

Anatomy of an Errors
and Omissions Claim

Rick Pitts, Vice President and General Counsel
Arlington/Roe & Co., Inc.

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How it Works: A Linear View

1. Six different pieces of information or events will be revealed chronologically
2. You will be working with limited information and limited context – it will be a bit frustrating
3. Each time, as information is revealed, review it and decide its importance.

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How it Works: A Linear View

4. Each time, answer the questions:

- ✓What E&O concerns do we have?
- ✓What should we do? Not do?

5. **Take brief notes and then compare your concerns with others as we discuss together after each one or at each moment in the events.**

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How it Works: A Linear View

6. At the conclusion of the six pieces of information, we will discuss the outcome of the real case on which it is based.

7. But first, a bit of background...

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Background

- You are the management team / operations team for the Fleetwood Mac General Agency
- Fleetwood Mac General Agency was started and is owned by Michael Fleetwood
- FMGA is headquartered in Landslide, Fleetwoodmac

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Background



This was ultimately settled on as the corporate logo...


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Background



Because THIS was rejected as not sending the right "message"

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- Strong in transportation, high value homeowners, general commercial
- Not-so-strong but present in professional lines and brokered (not binding) business
- 40 Year Old GA
- \$122,000,000 premium in 2014
- Now has 65 employees in three other states:
 - Sara, Tusk
 - Gypsy, Mirage
 - Songbird, Rumours

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FLEETWOOD MAC

- The commercial lines side is managed by John McVie
- The personal lines side is managed by Lindsay Buckingham
- Your group has been asked to supervise and review the work of young Stephanie Nicks

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FLEETWOOD MAC

- A talented young professional...
- With a flair for the dramatic, but....
- The typical subdued fashion sense so common to the insurance industry...



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CASE ONE ROUND ONE

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Email from Steve Rinkov to Stephanie

Steve Rinkov

To: Stephanie Nicks (snicks@fm-ga.com)
Sent: April 15, 2015 4:14 PM
Subject: Ack! Need new policy

Steph:

Coliseum Entertainment has stepped up to the big leagues! They've got a deal to provide the entertainment for a "Fan Appreciation Day" for the Mirage Trojans early next month. past. Can you get me a quote on this asap?

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Email from Steve Rinkov to Stephanie

Mirage is requiring a \$5M CGL, and additional insured endorsements, and Coliseum's BOP carrier won't write it.

You know these guys – you've done the few special events where we've had special insurance for them. It's the same stuff as before – they'll truck in the equipment like Tiny Tots Ferris Wheel, the carousel, the slides, bounce house. Usual.

Warm Regards,
Steve

Stephen Rinkov, Principal
Vito-Rinkov Insurance Agency
Gypsy, Mirage

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Stephanie's Response

From: Stephanie Nicks (snicks@fm-ga.com)
Sent: April 16, 2015 09:55 AM
To: Steve Rinkov (steve@vitorink.com)
Subject: RE:Ack! Need new policy

Steve: No problem. Shoot me what you need. I'm attaching an app supplement my main carrier will use. They can quote off of your last BOP app, so send it if you've got it.

Steph

Stephanie Nicks
Commercial Lines Underwriter
Fleetwood Mac General Agency

"Working to earn your trust and your business every day."

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The Entertainment App Supplement

THEN PLAY ON ASSURANCE COMPANY
 SUPPLEMENTAL APPLICATION FORM - SPECIAL EVENTS GENERAL
 RIDER

LIMITS REQUESTED

AUTOMATIC ADDITIONAL INSURED REQUESTED?

AT YOUR EVENTS, DO YOU HAVE THE FOLLOWING:
 Yes No if yes, describe:

Live Music?

Stage Work?

Pyrotechnics?

