweets), the faster your community of followers and champions will grow.

Twitter Etiquette

Here are a few best practices referenced by Twitter.

- ✓ **Share** – Share photos and behind the scenes info about not only your business but also the community.
- ✓ **Listen** – Monitor comments about your company.
- ✓ **Ask** – Questions can help gain valuable insights from your customers.
- ✓ **Respond** – Always compliment others for their compliments and feedback.
- ✓ **Reward** – Tweet updates about special offers, discounts and deals.
- ✓ **Demonstrate leadership and know-how** – Reference articles and links about the bigger picture as it relates to your business.
- ✓ **Champion your stakeholders** – Retweet and reply to your followers and customers.
- ✓ **Establish voice** – Twitter users prefer a direct, genuine and likable tone from your business. Think about your voice as you tweet. How do you want your business to appear to the Twitter community?

There are an infinite number of ways to use Twitter, from building your brand, generating leads and recruiting, to keeping up on industry trends, community news and important information.

I've included a few articles you might want to check out on business uses for Twitter:

- ✓ **"80 Ways to Use Twitter"** as a small business owner, by Lisa Barone.
- ✓ **"5 Ways I Use Twitter as an Insurance Agent"** contains some great tips you can use at your agency from Ryan Hanley, a rising star in the insurance industry.

- ✓ **“Top Ten Hashtags for the Car Insurance Industry on Twitter.”** Hashtags (#) serve as a theme for your tweet. Using them will make your message searchable by people looking for topics of similar nature. Jessica Dunlap offers some great tips to help you stand out.
- ✓ Finally, Twitter has a PDF entitled **“Handbook for Small Business.”**

Twitter is another arrow in your quiver as an agency to take advantage of social media as a marketing/advertising tool. It is not the end-all for your marketing, but it does provide another window to get your message out to your community. Maybe more importantly, Twitter would appear to be a platform that is going to continue to grow in numbers and utilization, so getting tapped into it now is a good idea. **Contact me to talk about the possibilities.**

Good luck and happy tweeting in 2013!

Long-Term Care Insurance News:

MAIA Offering State-Mandated Eight Hour Long-Term Care Training ...

Effective January 1, 2013 the playing field has changed. All Producers who “market” long term care insurance in Massachusetts are now required to complete an initial one-time eight hour course followed by a four hour refresher course every two years.

The Division of Insurance has applied a very broad definition of long term care insurance that includes:

- stand-alone long term care insurance products
- life insurance and annuity products with long term care benefits
- life insurance products that allow accelerated death benefits to pay for long term care.

MassAHU and MAIA have teamed up so that you can get this requirement under your belt as soon as possible. Sign up for the eight hour class now and be one of the first Producers in the state to be in compliance.

New Mandate in Summary:

- Massachusetts has now adopted the NAIC producer training requirements.
- Existing Producers (licensed before 1/1/13) must complete the initial eight-hour training by 7/1/14.
- New Producers (licensed after 1/1/13) must complete the training before selling LTC insurance in Massachusetts.
- After the initial 8-hour training, a 4-hour refresher course will be required every 24 months.

State Mandate:

On October 25, 2012, the Division of Insurance enacted Chapter 312 of the Acts of 2012 as part of Senate Bill 2359. Chapter 312 creates a new Chapter 176U of the General Laws, as well as other statutory provisions, that apply to the offer or renewal of long-term care insurance products in the Commonwealth on and after January 1, 2013.

Section 6 of M.G.L. 176U creates new training requirements for those producers marketing long-term care insurance products, including the completion of a one-time eight-hour course and at least four hours of ongoing training every 24 months. Producers currently marketing long-term care insurance products have to satisfy this one-time eight-hour training requirement by July 1, 2014 and then complete the ongoing training requirement of at least a four-hour training program every 24 month period beginning the day following the completion of the one-time training.

