Professional Bail Agents of the U.S.™ (PBUS™)
Certified Bail Agent™ Program – Course 6

NATIONAL LIABILITY STANDARDS

Purpose: This course will cover all aspects of controlling and limiting liability for the bail agent, the agency and your surety.

Class Outline:

- Introduction
- Understanding liability
- Different areas of liability
- It happened the way it's written down...
- Limiting liability
- Goals and benchmarks

Section I

Introduction

This morning as you lay peacefully sleeping snug in your bed, your best recovery agent made a mistake that will slowly evolve into your worst nightmare. It was nothing big on the onset, just a small minor mistake. The recovery agent you hired is as good as they come. He is a retired police officer looked up to by everyone. With license and credentials, he is without question the best recovery agent around; but he made *one* simple mistake this morning. A simple recovery of a misdemeanor defendant on a $500.00 bond that was not even enough to worry about. With a tip that the offender was hanging out in a certain area, the recovery agent went there to wait. As the offender came strolling down the street, the recovery agent stepped out to stop him. He was in the process of putting the handcuffs on when it happened; with one handcuff on, the offender jerked away and started to run. The recovery agent chased him and the mistake was made.

The offender ran less than fifty feet before colliding with an eighty year-old grandmother who crashed to the concrete sidewalk as the offender fell on her. The recovery agent was right there and grabbed the offender off of her and put the handcuffs on and got control of him, but the mistake was done. The grandmother couldn't get up because her hip was broken. The police, the paramedics and the ambulance were called. The recovery agent remained in place to provide the dispatched police officer details of the incident, while the paramedics and ambulance arrived and carried the grandmother off to the hospital.

The recovery agent finished his job booking the offender into the jail and made the surrender, then continued home to get some much needed rest; compounding his first mistake. As your day was just getting started, the grandmother was beginning the long wait in the hospital emergency room. As she waited, her grandson came to check on her and was quite appalled to find her still waiting. He went to the nurses' station and told them that his college roommate was the "smiling" lawyer whose ad graced the back of every phone book and if they did not do something right then for his grandmother, he would be calling that smiling lawyer!

Of course, what they didn't know was that he made the call the minute he found out that his grandmother had been hauled away in an ambulance. That smiling lawyer (AKA: Smiley) from the phone book was already enroute, but he made a few stops along the way. Smiley went to the "scene of the crime" and video-taped the location where "the mistake" happened, even though there was really nothing to show. He interviewed two witnesses who they told the story of how the defendant had recklessly thrown the grandmother to the ground in his quest for freedom and how the "bounty hunter" had jumped right on top of them to get the guy.

Smiley then found the officer who responded to the call and recorded his conversation with the police officer who had taken the report. Smiley then went by the jail and interviewed the defendant and video-taped the offender's version of what happened. With Smiley's offer to represent him for free, he swore that the "bounty hunter" slammed him into the grandmother in order to trip him up. The offender also said that he had gone to court and that his name was never called, so they should not have been looking for him in the first place.

As Smiley walked into the hospital his case was well under way, and now he came video-taping the grandmother, who was still waiting to be seen. As she lay helpless in the emergency room hallway, the grandmother vividly portrayed how this man had just run over her and slammed her into the sidewalk. This other man who had pushed the man into her, commenced to put handcuffs on him while she lay there helpless. She said it was just horrible that both of those men were cursing and swearing at each other. She said she just felt so abused. It was indeed a compelling story to listen to as the grandmother recited it. And for Smiley, the story and the coming settlement just kept escalating as timed ticked away.

So while you were still sleeping, you managed to get off of $500.00 in penal liability. And since you have a hold harmless agreement from the recovery agent and it is such a minor incident, you won't worry about it when you first hear about the mistake later that morning. You won't worry even enough to call your liability insurance company, if you have one. Nor will you bother to call your lawyer. But, you will wish you had. It may take several years but you will truly wish this morning had never happened. And you will wish that the compounded mistakes had not occurred after the first one. You see, the only question that remains is how much liability the jury will award due to the grandmother's pain and suffering?

If you were sitting on that jury, how much would you award? Just think about the "dog and pony" show Smiley is already preparing. After all, he can't spend a million dollars a year on advertising and be stupid.

What is Liability?

Blacks' Law Dictionary defines **liability** as the, "quality or state of being legally obligated or accountable, or owing a legal responsibility to another or to society, enforceable by civil remedy or criminal punishment." And Blacks' defines **liable** as, "responsible or answerable in law or that for which one is legally bound."

In the bail bond profession, we seem to have an overabundance of liability. First and foremost, we are liable to the Courts for the bonds we write. We have a simple job. We are paid to ensure that the defendants for whom we post bail return for every court date and if we fail to return the defendant to court, and then we return them to jail. If we fail at the first two, then we are liable for the full-face amount of the bond.

That is not all you are liable for, because you have liability to your surety company if you are not a personal surety (property) for each of the powers you hold as well as your build-up fund. If you are a personal surety, you have liability to your family for the assets you have encumbered. Possibly some of those assets may even belong to another family member or partner and you must think about the liability trail you leave on those outstanding bonds if something happens to you. You have liability to the indemnitors that you hold collateral from and to the principals whose bonds you have executed to earn the premium you have charged. And don't forget the liability from ongoing operations of having an office; liability of having a customer fall on a crack in a sidewalk, not having a handicapped entrance or having an employee do something wrong to a customer or another employee, such as sexual harassment. Then we get to the really scary stuff; liability involving picking up skips. That is when you get to "absolute liability."

Black's Law Dictionary defines **absolute liability** or strict liability as, "liability that does not depend on actual negligence or intent to harm, but that is based on the breach of an absolute duty to make something safe."

The truths are simple. When you put handcuffs on someone, you become absolutely liable, even if you are not the one who actually cuffs them. That is even worse. When you hire someone to do a pick-up, you give that person your authority, and no matter how many hold harmless agreements you have him or her sign, you are still liable. The minute those handcuffs go on, you are absolutely liable for the health and well being of that defendant. If an innocent bystander, like the grandmother in the above scenario, gets hurt in the process, you are absolutely liable because you were obligated to make them safe.

The purpose of this class synopsis is not to scare anyone out of the business. It is simply to make sure you fully understand all that you are liable for and more importantly, how best to protect yourself from that liability. Below follows an in-depth look at the different types of liability and what you should do to protect yourself, your agency and your company.

Section II

Understanding Liability

The Basics of Commercial Liability

Companies purchase liability insurance to mitigate the potential risk of financial loss should they be found responsible for damage awards as a result of negligence, products liability, absolute liability or other liabilities.

