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The insurance company ratings with which agencies are most familiar are primarily solvency ratings. They are NOT stability ratings and they *do not necessarily indicate future problems.*

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Shakespearean line from Julius Caesar when Cicero wisely states, "[But] men may construe things after their fashion / Clean from the purpose of the things themselves."

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The $3 Million Limitation

There's a reason 95% of agencies are smaller than $4 million.

The reason so few agencies, maybe a thousand or so out of 40,000, ever grow beyond $4 million in revenue is because the skills that enable a person to build their agency to $1 million or even $3 million are not the same skills required to achieve $4 million and more. A really good producer can build an agency on their backs to $2 or $3 million. The agency may be dysfunctional enough to give a circus competition, but a great salesman can still build an agency to at least $1 million.

Building to $4 million and more requires considerable skill beyond sales. Upon rereading the last sentence, a caveat is required. Building a *sustainable* business to $4 million or more requires considerable skills beyond sales. I have seen many agencies built to $4 million, even $10 million that were absolutely nothing more than houses of cards not even built will full decks. When money is so plentiful (the U.S. money supply has increased as much in the last 12 years as in the first 220 years) the most incompetent and most desperate often obtain the most money with which to invest in acquisitions. It's odd how that often works.

Building a sustainable agency business model that builds an agency beyond $4 million requires leadership and management skills not usually possessed by those who build their agency to the $3 million level. This is not a slight to anyone. To build an agency to $3 million, as a great producer, requires a rare set of skills. The two skill sets are simply very different.

A great producer, excluding surety producers, that can build an agency to $2 million or even $3 million mostly on their own production skills almost has to be a people pleaser. Clients and carriers must truly like and trust the person. One reason they trust the producer is because he or she pleases both carriers and clients. There is no way to build an agency this way without being really good at making these parties happy, which in turn means not upsetting people.

Not many humans can be extreme people pleasers to clients and companies and a hard-nosed business person to employees. Most of the ones I've met who could went too far beyond being hard-nosed to being downright cruel to their employees. In other words, most normal people are hardwired one way or the other and to build an agency to $2 or $3 million, most owners will be hardwired people pleasers. To build larger, an owner is not likely going to change their brains so bringing someone onboard wired differently and complementary that can manage people internally in a professional and objective manner is essential.

Managing 40 or more people successfully is simply not feasible for people pleasers because it is likely impossible to simultaneously make 40+ employees happy. A non-people pleaser has no trouble dealing with this reality. They understand the saying, "I do not know the key to success, but I do know the key to failure is trying to make everyone happy."

By the same token, a non-people pleaser may not be capable of the initial build. Together though, they can build a strong agency with the best of both worlds. Internally, the agency is run professionally with expectations that all employees, including producers, will follow the agency's procedures, they will achieve sales requirements, they will be a team player, they will do what is right for the customer, and the agency will achieve consistency in their operations, service, and quality. Externally then, the agency becomes an easier brand to sell to the consumer. The staff and producers still get the insights and sales leadership and the rose colored optimism that fuels the fun of the agency business.

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Inadequate Coverages

I am regularly asked by independent agents, "Why do I have such a high standard of care when direct/captive agents consistently get away with writing inadequate, even wrong and missing coverages?" The sense of frustration is huge. Assuming their point is correct for the sake of argument, the answer is that courts have generally held direct writers/captives/800 # writers to a lower standard of care. In other words, one standard of care exists for independent insurance agents and another standard of care exists for others.

This is a critical point for E&O and developing competitive advantages. From an E&O perspective, I am considerably troubled that so many E&O attorneys and some instructors do not seem to understand the different standards of care and from what I see in their articles and what I hear of their presentations, they tend to always argue the lowest standard. The best example I know derives from the Leonard v. Nationwide Mutual Insurance Company, United States District Court, S.D. Mississippi, Southern Division, August 15, 2006. In this case, a finding of fact was that the agent actually sometimes discouraged clients from purchasing flood insurance. This is an important point because the agency primarily wrote business along the gulf coast, the same coast that was hit hard by Hurricane Katrina. In fact, according to the case, Mr. Leonard asked his agent whether he should purchase flood and the agent opined "that the purchase of such a policy was not necessary." Mr. Leonard then did not purchase a flood policy. The court stated, "Fletcher's statement was advisory in nature, and the statement was made in circumstances in which it was reasonably foreseeable that Leonard would rely upon it. But there is no evidence to support the conclusion that this statement was made negligently. The statement embodied Fletcher's opinion, but it did not contain a reason for that opinion. In my view, Fletcher's statement was not a representation of existing fact, and it was not, in these particular circumstances, a misrepresentation of fact." (Source: www.leagle.com).

