

From the Chairman

by Donn P. McVeigh, CPCU, ARM



The CLEW Section Committee again enjoyed a busy and successful year in 2003. We aim to do even better in 2004. We can do that with your help. One of the most effective ways of helping is

writing articles for our quarterly newsletter, *CLEWS*. This is an excellent way to participate in CLEW activities, contribute to the insurance and risk management industries, and enhance your own profile and professional reputation. If you feel so inclined, please submit an article in Word to **Daniel C. Free, J.D., CPCU**, at dfree@insuranceaudit.com.

As indicated in this column in the last issue of *CLEWS*, the annual CLEW Section symposium was intended to be held in either March of this year or March of next year. Because of difficulties in obtaining speaker commitments, the symposium will be held in March 2005.

If any of you are attending the National Leadership Institute meeting in Tampa this year, please feel free to attend our section committee meeting on Saturday, April 24. It should kick off around 9 a.m.

I hope to see as many of you as possible in Tampa in April, or at the Annual Meeting and Seminars in Los Angeles in October. All of us on the CLEW Section Committee wish you a happy and successful 2004. ■

Editor's Corner

by Daniel C. Free, J.D., CPCU, ARM



In this issue, we continue with articles relating to the subject of expert witness testimony with our own Donald S. Malecki, CPCU's article entitled "Surfing on the Subject of Experts." Interesting title. I have never seen Don surf but what we can be sure of is that he

knows a thing or two about expert witness testimony. For those considering entering the expert witness arena, this is a must read.

If you read the last issue you will recall that I wrote a piece about free legal resources available over the World Wide Web. CLEW Committee member **Steven A. Stinson, J.D., CPCU**, has provided considerably more guidance on this subject. Steve has been a practicing attorney for many years. It becomes clear from the text of his article that he has used many of these resources in his everyday work.

"Pet Health Insurance and a Larger Question" by committee member **Jean E. Lucey, CPCU**, is particularly timely as there have been a number of spam solicitations sent to us on the Internet for pet health insurance. This product may

catch on when you think that a hip replacement for a dog costs \$5,000 these days.

I offer special thanks to **Vincent "Chip" D. Boylan Jr., CPCU**, our assistant editor, for submitting another in his series of profiles, this one on **Barbara W. Levine, Esq., CPCU**.

Prominent consultant, colleague, and friend, **Jack G. Harris**, who flew B24s in the 8th Air Force in World War II and I was talking about flying and in-flight emergencies. He said that in such situations "a little altitude is a nice thing to have." As your newsletter editor, I can tell you that a little content is a nice thing to have. Thanks to everyone who has submitted an article for this issue of *CLEWS*. We encourage all of you to send us submissions for publication. ■

CLEW Section Committee Member Profile

**Barbara W. Levine, Esq.,
CPCU**

**Executive Vice President
Exam Coordinator's Network
Boca Raton, Florida
www.ecnime.com**

A nationwide provider for independent medical examinations (IME) and peer-review servicing.

Education

- bachelor of arts in political science, Tufts University
- University of Florida College of Law, Gainesville, Florida
- CPCU designation

Family

Husband Steven and three children. Barbara is a native of Miami Beach, Florida, and the youngest sibling of four. Her father was an independent insurance agent who sold primarily life, health, and Medicare supplement policies. Her mother was a school teacher.

Career Background

Barbara's first job out of law school was assistant regional counsel with the U.S. Customs Service in Miami, Florida. In that position she assisted the U.S. Attorneys' Office with prosecution of persons involved in the trafficking of illegal drugs. Barbara also handled requests under the Freedom of Information Act, dealt with tort claims against federal government officers and agents, and taught constitutional law at the Federal Agent Training Center in Georgia.

Later, Barbara became a claims attorney for State Farm Insurance Company where her responsibilities included training management and claims staff on a variety of claims-related legal issues. Barbara evaluated files for litigation, regularly updated claims staff regarding relevant legislation and case law, interacted with plaintiff counsel, and worked with outside vendors such as defense counsel, IME and peer-review companies, and other consultants.

Barbara also had the opportunity to provide valuable claims floor input into

draft legislation through work with and as part of the Florida Insurance Council.

Barbara left State Farm to become an independent claims industry consultant. In that role she worked with claims management teams to evaluate processing efficiencies and deficiencies. Next, Barbara became vice president of claims litigation with the AIB Financial Group in Miami, Florida where she handled litigation matters for all lines of coverage

Tell us about your company and how you started it.

In late 1998, a chiropractic physician and I started discussion about opening an "IME/Peer Review" company. We felt that, with our combined backgrounds in the industry, we could bring a unique level of understanding and professionalism to the independent medical claim review process.

We began our company by buying a small "IME" company that had been in business for approximately 10 years. Our client base was small and our technology was weak! We quickly created the technological efficiencies necessary to process service requests in a timely and professional manner.

Our company has grown into a nationwide provider for IME and peer-review servicing. Our clients are insurance companies (claims departments), third-party administrators, human resource specialists, risk managers, and attorneys. The services we provide to our clients include IME/peer-review scheduling, credentialing of all expert witnesses on our panel, training programs on a broad array of topics for continuing education credits, and assisting in creating efficiencies for these processes.

How does your work relate to CLEW?

When asked the question "How does it relate to CLEW?" the answer is: it relates to CLEW on every level. ECN works as a consultant to the medical/legal claims industry. We procure expert medical witnesses in every specialty, who are highly credentialed, willing to testify, and who understand the litigation process.

What are the most interesting aspects of your work?