Accounting firms purchase liability insurance, as an example, to protect them from lawsuits filed by customers or users of their services. If a customer of an accountant becomes injured by owing taxes that they should not have been obliged to pay and sues because the accountants' tax guidance suggestions are alleged to be faulty, the accountant will have insurance that may pay for the defense or payment of a lawsuit.

Sources of Liability

In understanding liabilities and legal actions, it is helpful to understand the basis of laws in our nation. When the Constitution was being drafted after the Revolutionary War in the late 1700's, the Framers envisioned and created a representative Republic; a nation where its citizens elected representatives to draft and vote to approve the laws that governed them.

The Congress (the House of Representatives and the Senate) would serve as the Legislative branch and the President and the President's advisories would serve as the Executive branch. The President nominated and the Senate approved judges who would serve as the Judiciary branch. Therefore, a law would be written by the Legislative branch and approved by the President and the Judiciary would interpret those laws. This applies in some similar fashion at the federal, state and local levels. In many states, laws may also be proposed by individuals and passed by state ballot initiatives. Laws can also be created by the Executive branch through an executive order. Laws can also be created through judicial rulings (known as "case law") either by the Judiciary interpreting an existing law or striking out on their own as they did in Roe v. Wade (the case that allowed abortions).

It is important for business owners, especially bail agents, to be active in the political process to elect representatives and judges (where judges are elected instead of appointed). Possibly more important for business owners, is to serve on juries when they are called and to encourage their employees and friends to serve. One of the biggest reasons for the need for tort reform has been the simple fact that business people routinely beg-off their obligatory jury duty leaving the very people who are most willing to award large verdicts to serve. Legislative laws can affect business owners by increasing the minimum wage, broadening the eligibility rules for the Family Medical Leave Act (FMLA) or limiting the rights of employers to search an employee's workspace for illegal drugs. They can directly impact bail agents and the way they are licensed, write bail, how the courts forfeit bail and even put them completely out of business, such is the way bail was eliminated in Illinois and other states. Judicial laws can dramatically change existing legislative laws by expanding workers' rights to health insurance, increasing the liability of sexual harassment lawsuits or widening the exposure of businesses to tort claims. Along with changing the way bail is underwritten, forfeiture rules can also be changed or worse, allow more defendants to simply be freed at the taxpayers' expense.

In a civil lawsuit there is the party making the claim (the plaintiff) and the party the claim is made against (the defendant). There may be any number of plaintiffs and/or defendants. The plaintiff may be counter-sued by the defendant and the defendant may sue other parties not originally named in the suit in order to limit their exposure. They can claim responsibility is shared by other parties they believe have greater resources that would help them defend the action brought against them.

Critical definitions to understand include:

- CIVIL LIABILITY, known as tort liability, occurs when the rights of a person are violated. This may arise out of negligence, intentional torts, strict liability or contractual liability.
- NEGLIGENCE occurs when the defendant did not behave as an ordinary, reasonable, prudent person would have in the same or similar circumstances. To prove negligence, the plaintiff must show four elements: a legal duty was owed by the defendant, a breach of a right of a legal duty occurred, the breach resulted in injury or damages and the breach was the proximate cause of loss.
- INTENTIONAL TORTS is an intentional act in violation of the law. Examples include libel, slander, discrimination, invasion of privacy and assault.
- STRICT LIABILITY is usually thought of as "liability without fault." Public policy requires that the manufacturer of any product be held responsible for all injury or damage the product produces. All entities involved in the manufacturing and selling of the product are liable. Strict liability occurs for a bail agent any time they put someone in handcuffs or otherwise "take control" of someone.
- CONTRACTUAL LIABILITY is assumed under a contract or agreement. A breach of a contract could impose responsibility for damages upon the entity. Generally only tort liability involving bodily injury or property damage (two terms defined in the CGL policy) are covered by insurance. It is not intended to cover breach of contract suits such as failure to perform a contract in accordance with its terms.
- CRIMINAL LIABILITY is defined by the government as any act society deems harmful to public welfare. The same act can result in both criminal and civil suit for damages. A well-known example of this was the murder trial of O.J. Simpson, where Mr. Simpson was criminally charged with the murder of two people and was later sued in civil court for their wrongful deaths. Both were separate trials over the same alleged act. Criminal acts are not insurable because they are generally considered against public policy. In other words, insurance should not be used by a wrongdoer to provide monetary support for the consequences of his/her acts. An example of this is that your automobile insurance generally does not insure you if you cause an accident (civil liability) as a result of driving while intoxicated (criminal liability).

Business Liability

Business liability arises from six aspects of a business or its business functions. Each of the six is called an "exposure" to the risk of loss:

1. *Premises Liability Exposures*: ownership, occupancy or control of property. One must maintain premises in the same manner as would an ordinary, reasonable and prudent person. For example, if a bail agent had a client come in their office and sat in a chair that collapsed, they could face premise liability.
2. *Operations Liability Exposures*: involves some element of activity like manufacturing, processing or contracting. For example, if a client of a car dealership is injured in the showroom while a car is being moved in or out, the dealership could be liable for operations liability; or for a bail agent doing a recovery and a person gets knocked down in the process, operations liability would be one of the claims of injury.

3. *Products Liability Exposures*: the legal liability of manufacturers and/or sellers to compensate buyers, users and/or bystanders for injuries suffered from the use of those products. This action can be brought on the basis of negligence, strict liability or breach of warranty (merchantability, fitness, and so on). For example if a bail agent, while driving down the highway, is injured by a broken blade flying out from under a grass cutter on the side of the road, the manufacturer could be held for products liability.
4. *Completed Operations Liability Exposures*: injuries attributed to operations that have been completed. For example, a contractor installs stairs in a bail agent's office and not long afterward the stairs collapse. The contractor could be held for completed operations liability.
5. *Contingent Liability Exposures* (also known as "vicarious"): responsibility for actions of others such as employees, agents or independent contractors. The exposure to suit or claim for damages reverts to the business owner. For example, if a bail agency hired a convicted felon to work as a recovery agent and the felon injured someone, the agency could be held liable for contingent liability.

   Independent Contractors

   Usually a business' use of independent contractors does not make them legally responsible for any damages caused by them, but the law may revert responsibility back to the business owner when:
   - The activity itself is unlawful;
   - Extra hazardous operations (recovery works is an example);
   - The law does not allow transfer of liability by contract or the contract (or portion of it) is found un-enforceable;
   - There is a negligent choice of what independent contractor to use (also known as negligent hiring *or* supervision); and
   - The business owner violates the determination rules for what constitutes an Independent Contractor (for a complete explanation of determination rules for Independent Contractors, please see IRS Publication #15A found at the IRS's website at www.irs.gov.) Violation of these rules generally negates Independent Contractor status for tax purposes, but courts may hold that the act also negates the Independent Contractor relationship. For example, an Independent Contractor is required to offer its services to all businesses and not one business. If an Independent Contractor only offers services to one business, the IRS may determine that the Independent Contractor has an employee relationship to the company, thereby negating the Independent Contractor status. A claim therefore, could be made that the business may be responsible and liable for the actions of the Independent Contractor-employee as they would any of their own actual employees.
6. *Contractual Liability Exposures*: liability assumed under contract or agreement. The extent of liability can vary depending on the contract. For example, a bail agency enters into a contract with a coffee supplier to pay for its supplies on specific terms. If the agency fails to pay under those terms, they could be held liable for contractual liability.

