

# The Massachusetts Agent

Official Newsletter of the Massachusetts Association of Insurance Agents

July 10, 2014

## MAIA News:

### We're Looking for a Few Great Agents ...

MAIA is looking for agents interested in joining the Association's Board of Directors. A couple of Board vacancies are expected this fall.

If you are interested, please forward a brief resume of your accomplishments for consideration. Feel free to contact MAIA President and CEO Frank Mancini by email at [fmancini@massagent.com](mailto:fmancini@massagent.com) or by phone at 800.972.9312 or 508.634.2900 if you have questions about what being a member of the Board entails.

## projectcap News:

### Lock-In Your Advantage Subscription Price Now ...

The price of the Advantage subscription to TrustedChoice.com will increase from \$39 per month to \$49 per month on July 18th. So, if you've been waiting to sign up, now's the time to do it. Traffic is increasing at an amazing rate:

- TrustedChoice.com has broken its own traffic record ten months in a row with over 152,000 consumers visiting in May alone.
- TrustedChoice.com generated 3009 exclusive sales leads in May. Two-thirds of those leads (2102) went to agencies participating in the Advantage program.

**Sign up today** and lock in the current rate of \$39 per month for the next year!

Contact **projectcap** directly to lock in your monthly subscription fee for one year or take advantage of the multi-location discount by calling 855.372.0070.

## Comp. Corner:

### DIA Assessment Announced ...

The Department of Industrial Accidents (DIA) has released a letter outlining the official assessment rates to be applied to policies effective July 1, 2014 and thereafter. Here is the text of the letter:

Pursuant to M.G.L. c. 152, §65 (4) & (5), the Department of Industrial Accidents has established the insured assessment rates to be calculated for all policies effective July 1, 2014. The insured assessment rates are as follows:

Employer	Insured Assessment Rate	Self-Insured Assessment Rate
Private	0.058	0.058
Private opt-out	N/A	0.017
Public	0.000	0.000
Public opt-out	N/A	N/A

The letter also included a list of both public and private employers that have exercised their right to opt-out of Trust Fund assessments. To review the opt-out list, click [here](#).

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## SUBMIT YOUR NEWS

**GOT A STORY?**

There is no charge to submit milestones, staff promotions, mergers, relocations, etc...to MAIA. Spread your news today!

▶ SUBMIT NEWS



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## Member Milestones:

### Vermont Mutual's Joyce McCutcheon Named Claims Professional of the Year ...



Vermont Mutual Insurance Group has announced that the International Association of Insurance Professionals (IAIP) has named Joyce McCutcheon Claims Professional of the Year.

The award recognizes the claims professional who has demonstrated superior knowledge of the claims field, experienced professional advancement through educational pursuits, demonstrated leadership in the field, and is an active participant in IAIP activities.

Joyce is a 25 year insurance professional and holds the following designations CCLA, ACLA, SCLA, CPIW, she has been with Vermont Mutual for five years.

*Pictured L - R: Daniel C. Bridge, Executive Vice President, David N. DeLuca, Vice President Claims, Joyce N. McCutcheon, Senior Claim Representative and William A. Catto, President & CEO*

## Education News:



### Project InVEST Update ...

MAIA's Vice President of Training, Heather Kramer, was recently interviewed by ACORD regarding MAIA's Project InVEST at Joseph P. Keefe Regional Technical School. To hear about the Project InVEST Program, in general, and the Keefe Tech program, in particular, click [here](#).

InVEST, a school-to-work insurance program, teams with high school and college educators to provide a useful insurance curriculum for students. With the help of InVE liaisons (insurance professionals), students could have the opportunity for job shadow days, internships or even careers after graduating from InVEST. Guest speakers during an InVEST class provide firsthand knowledge of what it's like to work in the insurance field, and students have a new appreciation for the industry after a hearing a professional speak. And, before you've even entered the room they already are excited to have someone other than their teacher speaking to them! What's more? InVEST provides all the materials needed to speak in a classroom for you. PowerPoint presentations, quizzes, discussion questions and more! InVEST makes it easy and seamless to enter a classroom and impact the next generation of insurance professionals. Topics can include rating, claims, what to look for in a policy, how you have succeeded in the industry or even explaining specific insurance roles, like investigations and fraud.

