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- Understanding the myriad of coverage options available?
- Determining what coverage to quote?

Cyber liability is quite possibly the most complex area in the insurance business today. To make matters worse, it's also the fastest changing. It's almost impossible to keep up with everything on your own.

Part of the struggle that we all have with planning our continued learning is answering one question: what do I need to learn? Sometimes the answer seems obvious.

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You may have recently received an email or other notification from the New York Department of Financial Services (NY DFS) regarding its new cybersecurity requirements that became effective just over a year ago (on March 1, 2017). If so, some guidance as to how to respond might be helpful.

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Stop Selling Commercial Lines as if it was Personal Lines

Some prospect calls Agency X to insure their home and auto. The CSR gets the data required to determine the replacement cost on the house, asks about liability limits, and hopefully recommends appropriate endorsements (but probably does not in the real world beyond replacement cost).

Business A calls Agency X, or better yet, a producer in Agency X calls Business A. Let's name the producer "Joe." Joe solicits Business A and gets the opportunity to quote the account. Joe gets the replacement cost data for the building, maybe an equipment inventory, asks about liability limits, and maybe, hopefully, recommends certain applicable endorsements and workers' compensation coverages. Excluding the worker's compensation policy and the additional complexity of the building dimensions and contents, the producer is approaching the account just like a personal lines account. Some coverages are different. Liability limits are usually, hopefully, higher. Maybe more questions are asked to ascertain the business's exposures, maybe not though. I see many producers forego such questions.

This is how business after business after business ad nauseum is sold insurance. A whole lot of producers are asking, "What's wrong with this?"

Here is what is wrong:

1. Businesses have far more exposures and property is often minor compared to their liability exposures. But the focus is so often on the tangible property, just like in personal lines. But businesses live through cash flow and therefore, the primary focus of business insurance should be on coverages that protect cash flow. Many producers do not discuss these kinds of coverages, and if they do, they definitely do not explain them well because they do not understand cash flow well. The easiest target is business income. I cannot begin to count the number of producers I have met who hesitate to even discuss business income because they do not understand it.

Here is an easy solution: Take a high quality business income class!

2. Additional solutions include asking good questions to understand how a business's cash flow might be interrupted. Sure, a fire would be a problem but that exposure is usually relatively easy to address and damaging fires are rare. A variety of law suits is more probable and a GL policy does not cover all kinds of suits.

3. The owner dying or being injured severely on the job, driving for example, but not having worker's comp on themselves to save a few bucks might be a huge exposure. I saw an agency once almost go bankrupt because the E&O claim related to just this sort of situation. If you don't do it for your clients, maybe do it for yourself?
4. Understand the client's key contracts. I suggest that it is next to impossible to insure a business properly without knowing what that business's obligations are (by law or contract or regulation), whether the contracts are written and signed or if they are de facto obligations.

Key contracts include leases, employment obligations, security requirements (which may be contractual and legal), client obligations, vendor obligations, environmental requirements, or many other kinds of obligations. Personal lines clients do not have these kinds of contracts. Outside of car loans and mortgages, they really don't have contractual issues on a common basis.

The complexity and legal obligation differences require agents to not approach commercial lines like personal lines. Not only is it the better approach ethically, agents that sell commercial correctly increase profits!

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Knowledge by Folklore, by Bill Wilson

In one of my last blog posts of 2017, I mentioned that my blogging might be a little sparse into March because I was working on a book targeted for publication late this spring with the tentative title of "**When Words Collide...Resolving Insurance Coverage and Claims Disputes.**" I've completed the first draft of the introductory sections and the opening chapter called "*Policy Interpretation Basics.*"

In that chapter, I discuss an insured's duty to read the policy. Even more important is the *agent's* (or underwriter's or adjuster's) duty to read the policy. I share this story in the book:

Several years ago, I got an inquiry from an insurance agency's commercial lines manager who also had the Certified Insurance Counselor (CIC) professional designation. She wanted to know if a liquor store needed liquor liability coverage. According to her email [**emphasis added**], "***I was always told that unless you were in the business of selling liquor for consumption on your premises, you did not need to purchase liquor liability.***"

Just recently I viewed some agent professional liability statistics and noted a very similar claim that arose from the failure to provide liquor liability coverage for a liquor store. "Knowledge by Folklore" (aka, "I've always heard that...") is not how coverage determinations should be made.

Later in this chapter in the book, I provide my "10 Commandments" of insurance policy interpretation in the form of 10 "doctrines" that govern, or should govern, how coverage is determined or a claim is resolved, including:

Doctrine #10: Folklore is not Fact.

