

# RECOVERY SPECIALIST INSURANCE GROUP

# NEWS

March 2005

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## **RSIG to be the National Flag Truck's 2005 National Fuel Sponsor**

In our experience, reposseors have got to be one of the most visibly patriotic industries known to man. So many companies have incorporated the colors RED, WHITE and BLUE in their corporate identities and have some form of the word AMERICA in their name that it is clear that reposseors are true patriots. Notwithstanding anyone's specific political view or belief, patriotism is very different from politics.



RSIG first met Marc Valentine (the National Flag Truck's only driver ever) one summer several years ago at the Florida Tow Show held each year in Orlando. We learned from Marc that the National Flag Truck is based in Boston at the Boston National Historical Park, "The Freedom Trail". The truck carries a historic collection of five 300 pound, 90 foot American Flags which are stored under guard by the United States Navy aboard the USS Constitution and also carries the message of respect, appreciation and

understanding of the American Flag, the National Anthem, Mount Rushmore and true patriotism.

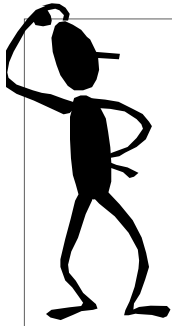
The National Flag Truck, serial number #1, is the only vehicle other than law enforcement which is allowed to have blue lights (it has 30 strobe and 20 halogen lights). The interior of the truck was donated by La-Z-Boy. The truck is donated by International and the transmission is an Allison MT643. The bed is donated by Miller and has been serial numbered D-Day 50<sup>th</sup>.

The National Flag Truck has no governmental funding and federal or state tax dollars do not go to support this cause. The National Flag Truck has attended over 600 official ceremonies and has participated in Pearl Harbor and D-Day events. The truck has also been on hand at Dover, DE Airforce base to carry the bodies of deceased soldiers whose caskets have been returned from Iraq and other war torn countries. During the course of his travels (300 days of a 365 day year), Marc Valentine and the National Flag Truck would visit schools to educate children about the Flag and patriotism, however this program has been stopped due to limited funding.

Recovery Specialist Insurance Group is proud to represent the recovery industry as the National Flag Trucks' 2005 National Fuel Sponsor. If you would like to make a donation to the National Flag Truck, we will gladly accept it and forward it on the proper officials.. Please send donations to PO Box 2707, Manassas, VA 20108 and make special note on the check it is for the National Flag Truck. With public help, the National Flag Truck can

continue its efforts to spread the word about democracy and patriotism.





## Understanding a Loss Run Report

A company's loss run report is a listing of that company's claims during a specific time frame or policy period. A loss run is supposed to list any claim submitted by an insured regardless if anything was paid out on the claim or not. The loss run report is a tool used by carriers, agents and insurance providers to help determine the insurability and profitability of a potential insured.

Let's use the following scenario as an example: You are averaging 50 repossessions each month. Your physical damage deductible is \$750, with liability deductible of \$1,500 based on monthly reports. Your average annual repossession insurance (not including bldg. and truck(s)) is about \$10,000. On August 4, 2004 your driver repossessed a 94 Chev. Malibu (w/keys) ACV \$2,200. While driving to the storage facility, your driver runs off the road and thru a fence, totaling an unrestored classic auto and the Malibu. The insurance adjuster handling the claim thinks the total loss will amount to \$15,000. The claimant is offered \$8,500 for the unrestored classic and \$4,000 for the fence, which has an alarm system. Claimant counters by demanding \$20,000 for the classic, plus unspecified emotional trauma. Claimant sues. The attorney assigned by the carrier to defend you does research, takes depositions, confers with local fence companies and determines fence and alarm can be repaired for \$3,500. Arbitration follows and claimant is awarded \$9,000 for the classic, plus \$3,500 for the fence. Your defense attorney invoices 48 billable hours at \$175 per hour—and you've decided its time to shop for other insurance!

