

Burand's Insurance Agency Adviser

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New Agency Intelligence Podcast with Jason Cass!

Chris and Jason discuss solving this crisis for the future so it never happens again!

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COVID-19 is the fifth major disruption I've experienced in my insurance career. While the going is rough, professional agents come through the tough times to realize greater success when the sun shines again. I'd like to help you be one of those agencies that comes



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Playing Games?

If a carrier advises they have reduced capacity, need to raise rates, etc. due to COVID-19, ask if they're covering the COVID-19 claims. They will almost certainly advise they are generally not covering those claims.

Ask them why they need to raise rates if they are not paying the claims. Legitimate reasons exist, such as loss of surplus, a big book of event cancellation coverage and so forth. However, raising rates without paying claims is an indication of some type of

through this more successful than ever.

I am working with agencies through Zoom to develop solutions and strategies to deal with today's difficulties as well as create greater success for the future. Sample topics include E&O issues, coverage issues, agency management, potential legislative impacts, and sales opportunities. A contact form and a full list of potential topics can be found at <https://www.burand-associates.com/looking-ahead>.

underlying problem. It is worth knowing such a problem exists. I expect some carriers will use the virus as an excuse to raise rates even if they don't pay COVID-19 claims.

I encourage you to constructively, not cynically, let them know you are paying attention to their actions. You might also want to reward those that are best positioned to weather this crisis. It takes a lot of work and patience to position an insurance carrier for difficult market conditions.

Now is The Opportunity for the Best Agents to Shine

As everyone pours over policy language for definitions of civil authority and virus exclusions, this is a great opportunity for Professional Agents to shine, even after the fact. But, let's first define "Professional Agents".

Professional Agents are agents who care so deeply about their clients they take the time, energy and expense to learn coverages in detail. These are the professionals. Everyone else is some level of peddler. Peddlers may care a lot, but not enough to learn coverages and options and opportunities for alternative solutions. As Bobby Knight was widely quoted, "Everyone has the will to succeed. Few have the will to prepare to succeed."

The definition of Professional Agents are agents that have the will to Prepare to Succeed by learning coverages deeply and learning true risk management, not the plague of faux risk management going around -- a virus in and of itself.

The Professional Agents will have already learned or will soon be learning business income so deeply their clients will either have the coverage during this COVID-19 pandemic or they will not be surprised they do not have it or they will learn what to do going forward. Regardless, E&O claims and disappointed clients will be minimized. While amateur agents are fighting claims over the next ten years, the Professional Agents will be taking their business.

The Professional Agents will be working, even after the fact, to help their clients recover. Even if the business income policy did not respond, a true risk manager will already have developed the tools, and in fact will have already built the warehouse kit containing advice, tools, means to help clients recover quickly. I know that I've built that tool chest for my clients and my clients that have listened hard over the last five or ten years have their own tool chest ready to go. As one said to me last week, "I do not really have much to fear because I've covered every angle I can think of and in the end, my agency will be doing well, maybe even better."

Even if an agent is still aspiring to be a complete Professional Agent and had not yet learned business income entirely (no one ever does), the journey goes on. Now is the time to learn more. You might think the cow is out of the barn, but only if you don't go and get it. You can still catch success even in a situation where maybe you did not offer the right advice and coverages -- IF YOU WILL DEDICATE THE EFFORT TO DO SO NOW!

You may be thinking it is too late to offer better coverages. In some ways it is but let's think positive about offering the right coverages going forward! Now is the time clients will listen. Now is the opportunity to provide advice that literally would result in solid business income coverage and no employee layoffs! That coverage is totally feasible if you are willing to work hard and learn a lot. Only professionals aspire to this level and are willing to put in the work.

One clue is this: Don't rely on industry standard forms and then say, "Well, coverage does not exist!" That is lazy. Professionals are first and foremost, not lazy.

This is just one example of agency centric "Be Prepared" program I encourage you to do and I am offering to only my professional clients.

Then, complete a "Be Prepared" program with your clients. This is what a true Risk Manager will do. Time is a factor but the opportunity to build true relationships with clients is right here, if you care enough to take the time to help them avoid future catastrophes.

If you are a Professional Agent with the will to prepare to succeed, contact me about my "Be Prepared" program. We can work together to make your organization and your clients stronger!

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E&O and COVID-19 Claims

While some law firms are laying off and partners are taking pay cuts, two kinds of law firms seem to be reviewing summer boat catalogues: Lobbyists and Plaintiffs.

