



# Risks Employers Face When Property and Casualty Agents and Employee Benefits Agents Don't Collaborate

By Frank Pennachio and Susan Toussaint | Partners | Oceanus Partners



Property and Casualty agents are frequently hesitant to refer an Employee Benefits agent into one of their accounts. And it is not uncommon for Employee benefits agents to feel the same reluctance. These hesitations, if not absolute refusals, are not logical, as employers would be better protected if the two sides collaborated effectively. This behavior is typically driven by emotion, as both types of agents feel the other side, usually, a fellow agent with the same agency, will “mess up the account.”

Unnecessary risks for employers arise when the two sides don't work together because Property and Casualty agents know things that Employee Benefits agents don't know, vice versa. Employers face risks across their entire enterprise, and they don't view them as P&C or Employee Benefits risks. Employers see their risk as potential adverse financial events that could be life changing, and they really don't care which side of the insurance profession addresses their issues.

A common problem arises when recommendations to an employer by one agent may create new employer risks that can only be addressed by the other agent. For example, let's assume that the Employee Benefits agent recommends that the employer purchase a “Level Funded Health Plan.” “Level Funded Health Plans” are more appealing products today due to several unpopular requirements of the Affordable Care Act (ACA).

“Level Funded Health Plans” allow small to mid-size employers to:

- ◆ Avoid community rating;
- ◆ Avoid some ACA taxes;
- ◆ Avoid ACA mandates, and probably most appealing of all;
- ◆ Get return of premiums if their loss experience is good, but no additional premiums are due if their loss experience is adverse.

You can see why many smaller employers, some with as few as 15 employees, would be attracted to such a plan. However, “Level Funded Health Plans” comes with a significant risk that is not in play with fully insured plans. “Level Funded Health Plans” are considered to be “self-funded plans,” which are usually purchased by much larger, more sophisticated employers. With “Level Funded Health Plans,” unlike fully insured plans, the fiduciary responsibility and liability are transferred from the insurance carrier to the employer, and more than likely, several of their employees.

Fiduciary responsibilities are wide-ranging and challenging to address and meet. Violations of those responsibilities carry significant risks, including the fiduciaries personal assets are at risk on a joint and several basis. The corporate veil does not protect fiduciaries in the event of fines, penalties, or judgments.



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So, consider this relatively common situation. The Employee Benefits agent and the employer change the group health plan from a fully-insured plan to a "Level Funded Health Plan." As a result, the employer is now facing a dramatically increased fiduciary liability risk that they were avoiding with their fully-insured plan. It is unlikely the P&C agent has been informed of this change in the health plan and subsequent change to the seriousness of the amplified risk. So, the employer remains in the dark and does not get advice on how to mitigate or transfer this significant risk to their business and personal assets.

It is advisable for any employer who purchases and manages a self-funded type health plan to gain insight, direction, and education on their fiduciary duties. In addition, it would be prudent to purchase Fiduciary Liability Insurance, which can only be provided by a properly licensed P&C agent. Without coordination and integration between the P&C and Employee Benefits agents, it is doubtful any of this will happen. Ironically, the fear shared by both agents that the other may "mess up the account," leaves the employer at substantial risk.

In addition to self-funded and level-funded health plans, fiduciary risks arise out of the management of employer sponsored retirement plan, such as a 401K. Due to recently updated government regulations, retirement plans may garner greater attention as the health plans stay under the radar. P&C agents are also needed to place ERISA Bonds for retirement plans which are frequently underfunded and out of compliance.

Let's look at another relatively common example of critical information and education falling through the cracks and leaving the employer and employees at risk. Let's assume an employee is injured in the course of employment and is put on a no-work status by the doctor for an indefinite period of time. The employer is unaware that the injured employee no longer remains eligible for the group health plan unless certain steps are executed. The P&C agent is not aware of the eligibility conditions in the group health policy that essentially kicks the employee off the group health plan due to no longer being "actively at work."

The consequences of an employee losing eligibility to remain on the health plan could be dreadful. The injured employee will continue to receive medical and disability benefits from the workers' compensation policy for the work-related injury. However, medical benefits will likely be denied for any other medical issues not related to the injury. In addition, if the employee's spouse or family is on the employer's health plan as dependents, they will lose their eligibility and coverage as well.