There are several interesting aspects of my job. First, there is great satisfaction in knowing that ECN's medical experts are thoroughly credentialed and highly qualified to perform impartial medical examinations and medical record reviews. We take great pride in our panel of health care professionals and know that they will stand by their written opinions.

Second, the opportunity to work with professionals in the fields of insurance, risk management, law, and human resources makes my job far from boring. There is always more to learn in each of these arenas.

Third, having an impact on "insurance fraud" by assisting in ferreting out those claims brings the satisfaction that "we are doing something about it." As a policyholder, I too despise seeing my rates increase year after year in large part due to insurance fraud.

And the most frustrating?

The most frustrating aspect of my job is dealing with delay tactics used by plaintiff attorneys in an effort to stall the IME process. As a condition precedent to coverage on a first-party claim, the insured/client is often not aware of the treating provider's charges and/or their attorneys' delay tactics. This often causes policies to be "exhausted" without the insured/patient getting the medical care he or she needs.

Another challenging area for IME and peer-review companies is discovery. Case law has allowed discovery of IME physicians 1099s and other financial records that bear no relevance to the case at hand. In addition, the HIPAA laws have created even more hurdles for the claims examiners to get the medical records they need to make a fair and impartial assessment of the claim.

What problems do you encounter on a regular basis?

The biggest mistake that I see made in claims is regarding proper documentation. Documentation of every phone call, letter, etc. should be objective providing

Surfing on the Subject of Experts

by Donald S. Malecki, CPCU

only necessary information. Too many times documentation is forgotten or can be construed as being biased. With the potential for all documents to be discovered in litigation, it is critical that insurance professionals be mindful of written notations.

What's your view of the insurance industry?

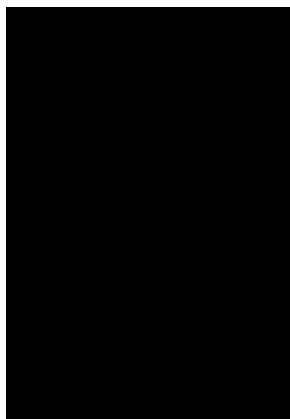
The good thing about the insurance industry in my opinion is that there are so many career paths to choose from. From underwriting to claims, from appraising to investigating, there is always something else to try. The industry calls for a diverse array of skill sets, from technical to personal, from clerical to professional, there is something for everyone within this field.

And how about CPCU?

Networking with other insurance professionals is vital. I have been involved with the South Florida Claims Association, but the members of the CPCU Society are unique. Coming from all lines of coverage, and all levels of expertise, I found the CPCU Society meetings to be both interesting and enjoyable. In June 2000, I attended my first national CPCU Society meeting. I truly enjoyed the seminar topics, and speaking to other CPCUs about their involvement in the Society. I decided to become more involved in my local chapter (Florida Gold Coast Chapter). Just a few short months later, I found myself applying for a position on the national Claims Section Committee. I attended my first section meeting at the recent Annual Meeting and Seminars in New Orleans.

What does your future hold?

It is hard to say where I am heading from here. I hope to continue to have an impact on claims operations by providing training programs. I also hope to become more involved with the legislative process so that the laws passed are instrumental in diminishing fraud rather than increasing litigation. ■



■ **Donald S. Malecki, CPCU**, is chairman and CEO of Donald S. Malecki & Associates, Inc., an insurance and risk management firm, and president of Malecki Communications Company, the publisher of a monthly newsletter entitled *Malecki on Insurance*. He has been in the insurance and risk management business for more than 42 years and authored nine books, including three textbooks used in the CPCU curriculum. Malecki is currently serving on the examination committee of the American Institute for CPCU and is an active member of the Society of Risk Management Consultants. He holds a B.S. degree in business administration, with an emphasis on insurance, from Syracuse University.

Generally, an expert on insurance matters can be categorized into two types, assuming he or she is qualified to be labeled an expert. The first is a testifying expert or one who will testify in deposition and/or trial. The second type is a consulting expert. This person is not disclosed to the opposing party and is retained to assist the client attorney on an as-needed basis.

In either case, the expert is someone who is supposed to be well-versed on the subject(s) being litigated, and has the skill, knowledge, education, and experience necessary to consult with legal counsel, or to explain to the trier of fact information that only that knowledgeable person can impart. Examples include the evolution of a litigated coverage provision, or the standard of care exercised by an insurer in handling a claim, or by an insurance agent or broker in his or her role as a salesperson.

One attorney some years ago, in his article entitled "The Direct Examination of the Expert Witness," described his ideal expert witness as:

[A] gentleman with impeccable credentials, preferably from a prestigious teaching university. He is a full professor in his chosen field, with a curriculum vitae listing education, position, honors, and publications, which, if read to the jury or testified to by the expert, would take over one hour. He should look and act like an elder Hollywood actor, such as Robert Young or Jimmy Stewart. He should have very little courtroom exposure, but at the same time, feel at home in the courtroom, have definite opinions and not be intimidated by the ablest attorney the Bar has to offer as the attorney for the other party. He should know the facts and circumstances of your case thoroughly, and should be up to date on all of the

Continued on page 4

Surfing on the Subject of Experts

Continued from page 3

pertinent literature dealing with the subject matter about which he is going testify . . .¹

So much for wishful thinking.

The fact that someone qualifies as an expert does not necessarily mean that a court will permit that person's testimony. Some courts, based on the facts of a case, will decide that expert testimony is not required. A case in point is *Bergman v United States Automobile Association*, 742 A.2d 1101 (Pa. Super. 1999), which involved a bad-faith action against an insurer. The insured brought this action against its auto insurer of underinsured motorists coverage requesting that the court adopt a "per se" rule regarding expert testimony in as bad-faith action by an insured against an insurer. By "per se" is meant that expert testimony be permitted in any bad-faith case against an insurer regardless of the facts.

