



November 2014 

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**Save the Date**

## Mid-Year Leadership Conference by Bob Biskupiak, CPCU, CIC, IIAM Executive Director

The recent 83<sup>rd</sup> Annual Agent's Convention was a tremendous success. Attendees enjoyed two plus days of education, professional development, networking, recognition and entertainment. There was truly something for everyone at this year's conference.

With this successful convention behind us, we are busy preparing for the upcoming Leadership Conference **March 9<sup>th</sup> and 10<sup>th</sup>, at the Great Northern Best Western in Helena.** Hosted by the Young Agents, the conference is open to all independent agencies, their employees and company partners.

Speaker Dan Weedin, CIC, CRM, will be presenting a 90-minute session Monday afternoon on **Maximizing Referrals.** Dan has nearly two decades of experience in the insurance industry as a commercial and personal lines insurance agent, as well as a company underwriter.

Tuesday will feature concurrent education programs, with Dan speaking on **Risk Management & Strategic**

**Crisis Planning** for Personal and Commercial Lines clients in the morning, followed by an interactive afternoon session featuring a **Risk Management Case Study.**

The second education track on Tuesday will see the return of the Construction Risk Insurance Program (CRIS) and be led by Lynne Lovell, CIC, CRM, CPCU, CLU, ChFC, ARM, RHU, AFSB, AINS, CRIS, MLIS. Her extensive background in life insurance & employee benefits, property & casualty insurance and risk management will make **Commercial Auto, Surety, CIPs and Miscellaneous Lines (7 CE)** a class not to be missed!

We are also excited to have the newly elected **Montana Speaker of the House, Austin Knudsen,** as our featured luncheon speaker on Tuesday.

Also on the agenda are the Welcoming Reception and Poker Run, a great networking opportunity for agents and company partners! Watch your inbox for more information, coming soon!

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# Why Should I Get Involved?

by David A Walker, IIABA Chairman



Upon return to my office following my installation as Big "I" Chairman, I received numerous congratulatory cards, letters and emails. Many

thanks to each and every one of you who sent them.

One of these emails I found especially interesting came from someone I have never met, who congratulated me and asked, as a young owner of an agency, if involvement with the association really offers any benefits? I was a little surprised by the question but then realized I am so close to the association and have been around for so long that I may take for granted both its importance and beneficial nature. My response was a relatively simple "yes." But then I had to qualify it.

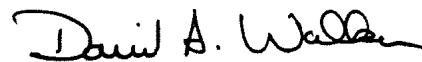
First, I told the young agent he is at a great stage of his career to become actively involved with the Young Agents Committee (YAC). My involvement with YAC in the 1980s served as tremendous preparation for the position I currently hold. YAC gave

me the opportunity to work with some of the best, brightest "up and comers" in the industry. Thanks to that involvement, I have made lifelong friends that share a common profession and serve as wonderful counselors when I have a question or challenge.

Second, I told him I'm an average guy with a nice agency and thoroughly enjoy what I do for a living-there's no particular reason that I or my agency would stand out to company CEOs and upper-level management. But as a result of my association activities and events, I have been able to meet and interface with some of our company leaders at levels I would have never thought possible.

Third, during my tenure on the YAC, I served as the liaison to the Big "I" Government Affairs Committee. I became engaged in the political and legislative process and gained a broader insight into its impact on our industry. Those lessons taught me how important it was to be a part of the process rather than a spectator.

I hope if you are new to this industry, you will not be afraid to engage it. I guarantee you will receive back sevenfold what you give.



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# Negligent Entrustment

by Dennis Gambill



In a claim for negligent entrustment you will have cause to pursue not only the driver of the vehicle for compensation, but also the owner! Negligent entrustment rules do not make the owner of a vehicle vicariously liable for the acts of the driver of the vehicle; they make him *directly liable* for his own negligence for allowing an incompetent driver to drive the vehicle.

A vehicle owner has an obligation to use reasonable care in his use or operation of his vehicle; he also has an obligation to use reasonable care when deciding whether or not to give others permission to use his vehicle. Of the main elements needed to be proven in negligent entrustment the key is that the injured person must be able to prove that the vehicle owner was aware of his driver's incompetence whether it be an obvious disability that his vehicle is not modified for or if the driver is obviously under the influence of drugs or alcohol. The owner of the vehicle knew of that recklessness or incompetence. Driver incompetence, owner knowledge, entrustment, and proximate cause are all elements that need to be proven in negligent entrustment.

"In Montana, the owner of a motor vehicle is not vicariously liable for the acts or omissions of the driver, absent statute or proof of some other legal theory such as *agency* or *negligent entrustment*." There are

several theories of negligent entrustment recognized by the Montana Supreme Court.

The first theory provides "that the owner or one in control of a thing and responsible for its use who is negligent in entrusting it to another can be held liable for such *negligent entrustment*." (Williams, Mt.1965). "Under this theory, for a person to be liable the person must be either:(1) the owner, or (2) *in control of the vehicle* and (3) negligently entrust that vehicle to another." (Williams).

The other theory provides that a "person who supplies a chattel to another whom the supplier knows *or has reason to know* is likely to use it in a manner involving unreasonable risk of physical harm is subject to liability for the resulting physical harm." (Williams). Under this theory, Montana law requires "the owner of a motor vehicle use care in allowing others to assume control over and operate the vehicle, and thus an owner who entrusts his vehicle to another has the duty to put it in charge of a reasonably prudent and competent driver, and to exercise reasonable care in selecting a driver and in ascertaining his competence to drive and the existence of habits which would make it unsafe to place so dangerous an agency in his hands". The general rule applies to entrustment of a motor vehicle to a minor who is in-

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whose duties require driving—loaning your personal vehicle—children operating the family car.