## State House News Service:

**"Baker: After Site Problems, RMV Should Delay Fee Increases**

After the Registry of Motor Vehicles took down its website for periods of the last weekend in June, preventing consumer from conducting transactions online as fee increases were planned to go into effect, Republican gubernatorial candidate Charlie Baker called on the RMV on Monday morning to delay the fee increases until the end of the week. Though RMV officials said the new fees are already in place and would not be changed, the agency is looking to refund a small number of customers who were detected by the system to be attempting to perform a transaction when the website was unavailable. At the start of the new fiscal year on July 1, the price of vehicle registrations rose from \$50 to \$60, inspections jumped from \$29 to \$35 and driving test fees rose by \$15 to \$35. Drivers hoping to renew their registrations online before the fee increase went into effect had trouble at times accessing the site due to scheduled maintenance. Sara Lavoie, the new chief of staff at the RMV, said the website was taken down for periods in the days before the fee increases went into effect to install security software and program the new fees and conduct tests. "We have heard from six customers who attempted to perform a transaction just prior to 12am on Tuesday, July 1. The RMV will be reviewing the individual customer cases to determine eligibility for a refund based on their transaction time," Lavoie said. Baker said drivers should be given until the end of the week to take advantage of lower pricing. "Delaying the fee increases until the end of this week is the fair thing to do because the state screwed up," Baker said in a statement. "The people of Massachusetts deserve websites that work, a real sense of customer service, and a state government that owns its mistakes, rather than passing them on to its constituents. With glitches and errors plaguing the Health Connector site, the unemployment benefits system, and now the RMV site, it is not fair for Massachusetts families to pick up the tab or endure the headache of essential services that just don't work." The RMV said 35,370 customers were able to make online transactions the weekend of June 28 and June 29, an uptick of 6,484 from the previous weekend. The website was unavailable for scheduled upgrades on Monday, June 30, the day before the fee increases took effect, from 11 p.m. to midnight, according to the RMV, while the automated phone system was taken down that day from 6 p.m. to 7:45 p.m. to change the message content and from 11 p.m. through Tuesday, July 1 at 6:48 a.m. for maintenance and testing for self-service transactions. The website was also down on the morning of Saturday, June 28 for the installation of a new firewall and security upgrades." – M. Murphy/SHNS

## E&O Update: Which Position Would You Rather Take?

by Curtis M. Pearsall, CPCU, AIAF, CPIA  
President – Pearsall Associates, Inc  
and Special Consultant to the Utica  
National E&O Program



When an errors-and-omissions claim against an insurance agency develops, an objective of the E&O carrier and the attorney it assigns to handle the matter is to review the file in question and determine the degree of liability, if any. Numerous defenses can be applied based on the facts of the specific case. Defenses include, but are not limited to:

- plaintiff failed to give accurate information to the agent
- plaintiff misrepresented certain facts to agent
- plaintiff failed to read his or her policy
- plaintiff signed a policy application containing incorrect information
- lack of duty

If the agency's customer had been made aware of a specific coverage but rejected it, generally, one would hope this would position the agency in a positive light. But what if the agency's customer was not made aware of, say, umbrella coverage, including what it does and how it works? To what degree would this hurt the agency's defense?

### Some Positive E&O Initiatives

Let's take the following scenario and look at the various positions. Imagine you are the jury and will be asked to render a verdict. The agency writes a homeowners policy for a customer in 2000. The agency includes a cover letter with the policy requesting that the customer read the policy and contact the agency if there are any questions. The cover letter includes a statement noting that the agency is a full-service agency and encourages the customer to contact the agency if there is any change in the customer's exposure.

These are some positive E&O initiatives from the agency, so far. However, for the next 10 years, the agency simply sends the policy with no cover letter. In essence, the agency has a customer for whom it writes one line of business, homeowners. The agency never reached out to the customer inquiring about where the customer's auto insurance is placed, whether the customer has an umbrella policy, any new exposures, etc.

In that 10-year period, the customer purchases a dog for his or her kids. The dog later bites the neighbor's child, resulting in a lawsuit requesting damages in excess of the liability portion of the homeowners policy. The agency is sued due to the lack of sufficient coverage.