Bail Agency Liability

Most bail agents recognize the obvious liability they have on each bail bond they write. The duty to the court to deliver the defendant at the time and place is obvious; although through the years there have been bail agents who seem to think their only duty is to collect the premium. There are a few bail agents who expect someone else to take care of their forfeitures and if that doesn't happen, then they expect the court to look the other way. There are some bail agents who have gotten that to work for a while, but then some new clerk, prosecutor or judge comes along and it suddenly changes.

However, the vast majority of bail agents realize that when they sign their name, they have an obligation to deliver.

How bail agents guarantee their bail bonds varies greatly from state to state. A few states such as Florida, Indiana and California only allow surety agents licensed by the state Department of Insurance (DOI) to write bonds. The majority of the states allow both surety agents and personal surety agents (property/pocket agents), although how the bail agents are licensed or appointed varies radically from state to state.

For instance in Arkansas, bail is regulated by a state bail bond board that in theory only allows personal surety, although there are currently insurance companies operating there playing under the rules of the board. Regardless of how the bail agents back their bonds, they still do the same job and have the same obligation.

Bail agents guarantee the appearance of each defendant at every court date. If the defendant fails to appear in court the first time, it is the bail agent's job to get them back to court; if they can't get them back to court, get the defendant in jail. If the bail agent fails at all of those tasks, then it is the bail agent's responsibility to pay the face amount of the bail bond they posted. It is a pretty simple job; just like the game of baseball. You throw the ball, you hit the ball and you catch the ball. The rest of it all depends on the speed of the game. Same way for writing bail bonds; it just depends on the speed of the defendant and the size of the bond!

Fiduciary Liability

Almost everyone is familiar with the term fiduciary responsibility. *Blacks' Law Dictionary* defines fiduciary as, "a person who is required to act for the benefit of another *on all matters with the scope* of their relationship." Many bail agents don't realize just how much liability they have in regards to defendants and indemnitors, and some don't even know they owe a liability to indemnitors. Most bail agents take very seriously their obligation to keep collateral secure.

After all, most state laws are pretty stringent about taking and holding collateral so most bail agents strive to stay out of trouble with regulators by making sure that proper legal receipts are given and collateral is held and stored in the appropriate way. Most bail agents want to stay out of jail themselves so they stay away from conversion of collateral, although there are always a few who don't think they will get caught or don't understand their duties relating to collateral. However, most bail agents realize that this is a source of real liability and take care to do this right.

Section III

Different areas of Liability

Liability from Collateral

When it comes to securing collateral, we all know cash is king! Cash collateral means no liability on the bonds we write so we love it. But cash has its own problems. Most insurers require cash collateral, at least in larger amounts, to be transferred to the surety company. Cash collateral in amounts above $10,000.00 must be accounted for to the IRS on form 8300.

Some bail agents don't realize that this also includes collateral and the premium combined when they total $10,000.00. Many bail agents believe that a cashier's check does not count as cash, when in fact it does. Unless you have the money wired to your account from another bank or you do a credit card transaction, you would be wise to complete and file a form 8300 with the IRS on any transaction involving even close to the $10,000.00 mark.

Other bail agents believe that if they accept payments stretched out over a period of weeks or months, they do not have to complete the form; but again, that is incorrect. If a total transaction involves more than $10,000.00, it must be reported on the IRS form 8300.

You always have to ask yourself this question: is this worth the money plus the fine you will have to pay and is it worth going to jail over? The justice department has been known to run sting operations against attorneys and bail agents where they offer large sums of cash to get someone out of jail. Is that a liability that you are willing to assume?

Many bail agents take all types of collateral that can create problems for them. Almost all bail agents take real estate and even though it seems safe, it has many perils. The most obvious is that the property could burn or be destroyed, which would increase your liability on the bond; or even worse when the economy is bad, the value of the property could deteriorate to the point where there is no equity. The risk most bail agents don't realize is the liability they attach to themselves when they do their own mortgages or deeds. Legal descriptions on real property are very particular and if you make one little mistake, such as a simple deletion of a comma in a critical place, could cause a lien to be placed on the wrong property. A condition that obviously means your bond is not secure, but also clouds the title of another property holder or worse, more than one property holder, all of whom you now owe a liability.

In some areas bail agents decide that it is better to actually hold title to the property by taking a "quit claim deed" and holding the property in their names or some corporation's name that they control. While this is considered conversion in most places, it is legal in others. There was a bail agent who took possession of a small piece of property that caused a liability nightmare, even though they held the property in their name for less than ninety days. This particular piece of property had been the site of several old oil wells from back in the forties and fifties and not long after the bail agent deeded the property back to its rightful owners, the federal government came in and put this property into a superfund environmental clean-up. The way that law is written, any entity that owned any part of the property at any time, is financially liable for the clean up. Even if the bail agent eventually avoids paying for the clean up, the attorney fees to fight it will probably put them out of business.

In another example, the bail agent set-up a corporation to hold "homesteaded" property because homesteaded property cannot be attached in that state, except in certain cases and bail is not one of them. The people who were renting the house were operating a crystal methamphetamine lab, which exploded and caused two neighboring houses to burn. The neighbors sued and when the Judge realized why the house was titled the way it was, he allowed the corporate veil of the holding corporation to be pierced, which allowed the bail agent to be sued individually.

Bail agents who take physical items, such as automobiles, jewelry, guns or other forms of chattel, hold many other liabilities to go along with those items. While there should be no liability for being listed as a lien holder on an automobile title, if you actually take possession of the auto, you will be directly liable for any damage caused to the vehicle while it is in your custody. There are many stories where bail agents take an automobile that has a dent in it when they take it and then have the owner claim it was done while in the possession of the bail agent.

If jewelry is taken, there is real liability in the way the jewelry is described in the collateral receipt. If you describe a watch as being a "gold Rolex watch" and when the owner comes to pick it up it turns out to be a fake, the owner may claim you have switched the watch and you have no defense. Jewelry should always be described in very generic terms so that a "gold Rolex watch" becomes a "yellow metal watch" and a "gold diamond ring" becomes a "yellow metal ring with a clear glass stone." Taking guns can create all kinds of liabilities, the most obvious is taking one that is stolen or that has been used in a crime. As always, the main thing is to be constantly aware of any liability you may be assuming and know the ramifications of taking on that liability.

