




March 2015




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Sales & Leadership Conference Starts With A Bang by Tom Chamberlin

The 2015 Leadership Conference hosted by the Young Agents of Montana started off with a bang courtesy of National Young Agent's Chairman, Mr. Quincy Branch.

Branch traveled from Las Vegas, NV, to kick start the conference at our opening lunch session. Branch touched on what the National Young Agents committee has been up to and where he sees the insurance world going forward with some possible changes in this 2015 legislative year.

Coach Van Diest kept the positive energy flowing with his inspiring team mentality message. Coach did a nice job incorporating his football philosophy with



regards to our changing insurance world. Recruiting new talent, maintaining an even workflow, keeping an eye on the future, and finding ways for the whole team to succeed. We see this in our everyday lives;

as I may sell a policy but it takes my whole office to help process and service that client.

The afternoon session dealt with a special message...How to maximize relationships and referrals, presented by Dan Weedon with Toro Consulting. This was a great group

discussion, as Mr. Weedon incorporated our entire days work into a simple message: listen to our clients carefully, ask relevant questions. *(continued on page 2)*

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The Young Agents gathered at the Lewis & Clark Brewery for a relaxed networking session with our carrier partners. This was a well timed event as we all were ready to get down to business with the folks that give us the ability to do what we do, our carrier partners. It takes an army of them to help us all perform our independent insurance agents roles.

I think the fun meter tipped the scales as we moved from the brewery to a fine hospitality suite at the Great Northern Hotel. Happy to report that all survived and attendance was adequate for our final session on Tuesday morning.

The sun rose a little early that morning but Lynne Lovell performed our CRIS class session, and Dan Weedon taught risk management and strategic crisis planning. Both classes were well received. A big Thank You to Lynne and Dan for their time.

The final lunch session was topped off by the Speaker of the House, Austin Knudsen. He delivered a great message on what is going on this session and how he thinks it will play out.

Jesse Laslovich finished off with some key insurance bills being discussed on the hill and Bob Biskupiak capped off what the Big I office has been focused on.

Thank you to everyone that attended and a special thank you to all of our carrier partners that helped with our conference. We need all of you to make this a positive success and that truly was the case.

Thank you all,
Tom Chamberlin
Chairman
Montana Young Agents.



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The Bakken and Workers' Compensation Coverage

by Dennis Gambill

The Bakken oil patch has provided great opportunities for employment for numerous workers. With work opportunities naturally goes the need for workers' compensation insurance coverage.

While the Bakken region encompasses both Montana and North Dakota, the majority of employment occurs in the latter state. Workers' Comp coverage availability is quite different between these two states! Employers need to be aware of those differences so that coverage gaps do not occur.

First, how coverage is obtained is very different. North Dakota is a **monopolistic** state fund. This means that coverage is only available for employees in North Dakota through the North Dakota

Workforce Safety & Insurance. Coverage **cannot** be purchased through private insurance companies. That is illegal!

North Dakota also does not allow **self-insurance**. Because of North Dakota's laws, certain advantages of a standard workers' compensation policy have to be handled in a different manner. While Coverage A - Benefits of the workers' comp policy is the same under all of the states-"as directed by state law", Coverage B - Employers Liability, must be purchased as a separate item.

The usual method is to add this coverage by a **Stop Gap** endorsement to the employer's Commercial General Liability policy. Care must be taken that the coverage is at least as comprehensive as provided by

the standard workers' comp policy. Also, part C - **Other States** coverage becomes vague and nearly non-existent. Therefore, a ND based employer has to be very aware of other state jurisdiction and various reciprocal agreements.

Montana, on the other end of the spectrum, is a **competitive fund** state. Private insurers are permitted as well as self-insured employers. Workers' Comp can be purchased through a private insurer or through the **Montana State Fund (MSF)**. The latter is also referred to as the "guaranteed fund" and, with certain exceptions, must insure anyone who applies.

In Montana benefits are the same for both private insurers and MSF, "as directed by State law", but special care must be taken when considering "**Other States**" coverage. The MSF is not as liberal as a private insurer might be in allowing automatic coverage in a 'listed' "**Other States**" insurance state.

(As a note of explanation here: When a workers' comp policy is first written, Coverage A lists the employer's primary work state and any other state that operations are currently ongoing. The Coverage C part, "**Other States**" is used to list those states in which the employer thinks he may have a future exposure. The best way to use this section is to list: **All Other States except those listed in Coverage Part A, and the Monopolistic States.**)

This latter wording, "Monopolistic States" will

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encompass both neighbors, North Dakota and Wyoming! (Yes, Wyoming also has its own rules and regulations, and YES, it is also illegal to write private workers' comp in Wyoming).

Jurisdictional issues are obviously paramount when it comes to workers' comp. Each state has its own rules and laws and compliance can be complicated. A multi-state employer must therefore be very aware of extraterritorial issues.

An employee may have a selection of remedies: benefits may be piggybacked; jurisdiction specific statutes or extraterritorial rules, case law, common law and tests may limit or expand benefits!