While E&O cases will typically be very "fact sensitive" and not totally "cut and dry," consider the following defense positions.

### In the Agency's Favor

In most, but not all, states, the agent is often referred to as "an order taker." In other words, it is up to the customer to specifically request coverage. Generally, an insured must make a specific request for a particular type of insurance coverage to impose a duty on the agent to procure that particular coverage. In addition, an insurance agent is not required to:

- provide an insurance policy that would cover all possible contingencies
- advise an insured with respect to coverage options
- advise the insured as to every exclusion contained in the policy

In defense of the agency, it secured the coverage the client requested. The customer never contacted the agency for additional coverages or to let the agency know about the "change in the exposure." Bottom line, the agency fulfilled its duty. A "special relationship" will be difficult to prove because the agency only wrote one line of business. Therefore, is there a good chance the agency will prevail on this legal matter? The odds are in the agency's favor.

### Not in the Agency's Favor

The customer probably will contend that he or she is not insurance savvy and relied on the agency's knowledge and expertise. The customer was not aware of umbrella coverage, but because of the purchase of the dog, had an umbrella been suggested, the customer would definitely have purchased it. (This is always what the customer will say after the loss.)

In addition, that the agency simply renewed the account "as is," with a slight increase in Coverage A for ten years, and never contacted the customer to discuss other coverage options or changes in exposure, does not position the agency well.

While the agency may prevail, these are exactly the types of situations E&O carriers are seeing with significant frequency. A recent industry study indicated the average number of policies an agency has for each personal lines customer is in the 1.6 area. When considering all potential "selling opportunities," it certainly seems like some missed opportunities exist. So, even if the agency does prevail, this scenario is resulting in significant defense dollars to defend the agency, which are obviously factored into the price of the E&O product.

### What to Do Differently

What could or should the agency have done differently? One initiative that could have easily helped avoid the type of E&O claim above involves the agency actively undertaking a cross-selling campaign. Some approaches to consider:

- Use your agency management system to identify scenarios like the one above – with homeowners, but no auto (or vice versa) or you have the auto and homeowners, but no umbrella. Develop a letter

## E&O Update ... continued from page 3

- bringing the specific subject/issue to the customer's attention. The letter should be educational and include information on why securing the additional coverage is important. Claim examples are a great way to make the point.
- When a customer calls in, make it easy for the CSR to identify what coverages the customer does and doesn't have. This is a great time to bring these additional coverages to the customer's attention.
- In both of these scenarios, if a customer rejects the coverage you are discussing, you must document, document and document. This documentation should not only be in the file/system, but also in an e-mail back the customer officially noting his or her decision.
- Make it a point to touch base with your customer to determine whether there has been any change in

his or her exposures, and then act on what you are advised.

Now, take the E&O claim scenario above and add the following to the letter the agency sent: ask the customer for an update on his or her exposures and/or bring umbrella coverage (what it does and how it works) to the customer's attention. Now, imagine if this communication was ignored by the customer. There is the strong possibility the E&O claim would have never even developed.

Another benefit of these additional "touches" involves the chance that you may just sell some insurance along the way. So, if you want to grow your agency, enhance your E&O commitment. Doing this will truly give your business the "best of both worlds."

## Industry News:

### Motorcycle Owners to Receive \$14.6 Million in Refunds Through Settlement with Commerce Insurance ...

#### *Total of \$57.4 Million Recovered for Massachusetts Motorcycle Owners to Date; Commerce is Largest Settling Carrier in AG Coakley's Industry-wide Investigation*

The office of Attorney General Martha Coakley released the following press release on July 7, 2014:

Thousands of Massachusetts motorcycle owners will receive a total of \$14.6 million in insurance refunds as a result of a settlement with Commerce Insurance Company after allegedly being overcharged on their policies, Attorney General Martha Coakley announced today.

The AG's Office has now obtained a total of \$57.4 million for consumers as a result of its four-year motorcycle insurance investigation. The investigation, which began with a single consumer complaint, has led to settlements with **19 insurance companies** since 2010, and generated refunds on more than 150,000 Massachusetts policies. Today's settlement with Commerce is the largest motorcycle settlement reached by the AG's Office and will provide refunds to more than 40,000 policyholders. Commerce, which was acquired by MAPFRE in 2008, is presently the largest writer of automobile insurance in Massachusetts.