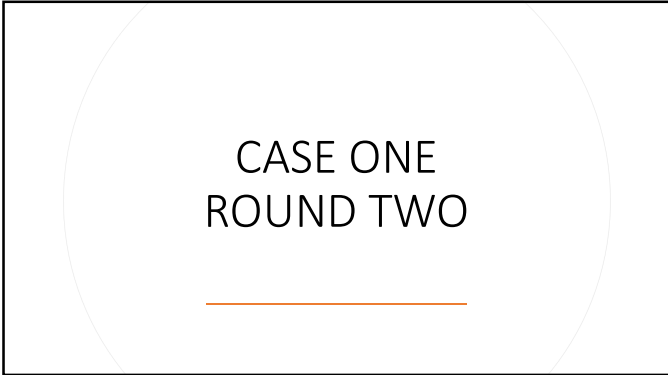
Sporting Event?

Carnival or Amusement Rides?

Animals or Petting zoos?

Concessions?

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Steve's Next Email

Steve Rinkov

To: Stephanie Nicks (snicks@fm-ga.com)
 Sent: April 22, 2015 1:35 PM
 Subject: Coliseum Entertainment

Steph:

Two attachments here. I typed up the supp app for Coliseum. I know you'll need a signature; I'll get it later. Second is the contract requirement from the Mirage Trojans - I just sent over the insurance part. How's Then Play On on this stuff?

Warm Regards,
 Steve
 Stephen Rinkov, Principal
 Vito-Rinkov Insurance Agency
 Gypsy, Mirage

Ent. App. Supp. (complete)
 Page 14 - Contract

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The Entertainment App Supp from Steve

**THEN PLAY ON ASSURANCE COMPANY
SUPPLEMENTAL APPLICATION FORM – SPECIAL EVENTS GENERAL
RIDER**

LIMITS REQUESTED

AUTOMATIC ADDITIONAL INSURED REQUESTED?

AT YOUR EVENTS, DO YOU HAVE THE FOLLOWING:

	Yes	No	
Live Music?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If yes, describe:
Stage Work?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ride set up.
Pyrotechnics?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sporting Event?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Work done at some sporting events.
Carnival or Amusement Rides?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Animals or Petting zoos?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Concessions?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Provided through host org.

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Section 14 of the Contract

Section 14.01. Insurance Requirements.

(a) Vendor will maintain at all times, at Vendor’s own cost and expense, commercial general insurance coverage in the amount of Five Million Dollars (\$5,000,000.00) with a company that has an A.M. Best Co. rating of “A-” or better. Vendor may comply with the required “per occurrence” limit through a combination of Primary and Excess Liability insurance policies. The insurance must be primary and not excess or contributing with any insurance or self-insurance maintained by Mirage Trojans Entertainment Baseball Organization, LLC. The insurance coverage required under this Agreement must be maintained by each Vendor for a minimum period of two years following any event for which Vendor is contracted.

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Section 14 of the Contract

(b) Vendor will deliver to Mirage Trojans Entertainment Baseball Organization, LLC, prior to the event for which it is contracted, a Certificate of Insurance including “The Mirage Trojans Baseball Club and its affiliates and subsidiaries” as Additional Insureds. Such Additional Insured status may be given by either an Additional Insured Vendors Endorsement or blanket Additional Insured Vendors coverage built into the Vendor’s General Liability policy form.

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Section 14 of the Contract

- (c) The Certificate of Insurance must identify all self-insured retentions and/or deductibles to the current ISO general liability policy.
- (d) Vendor must provide a minimum of twenty (20) calendar days advanced written notice should said insurance be cancelled (voluntarily or otherwise) or expire.


