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A Correction!

In a prior article, "Are Regulators Regulating Well?" (February 6, 2026), I incorrectly stated that reinsurance is included in surplus. It is not. I should have said that reinsurance is considered, by many, including some rating agencies, as a substitute for surplus.

I apologize for the mistake, and "Thank you" to an astute reader for pointing it out!

A Great Podcast!

For anyone concerned about PE buying insurance companies or anyone curious about the more complex aspects of how some insurance companies "create" surplus, listen to the "Next Financial Crisis?" episode of Steve Eisman's podcast, *The Real Eisman Playbook*: <https://youtu.be/a7MM0UnQ4o4?si=ap1vWt6JCrpEq0FW>

I disagree with one of his statements, however. He states that the bottom hasn't fallen out yet, but it did with the first PE acquisition of a life company, Executive Life. For an in-depth look at those



events, read *These are the Plunderers*, by Gretchen Morgenson and Joshua Rosner, regarding the 25-year-long debacle leaving policyholders with nothing.

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What value actually applies?

Numerous white papers and articles have documented that following a catastrophe, the vast majority of buildings are likely materially underinsured. I don't believe any reasonable debate is left on this point.

Carriers are forgoing substantial revenue by underinsuring property. That, by itself, begs a question about why they are so willing to forego so much revenue. In some cases, street-level intelligence indicates that a couple of carriers are doing so intentionally to gain market share. They have nothing to offer if they cannot cut the price by underinsuring the property. In other cases, it is clearly, to me, a situation of incompetence.

A large portion of the problem lies in the fact that real-world exposures have greatly outpaced the industry's ability or willingness to keep up. In particular, this involves ordinance clauses and, in some cases, foundations. Historically, ordinance exposures were minor issues, mostly affecting older homes and buildings, and primarily related to electrical upgrades 30 years ago. That is far from the case today when soil removal is now an ordinance issue, not to mention the numerous green energy requirements. Standard policies do not adequately account for these factors, and neither agents nor carriers are adequately educated to address the additional ordinance coverage required. In fact, where in the world can anyone get a replacement cost estimator that includes ordinance compliance? Or separates ordinance from standard replacement cost? As far as I know, the industry does not provide any such thing.

I heard someone say that property models work well now. Not if they don't address ordinance.

Another problem exists: the wording in regular policies. When I teach property classes, I usually ask my classes to tell me what the key words mean. But in many property policies, carriers either fail to define key terms or deliberately avoid doing so. "Actual Cash Value" is a prime example.

In a recent review of policy forms, one carrier defined ACV as the amount paid after accounting for wear and tear. "Wear and tear" is not defined. Also, who gets to determine what the "wear and tear" is? In another section, the form stated it would be the replacement cost less depreciation. What is the definition of "depreciation"? The form at least gives an idea of how depreciation is defined, stating that it reflects the age, use, and condition at the time of loss. Even then, those are very subjective judgments.

Moreover, depreciation has many definitions. There are multiple objective accounting definitions of depreciation, but policies rarely use any of those. For example, I have an old tractor. It works very well, and the paint looks great. I don't think it should be depreciated whatsoever because its 30 years of use, i.e., "wear and tear," has had no discernible impact on it. But what do you think a carrier will consider depreciation on a 30-year-old tractor? I know this is not a building, but I hope this simple example helps illuminate the problem with the word "depreciation".

Another example is that even before depreciation is considered, one large carrier states that ACV will be determined based on the value of the covered property at the time of loss, prior to depreciation. Who determines the value of the covered property prior to the loss and prior to depreciation?

I'm not a conspiracy theorist, but when an insurance company can set a low initial value and then depreciate that property using some subjective measure, what is the probability the insured will receive what they think their building is worth? Especially if the building is underinsured from the get-go?

I don't usually write about specific policy language because others write about this subject more effectively than I do. However, ACV presents a precise example of poor, ambiguous policy language that gives carriers the upper hand at claims time.

What are the solutions? The right solution is to eliminate such obviously ambiguous language. And for anyone thinking, "But ambiguity works in favor of the insured!", shelve your thoughts. Ambiguity only works in favor of an insured who possesses the time, energy, and often money to fight a claim. Otherwise, ambiguity does not work in the insureds' favor most of the time.

Good agents, not order takers, are the key to solving these situations. Here are steps to take:

First, learn your coverages. This means thinking through the words. Read and understand the definitions. Identify key words that are not defined. Hardest of all is to identify what is missing that should have been included. This is only possible with experience, a lot of education, time to think it through, and maybe new AI tools.

Second, do not be afraid of calling the claims person at the company (not the underwriter!) to learn how they define terms. Agents always tell me they called the underwriter for this or that explanation. Underwriters might help, but they generally have no authority. Just because they tell you this means that, it does not mean much of anything unless they give you a manuscript endorsement. The better person to call is the adjuster or claims manager. They have the authority to interpret policy language, and they will do so when adjusting the claim. This makes them the person to call.

Be sure to document their response.

