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#1:

If you receive calls, emails, advertisements, etc., from people wanting to sell your agency, here are a few quick points to consider based on very expensive mistakes I've seen agencies make:

- If they advise their service is free, they're not working for you. No one works for you if you are not paying them.
- If they are a broker advising they'll do an agency valuation for free:
  - Make sure they aren't sending or using the data in any way, shape, or form. Remember, if it's free, you are being used.
  - If you go ahead and obtain that valuation, remember, it will not likely hold up in court or with the IRS or really anywhere. These reports do not meet any of

the required standards.

- Buyers are experts. They buy agencies every day. You are an amateur because you are selling your agency exactly once. Pay the money and hire an expert. With multiples as high as they are, you'll make plenty of money. Don't be penny-wise and pound-cheap.

#2:

Many agencies and carriers are struggling to grow in this very soft property market. Economic reports suggest that the U.S. GDP is being so heavily driven by AI and data center construction that if your agency is not insuring clients in this space, you are likely pushing two stones up the hill. The first is soft pricing. The second is your clients are not growing, maybe shrinking, so you are not getting an exposure lift either.

The strategy to overcome this requires both offense and defense. Defense is required because competitors contact your clients and accuse you of overcharging, not marketing their account enough, and not working hard enough. Think it through: Have you worked hard enough? If you have, are you simply a victim of the market changing so quickly that your competitors are predatory? If so, get in front of all your other clients IMMEDIATELY! And you had better be using some form of coverage checklist or GAP analysis because the predators are going to use their AI platforms against you.

Your offense strategy is obvious. You must find new clients or, at the very least, work with existing clients to spend some of the savings gained in a soft market on buying better coverage to address the GAPs competitors will use as proof you're incompetent.

#3:

Hopefully you and your clients never need the following information, and maybe your state courts will decide differently, but in case you have clients choosing questionable carriers to save money, it might be worth pointing out that EVEN IF the state guarantee fund eventually pays their claim, a possibility exists that it will not pay the entire claim.

A few weeks ago, a Florida court ruled that a $75,000 hurricane settlement was not fully covered by the guarantee fund. An important note is that the carrier had already agreed to pay the $75,000 but went insolvent before the check cleared. This turned the claim over to the guarantee fund. The $75,000 claim had three components. The first was $37,500 for home damage. $22,500 was for the homeowner's attorneys who had litigated to get the claim paid in the first place. $15,000 was to a former law firm that had filed a lien against the homeowner relative to any settlement (as I understand it).

The court ruled that the guarantee fund likely only owed $37,500. The guarantee fund only owes what the policy covered and nothing else. Further review is needed to dissect the fees and determine whether the guarantee fund should cover any of them.

Florida's property market has been a mess forever, and homeowners often did not have better choices. When a choice exists, try to steer your clients toward the safest carriers. Guarantee funds are dicey at best.

Chris Burand
Certified Business Appraiser (CBA)
Certified E&O Auditor and Instructor
Burand & Associates, LLC
HC 66 Box 605
Mountainair, NM 87036
719/485-3868
chris@burand-associates.com
Visit us at: burand-associates.com

Ethics: What's the ROI?

A recent white paper by Chantal Roberts discusses how carriers that understaff, inadequately train, and/or rely excessively on automation create material issues. She makes the case that better management and leadership benefit carriers and insureds. I highly recommend reading her white paper: "The ROI of Claims Staffing and Education: How Skilled Adjusters Make Carriers More Profitable," by Chantal Roberts.

I believe Ms. Roberts is correct in her conclusions. I do not believe all carriers manage their companies using the same measures, though. Whether they are being penny-wise and pound-foolish is maybe a matter of debate.

Either way, the general thought process is:

A major carrier decided to hire adjusters that were "good enough". This is similar in some ways to that of a hamburger flipper. As a teenager, I flipped hamburgers. We cooked the meat almost to order, so striking a balance between having hamburgers ready for customers and not having so many ready that they would go to waste was a challenge. Some people were far better than others at estimating and managing this process, which was mostly the teenager's discretion. One guy in particular was really talented. He almost always had hamburgers ready, and his waste percentage was the lowest.

Was it worth paying him materially more? Management decided it was not worth a few extra dimes per hour. Wastage and customers waiting for their meals cost less than paying him more.

This particular insurance company made the same decision about adjusters pretty much on the same basis as the fast-food franchise. They are applying an economic theory, explained 40 years ago by the economist Carl Shapiro and further detailed by the great, late economist Daniel Kahneman. Mr. Shapiro identified that, at scale, companies will cut corners in ways customers cannot detect until after the purchase. The company will put some of the savings made by cutting corners toward just a low enough price to entice customers to buy from them, and they'll pocket the rest.

Cutting corners by hiring "good enough" adjusters is a perfect example. The customer will not know about the corner-cutting until well after their purchase. They probably will not even associate their "savings" with their poor claims service. The corner cutting is perfectly hidden.

This same carrier hires good enough agents charged with selling everything from homeowners insurance to commercial insurance to investment products. Technically, it is not impossible for an agent to be competent at selling all these products, but realistically, it is. The result is a person who may be great at selling snake oil but has no real idea whether the product fits the client, and the client will not know until claim time.

This saves quite a bit of money, around five full percentage points based on this company's financial filings, and the "good enough" is hidden.

And I can verify anecdotally, this particular carrier is writing a lot of new business they otherwise could not afford to write. In other words, they're saving enough by cutting corners to reduce their prices to the point that customers are moving their accounts.