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CASE ONE
ROUND THREE

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Stephanie's Quote Form (Page 1)

QUOTATION FOR INSURANCE POLICY



To:	Steve Rinkov, Vito-Rinkov Insurance Agency	Bind Per Quote:
From:	Stephanie Nicks	
Applicant:	Coliseum Entertainment	
State:	TU	Signature _____
Policy Type:	General Liability	
Limits:	\$5,000,000 per claim and aggregate	
Policy Period:	April 28, 2015 to April 27, 2016	
Prem / Tax:	Premium: \$2,950.00	
	Fee: \$350.00	
	SL Tax: \$89.50	
	TOTAL	\$3,389.50

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Stephanie's Quote Form (Page 2)

Company: **Then Play On Assurance**


Subject to: Fully signed & completed Supplemental App
Terrorism Form executed
Bind Order

Forms:	Number	Type	Minimum Earned Premium if 25% Of Total Quoted Premium
	TPO - 01A	Policy Declarations	
	TPO - 01	Commercial General Liability Standard Form	
	TPO - 03	Deductible Cond.	
	TPO - 05	Contractual Additional Insured Endorsement	
	TPO - 20	Fungi / Bacteria Excl.	
	TPO - 21	Terrorism Excl.	
	TPO - 24	Nuclear Excl.	
	TPO - 27	Volunteer Excl.	
	TPO - 33	Animal Excl.	
	TPO - 35	Liquor Liab. Excl.	
	TPO - 41	Performer Excl.	
	TPO - 42	Inflat. Excl.	
	TPO - 44	Sports Partic. Excl.	

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Steve's Response

QUOTATION FOR INSURANCE POLICY



To: Steve Rinkov, Vito-Rinkov Insurance Agency

From: Stephanie Nicks

Applicant: Cobsecum Entertainment

State: TX

Policy Type: General Liability

Limits: \$5,000,000 per claim and aggregate

Policy Period: April 28, 2015 to April 27, 2016

Prem / Tax:	Premium:	Fee:	St. Tax:	TOTAL:
	\$2,950.00	\$350.00	\$89.50	\$3,389.50

Company: **Then Play On Assurance**

Bind Per Quote: *Steve Rinkov*
Signature

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CASE ONE ROUND FOUR

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The ACORD 25

ACORD CERTIFICATE OF LIABILITY INSURANCE DATE (999999):

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSUREN(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements.

PRODUCER FLEETWOOD MAC GENERAL AGENCY VTD-RINNOV INSURANCE AGENCY	AGENT NAME: Stephanie Nicks PHONE: _____ FAX: _____ JUL. No.: _____ LIC. No.: _____ ADDRESS: _____
INSURED COLISEUM ENTERTAINMENT INC. 11 Mask / Behind Parkway Southwest Mtnge, Tusk	INSUREN(S) AFFORDING COVERAGE INSURER A: THEN PLAY ON ASSURANCE INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____

COVERAGES: _____ CERTIFICATE NUMBER: _____ REVISION NUMBER: _____

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The ACORD 25


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LINE	TYPE OF INSURANCE	INSURER	POLICY NUMBER	INSURANCE PERIOD (MM/DD/YYYY) (MM/DD/YYYY)	LIMITS	
1	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR		04/28/2015	04/27/2016	EACH OCCURRENCE / DAMAGE TO RENTED / PREMISES (SCHEDULE)	\$ 5,000,000
					MED EXP (Any one person)	\$
					PERSONAL & AUTO INCL.	\$
					GENERAL AGGREGATE	\$ 5,000,000
					PRODUCTS - COMP/OP AGG	\$
2	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED <input type="checkbox"/> UNLICENSED <input type="checkbox"/> HIRED AUTO'S <input type="checkbox"/> NON-OWNED <input type="checkbox"/> TRUCKS				COMBINED SINGLE LIMIT	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per occurrence)	\$
3	UMBRELLA LIAB EXCESS LIAB				EACH OCCURRENCE	\$
					AGGREGATE	\$
4	INSURER'S CONTRACTS ANY POLICIES OF INSURANCE (EXCEPT AUTOMOBILE LIABILITY) POLICIES OF INSURANCE EXCLUDED				LOSS RATIO / LOSS	\$
					E.I. EACH ACCIDENT	\$
					E.I. DISEASE - EA EMPLOYEE	\$
					E.I. DISEASE - POLY (LIMIT)	\$
					E.I. DISEASE - POLY (LIMIT)	\$

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The ACORD 25

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The Mirage Trojans Baseball Club and its affiliates and subsidiaries are additional insureds under the policy referenced above.