A key point in this case is the agent did not hold himself out to be a professional or to have a special relationship with the insured. In other words, when an agent is asked if an insured that has a clear exposure to flood needs a flood policy, and that agent only opines without giving any reasoning, the agent is not responsible. I do not see how such an agent relying on this defense could be considered anything but an amateur though. After all, what good is an agent that gives such a horrible opinion? (The court ruled it was an opinion, not advice.) This type of agent is typically coined an "order-taker" or a peddler.

So what happens when an insured asks a <u>professional</u> independent agent whether they should buy a specific coverage and the professional gives the wrong <u>opinion</u>? As a professional, the opinion might be considered advice. A professional giving bad advice most likely will lose the same suit. What defines a professional?

1. State statutes in some states define whether an agent or broker is a peddler or a professional.

2. Your advertising most likely will trump lower state standards. For example, if you advertise you are a professional, then for E&O standard of care cases, you will likely be considered a professional.

Any advertising that advises the agency will find the best combination of coverage and price, that will not leave any stone unturned, most any claim of expertise, accepting additional compensation (i.e., fees), acting as a counselor, advisor, expert, completing consultative sales, and so forth will likely put you in the professional category.

3. A longtime relationship can trigger the professional standard of care.

Other factors may also add to or subtract from the standard of care determination depending on the case and the jurisdiction. The key point is that different standards of care exist and most likely, the burden will be on independent agencies because they are more likely to advertise more professional services versus direct writers who are, in my experience, more likely to advertise price. So when you listen to attorneys discuss standards of care, make sure you know whether your agency will be considered a professional or an order-taker.

It makes perfect sense to me that independent agents should have a higher standard of care because being a professional is the independent agents' key competitive advantage. To fight the higher standard of care makes no sense. It is self-defeating to deny a great competitive advantage and it is critical that independent agents embrace this advantage.

Knowing what you are is crucial and is exponentially more important than an advertising campaign designed to compete apples-to-apples with firms spending $5 billion annually to advertise price and convenience. The opportunity absolutely does not lie with advertising for the same customers as these firms. Their clients are more transactional. A key element to the standard of care is longevity.

Transactional clients tend to have less longevity and therefore lend themselves to order-taker agents. It is a completely different market in every way, from E&O to service to sales to communication medium. Those firms are not advertising for long-term relationships upon which the client truly does depend on professional advice. Next time you see an insurance organization's advertisement, pay attention to whom they really are soliciting by whether they advertise speed and price. There’s a reason they do not mention professional standards.

If you do want to compete with those firms spending $5 billion annually and compete with them as a peddler to reduce your E&O exposure, absolutely do not advertise that you are a professional. Again, your advertising generally trumps any case law or statutory law. In other words, if you advertise or act as a pro, you are going to be considered a pro in court. Historically I know many agents advertised professionalism but acted as order-takers and got away with it. This was because no one ever read the agencies’ paper brochures. Insureds may not read your electronic advertising either, but when they incur an uncovered loss, their attorney surely will read your website and advertising.

Crucially, every agency must decide whether it will be a professional or a peddler for E&O and competitive reasons. The opportunities as a professional, and living up to professional standards are fantastic because the true competition will be limited. Few will practice what they preach (advertise) until they are sued or otherwise scared. Embrace this opportunity and advertise all you will do for your clients and then do it. The market to which this advertising will appeal is much more limited and therefore, advertising costs will be reasonable and yet the profit margins are much better. Done well, the E&O costs are even less, productivity is greater, retention is better, and overall profitability increases.