Although varying degrees of information is provided on a loss run, some of the information provided will be standard. Aside from the driver's name, description of vehicle, and brief description of the incident, the following information is normally provided on any loss listing:

**Claim Number:** number used by the carrier to uniquely identify each claim in their system. *Our claim number 123456.*

**DOL/DOI (Date of Loss or Date of Incident):** the date of the accident or incident. Once a DOL/DOI has been established, the carrier then immediately reviews the claim to see if coverage was in place at the time of the incident. In RSIG's case, this means they look to the monthly report to see if the account involved in the claim was properly reported. *Our DOL/DOI: 8/30/04. Your account #: 2004-0756.*

**Reserves:** this is an amount set by the adjuster who handles your claim which reflects the dollar amount that he/she estimates it will take to bring a submitted claim to a close and must be set aside into reserves by the carrier. This amount can reflect estimated costs of defense even if it is believed there will be no paid loss on the behalf of the insured. *The adjuster set reserves at \$15000..*

**Loss Paid:** the amount of actual paid loss, not including expenses. *Malibu: \$2,200, Fence: \$3,500, Classic: \$9,000 = \$14,700 total.*

**Salvage/Subrogation:** the amount of money the insurance company receives from the sale of the remaining salvage involved in a physical damage claim, or the amount an insurance company receives from another party if they have subrogated the claim to the others or a third party's carrier. Some carriers will reflect receipt of a deductible payment as salvage or subrogation; others will not. *\$750+\$1500=\$2250*

**Loss Adjustment Expenses:** this figure represents the cost of the expenses associated with the claim. Loss Adjustment Expenses include the cost to have an independent adjuster evaluate the damages as well as attorney's fees, transcription charges, the cost to retrieve records or documents, expert witnesses, etc. These expenses can easily far outweigh the loss payment and are incurred and paid by the carrier regardless of an insured's negligence. *Attorney fees: 48 x \$175=\$8400 + ACV appraisals \$250 = \$8650 total expense*

Some loss listings will also have a field for the total cost of the claim, which adds the loss paid to the loss adjustment expenses and subtracts any salvage or subrogation that may have been received to equal a net value for the claim.

This total cost of each claim (*\$14,700+\$8,650-\$2,250=\$21,100*) is the figure used to calculate your loss ratio. Your loss ratio is the percentage of the cost of your claims compared to the fees that you have paid to a carrier. *In this case, our loss ratio is 211%* (\$21,100 cost of claim / \$10,000 repo insurance x 100). Anytime the insurance company pays out more in claims than you pay into the policy in premium, you are operating at a loss ratio in excess of 100% and are not a profitable risk for the carrier.

It is then that you rethink your decision to leave a group policy. The group's premium helps to offset your losses, thereby keeping you insurable...for the moment. It is also then that you should expect to receive a notice from us, letting you know that you're in the danger zone. While the group's premium does serve as a security blanket, it cannot and will not bear the complete burden of a member's continued frequent and controllable losses. The notices that we provide to members who experience losses are meant to encourage you to review your business/training practices and hopefully avoid further claims!

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## **But I Didn't Do Anything Wrong!**

If I've heard it once, I've heard it a million times. "It was a perfect, no-contact repossession. I didn't do anything wrong." This is the battle cry of many a reposessor who has found him or herself named in a lawsuit, not because of something done by them, but because of their client.

The specific case we will look at this time involves the repossession of a piece of equipment. Obviously names and details have been omitted to protect the innocent, the guilty or the slightly embarrassed.

A finance company in one of the very litigious southern states financed a piece of equipment for a customer. The finance company provided the repossession company with the assignment and address where the unit could be located. The reposessor went to the given address found the unit out in the open and repossessed it without contact and without incident. The reposessor then is contacted by someone other than the debtor, who had purchased the equipment from the debtor. The reposessor informed the 3<sup>rd</sup> party that the unit was assigned for repossession by the lien holder and that he could redeem his personal property anytime. The 3<sup>rd</sup> party obviously upset that he had been duped by the debtor was going to get even – so he never came to get his personal effects and found a lawyer instead. The lawyer named everyone and anyone who may have a pocket deep enough for settlement and had enough ammunition to keep everyone named involved in the suit.

The insurance company hired an attorney to represent the member and was successful in getting a verdict in favor of the reposessor. The court apparently agreed that the reposessor didn't do anything wrong. (The lender on the other hand had to pay the value of the equipment.) But now there's the pesky little matter of the attorney's fee. The attorney who successfully argued the member's case wants and deserves to be paid for the services he provided; and he was paid.... \$22,300.00.