Liability from Privacy Issues

Under federal law, the *Gramm-Leach-Bliley Act* has very strict obligations to keep defendants' and Indemnitors' information completely secure. If you write for an insurance company, they should provide you with copies of their "privacy notice" to deliver to each defendant and indemnitor. If you are a personal surety agent, you are required to develop and deliver your own. Failure to provide a privacy notice can result in severe penalties. Under the law you are required not only to keep all of the personal information secure, you are also required to notify any person for whom you hold such personal information should you displace any of that information. Should someone steal a laptop computer from your car or your briefcase with private information, you would be required to notify those persons. Should someone then use that information stolen from you, you would be liable for any of the damages caused.

Those damages become treble damages, to include punitive damages, if you fail to notify individuals that their information was compromised. If you keep your bail information on a server in your office and someone hacks that server, you would be liable for the loss of that information. The good thing about keeping your information with an online service provider, provided that they have the necessary security certificates, is that they assume those liabilities. That is true providing that it was not someone, such as former employee whom you gave access to and did not revoke that access upon termination, who leaked the information.

Under the *Graham, Leach, Bliley Privacy Act,* you are required to establish a privacy policy and to publically post that policy. If you write for an insurer, they are required to establish their own policy and may require that you provide copies of their policy to your clients; but that does not override your obligation to have your own policy. In addition to any public posting you may do in your office, it must also be contained within your website if you have one and a copy provided, at a minimum, to anyone whose information you keep that requests a copy. It should be given to anyone whose information you collect.

One item in everyone's office that can be a severe lapse of privacy and that most people are not aware of is their copy machine. All modern-day copy machines have an internal hard drive, which keeps images of all the copies that are made.

The hard drive is there primarily to provide the copier company the ability to charge you for the number of copies made through purchase and maintenance agreements. If the hard drive is not erased when you discard the machine, whether you trade it in or you run it till it wears out and throw it away, then you are potentially providing someone who knows what they are doing with a great source for everything you have copied. You should ensure that the copier company, or other service provider, destroys the hard drive of the machine before discarding it.

How humankind survived without copy machines the first several thousand years is amazing because they sure can't do it now. Every time a bail agent copies a bail file, they open themselves up to loss of privacy liability. Some bail agents make multiple copies of a skip's file and hand them out like candy to different recovery agents reasoning that the more that are looking for a skip, the quicker they will be found.

What happens to those files when the defendant gets recovered? In addition to the defendant's information, there is also the indemnitor's personal information, which you are liable to protect. How many times have we watched a recovery agent go to a police officer and hand them the complete file of someone? Or even go to a home or work location of someone who supposedly knows the defendant and stand there talking to that person with the file open showing not just the defendant's information, but also the indemnitor's information. How many times a day do bail agents scan a file and email it not only unencrypted, but without even basic file password protection?

If you get rid of old files after whatever period of time required in your state has passed, you need to make sure those files are destroyed by either shredding or burning them and not throw them in the trash. Throwing someone's personal information in the trash where it can be picked up by anyone is tantamount to a disaster, which includes the possibility of federal prison time and whatever civil penalties you may face. If you use a shredding company you should be certain the standards the company uses are equal to state and federal laws. Some companies come to your location with a truck-mounted shredder and you can watch them doing the shredding, while others pick-up your shred boxes and carry them to a central location. You need to ensure that the files you give them are in fact being shredded and no one has access to them.

Terrorist Watch List

September 11, 2001 is a day that each of us will remember for the rest of our lives. That day changed how we see the world as much as December 7, 1941 changed the "Greatest Generation's" lives. What happened after each of these days was alike in that they led to war, yet they were drastically different in terms of those wars. World War II had clearly defined enemies with victory clearly defined.

The war against terrorism has no clear enemy and no good way to define victory. Since 9-11, we have witnessed many changes in laws and rules that have changed the way we live and interact with each other, both in business and personally. One way that has directly impacted the bail agent is the "terrorist watch list."

In the days after 9-11, President George W. Bush signed an executive order on September 24, 2001 that requires all persons doing any financial transaction to verify the identity of the person they are dealing with and to verify they are not on a federal watch list for terrorism. That order became part of the Patriot Act passed by Congress and signed into law a few months later. In order to be in compliance with the Patriot Act, a bail agent is prohibited from having financial transactions with persons, entities or organizations designated by the U. S. Government as being "blocked." The list of persons, entities or organizations with which the bail agent cannot do business is listed at www.treas.gov.

A bail agent is responsible for reviewing the referenced list when underwriting bail bonds, taking premium, collateral or working with indemnitors. If a person who is attempting to do business with the bail agent is found to be on the list, the bail agent is required to notify the Federal Bureau of Investigation BEFORE they can do business with that person. Failure to comply with this act has serious criminal and civil sanctions.

Liability to the Principal

In addition to keeping our principal's information safe and making sure any collateral held is held properly, what other liabilities do we owe our principal? To begin with, we owe them what they paid us for; to make sure that they appear in court.

It is always surprising to hear a bail agent tell a defendant it is not my job to keep up with your court date. If that were true, exactly what is a bail agent being paid to perform? The whole purpose of bail is to guarantee the court that the defendant will appear where and when they are supposed to appear. As bail agents, it is our job to make sure that our principals know where to be and when to be there.

If we cannot do that simple chore, then the rhetoric that taxpayer-funded programs state are true and the system does not need our services. Keeping up with hundreds and sometimes thousands of defendant's cases and providing court dates would have been challenging in the old days, but with the advent of the online computer, there are many solutions in the marketplace to help you keep track of court dates and notify the defendant. This can be done without you having to do anything but make sure the principal's email address and the court date are in the system.

At a minimum, we owe our principals good business practices. They should receive copies of anything they sign, especially the bail contract. And we should ensure that anything they sign is printed in an easy to read manner and in plain language that is easily understood. In the case of someone who does not speak English, we should make sure they fully understand what they are undertaking. The bottom line for good business practices is making sure we treat people like we would expect to be treated. Of course, it is imperative to make sure we do what we are paid to do, which is to make sure the principal goes back to court. Keeping up with court dates and making sure the principal knows when and where to be is the reason a bail agent gets paid. It is imperative that we perform; otherwise we are exactly what the taxpayer-funded release proponents say we are.

One other part of good business practices is making sure we take care of our business so that we stay in business and we don't jeopardize defendants on whose bond we have become surety by doing things that put our business or license at risk. Writing too many risky bonds or extending too much credit are obvious ways of getting run-out of the business, but there are many other ways to destroy our business as well. Doing things that are illegal is a quick way to not only get put out of business, but also find yourself needing your own bail agent. You have a responsibility to the people who have put their trust in you to get them out of jail and keep them out, so always keep your business practices good.