Or if you really want to be a peddler, do so but quit advertising you are anything but a peddler. The opportunities for this model can be good too if executed well. The last place any agency should hope to find themselves in court is straddling the line between a professional and peddler. It will feel like the medieval torture where two horses facing different directions would pull a man apart. It is your choice. Will you be a professional or an order-taker?

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People Pleasers

I've received many thoughtful comments from agency owners regarding my article on their people pleasing personality traits. The term, "people pleaser" resonated with them. They could relate to the weaknesses this term embodies relative to managing their people. They could see how so much of their stress and difficulties as agency owners/managers is directly cabled to their people pleasing character.

For those readers who missed the article, a short recap will help. Most agency owners, barring inheritance, became owners because they are great salespeople. Most really good salespeople are people pleasers. This trait makes sense. Consumers do not generally want to buy insurance from producers with difficult personalities. Think of the sales pitch from:

1. A person who's obnoxious
2. A person who loves to argue
3. A know-it-all

Who wants to buy from a person who is loud and inappropriate? Or a person who wants to argue every point? Or a person who never listens but just tells the prospect how much he or she knows? One of the joys of selling is the rush of knowing someone likes and trusts you enough to buy from you.

The catch is that being a people pleaser is usually not a desired characteristic for leaders and managers. First, pleasing all employees all the time is impossible. Second, when a job needs doing and an employee is not doing it, how can a people pleaser constructively address the situation without risking confrontation? Third, people pleasers may make sales to clients, but do they get the best deal from carriers? I cannot begin to describe the billions of dollars agents have left behind, walked away from, because as people pleasers, they could not ask companies for more money. The tiny risk of an adverse discussion was too much for them to handle.

This people pleasing nature is a leading reason approximately 99.8% of all independent insurance agents generate less than $10 million in annual revenue. Even many of the largest agencies got large through acquisitions, not good management. Quite directly, when people pleasers do acquisitions without having someone that can have such difficult conversations, their problem is exponentially made worse because now many of the people being managed have no loyalty. This is a key reason many acquisitions subsequently realize a departure of the best people.

Outside of acquisitions, I am not sure much size can be achieved in this industry if the key managers are all people pleasers. This does not mean anyone has to be mean or underhanded or biased or flippant or sadistic to manage people successfully and grow successfully. Many people pleasers can be coached to learn to provide constructive criticism without anxiety attacks. It is ok as a people pleaser to provide constructive:

1. Criticism
2. Guidance
3. Discipline

Developing a formal method based on objective measures is particularly helpful. Such a process eliminates fear. The manager does not have to fear the employee will think they are being subjectively mean. The objectivity creates security and it makes for better feedback to the employee/producer too. I have helped many people pleasing agency owners develop these programs.

If emotionally, constructive criticism and difficult conversations are beyond the agency owner's ability, then the only solution is to hire a manager that can have positive but tough conversations with employees and producers. Nothing is wrong with admitting such tasks are beyond you. We all have our own strengths and weaknesses. The key is finding the right people and developing the right skills that enable the manager to do an important job with little emotional turmoil while simultaneously benefitting the employee and thereby building the agency.

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What happens if...

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Industry trade publications are awash in feel good stories and DIY "I built my agency this way" stories. Those stories sell magazines. Real people usually, at some point, have real problems but real problems don't sell a lot of magazines and a very real problem is a substance abuse problem or even a criminal issue facing an agency owner. Such a problem is tragic for anyone but the problem is worse when it happens to an agency owner because their failure hurts a lot more people.

The best solution, as is often the case, is a proactive upfront solution. Producer contracts and buy/sell contracts with provisions for these situations is best. I try to convince all my clients to include provisions in their contracts. Unfortunately, few agencies have adequate, if any, such clauses in their contracts and if the agency only has one owner, my point is rather moot anyway. For most agencies then, here are solutions from two perspectives.

Employee's Angle
If the situation is bad enough, leaving is your best solution. I completely understand how hard it is to leave friends and even clients. I understand how hard it is to abandon the owner if he/she is otherwise a really good person. However, if their problem is bad enough, leaving is inevitable and the only question is timing. Inevitably clients will leave, and then employees and then the agency will be sold or it will implode. Protecting your own self is important.