"Our extensive investigation into these insurance companies has resulted in the return of millions of dollars to thousands of Massachusetts motorcycle owners," AG Coakley said. "Identifying these troubling overcharges continues to underscore the need for transparency in auto insurance rating practices, and we are pleased to have facilitated refunds for consumers statewide."

Under the terms of the settlement with Commerce, which was filed today in Suffolk Superior Court, Commerce will pay \$14.6 million in refunds on over 40,000 insurance policies, and \$325,000 to the Commonwealth. Later this month, Commerce will begin sending out refund checks ranging from less than \$50 to more than \$12,000 per consumer, with an average check around \$360.

According to the settlement, Commerce allegedly overcharged certain customers between 2002 and 2011 by using inflated and un-depreciated motorcycle values to calculate insurance premiums. Although Commerce changed its business practices in 2005, in an effort to comply with required rating procedures, the AG's investigation found that some overcharges occurred even after 2006.

All 19 motorcycle settlements stem from a consumer complaint that the AG's Office received from the owner of a 1999 Harley-Davidson Road King Classic. In each year between 2003 and 2008, the consumer's insurance company had calculated premiums for his motorcycle as if it were brand new, resulting in more than \$1,500 in overcharges. After identifying this problem at one insurance company, the AG's Office began investigating motorcycle rating practices across the Massachusetts auto insurance industry, and found the unlawful rating practice to be widespread.

In order to be eligible for a refund under one or more of AG Coakley's settlements, consumers must have purchased Comprehensive, Collision, and/or Limited Collision coverage for a motorcycle during certain time periods (typically between 2002 and 2010), and their motorcycle must have been overvalued by their insurance company. Commerce policyholders will be able to determine their refund eligibility using the **Attorney General's Motorcycle Refund Lookup Application** later this month.

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Consumers who have questions about the settlements or their refunds may visit the [Attorney General's Motorcycle Insurance Settlements FAQ](#) or call the Attorney General's Insurance & Financial Services Division at 1-888-830-6277.

This matter was handled by Mathematician Burt Feinberg, Investigations Supervisor Arwen Thoman, and Glenn Kaplan, Chief of the Insurance & Financial Services Division.

### DOI News:

#### DOI to Hold Hearing on Proposed Changed to CAR Performance Standards ...

The Division of Insurance has announced that it will hold a public hearing on proposed amendments to the CAR Performance Standards for the Handling and Payment of Private Passenger Motor Vehicle Insurance Claims by Assigned Risk Companies and to Performance Standards for the Handling and Payment of Commercial Motor Vehicle Insurance Claims By Servicing Carriers. The hearing will be held on August 7, 2014, at 10 a.m. at the offices of the Division of Insurance, 1000 Washington Street, Boston, MA.

The purpose of the hearings is to afford all interested persons an opportunity to provide oral and/or written comment regarding proposed amendments to the Performance Standards for the Handling and Payment of Private Passenger Claims by Assigned Risk Companies and to Performance Standards for the Handling and Payment of Commercial Claims by Servicing Carriers (collectively, "Performance Standards") adopted by Commonwealth Automobile Reinsurers ("CAR"). On June 18, 2014, the CAR Governing Committee voted to amend the Performance Standards. Pursuant to G.L. c. 175, §113H, the Commissioner must review, and approve or modify, the proposed amendments to the Performance Standards. The proposed amendments to the Performance Standards may be examined at the offices of the Division of Insurance during regular business hours.

This proceeding has been designated as Docket No. C2014-01. Any person who wishes to provide oral comment concerning the proposed amendments to the Performance Standards is requested to submit to the Division of Insurance a Notice of Intent to Comment no later than August 5, 2014. All other interested persons will be heard after those who notify the Division in advance of the hearing. All notices and submissions must be sent to the Docket Clerk, Hearings and Appeals, Division of Insurance, 1000 Washington Street, Suite 810, Boston, Massachusetts 02118-6200, [doidocket@state.ma.us](mailto:doidocket@state.ma.us) and refer to Docket No. C2014-01.

MAIA would like to acknowledge our 2014 Agent Awareness Campaign Diamond and Platinum company partners. Please support those companies that support the Independent Insurance Agent.

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