Liability to the Regulator

Liability to the regulator is probably more complicated. Every state regulates bail differently and in many places, it is even different from one county to the next. The obvious part is the application process you complete for your license. All applications for a bail license come with the caveat that if you lie on the application, it is the felony charge of perjury and almost every place is serious about putting you in jail for lying on the application. In many places, simple errors on an application is cause for it to be denied or if found after a license is given, sanctions can include fines, license suspension or possibly even license revocation.

There is also liability for reporting requirements. In some states reports are required annually while others require quarterly reports. A few even require monthly reports. Reports containing erroneous information can cause sanctions against the bail agent.

Reports that are blatantly false can cost the bail agent their license and for some, it could bring a charge of perjury.

Most bail agents are regulated by the Department of Insurance in their state. Large states like California have a couple of thousand bail agents where a state like Vermont, has only a few. But even in those states like California, bail agents make up a tiny portion of the licenses issued by the Department of Insurance when you compare it against property and casualty licenses. Approximately two thousand to several hundred thousand property and casualty licenses are issued, which also doesn't include any life and health licenses. Yet the truth is in many states, bail agents cause more problems and take up more time than all of the other licensees combined.

Liability to the Profession

President John F. Kennedy in one his most famous speeches said, "ask not what your country can do for you; ask what you can do for your country." The same should be asked of every generation because we live in a great country that gives every person bountiful opportunities if they choose to exercise them; nothing is given freely, but every opportunity is afforded to any person willing to do the hard work required and go the extra mile.

In the bail profession, the same opportunities exist. It is surprising how few bail agents know how we got to where we are politically. The bail industry has been under constant attack by proponents of a taxpayer-funded pretrial release system that calls for the elimination of financial release and the bail industry. How have we gotten to this extreme consensus?

Beginning in the late 1950's a slight push against commercial bail began when the son of a prominent east coast government official from Massachusetts was picked-up in California and brought back to Boston to face rape charges. Regardless of the fact that the son was convicted and sent to prison, this government official began attacking the bail profession as having too much power. As time passed, this official convinced others for the need to eliminate commercial bail. In the early 60's tactics also claimed that bail agents had too much power over indigent defendants, forcing the indigent to stay in jail while the wealthy were released. Additionally, it was claimed that the bail industry was owned by the mafia and was used mostly to keep their operators out of jail.

After President John F. Kennedy came to power, the Vera Institute started a project in New York City to release the indigent without using bail agents. United States Attorney General Robert Kennedy convened a symposium in Washington D.C. to force changes in the bail system. There were hearings held in the House and Senate and the Bail Reform Act of 1964 was eventually passed changing the way bail was done in federal courts, which mandated that a defendant must be released by the least restrictive measure to ensure their appearance in court. From those efforts, the *National Association of Pretrial Services Agencies* (NAPSA) was formed and shortly thereafter the *Pretrial Services Resource Center* (PSRC) was formed, now known as the Pretrial Justice Institute (PJI).

NAPSA was a membership-based organization that was started with government grants that invited judges, prosecutors and attorneys from across the country to serve on their board of directors. PSRC went one step further getting all of its funding from government grants. In the beginning, their boards were made of mostly of the same people. The PSRC used government funds to do studies and implement pretrial release programs in different states and kept a large part of the funds for operations. After the push in the federal system, the fight turned to the states.

In 1964, Illinois became the first state to eliminate commercial bail, still claiming that commercial bail keeps the indigent locked up. The issue of corruption arose after some Chicago judges were arrested for accepting bribes from bail agents, which again led to the elimination of the commercial bail system and implementation of a ten percent bail system.

The next state to eliminate commercial bail was Kentucky, which was lost when a couple of bail agents tried to bribe the governor. Following the loss of Kentucky, attacks on commercial bail came from everywhere.

It was a war bail agents were slow to come to, but they did become more politically active and slowly began to win victories in various state houses. Many victories were won by one vote, such as in Florida, Tennessee and Mississippi, but they were wins. The commercial bail industry was not so lucky in Oregon and Wisconsin, as commercial bail was eliminated in those states, but those were the last states to ban the industry. All through the late 1970's and early 1980's there was a hard push in many states to eliminate commercial bail, but bail agents got smarter politically and better organized. Many states started state bail agent's associations to lead the fights.

The California association had roots going back to the 1940's with Florida starting in the 1970's. During the 1970's there were several attempts to start a national bail organization. The **United States Professional Bail Agents Association** lasted a couple of years before splintering apart and then in 1981, a group of bail agents came together in St. Petersburg, Florida to form the **Professional Bondsmen Association of the United States (PBUS)**. The name of the association was later changed to the **Professional Bail Agents Association of the United States** due to a large influx of female bail agents.

Beginning in the late 1980's and continuing today, the taxpayer-funded release system realized that they were not going to succeed at in eliminating commercial bail on a whole-scale basis. The bail agents had become too politically active so they shifted their forces to begin working in counties and cities. They convinced the federal Department of Justice to include funding for start-up of pretrial services programs as part of the Byrne grants. They began attending meetings and conventions hosted by the League of Cities and Counties and holding seminars on ways to reduce jail overcrowding and save cities and counties funding. They convinced city and county leaders that by establishing a pretrial services program, such programs could drastically lower jail populations by providing a risk assessment to defendants and facilitating their release; such a system would focus on risk vs. the ability to pay for release. Federal grant money could be obtained to create such programs.

However once created, such programs quickly grew to be huge bureaucratic programs within city and county government with the taxpayers paying for them. What originally started in the early 1960's to facilitate the release of indigent defendants had now grown into a program that used taxpayer funds to release defendants who could afford their own release as well as violent and repeat offenders.

The commercial bail industry was not consulted as to what a taxpayer-funded release system would ultimately turn into. If the industry had been consulted, we could have clearly promoted the benefits the industry provides to taxpayers and to public safety and at a minimum, could have played more of a partnership role with the government system regarding jail releases. That is why it is very important that bail agents get to know their local and state government leaders to help educate them on the benefits the bail industry provides. Bail agents must become more politically involved to help prevent the industry from being eliminated.

Office Liability

Most businesses would not even think of opening their doors without general liability insurance. When you open a business, you invite anyone who is a potential customer to your business, but you can also have other individuals come onto your property without doing any business. For example, if your office has a sidewalk that fronts the street, you are liable for any tripping hazards that may occur.

You are also liable for any injuries inside of your place of business, such as falling from a broken chair or a slip from a rug or fall from a tear in the floor. There is also liability if someone is robbed or assaulted on your property/business.