The court rejected this appeal of the policyholder, stating that whether an expert's testimony in actions on insurance policies for bad faith should be admitted remains up to the discretion of the court. As it turned out, the court had some serious reservations about permitting this expert to testify, based on the expert's curriculum vitae, and decided that the expert's testimony would not contribute anything that was not already said either in his report or by other witnesses in this case.

Equally as important, if not more so, was the decision of this court that if this expert were permitted to testify on bad faith (which is solely a legal conclusion), there would be nothing for the judge to do, since the expert would have already made the decision for the judge.

This decision should not adversely affect that expert in the above matter, since, if this person is specially qualified to render opinions on insurance matters, there are many other subjects on which to do it, other than conduct of an insurer that corresponds or departs from custom and practice.

There is no consensus among the courts whether expert testimony is deemed

necessary in cases alleging insurer bad faith. Some courts have concluded that expert testimony is admissible, if the expert can address the standard of care that should have been exercised, paving the way for the court to make the final decision. While some courts have taken the position that expert testimony should be excluded because insurance is not so technical that the public cannot understand at least the general nature of an insurer's responsibilities, other courts have taken the position that expert testimony should be admitted, if the trier of fact lacks the knowledge and experience on the subject or is incapable of drawing correct conclusions from the facts.

Walking the Straight and Narrow

The testifying expert has to walk on the straight and narrow, and not infringe upon the court's role, which has the burden to decide questions of law on whether coverage applies, or whether the conduct of an insurer or someone else has met or fallen below the standard of care. What the court does not need with use of an expert is another lawyer telling the court the law!

It is, however, easier said than done because testimony about insurance custom and practice over, for example, the purpose of a coverage, can cross over if the expert allows himself or herself to involve testimony on purely legal issues of coverage interpretation. A case where that kind of circumstance arose is *United States Fidelity & Guaranty v Williams*, et al., 676 F. Supp. 123 (E.D. La. 1987). This was a subrogation action where one insurer brought an action against a permissive user of a yacht to recover amounts paid to a yacht owner after the vessel struck a bridge and sunk, also resulting in one death.

The yacht policy contained what one might think as being an oxymoron since it is referred to as a so-called "liability coverage exclusion," found under the "Who Is An Insured" provision that serves the same rationale as a "household" exclusion in a personal auto

policy, except that the "liability coverage exclusion" is broader in scope. This type of an exclusion, for example, can preclude a permissive user of a yacht from obtaining defense and coverage under the owner's policy when the yacht owner sustains injuries because of the permissive user's alleged negligence.

■ What the court does not need with use of an expert is another lawyer telling the court the law!

Since, in this case, the rationale for this "liability coverage exclusion" was not clear, the court appointed an expert and also permitted experts representing the plaintiffs and defendants. What the court was looking for from the experts was testimony solely to determine what general understanding, if any, the insurance industry had as to the meaning of the provision of this yacht policy.

As it turned out, the experts, in explaining the rationale for the "liability coverage exclusion," apparently overstepped the boundary. In doing so, the court stated that the three experts' testimony made useful dialogue on the many legal issues a court must consider to determine the proper interpretation of the policy. Having said that, however, the court went so far as to point out which of the three experts presented the best legal opinions! In stating that these legal opinions were not considered to be legally admissible evidence, the court, interestingly, stated that opinions of the experts nonetheless were forms of legal argument that a court could follow or reject as appropriate.

Some people may wonder why a court would make that kind of a conclusion. The rationale is elusive, but if an expert remains in the insurance and risk management business for any period, he or she will likely see a variety of these decisions by the courts. In fact, in one case involving a question of coverage, the reported opinion of a federal court quoted one expert as



saying that the duty to defend is broader than the duty to pay, and the opposing expert as confirming that statement of fact. This also seems somewhat unusual for a court to report, since it does not take an expert to know this.

Some courts are not as kind or as diplomatic to experts who overstep their boundaries, even if done so unknowingly, as the federal court in the preceding yacht coverage case was. Unless it is made clear to the court at the outset that the expert will be testifying on the general understanding in the insurance industry over, for example, the meaning of a given term or provision, the court may coldly and bluntly exclude such testimony.

Sometimes experts have to say “no thank you,” following an inquiry for assistance, or if the work is accepted, the expert has to take the “bull by the horns” so to speak, and educate their attorney clients on the extent to which an expert can testify. Some attorneys, unfortunately, are not familiar with the extent to which an expert is permitted to testify and when an expert does not explain his or her limitations, it can be an uncomfortable experience for both.

A case that exemplifies these actions is *Masonic Temple Association of*

Crawfordsville v Indiana Farmers Mutual Insurance Co., 779 N.E.2d 21 (Ind. App. 2002), where the testimony of an expert was rejected, because it dealt solely with two legal issues. The first one was over the meaning of “proximate cause,” (a term commonly applied to property losses), and the conclusion that the insurer, in relying on a policy exclusion, committed bad faith. The court here did not feel an expert was necessary to define proximate cause, and the expert’s conclusion of bad faith, from the court’s perspective, was a matter for the court alone to make.

Also falling into this category of inadmissible testimony are cases where the expert’s opinions are purely speculative or founded on assumptions that have an insufficient factual basis. A case in point is *Virginia Financial Associates, Inc. v ITT Hartford Group, Inc.*, et al., 585 S.E.2d 789 (Sup. Ct. Va. 2003).