Montana and North Dakota have a reciprocal agreement—that is, they will reciprocate each other's extraterritorial provisions, which is basically a way of honoring workers' comp coverage from the other jurisdiction for workers' of that other jurisdiction-in their jurisdiction on a temporary and incidental basis!

Basically, it helps eliminate duplicating workers' comp coverage on employees temporarily out of state---sort of!

Montana code 39-71-402 "**Extraterritorial applicability and reciprocity of coverage-agreements with other states-rulemaking**", gives some guidelines

and has a special exception for those out of state workers engaged in the construction industry, as defined in MCA 39-71-116.

North Dakota, in its "**Coverage requirements for out-of-state Employees**" has a "**significant contacts**" provision, which defines the circumstances when the other employer may be required to purchase coverage with **WSI**, the ND fund.

Partially circumventing this issue is the provision that the 'significant contacts' test does not apply if **your business** has a reciprocal agreement **in place** between Montana and ND. Reciprocity agreements are for a limited amount of time so they must be monitored closely. This point also applies to the State of Wyoming, since they are also monopolistic and reciprocity agreements are in force with that state.

I've covered only some of the differences between our neighbor state regarding workers' compensation coverage. There are other considerations that each employer must address before hiring or taking current employees into any other state.

Jurisdictional rules are unique to each state. Make sure your insurance advisor and legal counsel are aware of potential 'other states' operations before you start. Penalties for noncompliance are severe! Your firm could be held responsible for the same benefits "as directed by law"! [Return to table of contents](#)



Could your agency survive?

Recently, industry news publications covered the settlement of the largest E&O claims that we've have heard - a whopping \$48 million claim. That's bigger than the total written premium that some agent's E&O programs write in a given calendar year.

The claim involved a broker being sued for failing to secure coverage requested. The underlying policy driving the claim involved international political risk coverage stemming from an Argentina natural gas operation.

At this point details on this claim are scarce but it is a good reminder to agents to reevaluate the limits of liability carried as well as an opportunity to think about some things your agency can do to mitigate E&O exposure.

E&O claims are not settled overnight they can take several years to settle and in general an accident year is fully mature sometime around the eighth year of development. It is a considered a long-tailed business.

Avoiding claims altogether can save you from a long and stressful ordeal. While an E&O carrier with plenty of expertise and experience may make the claim process easier, you are still involved in assisting them and following the proceedings. It can detract from focusing on your core business.

In addition, the length of time from when an incident occurs and when it finds its way to the agent's doorstep may be awhile so make sure your agency

maintains an appropriate records retention policy.

Finally, it is good policy to make your E&O carrier aware of any incident that may reasonably give rise to a future E&O claim. Many E&O carriers will consider the incident reported under the current policy year, which is beneficial for eliminating potential gaps in coverage from known prior acts when you are changing E&O carriers.

There are so many potential areas within the procurement of insurance where an agent can make a mistake. These areas include failure to procure the coverage requested, not offering adequate limits, and not reviewing the applications.



Failure to procure coverage can be looked at on macro and micro levels. On a macro level a best practice for agents is

to review the individual's or business's operation to determine their potential exposure to loss and any prescription of coverage available to transfer that exposure.

Agents can use risk exposure checklists and questionnaires to get a better understanding of the client's operation and insurance needs.

On a micro procurement level, the insured may specifically ask you to add someone or something to coverage, in which case you must make sure that the addition is made and coverage is procured.

The accurate completion of applications by the client is another area to carefully address. It is prudent that

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agency personnel review all new business and renewal applications prior to forwarding to the carrier in a timely manner.

Misrepresentations on the application can provide an opening for primary carriers to deny claims; and we know that agent E&O claims are generated as a second resort to lack of primary coverage. Keep an eye out for questions on applications that ask about prior claims or losses of the customer. You may realize that a client has a claims history and they incorrectly completed the application.

Another thing to consider from a risk management perspective is to be careful how you market your services. Quite frankly, this is a balancing act because you want your marketing materials and website to be eye-catching and to attract clients, but you also don't want to over promise above your current skill level. Holding yourself out to have special expertise may bring a higher standard of client care depending on the state.

So could a \$48 million E&O claim happen to your agency?

Do you have adequate limits on your E&O policy to insure the long-term viability of your agency?

The limits that your agency carries depend on the agency itself. You ultimately need to make that decision in a similar way in which you work to assist your clients.

A couple of guidelines to consider are: the make up of your book of business including the maximum limits of the exposures that you write, the mix of personal and commercial lines, and the territory of risks. You should buy as much insurance as you think you can afford.

Big "I" state associations offer high limits, including an Umbrella product that also goes over the agency's primary E&O. (Contact [Mike Sell](#) at 406.442.9555 x104 for more information)

The reality is that E&O claims are going to happen. They can happen even if your agency hasn't done anything wrong. The key is putting your agency on the best footing to avoid claims and to defend those that are made.