There are many legal requirements that are imposed on business owners by local, state and federal regulations and statutes. Most businesses are required to pass inspections when they first open to get a Certificate of Occupancy; therefore you know when you move in you are in compliance. However as time passes maintenance issues can be addressed in a more haphazard way or not at all. Slowly over a period of years, your office could evolve so that it would no longer pass that inspection. If someone gets hurt on your premises and they can find even one item that does not meet some code, their potential damages can be increase significantly if they choose to file suit against you. If you have not complied with your insurance contract as to maintenance issues, the insurance company may not cover any damages.

Of importance is also adherence to the *Americans with Disability Act* (ADA). The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications and governmental activities. The ADA also establishes requirements for telecommunications relay services.

One of the biggest issues relating to this act is that many older buildings are not forced under the act to make changes to accommodate persons with disabilities. However, if a person with disabilities is harmed on your premises and that harm is a result of an issue that would have been cured under the ADA, then it should be expected that attorneys will find grounds for a negligence claim. A simple example would be handrails around a toilet. If a person with a disability fell and suffered harm while transferring from a wheel chair to the toilet when there is no handrail present, you could expect a claim under the ADA even though your building was old enough not to be subject to the act. If your building is already subject to the ADA and you are not in compliance, you are subjecting yourself and your business to a violation or potential liability suit.

Liability from Employees

Employers will often be held liable for the conduct of their employees and not the employee themselves. Even though the employer had no intention to cause harm to someone and played no physical role in any harm, they are still normally held responsible. There are two basic concepts that underlie employer liability. Because employers share in the good results an employee produces in terms of profits and is seen as directing the behavior of their employees, then they must accordingly share the bad results of that behavior. The real issue is always one of money. When someone is injured or harmed and should be compensated, who likely has the ability to pay: the employee or the employer? The legal system is interested in making the victim whole. Assigning liability to the employer along with the employee has the best chance of getting the victim compensated.

Employers are vicariously liable for the negligent acts or omissions by an employee under the doctrine of "*respondeat superior,"* which is Latin for "let the master answer." This is also known as the "Master-Servant Rule" and is recognized in both common law and civil law jurisdictions, with "in the course of employment," being a key phrase. For an act to be considered within the course of employment, it must be authorized by the employer or must appear to be an authorized act so that an employer should be held responsible.

Liability from employees takes many forms. There is the obvious where an employee hurts someone either intentionally or unintentionally. Any time you hire someone and give them handcuffs, even if they have no weapon, you have the potential for harm to another person.

While most bail agents use contract recovery agents, it is commonly known that almost all bail agents keep a pair of handcuffs on them or close by, even if they don't ever do recoveries. Most bail agents carry handcuffs but they must know how to use them. While it rarely happens, how much liability would you have if an employee hurt someone with a weapon, no matter what the circumstances of the event?

There is also liability from employees giving consumers the wrong information, either intentionally or unintentionally. Simple things like telling a client the wrong court date or completing standard paper work incorrectly can give an attorney grounds to sue. Giving someone a collateral receipt for the wrong amount, such as taking in one thousand dollars and writing ten thousand dollars, would certainly be a liability. There are too many issues employees can cause to list them, but the bottom line to keeping these from becoming a problem, is always good and proper training.

Negligent hiring or retention liability arises from acts performed by an employee outside the scope of his or her employment, unlike job related misconduct. The most common example of this is to hold an employer liable for the criminal conduct of an employee, to which bail agents are particularly susceptible. The liability arises based on the claim that the employer acted carelessly in hiring a criminal for a job that the employer should have expected would expose others to harm. In many states, a bail agent cannot hold a license if they have any felony conviction; but that does not seem to keep bail agents from hiring recovery agents who have criminal histories. Hiring someone who has any type of violent offense, misdemeanor or felony, could cause the bail agent and even their surety company serious problems if that person hurt someone. This is true even if it was not in the scope of their employment, such as if the person they harmed was accessed through the business.

Providing employees with access to potential victims without doing necessary examinations of an employee's background is the key to most negligent hiring and retention cases. To avoid liability for negligent hiring, an employer should always run a background check on an employee, especially if the employee has contact with the public. If you hire someone and become aware of something after the fact, then you must deal with the matter immediately to avoid negligent retention liability.

Harassment

Workplace harassment of an employee by other employees has become an increasingly problematic source of business liability for employers. Workplace harassment violates federal law if it involves discriminatory treatment based on race, color, sex (with or without sexual conduct), religion, national origin, age, disability or genetic information. Employees cannot be harassed for opposition to, or participation in, a workplace harassment investigation or complaint proceeding under the Equal *Employment Opportunity Commission.*

Workplace harassment does not include simple teasing, off-hand comments or isolated incidents that are not extremely serious. The conduct must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action," such as hiring, firing, promotion or demotion. Even if the harassment did not lead to a "tangible employment action," the employer can still be held liable unless it proves that:

- The employer exercised reasonable care to prevent and promptly correct any harassment; and
- The employee suffering the harassment unreasonably failed to complain to management or to avoid harm otherwise.

To avoid workplace harassment liability, employers should establish, distribute and enforce a policy prohibiting harassment and set out a procedure for making complaints. Preferably, the policy and procedure should be in writing. Small businesses owners may avoid liability through less formal means.

For example, if a business is sufficiently small that the owner maintains regular contact with all employees, the owner can tell the employees at staff meetings that harassment is prohibited, that employees should report such conduct promptly and that a complaint can be brought straight to any supervisor or the business owner.

Finally, it is not enough to simply create a harassment policy. A business must also conduct prompt, thorough and impartial investigation into any complaint that arises, and undertake swift and appropriate corrective action to fulfill its responsibility to "effectively prevent and correct harassment."

Sexual Liability

The U.S. Equal Opportunity Employment Commission (EEOC) defines workplace sexual harassment as "unwelcome sexual advances or conduct of a sexual nature, which unreasonably interferes with the performance of a person's job or creates an intimidating, hostile or offensive work environment." Sexual harassment can range from persistent offensive sexual jokes to inappropriate touching to posting offensive material on a bulletin board. Sexual harassment at work is a serious problem and can happen to both women and men.

Both state and federal laws protect employees from sexual harassment at work. Sexual harassment is a form of sex discrimination under Title VII of the Civil Rights Act of 1964. While Title VII is the base level for sexual harassment claims, states have sexual harassment laws which may be even stricter. Check the laws of your state for more information.

Under Title VII there are two recognized types of sexual harassment:

- Quid pro quo
- Hostile work environment

Under the quid pro quo form of harassment, a person in authority, usually a supervisor, demands that subordinates tolerate sexual harassment as a condition of getting or keeping a job or job benefit, including promotions and raises. A single instance of harassment is sufficient to sustain a quid pro quo claim (e.g., a superior demands you kiss her/him in order to keep your job); while a pattern of harassment is typically required to qualify as a hostile work environment.