Third, it is imperative to learn to communicate these problematic ambiguities to your clients and prospects. Order takers cannot explain anything but price. A good agent distinguishes themselves by developing communication skills to explain policy language and by giving insureds a better basis for choosing their insurance solutions. An order taker causes an insured to choose based on one variable. A good agent helps insureds understand that a lower premium is often correlated to less coverage or ambiguous coverage (ambiguous definitions mean ambiguous coverage). Then let them choose the balance best for them between coverage and price.

Given that the majority of property is materially underinsured, educating clients and giving them choices also protects your E&O. Because, when a house burns and the insured cannot afford to rebuild, they're going to sue someone.

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Plaintiff Attorneys and Insurance Carriers

Have you ever seen a suspense movie with unexpected twists of who is on whose side? Or a spy movie where two enemy states find some reason to work together to destroy some other third party?

Well, that is sort of what happens between plaintiff firms and insurance companies. On the surface, they spend a ton of money convincing the public and courts that they are mortal enemies. However, both achieve greater success when plaintiff firms prevail, provided the wins are not so significant that a carrier becomes insolvent or faces financial difficulties.

The value to the plaintiff firm in winning is rather apparent. But what is the value to an insurance company? The losses cause the carrier to increase rates. When rates increase, especially when all key competitors face the same pressure, revenues increase. When

revenues increase, the carrier executives look like they are great leaders. Sure, they have losses, but if they can increase rates slightly faster than losses, their profits increase too.

And indeed, carrier results follow this trend. Net premiums written have increased faster than consumer inflation and claims cost virtually every year since the credit crisis. I might expect really fast claims cost inflation, but the carriers are increasing rates even faster. Furthermore, an increase in GDP does not explain the difference because premiums are also increasing faster than GDP.

Carriers benefit from the plaintiff's bar. The worst thing that could happen to insurance companies is the elimination of the plaintiff's bar. If the threat of legal liability were eliminated, no one would need to buy liability coverage. The only issue is moderation.

This alignment between carriers and plaintiff firms may explain why insurance companies don't pursue tort reform as vigorously as agents and other business lobbies do. Many carriers really couldn't care less about risk mitigation, loss control, tort reform (within limits), and so forth because all those activities decrease the need for insurance.

The only time insurance companies generally care about loss control and risk management is when they believe they can use it without other carriers successfully copying them, thereby enabling them to reduce their rates slightly below the market rate. This makes their offerings appealing to consumers, and the carrier retains the additional profits.

I find that the best agencies are 100% emotionally connected with their clients. While agents also benefit from increasing rates, I don't know many who celebrate having to sell the sky-high rates. Maybe in some big shops the emotional attachment is diluted so they enjoy astronomical rates, but I find most traditional agencies do not. They are more than willing to take less commission if they can offer a lower rate and good coverages.

Agents' lobbying groups also work hard, not always effectively, but they work hard to convince legislators of the need to promote tort reform and stronger building codes. Carriers also like stronger building codes, provided they are not forced to discount rates.

When agents' interests are more closely aligned with consumers' needs, a significant opportunity is created. Instead of focusing on insipid commercials advertising price (and there is no doubt that price is more important than ever), focus on and advertise that you, as an independent agent, can and will be the consumer advocate against insurance companies and the plaintiff bar.

Independent agents have this option, whereas other agents do not. This is because independent agents, by default, already work on behalf of the insureds, unless their carrier contracts override this option. Other agents work strictly for the companies they represent, so as an independent agent, you should consider making this point.

If agents really want to step it up, they can go further. I know all the E&O defense attorneys and most instructors and auditors will cringe (keep in mind, I'm an approved auditor, an authorized instructor, and have been an expert witness on these matters) at the idea of meeting the professional standard of care. Go the extra mile and truly be the advocate (within the boundaries of your carrier contracts).

This means identifying exposures and exploring options beyond buying an insurance contract that transfers part of the risk. It means potentially becoming adequately educated in alternative risk transfer so you can place your clients with low exposures and great risk management in these alternative markets. Become technically competent so when carriers deny coverage for claims that should be covered, you exhibit deep knowledge and you can articulate your point clearly and professionally.

Stop working for commissions while you are at it. If you go to fees, your E&O standard of care goes to an extremely high level. But in my experience, the best agents don't need to worry about this because through their work, the odds of their clients incurring uncovered claims are materially lower. A high standard of care is only a threat to incompetent peddlers of insurance, especially to those who pretend they're professional.

Fees done correctly, and every state permits fees when done correctly per that state's rules, pay better than commissions. Furthermore, it demonstrates to clients you are on their side because you don't receive higher compensation if premiums increase. We are back to the alignment of interests between the insured and the agent. This also fosters a stronger sense of teamwork when interests are aligned, especially when the team is opposing the large forces of insurance companies and plaintiff attorneys. Beyond the additional revenue, you fight fewer battles in this model. It is just a better path for the professional agent and their clients.

For more information on how to step it up, contact me at chris@burand-associates.com.

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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 and 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 35 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 the Insurance Journal,

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Burand is a member of 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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