CERTIFICATE HOLDER Mirage Trojans Entertainment Baseball Organization, LLC	CANCELLATION <small>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE, THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</small>
	AUTHORIZED REPRESENTATIVE 

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CASE ONE
ROUND FIVE

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THEN PLAY ON ASSURANCE CO.
*North Coliseum Boulevard
Landslide, Fleetwoodmac*

Mr. William Burnette
COLISEUM ENTERTAINMENT
11 Mask / Behind Parkway Southwest
Mirage, Tusk

RE: "Fan Appreciation Day" Mirage Trojans
Date of Loss: May 19, 2015
Nature of Loss: Wrongful Death
Claimant: Robt. Welch (dec.); Mirage Trojans

Dear Mr. Burnette:

Then Play On Assurance Company is in receipt of the above-captioned claim. As we understand it, a complaint has been filed by the estate of Robert Welch against your organization and against the Mirage Trojans. The complaint alleges Mr. Welch was killed when your company's inflatable slide collapsed and pinned him beneath it. Mr. Welch's estate has named the Mirage Trojans as a defendant. Additionally, the Mirage Trojans organization has tendered the defense of the action to you.

Based upon our review of the complaint and your policy, I must inform you that there is no coverage under our policy for this claim. We therefore will not be providing a defense or an indemnification to either you or the Mirage Trojans.

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The reason for this position is the following exclusion made a part of your policy:

This insurance does not apply to any claim arising out of the use or existence of any inflatable amusement device. It is further stated that this exclusion applies even if the alleged cause of the damage(s) was the insured's negligent hiring, placement, training supervision, act or omission.

After you have reviewed the letter, if there is additional information you would like me to consider, please forward such information to me. Also, if you have any questions about the letter, please contact me.

THEN PLAY ON ASSURANCE CO.
Jeremy Spencer
Jeremy Spencer, Claims and Coverage Analyst

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CASE ONE
ROUND SIX

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Steve Rinkov

To: Stephanie Nicks (snicks@fm-ga.com)
 Sent: June 30, 2015 2:55 PM
 Subject: Coliseum

Steph:

What the hell?! I just got off the phone with Bill Burnette at Coliseum and he tells me that Then Play On turned down the claim. How can we not have coverage for this? You know what these guys are doing. Have Mick or John call me asap. This is a problem.

Steve
 Stephen Rinkov, Principal
 Vito-Rinkov Insurance Agency
 Gypsy, Mirage

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Stephanie Nicks

From: Stephanie Nicks (snicks@fm-ga.com)
 Sent: Jun 30, 2015 4:11 PM
 To: Steve Rinkov (steve@vitorink.com)
 Subject: RE: Coliseum

Steve:

John said he'd call soon. Sorry, I guess I missed it. I'm used to quoting your events fast. I think I hardly look anything but the dates and the details of the event. Look, we're going to try to work with Then Play On on this, but inflatables are excluded on the policy you purchased from us. It's listed as one of the forms on the quote we sent over to you.

Steph
 Stephanie Nicks
 Commercial Lines Underwriter
 Fleetwood Mac General Agency

"Working to earn your trust and your business every day."

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CASE ONE
THE REAL CASE

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Cleveland Indians Baseball Company, L.P. v. New Hampshire Ins. Co.

- o United States Court of Appeals, Sixth Circuit (2-1 decision)
- o August 23, 2013
- o “[A]n accident occurred at a “Kids Fun Day” event before a Cleveland Indians baseball game on June 12, 2010.”
- o Douglas Johnson and David Brown were attending the game as spectators.