An interesting side note, while the member did not incur a deductible for this loss since there was no loss paid, it will appear on the member's loss run. In this particular policy year, the member paid in almost \$17,000.00. Using the formula for a loss ratio, assuming this was this member's only claim in this policy period, the member's loss ratio is 135%. Had this member been on an individual policy, the member would have likely received a non-renewal or at least a substantial rate increase.

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## **I've Had It...I'm Done...I'm Selling My Business – Now What?**

Talking to people in the repossession business today, there is one common thread that is becoming more and more apparent – and that's wanting to know how to get out of the business. While RSIG membership is still growing steadily, we are finding that many members who have been with us since the beginning are slowly dropping off, new offices are constantly being added which maintains our slow and steady growth, but more and more members are finding that the repossession business isn't nearly as profitable as it once was and are looking for ways out and many are finding it in the form of a change of ownership.

Selling your business requires attention to a lot of details. And one detail that should not be overlooked is that your RSIG membership is not transferable. A new owner whether or not it is a partnership buyout, or selling to someone not affiliated with the company at all, requires that person apply and qualify for RSIG membership on their own. We recommend this be done 60 days but no less than 30 days prior to the change. The prospective owner must have verifiable experience as an owner or manager of a repossession company or comparable industry experience and meet all other membership qualifications as with any new member. If we cannot verify their experience, we cannot approve them for membership.

Some business owners have been less than forthcoming with their potential buyers about the fact that their RSIG membership is not transferable and thought they would just sell the business and not resolve the membership issue. This is not necessarily the best way to go either, because until we receive a resignation notice from you or until we cancel your membership due to

(Cont. pg. 8)

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## Decoding your Motor Vehicle Report – What does your MVR say about you?



One of the key factors in insurance rating and underwriting is the driver motor vehicle report or “MVR”. This report is a document from your state department of motor vehicles (the agency that issues your driver’s license) that tells the tale of your driving experiences.

When evaluating a MVR, just like looking at a claim history report, insurance carriers look at two main things: FREQUENCY and SEVERITY. A common misconception is that certain violations can only affect your record for 3 years. The truth is that while certain violations (reckless driving, driving under the influence, driving while intoxicated, etc.) can only be counted against you in the form of negative points for 3 years, it will appear on your record and affect your insurance rates for up to 7 years, perhaps even 10 years.

Reckless driving and the DUI charges are obvious points of concern and most people will not question receiving an exclusion or higher rate for driver’s with these types of infractions. In these cases, the fact that a carrier was even able to offer a quote for this driver should be considered a gift and the rate quoted should not be questioned that much.

But what about those other seemingly obscure violations. One of the most common we see is the “FTA”. No this isn’t a family/teacher association for those of you who have school age children. And it isn’t a new government branch charged with homeland security or anything to do with the airlines. It is a Failure to Appear or FTA. This is a designation that appears on an MVR when a violator fails to appear in court as required and has not pre-paid the appropriate fines/costs in order to eliminate the need for going to court.

Now some who are reading this may be thinking why is that a big deal?...

It shows a lack of responsibility and a general disregard for rules and authority - Common findings in the causes of accidents and frequent driving violations. Look at it this way, what is a speeding violation, if not a disregard for posted speed limits set by some governing authority?

So hopefully, you or your drivers are not receiving frequent tickets but in the event that you are unlucky enough to meet the trooper or officer with a radar gun that has it in for you...don’t blow it off. In some instances, traffic judges are likely to reduce the severity of a violation, fines or points, if you take the responsible route of appearing in court. Take your day in court...apparently, you’ve earned it!

### Rising Insurance Costs...who or what is to blame?

As we are all aware, insurance rates in all lines of insurance have been on a steady rise for the past several years. For those who offer health insurance to their employees, increases in the 10-15% range are quite common. Tow truck insurance rates have skyrocketed in excess of 20% in most cases due to the frequency and severity of losses. And in some states like Maryland, doctors may be forced out of the state due to the cost of medical malpractice insurance.

These increases are typically blamed on the insurance carrier and quite often it is said that insurance carriers greed is driving up the cost of insurance. We won’t pretend that the ability to make a profit doesn’t motivate insurance providers just as it motivates any for-profit business. You don’t operate your business because you feel that you are benefiting society, you do it to make a profit to take more from the business than you put in and to build reserves for the time that you won’t be able or willing to be in a tow truck all night and then in an office all day to deal with debtors, or clients.

