

Chairman's Corner

by James D. Klauke, CPCU, AIC, RPA

"If one learns from others but does not think, one will be bewildered; if one thinks but does not learn from others, one will be in peril."

—Confucius



■ **James D. Klauke, CPCU, AIC, RPA,** serves as chairman for the Claims Section Committee and is an executive general adjuster for Crawford Technical Services.

As my term as your chairman is coming to a close, I am happy to report that there have been many innovations in our section and more involvement by the members. This message is to thank you all for what you have done to promote the CPCU designation and advance your career through continuing education.

I now ask you to help us with one of our section goals, the Circle of Excellence Achievement. Each year the CPCU Society presents awards to interest sections and chapters that promote the CPCU designation or provide education programs to Society members, chapters, sections, and the insurance industry. These various programs and activities are measured from July through June, and the awards are a part of the Annual Meeting and Seminars each year. The program has been active for the past three years and your Claims Section has achieved the highest level, the Gold Award, each year.

In the past three years of this program we have been measured by the activities of the section committee. This year however, we received several presentations from the members and would like more for next year. We hope these contributions will help us to our fourth Gold Award this year in Atlanta. The measurement period is July 1 through June 30 each year.

Activities that qualify toward the Gold Award are another way for you to become involved in the CPCU Society and your Claims Section. Help us to earn recognition points in this program and advance your career at the same time. You can help us achieve this Gold Award for the fifth year in a row. The following are some activities and programs that qualify for points in the program:

- Conduct, organize, or participate in any industry seminars, symposia, workshops, or other educational

events. These would include conventions like the PLRB, *Claims Magazine* Convention, RPA Annual Meeting, chapter program, or some of these vendor educational programs that are becoming popular.

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**CIRCLE OF EXCELLENCE
RECOGNITION PROGRAM**

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- Create an educational program similar to the ones I discussed in a previous CQ.
- Prepare an article for newsletters, magazines, web sites, or other industry publications. These articles must feature an insurance industry or related subject.
- Participate in a chapter outreach program.
- Participate on a chapter committee, serve on the chapter board, or become a chapter officer.
- Participate on the board or serve as an officer of another industry organization.
- Conduct an in-house education program for your employer.
- Teach a CPCU or AIC course in your local community.
- Maintain your CPD (Continuing Professional Development) with the CPCU Society by achieving the required continuing education credits every two years.

If you plan to participate in any of the above activities this year, please send the following information:

- date and time of the event
- location of the event
- organization sponsoring the event
- full description of the program and subject
- copy of cover page of program or brochure of event
- copy of any article published

If you are in doubt as to whether the event or activity will qualify for points, send the information. We submit all activities and allow the Society committee to decide if they qualify. This information should be submitted to the Claims Section Circle of Excellence subcommittee at the following e-mail address: blevine@ecnime.com.

I would also like to call your attention to the Claims Section web site, www.claims.cpcusociety.org, which has been almost completely changed and updated. You will now find the agendas and minutes of the committee meetings. You will find my most recent articles and articles of other members of the section that have appeared in the CQ. You will also find the most recent CQ and other information of interest. We have an area where you can post a question for reply by the membership or reply to another member's question. A great deal of effort goes into this web site by members of the committee for your benefit.

Please visit the site and advise any committee member or myself if you have a question or would like to participate in the activities of the section. As always, I can be reached by e-mail at the following address: james_klauke@us.crawco.com.

Thank you for your contributions to the Claims Section. I am confident we will continue to build upon the successes of the past. I am excited not only about the future of the Claims Section but also your personal growth as an active member. ■

"Great minds will always find opposition from mediocre minds."

—Albert Einstein

Tour De Claims: Handling Car Versus Bicycle Accidents

by Jesse A. Baird, CPCU, AIC

■ **Jesse A. Baird, CPCU, AIC**, is a former claim specialist for an insurance carrier in California. He is currently a policy forms analyst for an insurance carrier in Illinois, and belongs to the CPCU Society's Central Illinois Chapter.

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In recent years, bicycle riding has become increasingly popular as a form of both transportation and recreation. Though for some—like children—a bicycle is the only form of solo transportation available. Many riders like bicycles because of qualities that make them different from motor vehicles: for example, they provide exercise and are environmentally friendly. However different they may be in those respects, bicycles are legally equivalent to motor vehicles, and this fact holds the key to adjusters' handling of these types of claims. Indeed, bicycle versus car accidents are similar in many ways to car versus car accidents, and this should be remembered throughout the claims-handling process.

