



2025

**SPRING  
CONFERENCE**

THE BILTMORE  
CORAL GABLES, FL

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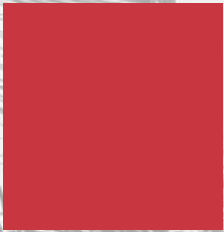
# How to Proactively Avoid TPA or MGA-Related Disputes

May 1, 2025

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# OUTLINE OF TOPICS

1. Background on the Basics
2. Due diligence and the negotiation of agency agreement & guidelines
3. The agreement – key terms to consider and include
4. Amending the agreement to reflect the evolving nature of the relationship
5. File documentation & auditing
6. Description of some common disputes that may arise

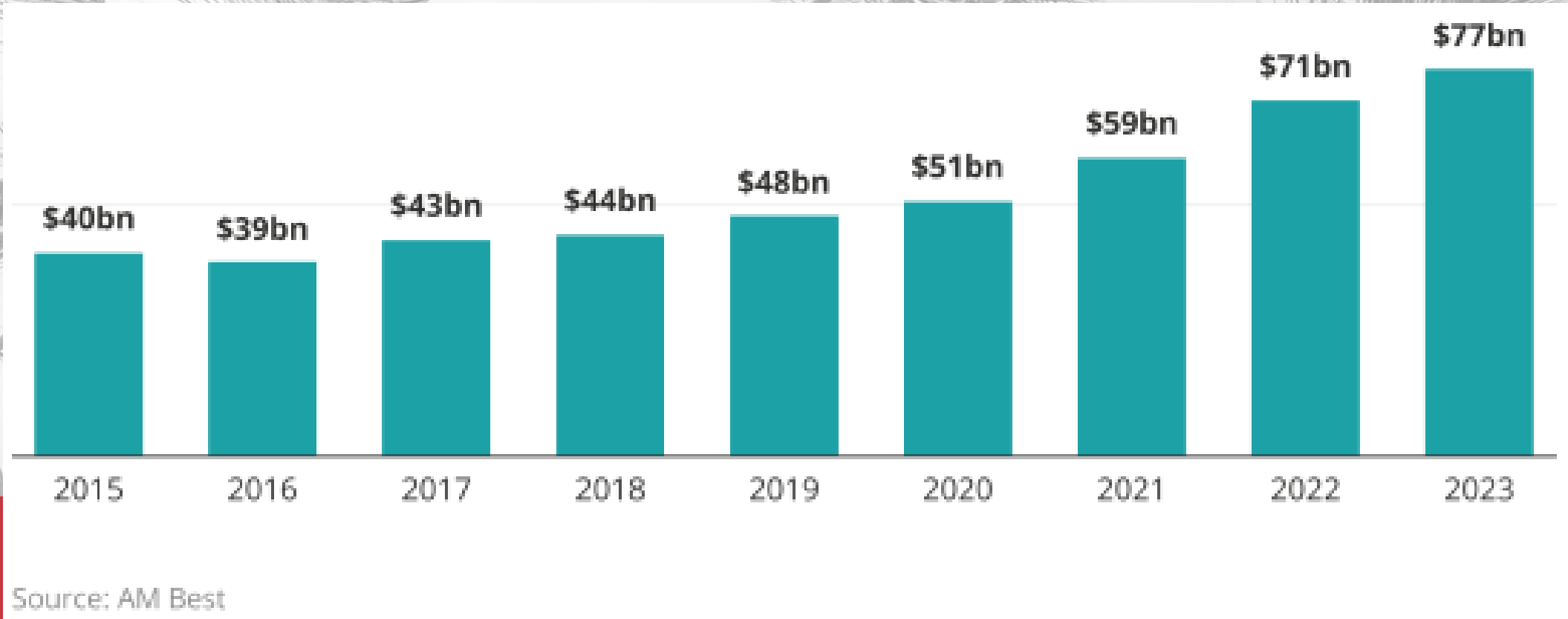


# BACKGROUND ON THE BASICS

- MGAs (or MGUs) are independent contractors that administer programs on behalf of carriers
- These program administrators provide some or all of the following services:
  - Marketing
  - Underwriting
  - Binding
  - Policy issuance
  - Premium collection
  - Data processing
  - Loss control
  - Claims management
  - Reinsurance placement & financial transactions

# BACKGROUND ON THE BASICS

MGA Direct Premiums Written in the US P&C Industry:



- Reinsurers increasingly reinsure fronting companies that work with (or are run by) the MGA

# BACKGROUND ON THE BASICS

- Program Business
  - Typically covers a well-defined and narrow segment of the insurance marketplace
  - The MGA/MGU controls the business
  - May have proprietary rates and rating factors and offer specialized coverage
- TPAs administer insurance claims
  - Verify coverage, investigate, and adjust
  - Like MGAs/MGUs, they are independent contractors

# DUE DILIGENCE & NEGOTIATION OF AGREEMENT AND GUIDELINES

Two Opportunities for Due Diligence:

- The decision to engage with the independent contractor
- And when the program is being set up

The conditions at the start of a program (rates, guidelines, etc.) are crucial to program success.