The main reason for skyrocketing insurance costs is not greed, it is loss experience. Many insureds have adopted the philosophy that if they pay \$10,000 in premium that means the insurance company owes them \$10,000 (or more) in claim payments. This leads to the frequency issue when looking at claims. The windshield that was damaged would have only cost \$300 to repair, but instead of repairing it, it has been submitted to insurance, which now has to add the administrative costs of handling the claim, the costs of the inspection, the cost to issue the check and bill the deductible and now may have \$200+ dollars in expenses; for a total cost of \$500 for what was a \$300 loss.

Then there’s the issue of the severity of claims. Generally speaking the repossession industry has gotten more careless and less attentive – causing not only a greater number of losses, but more severe losses. Contingency based billing encourages carelessness as agents hurry to go from one dead end account (knowing they’re not going to be paid for the work they’ve already put it in) to work some other more promising account.

These actions as well as the actions of lien holders and forwarding agencies, lead to lawsuits where judgments and jury awards have become staggering. Add to those figures the cost of defending the huge number of frivolous/nuisance suits and you begin to understand why insurance rates have had to increase steadily over the years.

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## Rising Insurance Costs...who or what is to blame?

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Absurd jury awards, which are decided by ordinary people - a jury of one's peers - also shares a large part of the burden of increased costs. If juries would award reasonable, legitimate awards, instead of thinking that they can really stick it to business, some attorneys may not be as motivated to bring these types of absurd cases to trial because they won't stand to profit as much. Worse than the absurd jury award is the lack of participation by ordinary citizens in the process. You know the who we're talking about, the person who receives their jury notice and scrambles to find a way to avoid jury duty. Our suggestion is to get on the jury and use common sense in awarding the judgment.

One citizen's website "Citizens Against Lawsuit Abuse" notes that "Everyone of us pays \$1200 more for goods and services every year because of lawsuits." It notes further that "1/3 of the price of an 8 ft. aluminum ladder is directly attributed to lawsuits - frivolous and otherwise." And one of its most shocking statistics comes from 1999 data on civil lawsuits filed in US courts: "more than 15 million lawsuits were filed in 1999 - or one lawsuit for every 18 people in the United States. That equates to a lawsuit filed every 2.08 seconds, the equivalent of one lawsuit filed with each blink of the eye."

Just as you look for ways to pass on increased costs to your customers (i.e. a fuel surcharge to help in recouping the additional expenses associated with rising fuel costs); insurance providers must also recoup their additional expenses associated with higher judgment and jury awards and costs to defend frivolous lawsuits. Defense costs are still incurred when the carrier provides an attorney to prove you didn't do anything wrong.

In a recent conversation with a Florida member discussing the handling of the hurricane claims in 2004, the member proudly mentioned that the local legislature is going to begin fining insurance carriers who may be paying claims at a rate slower than desired. The member says this in an effort to argue the point that insurance carriers are the root of all evil. While this may be a popular edict for hurricane affected Floridians, they may be losing sight of what's actually going to happen. If insurance carriers are fined, the funds to pay those fines must come from somewhere and where is the most likely source...increased premiums. So while the governing authority gained votes in popularity, it will effectively cost policy holders in the long run.

Another big cause of increased insurance premiums is the dramatic rise in attempted and/or successful cases of insurance fraud. How many times have debtor's come in to your office claiming cash, jewelry or expensive electronics were in their vehicle at the time of repossession? And how often have you known those claims to be untrue and said "Absolutely not. Those items weren't in the vehicle and I don't want insurance to pay them a dime." Carriers are having very similar experiences in Florida where insured's are claiming business property like computers, phone systems, office equipment, etc. were ruined in the hurricanes. Loss of use is another claim that often gets fraudulently submitted. Businesses that were weak or failing to begin with, all of a sudden are worth tens or hundreds of thousands of dollars once a building or vehicle was damaged in a claim.