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Cleveland Indians Baseball Company, L.P. v. New Hampshire Ins. Co.

- Johnson and Brown “were looking at an exhibit outside the Kids Zone when a large inflatable slide collapsed on them.”
- Mr. Johnson died nine days later.
- This insurance dispute arises out of a lawsuit filed against the Cleveland Indians and other parties by Mr. Brown and the estate of Mr. Johnson in an Ohio state court for punitive and compensatory damages.

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Cleveland Indians Baseball Company, L.P. v. New Hampshire Ins. Co.

- The Indians sued the agent involved, saying the agent had
 - ✓ Failed to procure the requested insurance
 - ✓ And issued an erroneous certificate
- The lower court said that no contract existed between the Indians and the agent and, as a non-contracting party, they could not recover purely economic damages from the agent for negligence.

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Cleveland Indians Baseball Company, L.P. v. New Hampshire Ins. Co.

- The Indians sued the agent involved, saying the agent had
 - ✓ Failed to procure the requested insurance
 - ✓ And issued an erroneous certificate
- The lower court said that no contract existed between the Indians and the agent and, as a non-contracting party, they could not recover purely economic damages from the agent for negligence.

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Cleveland Indians Baseball Company, L.P. v. New Hampshire Ins. Co.

- “[I]t is reasonably foreseeable that an additional insured such as the Indians will be harmed if an insurance agency or other intermediary fails to procure the intended coverage, just as the primary insured would be.”
- “While it is understandable that the law should not allow the insurance broker to be held liable to a virtually limitless class of claimants who are total strangers to the relationship between the insurance agency and the insured, or parties who were unknown to the insurance broker before the filing of a suit, **this is not that case.**”

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Cleveland Indians Baseball Company, L.P. v. New Hampshire Ins. Co.

- “[The agent] knew that
 - ✓ It was procuring insurance for the Indians as well as for National Pastime,
 - ✓ The dates and events the insurance was for,
 - ✓ The Indians had paid the premium
 - ✓ That a Certificate of Insurance to the Indians indicating that the policy was in effect.
 - ✓ The Indians could be harmed if the proper insurance was not procured.”

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CASE TWO
ROUND ONE

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INTEROFFICE MEMORANDUM

FLEETWOOD-MAC

To: All Staff
 From: Mick Fleetwood
 Re: New Program
 Date: August 11, 1996

Great news everyone! We've reached an agreement to be the exclusive distributor for Bicuspid Insurance Company. Bicuspid has a suite of insurance policies designed for dentists' offices. They write mostly off of a BOP form, but they can do a CGL with an inland marine if we have specialized equipment we need to write. They also have standard worker's comp insurance product and they do the med mal coverage, too.

We'll want to push this out to our agency force as a "one stop shop" type coverage. Best of all, Bicuspid has the endorsement of the state dental associations in the states of Tusk, Mirage and Rumours as well as Fleetwoodmac.

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Each one of those states will be providing the following brochure to their members:

Bicuspid's comprehensive insurance products are endorsed by your state association and are available at pricing only available to members. Together, we make the practice of dentistry better because of our combined marketing power. Best coverages available at competitive rates!

We are pleased to partner with Fleetwood Mac as the distributor for this program. Fleetwood Mac is ready and able to serve the unique insurance needs of our association's members. Fleetwood Mac, working with your local insurance agent, can offer competitive medical malpractice insurance in your dental practice that is designed to meet your needs.

Fleetwood Mac offers risk management consultation services staffed by experienced professionals. Fleetwood Mac will also be your contact point unparalleled customer service and claims servicing.

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CASE TWO ROUND TWO

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DENTAL OFFICE COVERAGE QUESTIONNAIRE

Please fill out as completely as possible to help us stay abreast of any changes that might affect your practice!