This was an appeal involving Virginia Financial Associates (VFA), which acted as a “marriage broker” for two insurers Hartford and Medical Protective (MedPro). William Montgomery Dise, an insurance agent and part owner of VFA, was instrumental in bringing the two insurers together. The proposal put together by Dise was that Hartford could sell its workers compensation and other coverages to MedPro’s approximately 20,000 dentist clients. These two insurers formed a joint venture and created an insurance product known as “The Package,” which was sold through a technique called “commercial mass merchandising.”

VFA expended significant time and expense to bring the joint venture together. VFA had been assured it would be compensated fairly for its work, but, according to VFA, the compensation it received was inadequate, which led to litigation. VFA presented the testimony of two expert witnesses to establish the value of adequate compensation that the Hartford should have paid to VFA for its services. One of the experts, who qualified on the subject of retail insurance, testified he was knowledgeable on the methods of compensation for

commercial mass merchandising programs. During cross-examination, however, this witness admitted that he had “never been paid a commission override for setting up an affinity program, such as this one,” and that he was “not aware of anyone else” who had been paid a commission override without providing an ongoing service. The second qualified witness testified on the standard range of compensation in the insurance industry for the services performed by VFA for the Hartford.

Hartford argued that the lower court erred in permitting both of these experts to testify that the customary method of payment for VFA was a commission override, because neither witness could cite an example in the insurance industry of an agent who was compensated on a commission override basis when that agent failed to provide ongoing services in support of an insurance program.

The court disagreed. In doing so, it stated that expert testimony is inadmissible if such testimony is speculative or founded upon assumptions that have no basis in fact. But that was not the case with these two experts.

However, when an actuary, who also qualified as an expert, attempted to opine on the projections that the insurer would have generated more than \$250 million in future premiums from its sale of insurance policies to dentists during the next 10 years, his testimony was barred by the court for being speculative. The reason this expert’s testimony was inadmissible, the court said, was that the projection was subject to significant unknown variable of whether the insurer’s joint venture would enter into a future bargain with another national insurer.

No Hard and Fast Rule

It is the opinion of many that, in light of the *Daubert v Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 case, there are more stringent requirements to qualify as an expert. In the case of *Kumho Tire Co. v Carmichael*, 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (U.S. 1999) the

Continued on page 6

Surfing on the Subject of Experts

Continued from page 5



United States Supreme Court heard arguments as to why the guidelines established by the court in *Daubert* should apply to all expert testimony as opposed to only scientific expert testimony.

The *Daubert* court had established guidelines for federal courts in determining if expert testimony would be beneficial. The Supreme Court held that the standards enunciated in *Daubert* applied to all expert testimony. One purpose for the guidelines established by *Daubert* was a desire by the courts to eliminate what has been referred to as "junk science" or expert testimony that is not demonstrated to have a reliable basis in the knowledge and experience of the profession or industry involved. The courts were said to have a gatekeeper function, in ensuring that expert testimony was reliable, based on a methodology that had been or could be tested and enjoyed general acceptance within a relevant scientific community. The impact of the ruling by the Supreme Court has had far-reaching implications and has cast a shadow over the ruling of many courts regarding expert testimony.

Prior to the *Daubert* case, many courts felt they could hear expert testimony and decide for themselves whether the testimony would be beneficial. Following *Daubert*, however, many courts, particularly at the federal level, are reluctant to allow expert testimony, even from qualified experts for fear of offending the rationale of *Daubert*.

In some instances, under the guidelines established by *Daubert*, experts that were allowed to testify numerous times pre-*Daubert* are still allowed to do so, while experts that have not logged considerable

time in court testimony are being precluded from doing so, despite their qualifications. It seems that some courts are comfortable allowing testimony from experts that have testified numerous times, regardless of qualifications, because it can be argued that the mere fact they have testified previously satisfies the *Daubert* guidelines. While this is obviously not the case, it is nonetheless a fact of life in the expert community.

It is up to the lawyer retaining the expert to ensure that the court is properly educated as to the expert's qualifications and to ensure that the testimony will be allowed. Unfortunately, many lawyers have no clue as to this fact or how to accomplish the goal. When an expert is precluded from testifying, these lawyers run for cover blaming the expert, rather than their presentation of the expert's qualifications and preparation for dealing with the *Daubert* issue.

An Influx of Competition

There has been a great deal of talk in insurance circles, at least, that the *Daubert* case is going to slow down the number of testifying experts on insurance matters. Yet, there seems to be a steady stream of insurance individuals entering the arena of experts who are not even insurance practitioners, and, in fact, have very little knowledge or information to impart to a court, except what they have acquired by trying cases. Within this category are practicing attorneys and retired judges whose only experience (insofar as insurance is concerned) is in practicing law.

How attorneys, who have never worked "in the trenches," can testify on insurance custom and practice is something that is difficult to determine. Perhaps the courts may feel that without an attorney assisting who has had some exposure to insurance, the situation may lend itself to decisions that can be labeled as "bad law." Judging from some of the decisions being made by the courts, one also could easily come to that conclusion.

Some courts, on the other hand, have disallowed the testimony of some

attorneys and retired judges based on their lack of experience in the insurance business. Others have been able to put their foot in the door, with more than one appearance as an expert, and have found a niche for themselves to complement their social security payments.

Considering the complexity of the insurance business, there is plenty of work for everyone who wants to do it. Whether, of course, they will be able to qualify as experts will depend on the court in question. If not as a testifying expert, there are still employment opportunities as a consulting expert, a profession that seems to be growing with each passing year. ■

Endnote

1. "For the Defense," September 1981, p. 21, The Defense Research Institute, Inc., Chicago, IL 60601.



Save the Date!