Since prior to the change in management of RSIG in 1996, the group has always had available a tiered payment structure. This structure was maintained because it was meant to encourage smaller offices to grow their businesses in order to reach a lower per repossession fee level. And while the program may have been successful for some in this respect, the vast difference between the base payment level and the lowest tier has created an atmosphere of unfair competition in some areas. We have also seen that the number of offices that benefit from the 2 lowest tiers has significantly decreased over the years as many organizations have recognized that a large volume of repossessions isn't necessarily the way to huge profits. Many other offices elect to pay slightly higher per repossession rates in order to maintain what they view is an acceptable retention level if they have a claim.

Over the past 8 years, RSIG has been pleased not to have to pass on a rate increase to the members. For the policy period 03-04 the carrier came to the table requiring a 10% increase, its first attempt for a rate increase since RSIG changed carriers in 2000. We negotiated and absorbed a 5% increase without passing on the additional expense to the membership. For the policy period 04-05, the carrier came to us with a 5% increase, which the group again absorbed. We're only 6 months into our 04-05 policy period and we've already been told to expect at least a 5% rate increase again in 05-06.

With each of these factors in mind, we have looked at our current payment structure and found that a 6 tier payment scale simply is no longer offering the benefits to the membership that it once did. So effective January 1st for all new members and coming into effect in October (with the September 2005 monthly repossession report) for all RSIG members, there will be a 5 tier structure, which will result in a change in the rates and deductibles associated with each payment level. The new rates and deductibles will be mailed to each office in the coming weeks. This change will help to simplify the reporting efforts as there are fewer tiers to deal with and will ensure that the group is maintaining the reserves needed to continue benefiting the membership as a whole.

## Louisiana Self-help Repossession

As many are aware, the State of Louisiana has passed new legislation which will allow self-help repossession. The law went into effect on January 1, 2005. But, Louisiana repossessors couldn't plan on grabbing a debtor's vehicle as soon as the last notes of Auld Lang Syne faded on New Years Eve.

The new law's effective date and compliance with the law's requirements are not necessarily compatible. The new law requires the secured party (your lender client), the debtor and the Louisiana self-help repossession agent to take some actions or in the debtor's case not take some actions before repossession is allowed.

To understand what must take place before self-help repossession can occur in the State of Louisiana, the new law should be reviewed. The statutes that you will need to review will be located at TITLE 6. BANKS AND BANKING CHAPTER 10-A Louisiana Revised Statutes 6:965, 6:966 and 6:966.1.

What do the statutes say in regard to self help repossession starting January 2005?

Revised Statute 6:965 was modified under the new law to include additional definitions and place new requirements on the secured party (lender).

The definition of "default" is modified to mean nonpayment of two consecutive payments or 60 days if the payments are more frequent than once a month.

The definition of "secured party" is modified to include lessor of motor vehicles, which would allow repossession of leased vehicles.

A limited definition of "breach of peace" was added which does not allow entry into a dwelling or repossession over oral protest by a debtor.

And in addition, there is a requirement that the secured party must have magic language in the security agreement or lease before self-help is available.

Since the magic language, "Louisiana law permits repossession of motor vehicles without judicial process." must be included in the security agreement or lease but cannot be added until the first of the year and a default does not occur for at least sixty days, it appears that no self-help repossession could possibly occur under the new law until sometime in March 2005.

Revised Statute 6:966 establishes the procedure for using self help repossession.

Once there is a default as defined in Revised Statute 6:965 the secured party (lender) must send all debtors a notice stating that Louisiana permits self-help repossession. The contents of the notice are detailed in the statute but the method of sending the notice and any time requirements are not clear from the new law.

Once a vehicle is repossessed by the secured party, it can be disposed of in accordance with Louisiana's Uniform Commercial Code.

Secured parties (lenders) allowed to use self-help repossession are limited to those listed in the statute.

Individuals who do the actual repossessions are required to be licensed by the State of Louisiana.

According to the statute a requirement for becoming a licensed repossession agent in the State of Louisiana is that you must be a member of one of three trade associations or Time Adjusters Conference, Inc. Since membership in

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## Where not to get sued!

*(Parts of this article were taken directly from the American Tort Reform Association's article "Judicial Hellholes 2004 www.atra.org)*

Each year the American Tort Reform Foundation puts together a report documenting litigation abuses. "The purpose of the report is two fold: (1) to identify areas of the country where the scales of justice are radically out of balance; and (2) to illustrate how accuracy, efficiency and predictability can benefit the American civil justice system. ... Judicial Hellholes are places where judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants."