If the situation is currently moderate, pray. I don't make this suggestion lightly because everyone needs guidance in tough predicaments. If you have a special relationship with this person, you may be able to assist, to slightly move the person in the direction of finding their own solution. Every person and situation is obviously different and the key is to not take on responsibilities that are not yours and to avoid becoming an enabler of more bad behavior.

Protect yourself first because they have a problem for which you have no responsibility no matter how much you care for the person. They have to resolve to address their problem. No one can do it for them.

Partner/Key Executive Angle
Enabling behavior is the key and it is a razor's edge fine line. On the one hand, if you enable their behavior, they have less incentive to address their illness because you are effectively covering for them. On the other hand, if you stop enabling their behavior, a different cascade of trouble may descend.

Partners often feel trapped in this Catch-22 scenario because their partner's problems do become their problems. More than one agency has failed because one partner had a gambling problem, a drinking problem, a drug problem, or even problems relating to young employees--usually females. Where does the partner draw the line and with what do they draw the line? With what the line is drawn may be more important than where the line is drawn.

Is the line drawn with chalk? Is the line the edge of Damocles' sword? If the person is a functioning abuser, a chalk line might suffice. A hard, sharp line might be more efficient. I'm not a psychologist or a counselor but I've spent many hours and days trying to save and salvage agencies owned by people with these problems and I've seen what their professionals did. My experience is that a functioning abuser may still listen to reason if a hard, sharp line is drawn. The manner in which this crucial conversation is had varies per the professional's advice. Maybe one-on-one or maybe a full intervention is best. The key is a tiny window of opportunity exists.

If the abuser is no longer fully functioning, the agency is faltering, your reputation and the value of your shares are falling, a chalk line will rarely suffice. These people are likely so far gone, desperate and scared though that a hard line may push them over the edge taking you with them. At this stage, the partner literally cannot live with them and cannot live without them.

The most drastic solution is breaking up the agency. Depending on the buy/sell agreement, this may only be mildly traumatic or it may be devastating. Partners who do this, who leave their former partner, usually recover and eventually reach new heights. But for three to five years, life is an emotional rollercoaster.

Some partners with the patience of Job just wait it out. This is a morbid and risky strategy because the question exists of whether the partner or the agency will fail first. Another option is to ask for outside assistance. The first and most important goal of outside assistance is helping the clean partner. I've heard these partners describe how they have not slept for weeks and months. A good counselor helps them find peace and not take responsibility for problems they did not create. With peace comes better solutions.

A quality counselor will also give the guidance necessary to have the crucial conversations that effectively draw lines made of Damascus steel but with the least probability of blowback. Ideally, they will help the abuser find rock bottom through words because rock bottom they must reach.

My heart goes out to everyone dealing with this situation. No painless solution exists. I hope that in some little way, this article helps you begin pain management and take the first step, the most difficult step, to finding your agency's solution.

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Upsetting Insurance Company Executives Without Even Trying

I have caused many insurance company executives to become terribly upset by simply emailing clients a notice of the insurance company's downgrade. I have also asked some company executives reinsurance questions or some specific aspect of their financials and they have practically accused me of heresy just for daring to ask a question. By simply pointing out standard, even boring recommended E&O practices that involve notifying insureds that their carrier lacks what is considered a stable rating has caused executives of some of those companies to become apoplectic. I never thought it possible to answer a question, a one sentence question, with a nuclear physics length thesis like these executives can do. The way they will twist and turn and totally separate the subject at hand from their explanation is truly an amazing venture. It reminds me of the famous Shakespearean line from Julius Caesar when Cicero wisely states, "[But] men may construe things after their fashion / Clean from the purpose of the things themselves."

Age has a few virtues. One such virtue is the time to assimilate experience. In every single case where a company executive(s) has become so upset, whether I knew so at the time or discovered it later, the company had serious problems. Now I know that when a company executive gets so upset, their fury and threats are meant to hide a serious problem. They are trying to bluster and bluff their way past discovery. Company executives without serious issues do not seem to ever get too upset in these situations, and just once in a while, they let me know they appreciate my comments even though I am not trying to do anything for or against them.