Plan now to attend the 60th Annual Meeting and Seminars **October 23-26, 2004**, in Los Angeles, CA.

Look for future issues of *CLEWS* for more information about CLEW Section-sponsored seminars.'

Brief Guide to Legal Research Internet Sites

by Steven A. Stinson, J.D., CPCU, LL.M., MALS, AIC

In the January 2004 issue of *CLEWS*, Editor Daniel C. Free, J.D., CPCU, discussed the advantages and disadvantages and possible pitfalls of using free legal research information from the Internet. My intention in this article is to list a number of such resources with brief descriptions of each. This is not intended to be a comprehensive bibliography, and it may very well overlook some important sites, but it will give the reader an overview of the topic and get him or her started.

Books on Internet Legal Research

1. **Legal Research via the Internet** by Valerie J. Atkinson Brown. This 2001 paperback book is part of the West Legal Studies Series. It appears, as if it is intended for the beginning law student or paralegal, but it has some good basic materials in it.
2. **Federal, State, Local, and International Laws on the Internet: A Legal Research Guide** (Legal Research Guides, V. 44) by Antje Mays. William S. Hein & Co; 2nd Edition (August 2003). This is an updated version of a 1999 research guide by Antje Mays.
3. **Online Legal Research: A Guide to Legal Research Services and Other Internet Tools** by Stacy L. Gordon. This 433-page in-depth guide was published in June 2003 by Fred B. Rothman & Co., and like the other books listed hereinabove, is available from Amazon.com.
4. **Teaching Legal Research and Providing Access to Electronic Resources** by Gary L. Hill, Dennis S. Sears, and Lovisa Lyman, Editors. Although this 2001 book is intended for reference librarians, it nevertheless provides information on sites and resources, and even has several chapters that explain how Lexis/Nexis and Westlaw work.
5. **Legal Research Online and in the Library**. Published by the Nolo Press in 1999, this inexpensive book explains both Internet legal research and legal research in general.

Internet Sites

1. **www.refdesk.com**—Although this is not a legal reference site, it should be bookmarked on everyone's computer. It has links to numerous news sites, encyclopedias, dictionaries, thesauruses, and other reference resources, including a link to **www.Nolo.Com**, which is a legal site. It also has numerous other links, and provides search capabilities within the sites and for a number of other databases. It also has links to a number of business sites and government sites.
2. **www.findlaw.com**—This is probably the most comprehensive free legal site that I have found. It has links to all the federal government and state legal sites. Under the federal government, it lists the following sites:

Codes, Statutes, and Regulations

- U.S. Constitution (www.findlaw.com/casecode/constitution/)
- U.S. Code (www.findlaw.com/casecode/uscodes/)—laws made by the U.S. Congress
- Code of Federal Regulations (CFR) (www.findlaw.com/casecode/cfr.html)—rules made by federal agencies and executive departments
- Federal Register (www.findlaw.com/casecode/fed_register.html)—official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents

Case Law

- **U.S. Supreme Court**—Opinions and Web Site (www.findlaw.com/casecode/supreme.html)
- **Federal Judiciary Home Page** (www.uscourts.gov/)—maintained by the Administrative Office of the U.S. Courts. Features publications, directories, news, and more.
- **U.S. Courts of Appeals—Opinions and Web Sites:**
 - 1st (www.findlaw.com/casecode/courts/1st.html)—Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island
 - 2nd (www.findlaw.com/casecode/courts/2nd.html)—New York, Vermont, and Connecticut
 - 3rd (www.findlaw.com/casecode/courts/3rd.html)—Pennsylvania, New Jersey, Delaware, and Virgin Islands
 - 4th (www.findlaw.com/casecode/courts/4th.html)—Maryland, North Carolina, South Carolina, Virginia, and West Virginia
 - DC (www.findlaw.com/casecode/courts/dc.html)—District of Columbia, tax court, federal administrative agencies
 - Federal Patent, International Trade, Claims Court, and Veterans' Appeals (www.findlaw.com/casecode/courts/fed.html)

Continued on page 8

Brief Guide to Legal Research Internet Sites

Continued from page 7

- **U.S. Trial Courts Web Sites**

- U.S. District Courts (www.findlaw.com/10fedgov/judicial/district_courts.html)
- U.S. Bankruptcy Courts (www.findlaw.com/10fedgov/judicial/bankruptcy_courts.html)

The Florida links below show a sample of some of the information available for each state. Information is abbreviated due to space constraints.

- **Federal**

- U.S. Court of Appeals (11th Circuit) (www.findlaw.com/casecode/courts/11th.html)—from FindLaw opinions since 1994
- U.S. District Court, Middle District of Florida (www.flmd.uscourts.gov/)
 - United States Probation Office (www.flmp.uscourts.gov/)
- U.S. District Court, Northern District of Florida (www.flnd.uscourts.gov/)
- U.S. Bankruptcy Court, Middle District of Florida (www.flmb.uscourts.gov/)