Last year's top Judicial Hellhole was Mississippi's 22nd Judicial Circuit. Due to the state government's diligent efforts, this area is no longer the #1 area in the country not to get sued in. And while Mississippi's legislature still has a way to go, their efforts have put Mississippi well on its way to recovery.

### **This year's top Judicial Hellholes are:**

1. Madison County, Illinois
2. St. Clair County, Illinois
3. Hampton County, South Carolina
4. West Virginia (the entire state)
5. Jefferson County, Texas
6. Orleans Parish, Louisiana
7. South Florida
8. Philadelphia, Pennsylvania
9. Los Angeles, California

The report also calls attention to four "dishonorable mentions" [which are] places where particular abusive practices or warped litigation environments could lead them to being named a Judicial Hellhole in the future.

- Oklahoma (the entire state)
- Utah Supreme Court
- District of Columbia
- New Mexico Appellate Courts.

***"Judicial Hellholes are places that have a disproportionately harmful impact on civil litigation. Personal injury lawyers seek out these places because they know that they will produce a positive outcome - an excessive verdict or settlement, a favorable precedent or both."***

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With the recent changes in Louisiana and the new laws governing self-help repossession in that state, this report shows why repossessioners in the Orleans Parish need to be extremely careful when executing self-help repossession.

This report also helps to explain why insurance adjusters may be anxious to settle certain claims in these highly litigious states.

## Louisiana Self Help Repossession

(Cont. from pg. 6)

the organizations listed is restricted to owners of repossession agencies and some of the owners are members of more than one of the organizations, as the law is currently written, only about a dozen individuals are eligible to qualify for licensing under the statute.

The additional qualifications for this rather small group of potential repossession agents are to be established by the Commissioner of Financial Institutions, according to the statute.

To review the proposed additional requirements and copies of applications for licensing you can go to the State of Louisiana Office of Financial Institutions web site at [www.ofi.state.la.us](http://www.ofi.state.la.us).

In addition Revised Statute 6:966 allows the secured party (lender) to seek a deficiency after self-help repossession.

Finally, Revised Statute 6:966 sets the procedure for handling the personal property located inside the repossessed vehicle.

**Revised Statute 6:966.1** is the reporting requirement to law enforcement once a vehicle is repossessed by self-help.

Under this statute the repossession must be reported within three days to the recorder of mortgages in the parish where the collateral is located who will in turn transmit it to the appropriate law enforcement agency.

It appears that several issues are unresolved as a result of this new law. Unless the statute is modified or the Commissioner of Financial Institutions resolves them by rule or interpretation the most likely scenario is that they will be decided in the Courts.

RSIG held its state specific repossession certification course for the state of Louisiana in December of last year. The class was one of the largest ever hosted with 75 attendees registered and with 91% of attendees passing the course! Way to go!

## I've Had It...I'm Done

(Cont. from pg. 3)

the increased hazard associated with the new unapproved owner, contractually you are still personally responsible for the debts and actions of the office. Just like the married couple who purchases a vehicle that is put in the husband's name, if upon a separation or a divorce the wife maintains possession of the vehicle, but takes no action to change the ownership of the unit, the unit can still be repossessed if the husband fails to make the payments.

One other thing to keep in mind is that any deposit you made when you became a member is considered an asset and should be addressed in the buy/sell agreement. The deposit is refunded 2 years after a member leaves the group. If you have sold your business, we need to know who is entitled to the deposit – the original owner or the new owner. Any currently owed deductibles or possible future deductibles should also be addressed. Lawsuits can be brought against a company two, three, even five years after the repossession date and who is going to be responsible for the deductible is something that should be decided.

The best and cleanest way to manage your RSIG membership if you are thinking of selling your business is to give proper notice and for you to tender a letter of resignation when the sale of your business is finalized along with a copy of the final buy sell agreement. You don't have to tell us how much your business sold for, but issues of the office and lot, trucks, computers, the deposit, and deductibles should be known to our office in order for us to assist in an orderly transition . Notifying your potential buyer that the RSIG membership is not transferable and that he/she will have to qualify for membership on their own, **prior to the finalization of the sale** would also be a great idea and the ethical thing to do. This gives the potential new owner the opportunity to shop the insurance if they choose to do so, or to make sure they qualify for RSIG membership before any issues arise.