It is unlikely that anyone will be informed of the employee's loss of eligibility unless and until a large claim is submitted to the insurance company. It is a common practice for the insurance company to request payroll records when reviewing the submission of a large claim. The injured employee's name will be missing from the payroll record going back to the date of the injury. Thus, the claim will be denied.

There is an active debate as to which of the two agents, P&C or Employee Benefits, should own the responsibility for educating the employer. Most employers are not aware of the processes that must be implemented to protect the employee's eligibility to remain on the health plan during their "no work" status. P&C agents assert they are not responsible as they don't place the health plan which contains the eligibility provisions. Employee Benefits agents usually have not been exposed to workers' compensation policies and procedures, and state it is not their responsibility.

There is also a debate as to whether or not the insurance company will actually deny the claim because agents may not have seen this situation occur. These circumstances are low frequency, but a high severity occurrence. Even though agents may not have experienced such a calamity, the contractual language is clear and there is substantial anecdotal evidence that insurance companies have denied claims under these circumstances. But, as mentioned, the claims are usually larger or more catastrophic claims.

The solution for the eligibility risk is not particularly complex. A lack of communication and coordination between the respective agents lies at the center of the risk. Creating awareness and assigning responsibility is the greater challenge. Some agents may even delay getting the processes in place after they become aware of the situation to avoid embarrassment. Or, they continue to believe that a denial of benefits will not happen because they have never seen it occur.

The insurance industry and profession are fragmented and slow to change. P&C agents sell workers' compensation policies even though the policy is actually an employee benefit. Employee Benefits agents would likely be better suited to sell workers' compensation policies, but the job went to P&C agents over 100 years ago. Tradition and licensing requirement will probably keep the status quo in place.

As a result of this paradox, and because agents fear a referral to another agent is too risky, employers find themselves unknowingly and unnecessarily at risk. However, for those agents who decide to swim against the tide and join hands with other professionals, there are substantial rewards. It is far less likely that the other agent will "mess up the account," than the employer will be facing needless, potentially catastrophic, risks and threats to their business and employees. Where there is danger, there is opportunity.

If you are an agent in an agency with both a P&C and Employee Benefits department, then it would be wise to remove any and all barriers to working



more closely together and taking better care of their respective employer clients and prospects. If you are an agent in a "Benefits Only" agency, then it is advisable to find a trusted colleague in the P&C world to fill the gaps. Defective traditions and endemic fragmentation in the insurance industry has created unnecessary risks for employers and opportunities for agents. There is still time to be a first mover on these issues.

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### About the Author

#### Frank Pennachio, Co-founder



Frank Pennachio has more than 30 years of experience in the insurance industry as an agency owner and as a sales and marketing consultant to independent insurance agents. He has consulted with agency owners and trained more than 1,000 agents in the past decade, encouraging them to develop their expertise in all areas of protecting an employer's workforce.

Frank is an accomplished speaker, presenting at national conferences and seminars to agents, employers and other insurance professionals. In addition, he frequently writes articles on Self-funded Group Health, Workers' Compensation, Sales & Selling, and Lead Generation for industry publications including American Agent & Broker, Risk and Insurance, Professional Insurance Agent, HR Magazine and Insurance Journal. He is recognized as an expert in the Workers' Compensation community.

#### Susan Toussaint, Co-founder



Susan Toussaint has been leading sales and business development initiatives for more than 25 years and developing specialized insurance training programs since 2007. As co-founder of Oceanus Partners, Susan's passion is helping agents develop and implement processes that smooth the path for pipeline development, client attraction, acquisition and profitable retention.

In 2009, Susan co-founded The WorkComp Advisory Group—the predecessor of Oceanus Partners—an organization committed to helping insurance agencies that are interested in leading with workers' compensation to integrate technical knowledge with an effective sales process and implementation strategies.

In 2007, she founded Injury Management Partners, a consulting firm specializing in the development of turnkey consulting packages that enable insurance agents to develop fee-based employer relationships outside the broker of record.

As a former sales leader for a regional healthcare provider, she led employer-as-customer strategy initiatives in occupational health, wellness and business health services.

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Oceanus Partners is a consulting and training organization for insurance industry professionals. We believe our clients strive toward two goals—sustainable growth and profitability. Using a collaborative approach, we lead clients through a process of developing a strategic plan for attracting, acquiring and retaining profitable business while at the same time assuring that their people, processes and technology can support the initiatives necessary to win in the marketplace.

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