I am just trying to make my agency clients more successful and trying to protect them by giving them more knowledge. Company executives should not read anything more or less into the situation. For example, by the time I share a notice of a publicly published downgrade with my clients, the company already has known their problem would be published for weeks or even months. Three or four industry publications have already likely published the story. So I am not sharing anything that is not immensely public. One company was so mad that I had sent a copy of their downgrade that they demanded a retraction of their own downgrade! I offered to publish anything they wanted to say and their response? They copied the rating company's downgrade notice and asked me to send it out! Absolutely unreal. They were sold a short time later.

The executives in these cases misconstrue simple points on purpose. They take a simple question and then begin implying that I have accused them of everything from being insolvent to cheating on their spouse. I am only exaggerating slightly. A question such as whether a policy is assessable in any way whatsoever is a reasonable question. An agency needs to know so they can properly advise clients. A question such as, "Why are you not rated by A.M. Best?" will set off a Byzantine explanation.

A question for an executive of a poorly rated company such as, "Do your agents need to notify their clients they place with your company that you are not rated by A.M. Best?" or "Do I need to notify the insured this policy is assessable in some way shape or form?" will often result in company executives giving everything but a direct answer or in the rare cases they offer a direct answer and that answer will be "No!" My suggestion for agents in these cases is to obtain a personal hold harmless.

Why is this important to agents? Agents' best interests in these situations is usually (though not always and when not is a subject for another article) doing business with stable, highly rated, companies. This is because most agencies' E&O exposures are then manageable. Often their E&O policies' insolvency clause almost forces them to ignore any other carriers.

While agencies are not typically held responsible for the financial analysis of their carriers, they may be held responsible for procuring insurance from a stable company. To my knowledge, no definition is explicitly given of "stable" but the common standard is the company be rated at least a B+ by A.M. Best and possibly at least a BBB by S&P. This standard may have derived from the same standard, with exceptions, listed in many agency E&O policies.

So when an agency places an insured with a lower rated carrier, the agency would be prudent to verify their E&O policy covers them. Each policy is different and some E&O policies have higher minimums. The agency would also be prudent to advise the insured because some courts have found agencies have a responsibility to notify insureds if the agency knows or should know a carrier is inadequately financially stable. When a carrier lacks a rating, common sense suggests this is usually indicative of a possible financial stability problem or at the very least, the lack of a rating gives the agency nothing upon which to rely and therefore, the agent should at least consider advising the client that the agency has no clue if the company is financially stable since the company completely lacks any rating.

I am not suggesting this disclaimer will not upset the carrier. It might even upset the insured and it might even cost the agency a sale, especially if the competition does not disclose the same issue. I am suggesting that disclosure is the best way to protect the agency.

I have seen more than one unrated company become upset that I am advising my insurance agency clients to notify insureds of the carrier's poor rating (or lack of any rating). When this happens, the company likely has other problems. No matter how unfair the carrier executives claim A.M. Best to be, and I have heard many such claims, when the carrier executives fight hard against notifying insureds, they are not protecting their own agencies. They are trying to protect you know what.

Similarly, good E&O practice is to notify insureds when their carrier is downgraded. The real world importance varies by line of business, the severity of the downgrade, and so forth, but notification is a good practice. So the company executive who blows a gasket when their downgrade is published is not acting to help the agent. Again, the agency wanting to protect its own interests and the interests of their insureds, should notify the insureds.

This is where agents really need to protect themselves. Companies are not going to protect you. Even if they did give you a hold harmless, if they go insolvent, what value is the hold harmless? For some readers, you will be wondering why I am writing about something with such low frequency. Insurer insolvency is a severity issue, not a frequency issue. Other readers will wish I would be more explicit because they are quite concerned about their carriers. They are doing business with one or more unrated carriers or carriers that have unique clauses, which includes some health insurers. My suggestion is to never take the lack of a rating or any kind of accessibility clause lightly. We're going to see more of both and not all such situations are easy to identify. Agents will need to become more educated on these subjects and truly understand their carriers' structures, especially given how many new carriers are being created using atypical structures. By no means is this industry, in this sense, the same as it was 20 years ago. Protect yourselves.

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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 20 years' experience. He is a featured speaker across the continent at more than 180 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, 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.

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