What is the solution? Mr. Shapiro's main message is that you must find a way to differentiate your quality from your competitors' corner-cutting and reduced quality. You must show why your premium pricing is worth it. The airlines have had difficulty achieving this, but Delta seems to have done so, with United in second place. These might be good examples to study because what Delta has achieved is difficult and impressive.

A simpler, though still challenging solution is to build a boutique brand. Get out of selling insurance and get into protecting clients. Protecting clients is a much broader umbrella and valued by clients more. Insurance is only one part. By doing so, you diminish the importance and emphasis on commodity insurance sales. And this approach is far more enjoyable for those with higher ethical standards, though not without the frustration of trying to change perspectives.

When Ignorance Meets Reality

I was working on an agency's E&O claim when the following happened: The agency's attorney read the contractual clause to the agency owner and producer. The clause was direct, with no grey area. The attorney explained the facts as he knew them regarding the clause and asked whether his understanding was correct. The producer and agency owner agreed the facts were correct. The attorney then suggested they settle because the agency was clearly wrong.

The producer declared that in all his years, he'd never heard of any such contractual requirement and that he would never abide by that clause because it would make his job impossible, and therefore, he needed to quit, or some reasonable jurist needed to delete that clause in all contracts.

The attorney asked me how long I thought that clause had been in common use. I advised that it's in almost every contract I've reviewed over nearly 40 years, and it happens to be a very logical clause. Ignorance met reality.

The producer's ignorance had no negative impact for years. But that does not mean the other party did not enforce the contract, and therefore, his ignorance does not change the contract. Ignorance of the law is not a valid defense against being subject to the law. Contract law does not differ that much from criminal law on this point, especially when the clauses are straightforward and simple to understand, as this one was. The producer was ignorant because he had never attended a quality E&O class, or he hadn't listened and learned in one.

And moreover, case law on this point hasn't changed in at least 40 years, in my experience. It is a simple and long-standing clause common in most similar contracts. This is what makes it a perfect example of ignorance because legitimate alternative interpretations do not exist. He was just ignorant, and when reality hit him hard with an E&O claim, he became irrational.

I see other versions of this daily, though not usually so cut-and-dried. I have seen it multiple times when agency owners violated trust law. They had been spending money that wasn't theirs for years, and when caught, they acted like they were the victim. They declared no one had ever told them they couldn't spend their clients' money.

I see it when producers must face the fact that they have no idea what the policy wording they've been selling for years says. I see it when producers don't tell insureds the implications of workers' compensation for employees working out of state and then claiming, "Why didn't someone teach me this?" My retort: "Why didn't you learn it?"

I see this regularly when I point out a law and my clients, and often their professional advisors (accountants and sometimes their attorneys), ask if they can ignore the law without repercussions or risk. I've had clients deny that laws apply to them because they thought the laws were stupid. They decided to pretend they didn't know those laws existed (particularly tax laws and sometimes labor laws).

I see this often with producer contracts that almost certainly violate tax law. So far, I haven't had an attorney say, "Thank you for pointing this out." I also haven't had one offer to refund my clients their fee for writing a contract that violated the law, and these are truly black-and-white, serious errors.

Psychologically, people are not well-designed to be confronted with anything that requires them to change their behavior or practices. The clause the producer viscerally hated meant he had to tell his clients to change their behavior, and he was scared to death he'd lose them if he advised them correctly. He truly preferred to take his chances that nothing bad would happen if he allowed them to remain ignorant. It is an understandable reaction. The agency owners who misappropriate clients' money do not want to admit they committed a criminal act, which prevents some from returning the money before being discovered.

The producers who blame others for not educating them don't want to take responsibility for their own education. They prefer a helicopter-parenting or nanny-state environment to avoid personal accountability. It's less work.

The attorney who writes contracts for which they're completely unqualified wants money and the prestige of having clients think they can handle any kind of contract. It's easier.

Being educated and doing things the right way is hard work. It is tiring. It is frustrating. It presents all kinds of other difficulties, particularly from a producer's perspective of educating clients who really don't want to be educated. Producers feel vulnerable because they know competitors will be pitching easy street, hiding reality from the customer, and knowing the customer may fall for the con.

I'd like to say that it's just time to grow up in many cases, and it is, but that never results in anyone growing up. Maybe I should direct them to Kübler-Ross's Five Stages of Grief and suggest counseling. They did not suffer a tragedy or death, but it is the death of a long-held ignorance. It may seem flippant, but reality is not what they thought it was, and they liked the fantasy world better.

Everyone must figure out how to best deal with these situations themselves. Sometimes I've been so frustrated when confronted with a new personal reality that I've researched the subject extensively to learn if there are alternatives and to understand how I could have misunderstood it in the first place. But I try not to merely reject what I am being confronted with.

If you are a manager and you have these situations, I wish I had better advice for you other than to become a counselor and carve out hours from your already busy schedule to let your employee talk themselves straight. They have to work it out for themselves, and reflecting back on Kiebler's Five Stages of Grief is a decent outline for those discussions. I just don't know where most people would find the time and patience.

A more proactive solution is education. The state of education in the insurance industry is miserable, which only creates more and more of these situations. A good manager, though, will insist and pay for constant high-quality education because the only way to minimize ignorance is through life's mistakes and education.

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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, American Agent & Broker, and National Underwriter. He also publishes Burand's Insurance Agency Adviser for independent insurance agents.

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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please e-mail AgencyAdviser@burand-associates.com.