Regarding whether coverage exists for business interruption claims, let's get past the argument common to two-year olds where the answer to everything is: "No." This argument is pointless on multiple levels:

- There's only about a jillion different insurance forms so any kind of uniform answer to whether coverage exists expresses a high degree of excessive simplicity. Professional coverage reviews are specific to form and situation, not speculation.
- The dollars involved are far too large and if going bankrupt, what does an insured have to lose by suing?
- A strategy will be to sue and hope to settle for something.

For these reasons, at the least, agents absolutely should not make the mistake of telling insureds they have no coverage. That would be E&O mistake #1.

Claims already are being filed for other coverages such as D&O, general liability, worker's comp and even medical malpractice. And whether COVID-19 is the proximate cause, the economic downturn will result in other kinds of claims, as downturns do. To therefore tell a client they have no coverage, without being extremely specific to a given form would be an even worse mistake. They may have coverage under other forms for different aspects of this pandemic.

Under these other forms, at the least, their defense coverage may be the most important aspect of their policies. Is their defense inside or outside policy limits?

And where policies provide no coverage, E&O policies might. I suspect a large increase in E&O claims will occur. Whether agents lose those claims is another story. If history holds true, agents will win the vast majority of the claims filed but get prepared. Those agencies that had good procedures, who followed those procedures, and who used coverage checklists well should come through this especially well.

It might be a good idea to review with your producers and staff your E&O carrier's guidance on what to do if sued. That sounds pessimistic but in past catastrophes, the volume of E&O claims, including really baseless claims has been extensive. The baseless claims are often the worst. My recommendation is to not make a baseless claim payable due to the lack of preparation, the lack of instruction resulting in someone saying the wrong thing.

There is a human tendency in times like this to think of Doris Day (she's a few generations back so if you don't know her, Google her) and her song, "Que sera, sera." "Whatever will be, will be." More pessimistic people will throw their hands in the air and think, "It's too late to do anything now so sue me!" I encourage readers to tighten their quality controls now. Don't make a bad situation worse. There is a lot on everyone's plate but make time for improving quality. These suits and the suits still to be filed by actions agencies take next week will be mitigated with better quality control today.

On the brighter side, a lot of normal risks exposures are decreasing so significantly that loss ratios should improve significantly in many lines, excluding claims specific to COVID-19. The frequency decrease is what will decrease losses and with less frequency, the odds of other E&O claims will decrease too. These two opposing forces may cancel each other. A serious possibility exists that 2020 loss ratios will be excellent in many major lines.

If you would like to arrange a short class on E&O mitigation and expectations in this environment, contact me at chris@burand-associates.com.

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Fools for Teachers

"If you are self-taught you had a fool for a teacher." -Mark Twain

This is one of my favorite quotes. It explains many of the reasons so many agencies fail to grow. The owners and leaders are self-taught in growing their businesses. They are self-taught in using their management systems, doing the highly unique agency accounting, managing people, managing carrier

relationships, and managing almost everything.Â

Managing a business should not be a DIY project and DIY projects are almost universally taught by fools. I've done so many significant DIY projects and screwed up most. I remember one of my first such projects. Nothing was working. I called my father-in-law across the country for help. He told me to rush downstairs and shut everything down before I blew up the house! After shutting everything down and figuring out if he was overstating the situation, I realized he'd understated the situation. It was a close call!

I will never, ever forget to be sure pressure valves are installed the correct direction again!Â I was self-taught. I was a fool. But the lesson is one of the stickiest educations I've ever received. Being self-taught, going to the school of hard knocks provides a great education because it is so painful, so difficult, and so hands-on. The hands-on aspect is why this education can work, but it is painful, and the teacher is a fool.

What if you could get that hands-on quality education without the pain? What if you could get unforgettable lessons without being self-taught? What if you could have the best of all worlds?

Burand Insurance Education has developed the solution: Three Dimensional Training®. This coverage training is completely designed for hands-on, deep, memory muscle education.Â It is hard. People have to work, but the results are fantastic. My firm is seeing producers outsell their peers by 3 to 1 and this is not even a sales program! Moreover, E&O exposures decrease and client satisfaction increases.

If you are ready for the value of self-training without the pain, contact me today.

If you are interested in learning about business income in a proactive, interactive environment, contact me today to learn more about Burand Insurance Education's world class business income program at: chris@burand-associates.com.Â



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Is your business plan based on luck?

Most insurance is sold poorly. That is not a judgment or an opinion. It is a provable fact and based on all the E&O audits I've completed and education classes I've taught, the facts are clearly visible. Not much doubt can exist if one looks at the data unemotionally. (Some people confuse an agent's ability to sell insurance coverage correctly with selling coverage correctly -- two different facets.)