The time to correct issues is at the start and not after the agency has the carrier's pen.

# DUE DILIGENCE & NEGOTIATION OF AGREEMENT AND GUIDELINES

What to consider when finding a partner:

- Business model/business plan
- Experience with existing carrier
- Historic & expected premium volume
- Reputation
- Financial condition / review of financial controls
- Underwriting and management skills
- Existing market presence
- Program structure (e.g., reinsurer participation)
- Marketing plan (e.g., size of market, differentiation from competitors, experience)
- Actuarial review



# DUE DILIGENCE & NEGOTIATION OF AGREEMENT AND GUIDELINES

What to consider when implementing the relationship:

- Deal structure
- Underwriting guidelines
- Referral criteria
- Risk eligibility criteria
- Program geography
- Required reporting
- Policy forms review
- Systems review / interface with company
- Should the MGU also handle claims?

# DUE DILIGENCE & NEGOTIATION OF AGREEMENT AND GUIDELINES

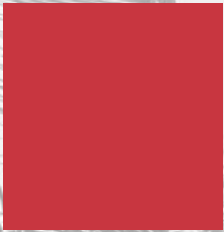
What to consider for claim handling:

- Expertise for the particular book of business
- Geographic spread/licensing requirements
- Size of claim inventory & claim flow
- Timeliness of contact with claimant, investigation, and settlement
- Claimant satisfaction
- Supervision/reporting/audit schedule
- Documentation
- Quality of investigation
- Level of authority
- Litigation management guidelines
- Compensation
- Subrogation recoveries

# DUE DILIGENCE & NEGOTIATION OF AGREEMENT AND GUIDELINES

The effect of reinsurance:

- Fitting program into existing treaty or a new one
- Approval of reinsurance contract wording
- Oversight of relationship with reinsurer



# THE AGREEMENT

## Key Provisions

- Scope of authority
- Indemnification
- Compensation / risk-sharing (to align incentives)
- Access to records
- Termination

# THE AGREEMENT

Examples of potential ambiguity:

- Providing for termination if there is an earned premium “drop,” but not defining the time period in which that drop was to be calculated
- Reverting to a different claim fee payment model at a certain point in time but not explaining how that would affect claims already being handled or previously handled
- Allowing exceptions to authority in a “minor percentage” of cases

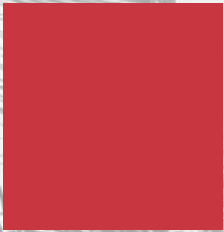
# AMENDING THE AGREEMENT

- Over the life of a contractual relationship, practices may change and either party may come to assume that silence = acquiescence.
- Of course, the better practice is to amend the agreement than to rely on one's own understanding of what it thinks is a shared course of dealing.

# FILE DOCUMENTATION & AUDITING

## What to Consider When Monitoring a Relationship

- Are guidelines and limits on authority being adhered to?
- Are referrals being made as appropriate to the carrier?
- Frequency of audits



# FILE DOCUMENTATION & AUDITING

## What to Look for When Auditing an MGA/MGU:

- Compliance: sanctions policy, anti-money laundering policy, data protection, record retention, code of conduct, complaints log
- Governance: corporate structure, outsourcing agreements, the sufficiency of their insurance coverage (E&O, cyber, etc.), licenses, internal audits, business continuity plans
- Accounting: latest audited financial statements, bank statements, account reconciliations
- Management Info & Reporting: claims bordereaux reports, adherence to guidelines
- Information Technology: IT security, disaster recovery plan, penetration testing results, risk assessment report, etc.



# FILE DOCUMENTATION & AUDITING

## What to Look for When Auditing a TPA/Claims Handler:

- Review of payment process & authorization
- Whether claims handling guidelines are followed
- Coverage verification
- Authority levels & sign-off structures
- Reserve philosophy, implementation, and accuracy
- Approach to fraud monitoring and management
- Internal audit procedures
- Workflow & backlog management
- Documentation: bordereaux, guidelines, service level agreements, fraud management procedures

# COMMON DISPUTES

Potential Causes of disputes:

1. Too much authority given
2. Lack of monitoring
3. Compensation based on premium volume leads to problems when that volume doesn't materialize
4. Lack of understanding by one party or the other regarding all aspects of the business
5. Ambiguous contractual language
6. XPL claims with unexpected consequences
7. Adherence to a termination clause

# COMMON DISPUTES

## Types of Disputes:

- Alleged failure to obtain approval from carrier for deviations from authority
- Writing policies or settling claims outside of authority
- Whether carrier ratified these actions by not contesting them earlier
- Calculation of compensation
- Whether TPA handled claims negligently or provided bad advice to the carrier

# COMMON DISPUTES

Principles that, if followed, may help you avoid disputes:

- Know your partner: beginning at the due diligence stage
- Align your interests: everyone should have a financial incentive to produce good results
- Monitor the relationship
- Know when and how you can exit the relationship in accord with the contract

# Questions?

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