Class Topics:

- | | |
|--|------------------------------------|
| 1. Review Chapter 312 of the Acts of 2012 “An Act Establishing Standards for Long-Term Care Insurance” | 5. Setting Where Care is Delivered |
| 2. Long Term Care Industry | 6. Cost of Long Term Care |
| 3. Types of Long Term Care | 7. Funding for Long Term Care |
| 4. Risk Factors for Long Term Care | 8. Suitability |
| | 9. Trends in Long Term Care |

REGISTER HERE

DATE	LOCATION	CITY	GL #	MEMBERS	NON-MEMBERS
3/27/13	Association Headquarters	Milford, MA	247547	\$95.00	\$190.00
4/17/13	Holiday Inn	Tewksbury, MA	247546	\$95.00	\$190.00
6/13/13	Hampton Inn	Chicopee, MA	247549	\$95.00	\$190.00
10/17/13	Comfort Inn Randolph	Randolph, MA	247550	\$95.00	\$190.00
12/11/13	Cape Cod Resort and Conference Center	Hyannis, MA	247552	\$95.00	\$190.00

Do Insurance Agents have a DUTY TO ADVISE?

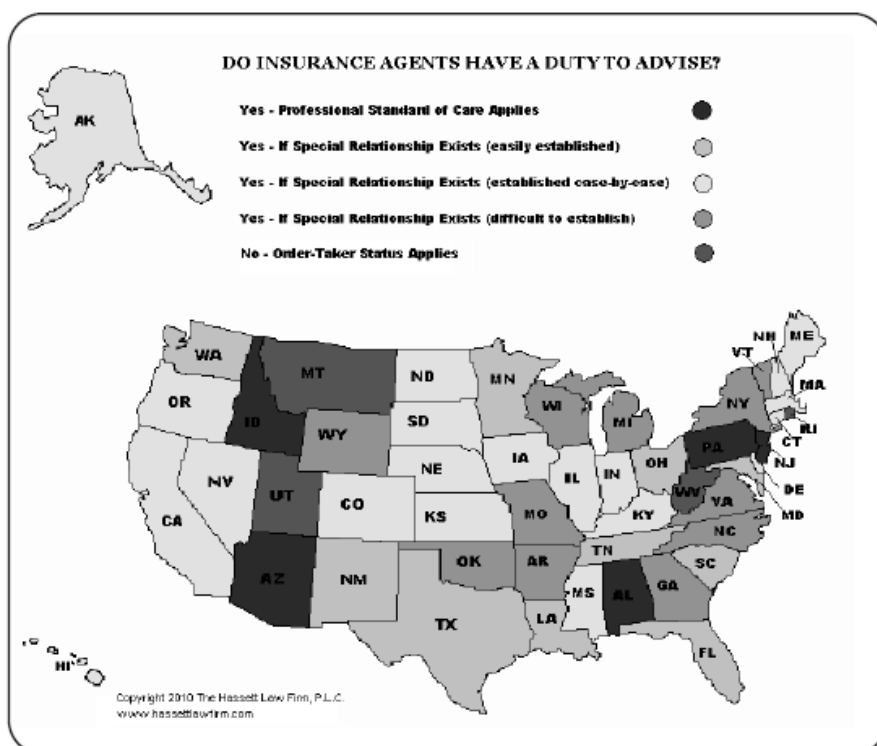
A summary of the law governing insurance agents' obligations to advise their customers.
By Myles P. Hassett, Esq. and Julie K. Moen, Esq.

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

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

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

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



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

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

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

2. Professional Standard of Care States.

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

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

obtaining additional limits of coverage.

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

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

3. The "Special Relationship" Test.

Many states agree that to impose a blanket affirmative duty on agents to advise about types and limits of available coverage would reward insureds for taking an "intellectual" gamble purchasing less insurance now (for less money), then later claiming they would have purchased better (and more expensive) coverage if only the agent had advised them to do so. This removes the burden from insureds for determining their own best interests and turns agents into financial guidance counselors. As a matter of public policy most states thus require that the insured first establish from the circumstances that the agent-customer relationship was "special" before any duty to advise can arise. Courts generally define "special circumstances" as including one or more of the following factors: 1) the agent agrees to advise the customer; 2) the agent accepts additional compensation beyond the premium for the advice; 3) a (long-term) course of dealing between the agent and customer in which the agent is on notice that the customer seeks and relies upon the agent's advice;

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

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

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

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

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

B. Independent View of the Special Relationship Test.

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

North Dakota, Oregon and South Dakota. Illinois has a statutory duty of care that requires agents to use ordinary care to procure, renew, bind, or place coverage for an insured.