Hostile work environment harassment is grounds for legal action when the conduct is un-welcome, based on sex and severe or pervasive enough to create an abusive or offensive working environment. Elements which courts analyze in determining whether this standard has been met include:

- Whether the conduct was verbal, physical, or both;
- Frequency of the conduct;
- Whether the conduct was hostile or patently offensive;
- Whether the alleged harasser was a co-worker or supervisor;
- Whether others joined in perpetrating the harassment; and
- Whether the harassment was directed at more than one individual or a single victim.

In any sexual harassment case, the alleged victim will have to meet a subjective and objective standard. In other words, the plaintiff must show that:

- He/she subjectively believed the conduct was hostile, abusive or offensive; and
- A reasonable person in the plaintiff's position would objectively believe the conduct was hostile, abusive or offensive.

Employer Liability

Only employers with 15 or more employees are subject to Title VII. For companies with fewer than 15 employees, state law governs and most states have enacted laws covering such circumstances. If either quid pro quo or hostile work environment harassment can be proven, employers may be liable for compensatory (monetary loss, pain and suffering) and punitive damages. Liability may depend on who committed the harassment (superior or co-worker) and what action the company took to correct it.

If the harassment is committed by a superior and:

- There is tangible employment action (firing, demoting, negative changes in assignments or responsibilities), the employer is liable.
- The harassment is a hostile work environment, then the employer is liable. The employer's defense to liability is that it 1) exercised reasonable care to prevent the harassment and took prompt corrective action to stop it once made aware, and 2) the employee un-reasonably refused to take advantage of the corrective measures.

If the harassment is committed by a coworker:

- The employer is liable if it knew or should have known about the harassment, unless the employer took immediate corrective action.

There is one last form of sexual harassment that needs to be covered for a bail agency, and that is harassment of clients of bail agents or others. If you have been in this business any length of time, you have heard the stories of some bail agent trading sex for bail. While the rumors seem to be rampant, there are rarely prosecutions for it but when the authorities do discover that happening, there will be prosecution. It is not just a liability issue but also a criminal issue and a serious one.

While there have been some sexual harassment issues involving bail agents, most of these issues involve employees and/or agents of bail agents. This is an extremely offensive issue to our profession and everything that can be done to make sure it does not happen should be done.

Bail agents should also monitor closely their conversations with court personnel and criminal justice personnel. There have been instances where bail agents have been heard telling inappropriate jokes or making inappropriate comments, which creates an unprofessional image and could lead to sexual harassment claims that any potential employer could face.

Automobile Liability

We all need automobile insurance. For the majority of people the automobile is their greatest source of liability, particularly with the use of cell phones, texting and other distractions. As a bail agent, you should think about the following:

- How many bail calls do you take while you are driving?
- Do you have an IPad in your car that you can take down bond information while you are driving?
- Would that qualify as doing business and yet you are only carrying personal automobile liability insurance?
- Do you ever have your agent or employee jump in your car and run down and pick-up donuts, lunch or maybe a defendant from the jail?
- Any chance they may have an accident while driving your car, which may not have a business liability policy on it?
- Will your personal auto policy cover an accident if that happens?
- What would the repercussions be if your agent was driving your vehicle and got into an accident while talking on a cell phone and someone was killed?

Your personal auto policy will not cover such instances, nor will your homeowners liability policy. If you write you're automobile policy off on your income taxes, do you think an IRS auditor would know to look at how the automobile is insured to determine if it is really a business car? Have you thought about how much taxes that would cost you to have that automobile deduction denied or have the IRS look at previous tax returns? A business automobile policy is not that much more expensive than the personal automobile policy you may already be paying for, so it would make sense to talk to your insurance agent about getting such a policy.

Recovery Liability

For most bail agencies, recovery liability is the big issue. It comes in many forms, almost too many to mention, but some of the big ones are obvious and have already been mentioned. The biggest mistake bail agents make is hiring a contract recovery agent and failing to get a hold harmless agreement signed. While this will not keep you from getting sued, it will offer you some cover in a few courts and more importantly, it will at least give you an opportunity to be made whole by the recovery agent.

While many bail agents may do their own recovery work, it is still very important that they are properly trained and they are not carrying a weapon that they are not certified with, such as handcuffs, pepper spray, a Taser or especially any type of gun.

A bail agent doing their own recovery work usually will recognize a liability problem and back away before it gets too bad, where many hired recovery agents will not.

Some of the issues that cause bail agents problems in recoveries include:

- Lack of proper training when doing recoveries;
- Failure to properly identify the defendant;

- Failure to make sure the bail bond is still valid and/or a valid forfeiture exists;
- Hiring a recovery agent who has not been properly trained;
- Hiring someone who has previously been convicted of a crime involving violence;
- Allowing a recovery situation to get out of hand so that someone gets hurt;
- Failure to properly restrain a defendant; and
- Failure to ensure you have the correct address and/or entering the wrong address.

The most important point that you need to remember is that when you or someone acting on your behalf restrains another person, no matter how insignificant that restraint may be, there is liability. It is entirely on the bail agent's shoulders to make sure that you or the person you hire is properly trained, acting responsibly and has your best interest at heart.

Section IV

It happened the way it is written down!

For anyone who spent time in the military, this should be second nature. Everyone has heard the phrase that, "the U. S. Navy floats on a sea of paper," or that "the job is not done until the paperwork is all done." The simple fact is that whoever has a written version of any event probably has the only written version. Anytime something happens that even hints of being out of the ordinary, you should write down the details of what happened, take pictures if there is anything to take pictures of and file it where you can find it three years from now.

Every recovery should have a case file associated with it that contains all of the relevant paperwork that is kept together. All investigative notes should be kept in this file showing the clear trail of how that defendant was tracked and captured. It should show times and dates of every time the file was opened and every person contacted. It should show specific places, dates and times when you were actually knocking on doors expecting to find the defendant.

If any recording devices are worn or carried, whether audio, video or both, a full typed transcript of everything that is said should be kept in the file either on a CD or flash drive, along with a copy of what was recorded, so that it is preserved for future reference. When a defendant is placed in a car the beginning mileage and ending mileage, along with times and places, should be recorded. A photo of the defendant should be obtained showing how he/she looked entering the jail to prove that there was no injury upon surrender. With all of that, if anything out of the ordinary happened while you were doing the recovery, especially if it involved another person, an incident report clearly indicating what happened should be written. If you are sued, you can refer to this information to defend yourself. If you used a recovery agent, it is even more important to have this documentation, to include any recordings made by the recovery agent.