Insurance sold poorly, over and over and over again, is evidence of a business plan founded upon a presumption of perpetual good luck. In Greek, Tyche was the goddess of fortune, chance and fate. The Greeks understood that fortune and luck were intertwined: there's a 50/50 chance that some event would

be really good or really bad. The Greeks actually understood luck more accurately than modern humans do who attribute all good luck to their skill and all bad outcomes, luck or otherwise, to anything other than their own attribution.

Insurance sold poorly, is defined as not making much of an effort to determine what specific coverages a client needs. If an agent does not know what coverage they need, odds are about 0% the client will buy what they need. To not make the effort to identify those exposures and sell the applicable coverages means the agent is hoping the insured never has an uncovered claim. Maybe you are a seer and can see accurately into the future which claims clients will not incur. Your ability to see into the future is a huge time saver enabling you to not have to discuss any coverages that will never come into play. With this ability though, you should probably run an insurance company.

Otherwise, the sale is based on the hope the coverage you did not offer is a coverage they will never need. When this happens thousands and thousands of times, one has an entire business based on hoping that thousands and thousands of clients will never need the coverages your people failed to sell them. It is a weird business plan that demands everyone have the same needs because of the failure to learn what customers actually need. In some ways it is the epitome of Henry Ford's statement, "Customers can have any color they want, as long as it is black."

Running a business founded on the premise that inadequate coverage will be sold daily with the hope that coverage gaps will never be triggered by an actual claim is truly bewildering. It is no wonder new insurance players feel so strongly that they can eliminate many agents. Even if it is true that some InsurTech players and direct writers are not selling the right coverages, they are employing a different version of the same strategy except for two important differences.

The first is that their standard of care is probably lower than that of traditional agents. From an E&O perspective this difference matters. The second is they can sell inadequate coverages more cheaply than traditional agents. Even if an agent's standard of care is lowered, their cost structure remains too high. In the race to the bottom, assuming those claims of inadequacy are correct, the low-cost provider will win. I wonder if any other industries exist where so many strategies are based on offering inadequate services and products hoping clients never notice? I sometimes get the feeling many doctors and attorneys act on this premise. Do you want to do business with or be treated by these kinds of practitioners? Having been treated by quacks with medical licenses, I certainly don't want that experience again.

Technology and money and consolidation are cracking the foundations of agents who operate by hoping their clients never need the coverages they failed to sell. The new technology that the plaintiff bar possesses combined with the ability of private equity to invest in lawsuits is likely a game changer alone. Also, the fact that most insurance policies are written to protect 1960's exposures versus 2020 exposures is a problem in and of itself. It will be interesting to see how Coronavirus claims will impact the industry. I suspect that some suits will develop from clients that needed certain kinds of business income coverage that was available, but their agents failed to offer.

Following the Credit Crisis an important book was written by Nassim Talib. The book, *The Black Swan*, is based on how no one in the western world ever considered the possibility that a black swan could exist until they discovered Australia. A "Black Swan" event is a rare event with significant consequences that is possibly predictable but unpredictable in detail and timing. The Coronavirus may be a good example of a

Black Swan event because experts knew such a virus was likely to occur at any time. They just did not know when, where, or how bad it would be. To some extent, the Coronavirus was inevitable, but could be termed a Black Swan event anyway.

Insurance was designed for Black Swan events. Insurance is designed for highly improbable losses that occur with no predictability. Not being able to predict when an insured will incur a claim and exactly what kind of coverage an insured will need at that moment is why insureds should be offered the coverages they need for the exposures an agent would know exist if they took the time to discover those exposures. To not offer those coverages is in some way a business strategy with a cornerstone based on hopeful good luck and may also be indicative of playing God. One is kind of playing God through omission indicated by silence that insureds should not worry about such and such a claim because it will never happen. The Black Swan event will never happen -- so don't worry about it and don't buy insurance for it.

Not only was insurance designed to help people when bad things happen in bad ways, it was designed purely for bad luck. If all anyone ever has is good luck, they don't need insurance.

Insurance is designed for bad luck, large bad events, that occur randomly and the exact nature of the eventual claim is not predictable. To counter all that Greek Fortune, a methodical approach to learning clients' coverage needs and offering the applicable coverages is one's best strategy and a great way to build an entire business. Going forward, will the cornerstones of your organization be hopeful luck that your clients never need the insurance you did not sell or offering clients the coverages they may never need but if they do, you will be their hero for helping restore their lives and businesses? It is your choice. What will it be?