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

C. Conservative View of the Special Relationship Test.

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

These states also generally require the insured to have specifically requested the insurance she claims the agent failed to procure. A request for "full" or "adequate" coverage, or the "best coverage available," does not generally

create an obligation for the agent to seek out or procure a specific type of insurance for the customer.

4. Order-Taker States.

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

5. Conclusion.

Our research indicates that the general trend is moving toward the imposition of professional standards of care by the courts, guided in many instances by the use of a predicate "special relationship" test before imposing an affirmative duty to advise. Prudent agents are responding to this trend by promoting best practices and awareness of the

insured's needs. Independent insurance agents should accordingly not content themselves with minimally-compliant conduct that merely satisfies legal standards, but should instead aim to provide service that exceeds these standards, consistent with the goals of earning and keeping customer trust and confidence.

About the Authors

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

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

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

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For a list of the each state's most pertinent cases, visit the Big "I" Risk Management Website www.iiaba.net/eohappens and click on "Standard of Care."

MAIA would like to acknowledge our 2012 Agent Awareness Campaign Diamond and Platinum company partners. Please support those companies that support the Independent Insurance Agent.



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Platinum Partners



QUINCY MUTUAL GROUP



Upcoming Webinars

Register for Upcoming free ACT Webinars.

Getting a Grip: How to manage your independent agency's social media

(Friday, February 15, 1:00--2:00 PM eastern time)

Social media has provided many independent insurance agencies with a powerful new marketing, communications & branding tool which is powering growth for them. But how do these agencies successfully manage their social media initiative? This webinar will provide "best practice" advice from agents and other industry leaders on how to successfully manage a social networking initiative and provide options for making social media management easier for your agency.

This interactive panel of industry experts will answer your questions around such topics as:

- How do I budget time on social media?
- Where do I get content?
- Who should manage my firm's social media?
- How do I protect myself from negative comments?

Webinar participants include:

Rick Morgan, Aartrijk Group, Moderator

Ryan Hanley, The Murray Group

Chris Paradiso, Paradiso Financial Services & Insurance

Katie Peet, State Auto

Mike Peterson, Project CAP

Angelyn Treutel, SouthGroup Gulf Coast

Mike Wise, Web Wisdom LLC

Jeff Yates, ACT Executive Director, Host

Please [click here](#) to register for the webinar.

ACT AND AUGIE LEADERS URGE INDUSTRY TO EMBRACE KEY TECHNOLOGY PRIORITIES

Joint Efforts Focus on ID Federation, Real Time, E-signatures and Self-service Capabilities

The leaders of the Independent Insurance Agents & Brokers of America's Agents Council for Technology (ACT) and ACORD's User Group Information Exchange (AUGIE) recently concluded joint planning sessions and agreed to work together to advance four important industry priorities in 2013: ID Federation, Real Time, e-signatures and client self-service capabilities.

ACT and AUGIE have worked together on numerous issues in recent years and this recent effort is part of that continuing partnership.

The four key priorities the AUGIE and ACT leaders urge the industry to work together on to implement in 2013 are:

- To support the ID Federation and movement to federated digital identities to replace passwords. Efforts are underway to encourage vendors to become identity providers and the carriers to support the initiative. The development of an effective digital identity infrastructure is also likely to increase agency use of Real Time and enable agencies to provide greater customer functionality through the agency website, such as to make a payment.
- To increase agent and carrier adoption of Real Time. The groups are encouraging carriers to build out their transactions following the industry recommended workflows, so that agencies will have a consistent experience across their carriers. This includes increasing the use of Real Time for commercial business, including program and E&S business, and supporting the all-industry Real Time Day to be held April 9, 2013.
- To encourage agencies to incorporate e-signature tools into their client workflows and carriers to support their agencies employing these tools. The groups also are seeking integration of e-signature technologies with the agency management systems.
- To enhance agencies' ability to offer clients self service capabilities through the agency website which integrate with carrier functionality, such as to make a payment.

The ACT and AUGIE leadership will continue to meet quarterly and review the progress on these industry priorities.