Rules of the Road

The most important point to remember when handling bicycle versus car claims is that the rider of a bicycle is subject to the same rules of the road that govern the drivers of motor vehicles. California's law is typical:

Every person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division . . . (California Vehicle Code Section 22100(a))¹

A variant of this regulation is in force in every state, and it is also the law in Canada, Australia, and Belgium, bringing it close to a universal legal principle.²

The legal equivalence of cars and bicycles is important to claims adjusters for several reasons. First, bicycles have a right to operate anywhere on the highway that motor vehicles are allowed, unless expressly forbidden to do so. In practice, this means that bicycles have the same rights as motor vehicles on virtually all roads except freeways. Bicycles can drive in the middle of a roadway, they have the right of way when approaching from the right, and indeed have all the other rights of cars, trucks, and motorcycles. Motorists assuming that bicyclists are obligated to yield the right of way to a car or truck are thus in the wrong, and any accidents caused by such assumptions should be settled in the bicyclist's favor. It is especially important to remember that, as with motorcycles and pedestrians, just because bicycles are difficult to see does not mean that motorists are not obligated to be attentive and exercise special care when sharing the roadway with them.

The only exception to this general rule relates to laws in some states pertaining to bike paths. Oregon statute ORS 814.420, for example, provides that a bicycle rider "commits the offense of failure to use a bicycle lane or path" when a path is available and the rider

rides outside the path.³ Most states, however, are like California in not requiring bicyclists to use available paths.

The other side of the broad rights of bicyclists is that they have a responsibility to follow the rules of the road as strictly as if they were driving an 18-wheeler. According to more than one bicycle safety web site, many bicycle versus auto claims result from ignorance of this fact on the part of the bicycle rider. This shouldn't be surprising; as anyone who drives in an urban area knows, many motor vehicle drivers do not feel themselves bound by the rules of the road. It is hardly surprising, then, that this is true for some bicycle riders as well, since they operate smaller, slower vehicles that present much less risk to others than the large, powerful machines driven by the majority of those who use the roadway.

Which types of bicycle versus motor vehicle accidents are most common is a strongly disputed subject. No reliable national statistics are kept, and the local government entities that do compile such numbers vary so widely that quoting statistics would not cast any light on the subject. Web sites run by plaintiff attorneys⁴ as well as some bicycling advocates maintain that the vast majority of bicycle versus car accidents are the fault of motor vehicle drivers. Web sites promoting bicycle safety and some of the public health literature emphasize the part that bicyclists play in causing collisions. Common sense and the long experience of adjusters suggest that both riders and drivers play a part in causing collisions on an equal basis.

The Biking Community

This fact is recognized by some in the biking community. The web site www.bicyclesafe.com,⁵ or "How Not to Get Hit by a Car," was created for bicycle riders

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Tour De Claims: Handling Car Versus Bicycle Accidents

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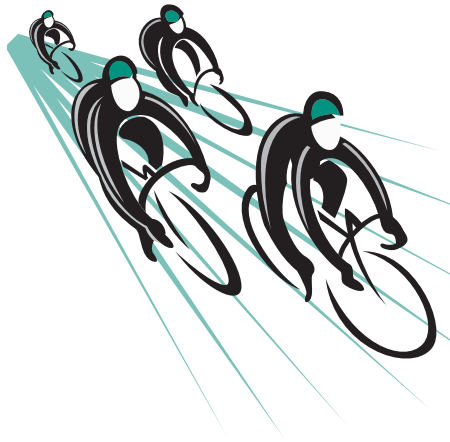
to avoid being involved in accidents. It provides a list of common types of bike versus car accidents with such names as “The Right Hook,” “The Door Prize,” and “The Red Light of Death.” What is striking is the similarity to types of accidents that commonly occur between motor vehicles: making a left turn in front of an oncoming vehicle, making a right turn from a place away from the curb, rear-end collisions, etc. The suggestions to bicyclists as to how to avoid accidents are appropriate for anyone using the roadway: “don’t pass on the right,” “never, ever move to the left without looking behind you first,” and “slow down.” Given this advice, “don’t ride on the sidewalk” and “don’t ride against traffic” seem too obvious to state.

Unfortunately, they aren’t—any more than is the admonition to motorists to “slow down.” According to bicyclesafe.com and other safety sites, numerous car versus bike accidents are the result of bicycles riding against traffic. The scenario—familiar to auto adjusters—is that a motorist is waiting to enter a roadway from a driveway or stop sign and is looking to the left for approaching traffic, and does not see a bicyclist approaching from the right against the flow of traffic; the motorist then leaves a stopped position and collides with the bicyclist.⁶ Though the individual circumstances of the collision are important in determining liability, a significant portion of liability will rest with the bicyclist.