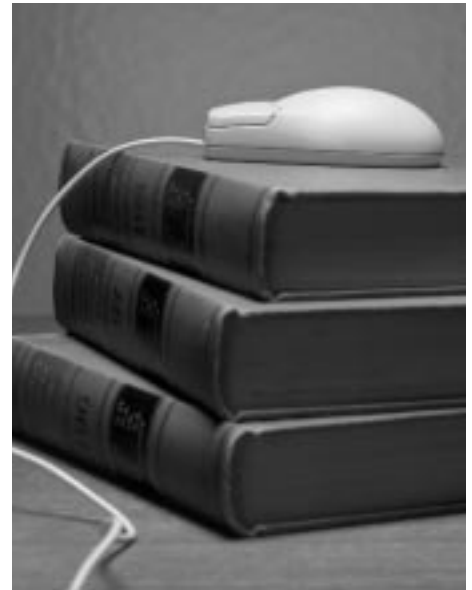
- **State**

- Supreme Court of Florida Home Pages (www.flcourts.org/pubinfo/sct.html)—justice biographies, case of the month, and even a puzzle
 - Briefs of Pending Florida Supreme Court Cases (www.flcourts.org/sct/clerk/briefs/index.html)—press summaries of cases are also available.
 - Florida Supreme Opinions, Court Rules, and Other Court Documents (www.flcourts.org/sct/sctdocs/index.html)
 - Overview of Florida's Court System (www.flcourts.org/pubinfo/system2.html)
 - 1st District Court of Appeal (www.1dca.org/)—opinions, court calendar, and biographies
 - 2nd District Court of Appeal (www.jud10.org/2ndDCA/2ndDCA.htm)—Second District Court of Appeals opinions
 - 4th District Court of Appeal (www.4dca.org/)—Fourth District Court of Appeals opinions
 - 5th District Court of Appeal (www.5dca.org/)—Fifth District Court of Appeals opinions and more
 - Circuit Courts
 - 2nd Circuit (www.2ndcircuit.leon.fl.us/)
 - 5th Circuit (www.co.hernando.fl.us/judicial/)
 - 6th Circuit (www.jud6.org/)—schedules, rules, opinions, assignments, and representing yourself
 - State Courts (<http://www.flcourts.org/>)—judges' page, Florida state courts, law reviews, and opinions
 - Florida Rules of Civil Procedure (http://phonl.com/fl_law/rules/frcp/)

Additionally, FindLaw has numerous hotlinks to most of the academic or law-school-related law reviews, either alphabetically or by topic. There are also many topics of interest to business, consumers, and attorneys with related links.

3. **www.ilrg.com/ (Internet Legal Resource Guide)**—This is another general internet research site that hotlinks to a number of federal and state government sites, which provide both statutory and court information. It supposedly also has legal topics such as insurance law, but when you click on "insurance law," it simply lists about 30 insurance treatises, and books that are available for sale.
4. **www.hg.org/ (Hieros Gamos)**—This appears to be a particularly well-organized site that links to all federal and state court sites. It claims to also link to 400 different law review sites. Most importantly it has a hot link under Insurance News Network: State Insurance Gateway that takes you to www.insure.com, which in turns, lets you open up each of the home pages of the various state Departments of Insurance around the country. Each state web site is different, but some permit you to get into state regulations and decisions.

It will also permit someone, who is not a subscriber to Westlaw or Lexis/Nexis, to obtain for a per case fee, a particular case or document from one of these subscriber services. It lists public libraries, law school libraries, and many other legal resources.



5. **www.loc.gov/ (Library of Congress)**

<http://thomas.loc.gov/> (Thomas-Legislative Information)—The Library of Congress has guides to legal information from virtually every country in the world. With respect to the United States, it has the following guides:

Constitution

- Guide to Law Online: United States Constitution

Executive

- Guide to Law Online: United States Executive

Judicial

- Guide to Law Online: United States Judiciary

Legislative

- GLIN: Global Legal Information Network (Law Library of Congress) as of September 1, 2002, offers 1,270 searchable abstracts of laws, decrees, and regulations
- Guide to Law Online: United States Legislative (Law Library of Congress)
- Guide to Law Online: United States Law (Law Library of Congress)

States

- Guide to Law Online: U.S. Lists

Legal Guides and Miscellaneous

- Guide to Law Online: States and Territories
- Guide to Law Online: United States Legal System
- Guide to Law Online: Criminal Justice System
- Guide to Law Online: Elections
- Guide to Law Online: Enron (Legal Aspects)
- Guide to Law Online: Law Reviews Online
- Guide to Law Online: Legal Services
- Guide to Law Online: Native Peoples
- Guide to Law Online: Terrorism

<http://Thomas.loc.gov/>, named after Thomas Jefferson, is the Library of Congress Congressional database.

6. **www.lawschool.cornell.edu/library/default.asp (Cornell Law School Library)**—This Ivy League Law School Library has a number of resources that can be accessed online. There is an Insurance Law page with a number of important cases and links to other insurance law sites throughout the country.

7. **www.law.uconn.edu/library/ilc/ (University of Connecticut Law School Insurance Law Collection and Research)**

- state regulations
- organizations
- social insurance links
- hot links
- foreign sites
- historical collection
- insurance fiction
- insurance publications
- insurance law journal
- insurance news
- insurance law center

The above sources link to many other insurance sites. The first link in this list takes you to the National Association of Insurance Commissioners, which includes state regulations in all 50 states.

Hopefully this will be only a starting point, and other members of the CLEW Section can provide supplemental information and additional sites that they run across. ■



Pet Health Insurance and a Larger Question

by Jean E. Lucey, CPCU

Back in the early 1980s, scattered calls from consumers asking about the availability of health insurance coverage for their dogs and cats were received at the Insurance Library Association of Boston. Perhaps spurred by stories in general interest publications such as the *Wall Street Journal*, a product designed by veterinarian Jack Stephens and underwritten by California carrier Veterinary Pet Insurance (VPI) began garnering policyholders in 1982. Despite certain exclusions from coverage—treatment for psychological disorders and for cosmetic surgery, for example, stick in my mind—it seemed that a viable niche market existed and invited development. According to a 2000 article in *Dog and Kennel Magazine*, approximately 30 different pet insurers “came and went” since 1982. As this is written, links to five pet insurance providers’ web sites are included on www.Insure.com.