It is very important to understand that a written report done at the time of the incident carries much more weight in a court than a memory, which can be distorted by an attorney two or three years down the road when you finally get to court. The incident report will stand on its own. But of course, if the report is bogus and is unbelievable because of things you or the recovery agent put in it that make it false, then it not only has no value, it could be used as evidence to gain a perjury conviction against you. It cannot be emphasized enough that any time something happens there should be an incident report completed. If the incident involved more than yourself or one of your employees or agents, then each person should complete a separate report in their own words, not your words, to be believable.

Incident reports are not just for recoveries. Every time something out of the ordinary happens in a business, there should be an incident report done and a file developed. If someone comes into your office and is complaining about the way they were treated by one of your employees, you should write it down and have the complainant file an incident report. The longer you wait, the worse the memories involved will be and if it is not written down, the judge and jury will tend to believe the victim.

If something happens in your office and someone is injured, such as the chair breaking, falling or someone slipping in the restroom, complete an incident report. Do not rely on a report to be written by the police, fire department personnel or EMT personnel. The report they write will cover what they do and see, not what may have happened. While you can't always prevent people from falling or tree limbs from falling on people, you can make sure you limit your liability to the actual damage.

Section V

Limiting Liability

You now know some of the problems associated with liability, but the big question of the day is how you protect what you have. You already know that when you have an issue, no matter how insignificant, you write an incident report. But you know it is not that simple, as it never is. The truth is that limiting liability starts at the beginning. The same place it starts when you are writing a bail bond. How do you limit your liability on a bail bond? You do it before you ever write the bond. As a matter of fact, you start limiting your liability on a bail bond before you ever take the first call, even before you start to advertise yourself as a bail agent.

When you prepared to start your business, you either contracted with a surety company or prepared to license yourself as a personal surety (property) agent. It was at that point that you hopefully began to protect yourself against bail liability. If you signed with a surety company, they provided you with the forms that you needed, such as an application for bail and an indemnification agreement, along with collateral receipts, proper power of attorneys, promissory notes and all of the legal forms you needed.

You should have also received the proper training to teach you how to use their forms. If you are a personal surety, you may have copied someone else's forms, maybe someone you used to work for or failing that, hopefully you had your attorney prepare the forms. That is how you should have prepared yourself to enter the bail bond business. Every time you write a bail bond, you know that limiting your liability begins with the very first phone call. It begins with listening to the information you are given from the beginning of the call and making good notes. It continues with every call you have relating to that bail bond and every conversation you have in person with the friends, family and indemnitors up to the point you decide to write the bail bond.

Even after you have written the bond, you are still making notes and keeping tabs on what is said and making sure you have any information you may need to find the defendant if he/she absconds. It is what every good bail agent all across the country does to make sure the defendant's bail is written on show-up for court. The question becomes are you as diligent in taking care of the rest of your business as you are in writing bonds? You should have done this before you started your business and hopefully you did. You need to sit down with a well-qualified commercial insurance specialist and go over all the needs of your business.

You may want to say that you cannot buy liability insurance for a bail bond business. There is truth in that statement only as it relates to the recovery part of the business. But what is most important is that you have general liability coverage even if it specifically excludes liability relating to recovery. It is important that you be candidly honest with an insurance specialist about all of your liability issues. They cannot protect you and your business from something they do not know about. Most commercial insurers have a specialist that will come to your office do a complete audit of possible liability issues; while some do it as an ordinary part of their business, most only perform the audit if they are requested. Even if you have to pay someone to perform this audit, you should have it done if you have never had your business put through an audit.

The second issue you should seriously discuss with your commercial insurance specialist is your automobile polices, especially if your automobiles have personal auto policies on them now. This issue has been discussed previously, but it is important to make sure you bring this issue to your agent. This one issues hurts more small business owners more than all the others combined.

The last policy you need to discuss with your insurance agent is an umbrella policy. Most people are severely under-insured when it comes to catastrophic liability. It is often surprising to learn how few people have umbrella policies and even more surprising how few business owners have them. The liability polices you have on your automobile and business are sufficient for the average accidents. However, if you ever have a serious accident where someone is seriously harmed or killed, neither of these policies will be enough to cover the damages.

As an example, there was a case where a young business person was driving in city traffic doing less than the posted twenty-five miles per-hour speed limit and had a person step into traffic from between two cars right in front of them. Even though the pedestrian was on the phone, the driver was cited for the accident. The auto policy insurer paid the limits of the policy and luckily the driver had an umbrella policy to defend them against the remaining damages.

So insurance wise, there are three polices you need to discuss with a commercial insurance specialist; your business liability policy, your business automobile policy and an umbrella policy. Make the call today.

Section VI

Goals and Benchmarks

Every day you enter your office you should do a liability audit of the premises and consider the following:

- Are the exterior lights all in good order and working properly?
- Is everything on the exterior as is should be?
- Are the sidewalks broken so that someone could trip or tree limbs that might fall on someone?
- Are your steps in good order and do you have a handrail?
- Do you have ADA ramps in place where needed?
- Have you ever considered whether you need to provide security for persons on your property?
- Do you have exterior cameras that record what happens on your property and do they work?
- Does the building itself have a professional look and feel so that your customers feel secure when they come there?
- What about the interior? Is the interior in good order?

- Do all the lights work and does the interior look professional?
- Is all the furniture in good order?
- Is anything broken or are there any pieces that are not where they should be so that they are blocking lanes of traffic and creating a fall hazard?
- Is your office a mess of stacks of paper or does it look professional? A messy office is a sign to some people that you are not organized.

You should look carefully at your bail business as after all that is the reason you are in business. Are you doing everything you should be doing to limit your liability on the bonds you write? For instance:

- Is your paperwork up to date?
- Are you using the correct forms for all parts of your business?
- Are you sure the forms you are using meet current regulatory standards and current legal standards?
- When was the last time you had your attorney review your forms?

Paying an attorney to review all your forms once a year would be very cheap compared to losing the indemnity of a large bond because the state law had changed on the wording for a notary.

What about your recoveries?

- Are you sure you are doing your recoveries properly?
- Have you reviewed the way you do recoveries lately?
- Are you sure what you do is safe for everyone involved?
- Are you or whoever does your recoveries qualified with every weapon they carry, such as a Taser, pepper spray, handcuffs or guns?
- Does everyone have the proper training in all aspects of recovery?

You really do not want to be known as the bail agency that goes out and hurts people. Make sure of your training and your employee's training.

Please be careful when hiring a recovery agent who has a felony conviction of any kind, but especially a felony conviction that involves violence. If something happens there is no defense that will make sense to a jury.

Everything you do, every day you are in business for yourself should be to limit your exposure to liability. It is your money. If you want to keep it you need to protect yourself. If you are not watching your money, someone else will.