As the liquor liability anecdote I shared earlier in this chapter demonstrates, you don't make insurance policy coverage determinations on the basis of "I've always heard that..." The same goes for making generalizations about coverage and applying "rules of thumb." Words matter, specifically, the words in the insurance contract. And there are rules of construction and interpretation that must be followed. In the following chapter on "Legal and Contractual Principles," we'll explore many of those principles, precepts and practices.

The only antidote to this anecdote is **Doctrine #2: RTFP! Read The...Policy!**

Thanks to Mike Edwards, CPCU for the connection.

Bill Wilson

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Livin' in the Past

"...it's such a drag when you're livin' in the past" -- Tom Petty

I was conducting an E&O audit and as is common, the owners, staff, producers all lamented the loss of the good old days when company partnerships existed and agents could trust their clients. I am not sure when those days existed. When I was younger, I thought those were the days before my time. Now my experience covers most insurance veteran's "old days." Maybe the frequency of insurance company issues and clients' actions were less, but I don't remember it that way. I'd like to remember it that way but the reality I remember is not that different. Some of the most outrageous E&O claims in my personal E&O claim example file date back 25-35 years.

Lawyers have been filing egregious, outlandish, and frivolous suits ever since the second attorney passed the bar. The "good ol' days" are a trick of the human mind. The "good ol' days" are "good ol' days" because they are in the good historic distance making them safe, safe, and more safe. The future is scary, not the past.

But "Livin' in the Past" is far more dangerous than living in the future. Moreover, proactive risk management techniques can negate or at least minimize a generous portion of future risk on most points. I am really not sure what there is to fear of the future if good risk management is part of the toolbox and the tools are used.

I get pushback everywhere I travel regarding the future being as bright as I paint it, so I know agents' fears are real. I believe the desire for the good ol' days and the fear of suits may be a mask for the fear of not being able to meet the higher standards of care clients and carriers are requiring of agents. No question exists that expectations are rising. In some ways, agents will have to work harder and definitely differently. For example, commission for basically doing nothing on renewal will likely end. This is the extremely common practice of "renew as is unless the rate increases by X%."

(As an FYI, more than one agent has expressed anger with me for publicly "outing" them for doing nothing on renewals. I am not sure why they, or anyone, would think their practice is a secret and that being paid on renewals for doing absolutely nothing is money for nothing.)

I am not exactly sure how the end of commissions for this poor practice will occur or exactly when. It could be competition. It could be greedy carriers. It could be consumer expectations. My guess is the catalyst will be some combination of these three forces fueled by technology that will exterminate it.

Many agents know they do not know coverages. They know they do not really work renewals. They know they do not know how, after so many years, to learn coverages and work renewals. The lifestyle change would just be too challenging. They are scared and are wishing for the good ol' days. Instead of being proactive and at least learning coverages, they seem intent on trying to maintain status quo until retirement. There is nothing to be afraid of relative to learning coverages but I get how this affects their lifestyle. Changes to lifestyle is the real fear, not learning coverages in and of themselves.

I hate to be coarse with analogies but I'm not sure a fine analogy works. This is the same attitude royals of all ages have had when changes faced them. They were living well doing nothing while their serfs and subjects toiled in misery. Nothing was wrong then, or now, with working.

Similarly, in most every historic scenario, those not working but living richly were willing to fight hard to maintain the status quo because they had forgotten how to work. I'm not writing about self-made people but those who inherited lands and people. I get the fear but fighting for the status quo is an example of where energy is better spent learning coverages, learning to work renewals, and providing true value for your earnings and reaping the benefits, including the clients of your competitors that are deadly intent on fighting for the past or at least trying to hang on until retirement.

Living in the past is no way to live if you want to thrive in the future.

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Test the Depth of your Insurance Knowledge with the Academy of Insurance's Skills Tests, by Patrick Wraight

Part of the struggle that we all have with planning our continued learning is answering one question: what do I need to learn? Sometimes the answer seems obvious. You just moved from personal lines to commercial and you need to learn about commercial exposures, policies, etc. Maybe you have a client on the phone asking a question that you can't answer, so you need to learn something quickly to be able to answer the question.

We created our skills test for those times when we don't know what we need to learn next. We have four tests that are designed to let you know your level of expertise. We made the tests to be challenging on purpose. We asked detailed questions that require a thorough understanding of coverages and concepts in order to do well. We think insurance professionals are up to the challenge.

If you're interested in a broad view of all of the tests, you can find them at the [Academy of Insurance skills test page](#). Let's take a few moments and introduce you to the tests.