Companies competing nationally include VPI, PetHealth, Inc. of Canada (through subsidiary PetCare Insurance Agency, Ltd.), and the Hartville Group. VPI remains the market leader, and received a vote of confidence (as well as a financial lift) with Nationwide affiliate Scottsdale Insurance’s significant investment in its operation. As with any insurance product, plans and premiums vary.

It is estimated that 60 percent of U.S. households, more than 58 million, count among their residents a cat or dog. (You may have noticed that I did not use the word “own” in the previous sentence. I’ve avoided it in recognition of the trend for animal law attorneys to use the word “guardian” instead of “owner” to identify the person in a person/pet relationship. I still remain somewhat politically incorrect, as the trend is also to refer to “companion animals” rather than “pets.” As animal law is now taught at some 20 law schools, including those at Harvard and Georgetown, perhaps I should watch my step.) A 1999 survey by the American Animal Hospital Association found that pet owners spent between \$150 and \$350 annually on veterinary care, and forecast that by 2001, Americans would spend \$28.5 billion annually on pet-related

items including veterinary care. Clearly, there are some discretionary funds in the hands of pet-inclusive householders.

While data are inexact—the pet insurance line is not included in prescribed annual statement forms—it has been estimated that only about 1 percent of pet people in the United States have purchased coverage. This estimate contrasts with its purchase by some 19 percent of pet householders in England, and a striking 49 percent in Sweden. Then again, those two places provide virtually universal health insurance to their human citizens, but more about that later. It seems reasonable to surmise that interest will increase among consumers, as I am sure it is not just in Boston that such amenities as gourmet dog biscuits and dog-friendly cafés, not to mention bus services for doggie day care center pick-up and drop-off, are available. I guess there must be day care centers for cats too, although I can’t quite picture my cats participating willingly in organized activities. When pets are thought of as chattel, only the relatively few animals that compete in organized shows (successfully, at that) would seem, because of their monetary value, to be health insurance candidates. Emotional attachment to animals makes candidates of the scruffiest of mutts and the surliest of cats.

A report circulated by Packaged Facts (“Market Trends: The U.S. Market for Natural Pet Insurance,” www.MarketResearch.com) indicates that pet insurance revenue increased

342 percent from 1998 to 2002, with sales totaling some \$88 million in the latter year. An official at Canada’s PetHealth posited that sales might have grown due to increases in pet adoptions and purchases following the September 11 terrorist attacks, as well as the public’s generally increased focus on insurance engendered by those events.

Another factor may operate to increase pet health insurance sales. Some employers are adding such plans to their roster of benefits. Especially as related premiums are often paid entirely by employees, such employers as Lenox Hill Hospital in New York, Mirage Resorts in Las Vegas, and a small firm in Vermont—Small Dog Electronics, Inc.—have nothing to lose and considerable good will to gain by arranging group options.

Pet health plans come in different forms. Market leader VPI offers several levels of traditional coverage, under which people take their pets to their own veterinarians. Annual premiums vary depending upon animals’ species, age, size, and breed, and range from approximately \$150 to more than \$400. VPI offers “Vaccination & Routine Care Coverage” at an additional cost of \$99 per year. This extends coverage to routine physical examinations, heartworm and flea protection, as well as the underlying coverage for X-rays, laboratory fees, prescriptions, emergencies, and cancer treatment. A sample benefits schedule indicates reimbursement of \$357 for treatment of gastritis and \$1,993 for gastric torsion. (I don’t know what that is, but it must be serious!) Other offerings, such as one from Pet Assure, function similarly to HMOs. Of course it is important to check on the terms of any particular plan, but typical exclusions, in addition to mental health treatment and cosmetic surgery, include coverage for pre-existing conditions and congenital and hereditary diseases. VPI also offers what it calls its “Avian and Exotic Plan” through which coverage may be bought for birds, rabbits, ferrets, reptiles, chinchillas, and other species.





The American Veterinary Medical Association has promulgated a "Pet Health Insurance Statement." In addition to replacing the word "pet" with the phrase "companion animal," 2003 revisions to the statement added to the requirements for a companion animal health insurance program:

Reimburse the animal owner for fees previously paid to the veterinarian. Companion animal insurers should commit to assuring that companion animal owners (!) are aware of how the terms and conditions of their policy will impact their coverage and reimbursement. Not only should the type and amount of monetary coverage be clearly explained to the policy holder, so should concurrent financial obligations such as co-pay, deductible, and other risk-management charges (e.g. surcharges, exclusions) that are integral components of the insurance contract.

This, of course, seems an excellent requirement for all lines of insurance coverage. Veterinarians have a clear interest in the avoidance of coverage disputes, even though they seek to specify that such plans should take an indemnification and not a "pay-on-behalf-of" form. An additional consideration is that veterinarians' offices are often the place where buyers learn of

the coverage through pamphlets and/or verbal recommendations.

VPI founder Stephens has stressed that claims and costs must be managed if an insurer is to succeed in this line.

I had a friend who insisted to her vet that her dog must have a hearing problem because it did not come when called. She

commissioned (at her own expense) costly tests that determined her dog's hearing was just fine and obedience training was in order. I'll bet a deluxe health plan would have paid for those tests. A cat we once lived with came home one day limping badly. Our veterinarian found no leg injuries and speculated that one or more small bones in the cat's leg had been broken. The vet agreed with us that the only sure means of diagnosis—X-rays—was inappropriate, given that no treatment would have been indicated whatever the X-rays showed. If cost were not an object, though, I might have decided to go ahead with the procedure. My brother, a veterinarian, had a dog that lived happily into its 20s. I sincerely doubt that the dog would have lived to such an age without very regular veterinary care that might have proven prohibitively expensive if not provided by its "companion." If insured, that dog might well have had an adverse effect on the insurer's loss ratio. Just as with property insurance and human health insurance, deductibles and co-payment provisions can help control payouts.