“For liability to be imposed on a parent under a theory of negligent entrustment, (1) the parent must know that he or she has the ability to control the child; (2) the parent understands the necessity for doing so; and (3) the parent’s failure to exercise reasonable care under these circumstances creates an unreasonable risk of harm to a third person.” (Styren Farms, Inc. v. Roos, Mt.2011)

Being aware of an operator’s driving record, driving habits and responsibility can be factors in a resulting negligent entrustment claim. Many business owners require an applicant supply a current motor vehicle record as a part of the employment application. Further, many employers will periodically update MVR’s on current employees who have driving responsibilities. A very small expense if driver issues become a problem with insurance renewals or availability of affordable coverage. An ounce of prevention!!

*Dennis Gambill is an insurance litigation consultant (expert witness). He previously was a property/casualty underwriter and insurance agent. He also was an adjunct professor at Eastern Montana College teaching risk and insurance courses.*

*(Continued from page 2)*

competent or a reckless driver.” (Smith v. Babcock, Mt.1971).

In the first theory the issue of “control of the vehicle” is required. In Bahm v. Dormanen, Mt.1975, the Court stated that “control must be greater than physical power to prevent use of the vehicle.” Here the Court looked to the state of Maryland for guidance. The Maryland Supreme Court cited “Restatement of Torts, 260 (now Restatement of Torts, 2<sup>nd</sup>, 390). From that guidance, the Court stated that it was clear that “a superior if not exclusive legal right to the object is a precondition to the imposition of the legal duty”. Thus, the “right of control” being greater than physical power to prevent.

Negligent entrustment can appear in many different situations. A business owner having employees

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## Big “I” PAC Scores 93% Congressional Victory Rate

InsurPac distributes more than \$1.8 million to campaigns across the country in election 2014.

WASHINGTON, D.C., Nov. 6, 2014 — The Independent Insurance Agents & Brokers of America (IIABA or the Big “I”) today announced that its political action committee, InsurPac, distributed more than \$1.8 million in the 2014 campaign cycle resulting in a 93% congressional victory rate.

“InsurPac supported more Senate and House campaigns than ever before and we are pleased with the overall numbers,” says Robert Rusbuldt, Big “I” president and CEO. “Big ‘I’ independent agents and brokers have spoken loud and clear through InsurPac dollars leading to a strong victory rate for the PAC.”

In the 2014 election cycle, more than 5,000 independent agents and others have joined forces to support InsurPac with personal, voluntary contributions. InsurPac distributes 100% of its voluntary agent contributions to federal campaigns and, as a result, has an impressive bipartisan track record in Congress and on the campaign trail.

“The political power of the Big ‘I’, fueled by an active membership, bipartisan government affairs team and



InsurPac, is highly regarded on Capitol Hill,” says Charles Symington, Big “I” senior vice president of external and government affairs.

“InsurPac supported more Senate and House campaigns than ever before, and distributed a significant amount of money as the largest political action committee representing the independent agent and broker community. InsurPac distributed \$1,836,169 in support of 292 races, winning at least 272 of them for an overall 93% victory rate.”

In disbursing contributions, InsurPac does not look at party affiliation but supports candidates for federal office including members of the U.S. Senate and House of Representatives who have been advocates and supporters of the independent agency system and small business.

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# Billings To Host 84th Annual Agents' Convention

by Deanna Darnielle, CIC, IIAM President

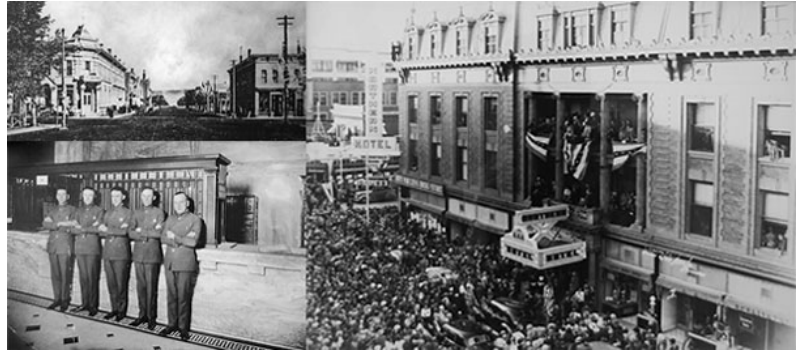
## SAVE THE DATE – September 21 & 22, 2015

Plan to spend a couple days with us at the Historic Northern Hotel in Downtown Billings, Montana. Taking advantage of the “big city” destination we hope to provide a top quality experience with continuing education seminars, professional development, off site social with Western flair, as well as first class accommodations at the newly renovated Northern Hotel.

Joining our company partners we hope to revitalize your relationships, and refresh your network with other agents here in the state.

The original Northern Hotel was built in 1902 and opened in 1904. The cost of building and expanding the hotel surpassed \$600,000 and room rates started at \$1.50 a day. Completely destroyed by fire in 1940, its owner P.B. Moss envisioned an even greater hotel, “...a modern fireproof structure...”

Its guests have included President Theodore Roosevelt in 1918, President Woodrow Wilson in 1919, Adlai Stephenson in 1952 and Richard Nixon in 1960. Early day cattle and sheep barons stayed at the



Northern, as well as famous western artists. You might be surprised to know who sipped a cocktail or enjoyed a meal in the Golden Belle restaurant and lounge.

In 2006 the Northern Hotel was closed and put up for sale. In 2009 brothers Mike and Chris Nelson purchased the hotel at auction and begun its restoration to the fabulous facility it is today – mindful of its unique history and grace.

These tidbits of history can be found online at [www.northernhotel.com](http://www.northernhotel.com), as well information about its current features and amenities. Take a look, and be sure to mark your calendar to join us!

Deanna M. Darnielle  
IIAM President

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