		Additional Notes
Name	<input type="text"/>	Date <input type="text"/>
Address	<input type="text"/>	
Contact Person	<input type="text"/>	
Prior Coverage	<input type="text"/>	
Office Locations / Details	<input type="text"/>	Owned or Leased? <input type="text"/>

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The Questionnaire Continues

ITEM	VALUE	ITEM	VALUE
Air Compressors		Chairs	
Articulators		Imaging Equipment	
Autoclave / Sterilizers		Handpieces	
Boilout or Curing Units		Lamps	
Burnout Ovens		Lathes	
Casting Machines		Mixers	
Cleaning Equipments		Nitrous Oxide Systems	
Chairs		Routers and Trimmers	
Imaging Equipment		Ultrasonic Equipment	

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The Questionnaire Continues

Malpractice		
	Limits	
	No. of Patients	
	Fees in last year	
Payroll		
	Number of Employees	
	Payroll (excluding ownership)	

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CASE TWO
ROUND THREE

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Stephanie Nicks

From: Stephanie Nicks (snicks@fm-ga.com)
Sent: October 25, 2005 11:24 AM
To: John McVie (jmcmvie@fm-ga.com)
Subject: Dental Assoc Program

John:

I just got off the phone with the marketing folks at Bicuspid. Apparently, they're disappointed in our sales volume and retentions and want to amp up the marketing. They ghost-drafted this article for us to put in the dental association newsletters in the various states. You ok with this? I'm going to do it unless you say otherwise.

Steph
Stephanie Nicks
Commercial Lines Underwriter
Fleetwood Mac General Agency

"Working to earn your trust and your business every day."

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Newsletter Insert for Risk Analysis Services

A professional insurance agent is trained in risk analysis, which involves evaluating risk exposure to measure the potential loss to your business. With your specific business and property in mind, your agent can partner with Fleetwood Mac. Together, they can recommend appropriate insurance coverage and perhaps reveal risk exposures you may have overlooked. These insurance professionals are knowledgeable about the insurance options available in your state. With this expertise, your agent and Fleetwood Mac can suggest options from a vast menu of risk-management products offered by Bicuspid and ensure that you are in compliance with all mandatory regulations. Your insurance professional can also amend a basic policy by adding endorsements, which alter or expand the coverage provided under a basic policy. The insurance program developed by your agent, Fleetwood Mac, and Bicuspid will be tailored to your business's unique needs.

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CASE TWO
ROUND FOUR




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Bekka Bramlett
 To: Nancy Tusk, DDS (nancy@tuskdentistry.com)
 Copy: Stephanie Nicks (snicks@fm-ga.com)
 Copy: John McVie (jmcmvie@fm-ga.com)
 Sent: September 21, 2006 4:14 PM
 Subject: Insurance Renewal


Nancy:

Bramlett Green Kirwin Insurance is pleased to transmit to you your Insurance renewal from Bicuspid Insurance, the endorsed provider. *Please take a moment to look these policies over and be sure that they have been issued to your liking.* Please keep this with your copies of the policies. Any changes from your renewal questionnaire may not necessarily be included.

Best,
 Bekka



Dent. Off. BOP Pkg. Med Mal and WC (Tusk) 2006 renew



Bramlett Green Kirwin Insurance
Artists in Risk Management for YOU

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CASE TWO ROUND FIVE

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Tusk-Trojan Dentistry's 2008 Questionnaire

ITEM	VALUE	ITEM	VALUE
Air Compressors		Chairs	
Articulators		Imaging Equipment	
Autoclave / Sterilizers		Handpieces	
Boilout or Curing Units		Lamps	
Burnout Ovens		Lathes	
Casting Machines		Mixers	
Cleaning Equipments		Nitrous Oxide Systems	
Chairs		Routers and Trimmers	
Imaging Equipment		Ultrasonic Equipment	

Bekka, I don't know what the individual values are, but we should increase this. We're at \$204,000, but I think it ought to be about \$350,000 or so. Nancy