The Larger Question

I have had the unpleasant experience of sitting in the waiting room of an excellent animal hospital in Boston where I could not avoid overhearing conversations involving the arrangement of payment plans for treatment of animals. More than once in a short

period of time, the costs were estimated to approach or exceed \$2,000. Unless a plan was arranged, the treatment would not be initiated. It seemed clear that those people who needed to arrange payment plans were those who could least afford such expense. It may be that pet health insurance is best suited for that group of pet owners. With the assumption that less affluent people are just as attached to their pets as their wealthier counterparts, the relatively small and predictable expense of premiums could provide the peace of mind necessary to enable pet companionship. Additionally, the existence of coverage might well mean that necessary visits are made to veterinarians on a more regular basis.

However, I think it quite likely that those same people arranging payment plans for their animals' treatment have inadequate health insurance for themselves. According to the Census Bureau, some 1.4 million people lost their health insurance during 2001. That brought the total of uninsured Americans to approximately 41.2 million. "Even more alarming," according to the web site of The American Association of Health Plans [is the fact that] "almost 75 million Americans under the age of 65—30.1 percent of the population—were uninsured at some time during 2001 and 2002. Of those, 18 million (24 percent) were uninsured throughout the two-year period." I certainly don't pretend to know how the \$88 million spent on pet health insurance premiums could make a big difference to those people living without health insurance, but it does cause me to question our collective priorities. ■

Who's Managing Your Success?

CPCU Society National Leadership Institute

Invest in Your Professional Development— and Take Charge of Your Career Success!

**Spring 2004 CPCU Society
National Leadership Institute
April 22-23, 2004 ♦ Tampa, FL**

- ♦ Develop effective leadership, communication, and management skills to guide your company—and your career—to success.

- ♦ Gain real-world knowledge about managing and leading in the P/C industry.
- ♦ Prove that you have the drive and the know-how to get ahead in today's competitive marketplace.

Set Your Schedule for Success!

Thursday, April 22

8 – 11:30 a.m.

- ♦ Developing Resilience in a Rapidly Changing World

8 a.m. – 4 p.m.

- ♦ Effective Communication Skills
- ♦ Practical Techniques for Project Management
- ♦ Finance for Nonfinancial Managers
- ♦ Facilitative Leadership Skills
- ♦ Power Tools for Successful Negotiations

Noon – 1 p.m.

- ♦ Thursday Leadership Luncheon

1 – 4 p.m.

- ♦ Delivering Compelling Messages to Your Staff

1 – 4:30 p.m.

- ♦ Time Management—Managing the Only Non-Renewable Resource

5 – 6 p.m.

- ♦ Reception

Friday, April 23

8 – 11:30 a.m.

- ♦ Developing Resilience in a Rapidly Changing World
- ♦ Time Management—Managing the Only Non-Renewable Resource

8 a.m. – 4 p.m.

- ♦ Effective Communication Skills
- ♦ Practical Techniques for Project Management
- ♦ Finance for Nonfinancial Managers
- ♦ Facilitative Leadership Skills
- ♦ Managing Conflict in the Workplace

Noon – 1 p.m.

- ♦ Friday Leadership Luncheon

1 – 4 p.m.

- ♦ Becoming a Successful Leader

Register Today to Take Your Career to the Next Level!

Complete the registration form in your February/March issue of *CPCU News* and mail or fax it to the CPCU Society by April 9, 2004. Members can also register online at **www.cpcusociety.org**. For more information, please contact the Member Resource Center at (800) 932-CPCU, option 4, or at **membercenter@cpcusociety.org**.

CLEW Section Quarterly

is published four times a year by and for the members of the Society's Consulting, Litigation, & Expert Witness Section.

CLEWS Editor

Daniel C. Free, J.D., CPCU, ARM
Insurance Audit and Inspection Company
6314 Rucker Road, Suite G
Indianapolis, IN 46220-4892
E-mail: dfree@insuranceaudit.com

CLEWS Assistant Editor

Vincent "Chip" D. Boylan Jr., CPCU
Hilb Rogal and Hamilton Company
800 King Farm Boulevard, #200
Rockville, MD 20850-5748
E-mail: vincent.boylan@hrh.com

CLEW Section Chairman

Donn P. McVeigh, CPCU, ARM
Creative Risk Concepts Intl.
6114 La Salle Ave #355
Oakland, CA 94611-2802
E-mail: dmcveigh@crcinternational.net

Sections Manager

John Kelly, CPCU
CPCU Society

Managing Editor

Michele A. Leps, AIT
CPCU Society

Production Editor/Design

Joan Satchell
CPCU Society

CPCU Society
Kahler Hall
720 Providence Road
PO Box 3009
Malvern, PA 19355-0709
(800) 932-2728
www.cpcusociety.org

Statements of fact and opinion are the responsibility of the authors alone and do not imply an opinion on the part of officers, individual members, or staff of the CPCU Society.

© 2004 CPCU Society



Printed on Recycled Paper



Consulting, Litigation, and Expert Witness Section Quarterly

Volume 11

Number 1

March 2004

CLEWS

CPCU Society
720 Providence Road
Malvern, PA 19355-0709
www.cpcusociety.org

PRSR STD
U.S. POSTAGE
PAID
BARTON & COONEY