Legal Defenses

The legal equivalence of bicycles and motor vehicles provides several other available defenses:

1. **Drunk riding is illegal.** The law of most states obligates bicyclists to ride sober, and if they exceed the legal blood alcohol content while operating a bicycle they can be arrested just like any other drunk driver. If alcohol impaired the bicyclist’s riding ability, this is an important defense.



According to researchers at Johns Hopkins Medical School, riding a bike requires a higher level of psychomotor skills and physical coordination than driving a car, so alcohol has an even stronger effect on bicyclists than on drivers.⁷

2. **Safety gear is often required by law.** Many states require minor bicyclists to wear helmets. In the event one is not worn and an accident occurs, this defense could be used to the extent any injuries would not have occurred but for the use of legally required safety gear. This is similar in concept to the seatbelt defense.
3. **Signaling equipment is often required by law.** Headlights and reflectors are required for bicycles at night in most jurisdictions, because their absence can make a bicycle utterly invisible to motorists.

When it comes to damages, the auto claims adjuster is confronted with the stark difference between bicycles and motor vehicles. There is generally no such thing as a low-impact car versus bicycle accident. The design of bicycles means that the rider is not protected from other vehicles, and when even minor accidents happen, an injury claim by the bicyclist is a near certainty. Since the bodily injury and property damage liability portions of the policy address

these types of claims, the only coverage worry an auto claims adjuster has (assuming coverage is in force) is whether enough coverage exists to pay a given injury claim.

Fortunately for some bicyclists, some auto policies cover bodily injury damages to a bicyclist from an at-fault uninsured motorist under the Uninsured Motorists Bodily Injury coverage. If this coverage applies, the analysis of liability and damages is the same as described above. The same coverage, however, does not extend to drivers of an insured motor vehicle struck by an uninsured bicyclist, since a bicycle is not a motor vehicle. Given the disparity in potential for injury between the respective operators of cars and bicycles, however, this situation is unlikely to ever arise. If only all car versus bicycle accidents were so unusual. Only when both bicyclists and motorists pay attention to the roadway and consistently follow the rules of the road will these types of accidents become a rarity. ■

Endnotes

1. California Vehicle Code Section 22100(a).
2. <http://www.massbike.org/bikelaw/bikelaw.htm>.
3. Oregon Revised Statute (ORS) 814.420.
4. Plaintiff attorney sites comprise the majority of sites having to do with bicycle accidents; there are too many to reference here.
5. www.bicyclesafe.com/.
6. Bicyclesafe.com calls this “The Wrong-Way Wallop.”
7. “Use of Alcohol as a Risk Factor for Bicycling Injury,” *Journal of the American Medical Association*, February 2001; 285:893-896.

Analyzing the Exotic Insurance Coverage

by Laura S. Danoff, CPCU



■ **Laura S. Danoff, CPCU**, is principal, LS Danoff Educational Enterprises, a provider of onsite continuing education in California, Washington, and Oregon, founded in 1999. An E&S broker for 22 years, Danoff is also a motivational speaker, and designs custom insurance classes for in-house programs. She received her CPCU designation in 1981 and has served on the Boards of the CPCU Society's Golden Gate and Santa Clara Valley Chapters, as well as the Northern California Steering Committee of PLUS. This article was based on her seminar "Take It Apart Quickly: Analyzing the Exotics." For details about that and other seminars, please go to www.LSDanoff.com.

Insurance is not "rocket science."

In fact, nothing you compare to rocket science can be rocket science. The only thing that actually can be rocket science is, well, rocket science.

But you know what? Insurance is harder. Why? Because the general public doesn't have to understand rocket science, but we expect the general public to understand our products, and if they don't, guess who they'll blame?

As claim professionals you all know how to investigate coverage, liability, and damages. So let's face it—we're all in "the industry" and there are times we cannot understand our own products, especially the new ones. But, because my mission as a provider of continuing education is to make this easier for others, first I had to learn how to do it.

When I started reading policy forms, there were two challenges:

1. How many words I could read before dozing off.
2. They're not linear.

You can't start at the top of page one and read straight through to the end. You have to dart around from bold words in the Insuring Agreements to Definitions, from Definitions to Exclusions to back to Insuring Agreements and so on. But I did devise a technique that can actually quickly locate the important coverages and potential areas of conflict.

So get out your highlighter and your policy form and we'll get started.

In fact, that's my first step with any unfamiliar form: make a copy of it and get a highlighter.