Also, leasing new equipment - need to add leasing co to insurance. NT

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Tusk-Trojan Dentistry's 2008 Questionnaire

Malpractice		
	Limits	
	No. of Patients	
	Fees in last year	
Payroll		
	Number of Employees	
	Payroll (excluding ownership)	

Bekeka, we've added two part-time dentists. Increase malpractice? Otherwise, payroll is same. Nancy

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CASE TWO ROUND SIX

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**BICUSPID
INSURANCE CO.**

*Coliseum Boulevard
Lan Shide, Fleetwoodmac*

Nancy Tusk, DDS
Tusk - Trojan Dentistry
44 Nightango Lane
Thechain, Fleetwoodmac

Dear Dr. Tusk:

BICUSPID CLAIMS, LLC is the claims administrator handling claims arising under your insurance policy issued by BICUSPID INSURANCE.

Please be advised that I am the adjuster handling this matter and all future correspondence should be directed to my attention. The purpose of this letter is to advise you of our coverage position in light of your prior correspondence on the matter.

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We value you as a customer and appreciate your business; however, we must inform you that, based on the scheduled values and limits of business personal property in your insurance policy, BICUSPID INSURANCE'S total financial responsibility for the contents (the medical practice items and office equipment) is \$204,371.11. I have enclosed a check in that amount.

We understand that, as a result of the fire loss you suffered, you have claimed the costs (replacement and otherwise) of the damaged or destroyed items in excess of \$700,000.00. We regret to inform you that there is no additional coverage under the policy captioned above for this claim.

After you have reviewed the letter, if there is additional information you would like me to consider, please forward such information to me. Also, if you have any questions about the letter, please contact me.

BICUSPID CLAIMS, LLC
Jeremy Spencer
 Jeremy Spencer

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CASE TWO
 THE REAL CASE

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Indiana Restorative Dentistry, P.C. v. The Laven Insurance Agency, Inc.

- Indiana Supreme Court
- Decided: March 12, 2015
- "After a fire, a dentist's office discovered that the contents coverage of its insurance policy—a policy it had maintained for over thirty years—was inadequate to cover the loss. The insurance agent and the insured now dispute whether their long-term relationship was a special relationship that obligated the agent to advise the insured about its coverage."

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Indiana Restorative Dentistry, P.C. v. The Laven Insurance Agency, Inc.

- “The value of the lost office contents was \$704,394.35, which included equipment and technology used in IRD’s prosthodontist laboratory. IRD submitted an insurance claim to ProAssurance for the lost office contents under its building personal property policy. The policy included coverage for office contents and had a limit of \$204,371.”
- “[The Court of Appeals held] that a special relationship existed between Laven and IRD, which created a duty to advise, and that no implied contract existed between Laven and IRD “to procure full coverage insurance based on its past dealings with IRD.

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Indiana Restorative Dentistry, P.C. v. The Laven Insurance Agency, Inc.

- The duty to procure is distinct from the duty to advise.
- The duty to advise arises from the agent and the insured having “a special relationship of trust and intimacy.”
- The usual factors creating a “special relationship” are:
 - ✓ The agent exercising broad discretion
 - ✓ The agent counseling about specialized coverages
 - ✓ The agent advertising highly skilled and
 - ✓ The agent receiving compensation above commission for worker performed

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Indiana Restorative Dentistry, P.C. v. The Laven Insurance Agency, Inc.

<p>ARGUMENTS FOR A SPECIAL RELATIONSHIP</p> <ul style="list-style-type: none"> • The agency used a questionnaire • The agency touted its trade association endorsements • The agency sent out risk management letters • The relationship lasted for years 	<p>ARGUMENTS AGAINST A SPECIAL RELATIONSHIP</p> <ul style="list-style-type: none"> • The insured directed the limits • It was a generic property policy • The letters and association endorsements were merely marketing pieces • Even though the relationship lasted for years, the agency simply took orders from the insured.
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