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Let's Make Lemonade out of Lemons

The COVID-19 pandemic is certainly a huge lemon thrown into our lives, the economy, and most likely E&O claims. I do not believe the common line I am hearing that "no coverage exists" is the right response, especially for agents, to give clients. In fact, agents should not tell clients they do not have coverage, ever, and especially now. Let's assume there is no coverage and discuss the likely E&O claims anyway. We **can** make lemonade out of these lemons.

One of the top errors agents commit is trying to help clients get claims paid and/or telling them coverage for a claim does or does not exist, etc. Don't! Stop! Don't let anyone in your organization pretend to be a claims adjuster. This is not your job. You are, in fact, prohibited for all practical purposes from performing this job! The insurance contract is between the insured and the carrier. The agent is not a party to the insurance contract, so you have no right to interfere.

That said, following up on claims, making sure the adjusters remain timely and maybe even helping some of the adjusters read the policies correctly (behind the scenes) are all good actions. You can be proactive within a narrow scope as an agent.

Major, top of the list allegations that insureds typically make against agents, and I can see this really being

the case relative to COVID-19, are of failure to procure appropriate coverage or limits and failure to advise the client of policy exclusions or limitations.

For a fact, almost all businesses, non-profits, and even governmental entities are realizing they do not have adequate business interruption insurance. The question is whether the agent should have procured appropriate coverage. Hindsight is definitely, to me, a different view from foresight. Additionally, finding business interruption coverage specific to COVID-19 for regular insureds was most likely nearly impossible. It may have been impossible, but I'll use the conditional word, "nearly" in case it was available in some corners of the industry and also excluding potential case law that discovers an opening. (The potential for case law to develop whereby coverage is discovered is another reason agents should not tell clients there is no coverage, because in the event coverage is identified but the client did not file a claim, the agent might incur a serious future E&O claim.)

The issue of failing to procure adequate limits is potentially a different situation relative to general liability and D&O. Failure to procure adequate coverage might also be an issue with workers' compensation. The broad exclusions applicable to business income and property insurance might not be so broad relative to these forms and limits.

However, let's say that the coverage was not available and therefore, the agent's failure to procure adequate coverages and limits was the equivalent of a failure to procure the impossible and is therefore a moot point. That leaves the question of whether the agent failed to advise the client of material policy exclusions.

This brings me to that critical, ever-present fork in the road and maybe to that old proverb dating back to Tudor times regarding not being able to have your cake and eat it too.

One of the leading allegations and most common errors defense attorneys witness is agents who hold themselves out to be experts, specialists, and I'd say risk managers when they are just common agents. Without going into standards of care by state and those details, I believe it is safe to say, generally, that an agent who is acting just as an agent and who emphasizes the warning, "You must read your policies and advise if the coverage is correct and adequate and so forth and so on..." is not holding himself/herself out to be much of anything other than an order taking agent. The fork in the road is whether one wants to just be an agent or if one likes the sexier and often more lucrative "risk manager," "expert" or "specialist" titles. The latter titles mean the standard of care is much, much higher. While an agent may not have any responsibility to advise their clients that they don't have this or that coverage, that same bottom of the barrel standard of care most likely does not apply to risk managers, experts, and specialists.

You can't have your cake and eat it too. I have witnessed a lot of sales consultants telling their clients to advertise themselves, the producer, as a risk manager. However, 100% of the time they failed to explain the far higher standards of care to which they are likely to be held. Offering far superior advice to clients is awesome but having the ability and knowledge to offer that advice comes first. What the sales consultants have backward, because they know selling business insurance correctly is so difficult, is that the title of "risk manager," "expert" or "specialist" does not come first. The knowledge comes first. Giving people this title as soon as they get a license is putting the cart before the horse, and I am thinking those agencies that have done this may have significant E&O exposures.

I don't think people claiming to be risk managers, experts, and specialists can hide behind the disclaimer, "You have to read your policy..." There is a fork in the road. Both directions have advantages. One is not inherently better than the other for everyone, but you can't have it both ways.

This brings me to some sweet lemonade. I haven't seen a better opportunity in the last ten years for true risk managers to excel. True risk managers know their coverages, procedures and risk management techniques (to be a true risk manager vs. a fake one, one has to have deep knowledge of coverages and risk management). I am personally having a blast working with people willing to put in the hard work to learn their coverages and risk management approaches. It is fun, and they are typically outselling their competitors by three to one. Their E&O risk is much lower too because they are truly covering all the bases, not just pretending to cover the bases.

It is funny how, when a person knows their coverages extremely well, risk management comes so much more naturally, and E&O exposures decrease while sales increase. This is the way to make lemonade out of the lemons with which we've been dealt. If you are willing to put in the hard work to be a true risk manager and massively increase sales, contact me. It's a lot of fun.

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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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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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