- The [Workers' Compensation Skills Test](#) requires that you understand what triggers coverage, how it applies to employees and independent contractors, how you handle an out-of-state exposure, and more.
- The [Personal Lines Skills Test](#) covers the ISO Homeowners coverage forms and Personal Auto Policy form. You might want to bone up on your definitions, valuations, eligibility, covered autos, and anything else you can think of related to these coverage forms.
- The [Commercial Property Skills Test](#) is a comprehensive review of the commercial property policy. You will also want to look at your business income and extra expense forms and endorsements such as the ordinance or law coverage endorsement, utility service endorsement, and leasehold interest coverage.
- The [Commercial General Liability Skills Test](#) will cover both the CGL and BAP coverage forms. Some important items to review are the CGL exclusions, CGL endorsements, business auto coverage symbols, and business auto insured status.

Here's the challenge. Take the tests and find out where you stand. You may learn that you know more than you thought you did.

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Insurance Journal's Academy of Insurance delivers specialized property/casualty insurance training to thousands of insurance professionals. The Academy's insurance learning products include on-demand and live webinars, a learning management system (LMS), facilitator guides, insurance books, skills tests, and on-site instruction. Academy is a division of Insurance Journal, the Internet's top-trafficked property/casualty industry news source. Insurance Journal is part of Wells Media Group, a business media company with a focus on the property/casualty insurance industry.

Cybersecurity Requirements, by Scott Lyon

You may have recently received an email or other notification from the New York Department of Financial Services (NY DFS) regarding its new cybersecurity requirements that became effective just over a year ago (on March 1, 2017). If so, some guidance as to how to respond might be helpful.

By way of background, the NY DFS cybersecurity regulations require financial institutions and insurance-related companies (including brokers and agents) licensed in New York to adopt written cybersecurity programs that meet certain specific criteria described in the regulations. All licensees were required to electronically file a Certificate of Compliance prior to February 15, 2018, confirming that the required policies and programs have been prepared and implemented, including but not limited to a comprehensive written cybersecurity policy, data access restrictions, and security requirements for your suppliers, vendors, or third party service providers.

Depending on the size of your organization's New York operations, you may also be required to draft an incident response plan and designate a Chief Information Security Officer (CISO) to monitor your organization's information security and report to key stakeholders. Additional DFS cybersecurity requirements triggered on March 1 (including a requirement to perform a risk assessment), with more regulations coming into effect in September 2018. While smaller organizations could qualify for certain limited exemptions, those licensees must electronically file a Notice of Exemption through the NY DFS portal. While the filing deadlines have passed, it is important to adopt these policies and certify compliance as soon as possible to avoid potential regulatory sanctions.

These new regulations put a substantial burden on insurance brokers and agents, who may not have the internal resources or expertise to perform a cybersecurity assessment or prepare the requisite policies. If you are licensed in New York and have not yet filed the requisite Notice of Exemption and/or Certificate of Compliance, or should you need help drafting the required policies or other technical compliance advice, the cybersecurity lawyers at Michelman & Robinson, LLP are available to assist. Please contact Scott Lyon at slyon@mrlip.com or (949) 783-4622.

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Chris Burand is president and owner of Burand & Associates, LLC, a management consulting firm that has been specializing in the property/casualty insurance industry since 1992. Burand is recognized as a leading consultant for agency valuations, helping agents increase profits and reduce the cost of sales. His services include: agency valuations/due diligence, producer compensation plans, expert witness services, E&O carrier approved E&O procedure reviews, and agency operation enhancement reviews. He also provides the acclaimed Contingency Contract Analysis® Service and has the largest database and knowledge of contingency contracts in the insurance industry.

Burand has more than 30 years' experience in the insurance industry. He is a featured speaker across the continent at more than 300 conventions and educational programs. He has written for numerous industry publications including *Insurance Journal*, *American Agent & Broker*, and *National Underwriter*. He also publishes *Burand's Insurance Agency Adviser* for independent insurance agents.

Burand is a member of the Institute of Business Appraisers and NACVA, a department head for the Independent Insurance Agents and Brokers of America's Virtual University, an instructor for Insurance Journal's Academy of Insurance, and a volunteer counselor for the Small Business Administration's SCORE program. Chris Burand is also a Certified Business Appraiser and certified E&O Auditor.

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Burand & Associates, LLC is an advocate of agencies which constructively manage and improve their contingency contracts by learning how to negotiate and use their contingency contracts more effectively. We maintain that agents can achieve considerably better results without *ever* taking actions that are detrimental or disadvantageous to the insureds. We have *never* and would not ever recommend an agent or agency implement a policy or otherwise advocate increasing its contingency income ahead of the insureds' interests.

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