Create a culture within your agency that embraces E&O risk management. Assigning someone within your agency to review files to make sure proper and consistent procedures are being followed from a quality control standpoint will instill an E&O mindset that can help you avoid E&O claims.

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Nominations are now being accepted for the 2015 National Outstanding CSR of the Year. This award is the highest honor for insurance customer service representatives who have distinguished themselves through contributions to their industry and profession.

This contest is open to everyone regardless of affiliation or professional designation. Candidates must:

- Be an insurance customer service representative, or have primary responsibility for customer service duties.
- Write an essay of no more than two pages double-spaced (approximately 1,000 words) on a topic, "In the current insurance agency environment, the meaning of the term, 'Customer Service Representative,' has frequently been replaced with

the terms 'Account Manager,' 'Account Executive,' 'Client Service Advisor,' etc. In your judgement, is there any important difference in the meaning of these titles in terms of one's knowledge, expertise, compensation, and responsibilities? Do you believe these different titles make a difference to your clients, coworkers, and insurance companies?"

- Submit letter(s) of recommendation from a professional reference(s).

To make your nomination, please complete the [nomination form](#) and email, mail, or fax it today so your nominee may be contacted. NOTE: You may nominate yourself. All essay entries become property of The National Alliance, inclusive of permission to reprint.

Deadline for all materials (including essay) is May 1, 2015.

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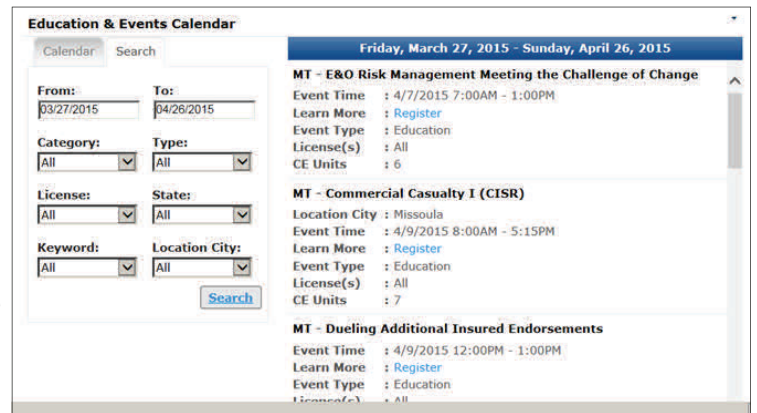
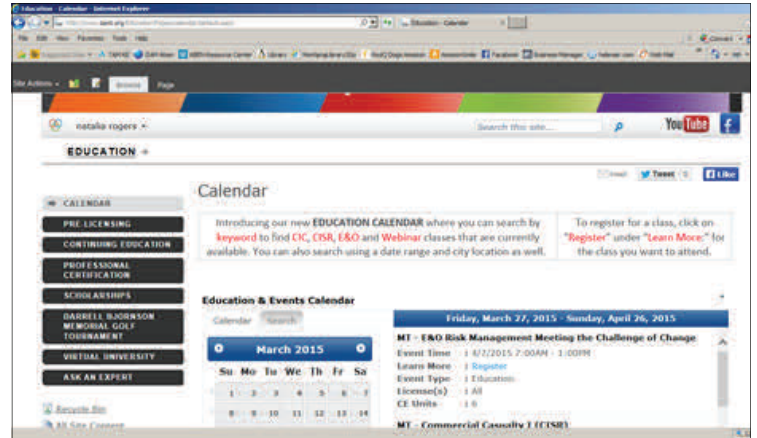
Have you seen our new [website](#) look? Along with a cleaner, fresher layout, we've added some additional calendar options to help you find classes faster.

In the left hand column there are two tabs you can switch between. The default tab is "Calendar", which shows the current month and the next month. You can use the arrows to change the months.

The second tab is "Search". You'll have the ability to sort by quite a few criteria. We're really excited that you'll now be able to search by date range, keyword (ie, CIC, CISR, Ethics, Commercial), and location city!

In addition, this [calendar](#) will now feature our online courses available through ABEN and our national association webinars.

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Education News

Montana will be offering two CIC institutes and a Ruble Graduate Seminar in 2015.

[Personal Lines Institute \(CIC\)](#)

May 20-23, Missoula

[Ruble Graduate Seminar](#)

August 5-7, Kalispell

[Commercial Property Institute \(CIC\)](#)

November 4-7, Billings

The CISR schedule has started, the next class is:

[Commercial Casualty I](#)

April 9, Missoula

Our national webinar schedule is heating up with

[ISO CGL Property Damage Exclusions](#)

May 6 (webinar)

[Data Breach, The New Wild West?](#)

July 15 (webinar)

[ABEN Webcasts](#) are offered multiple times per month. Topics include:

- Errors & Omissions
- Additional Insured Endorsements
- Certificates of Insurance
- CL or PL Claims That Cause Problems
- Ethics in Today's Changing Times
- Home Based Business Exposures
- The Personal Auto Policy
- Rental Cars

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