Because the topic of this article is "exotic" let's start with a brand new exotic coverage. The genesis of this coverage was a night of channel-surfing while eating too much junk food and drinking too much Diet Coke (to stay awake) alternating with too much Pinot Noir (because any article mentioning wine these days has to include a reference to the movie *Sideways*).

The result: Reality TV Show Offense Liability Insurance [RTVSOLI].

What does it cover? One of my CPCU instructors always related liability insurance to what he called "The All-American Doctrine of Entitlement," roughly translated as "Something bad happened to me! I'm entitled to money! Where can I get it?"

You're all claims people so I know you know what I am talking about. . . .

I figured if anyone can sue a fast food company for making someone obese, I should be entitled to money for the brain cells lost by watching reality TV shows. Some of the worst offenders included "Who Wants to Marry My Retrocessionaire?" "America's Funniest Insurance Regulations," and "Fear Factor Deposition, Eating Your Words." Now that you know the reasons for the coverage, let's get to analyzing the form.

Any policy analysis begins with a roll of the "DICE," okay, actually the word is "DICED," but I couldn't find a metaphor for that. Every insurance policy can be divided into the following:

- **Declarations:** the who, what, when, where, how much
- **Insuring Agreements:** the *giveth*
- **Conditions:** who does what and when
- **Exclusions:** the *taketh away*—but not always
- **Definitions:** what the bold words really mean

Where do you start? Ignoring the declarations as we're just looking for coverages, we boldly move on to the insuring agreements, or the coverage, or what we insure, here's what we're gonna cover, etc., as isn't that where you think the coverage would be? BZZZT! Nope. Let's look at the insuring agreement for RTVSOLI:

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We will pay on **You** behalf those sums in excess of the **Deductible** and **within the applicable Limit** of Insurance stated in Item 5 of the Declarations that **You** become legally obligated to pay as **Damages or Claim Expenses** because of **Claims** as a result of a **Wrongful Act**.

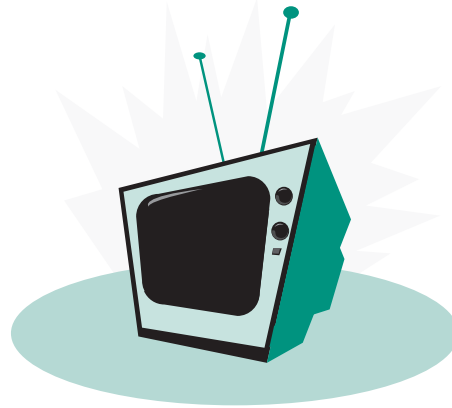
I highlighted “**You**” and “**Wrongful Act**.” So tell me (rhetorically), at this point do you have any idea of what’s being covered? No—the critical information, i.e., what constitutes that Wrongful Act, who’s actually an Insured, what constitutes a claim, will be found in the Definitions. So you only get as far as one sentence and have to go running off to another section of the policy. But at least you do know what that section is. Why not just go to the Exclusions? Because first you have to know the Act that’s being covered before you can fine-tune it into what isn’t. Let’s find out.

- **Wrongful Act** means production of a television program that results in a **Reality TV Show Offense**.

Oh, really helpful. Having fun yet? We now skip back from the W’s to the R’s and that’s our first really important find, our first hint at what’s really being covered.

- **Reality TV Show Offense** means any actual or alleged: headache, nausea, shock, gastric or emotional distress, feelings of self-hatred, annoyance, outrage, and drop in IQ arising out of viewing a **Reality TV Show** produced by **You**, including but not limited to programs containing:
 - a. former child stars now in rehab
 - b. dysfunctional families
 - c. over-botoxed, collagenated or otherwise enhanced aging celebrities of any gender
 - d. groups of unrelated persons thrown together in any controlled environment
 - e. the consumption of any food that is still moving

As night follows day, that definition leads you to another, **Reality TV Show**, because even if you think you know what a “Reality TV Show” is, it doesn’t matter what you think. In the event of a claim, it’s the policy definition that will rule, not your thoughts. Here’s this one:



- **Reality TV Show** is an unscripted television program in which contestants are competing or have submitted themselves to making a change in their lives. The following are not **Reality TV Shows**: news, political discussions, talent shows, game shows.

How do you like that? An Exclusion within a Definition. That’s why it’s my theory that the true coverage will generally be found somewhere between the Definitions and the Exclusions, and for any of the *exotics*, that’s where I’d always begin.

So on to the Exclusions, which I’d called “the taketh away, *but not always*,” because when you run into words and phrases such as: “but,” “however,” “does not apply to,” etc., what follows those words (or sometimes it’s just a semi-colon) may actually be a grant of coverage. Here’s an example:

- The insurer shall not be liable for loss arising from any **Claim** made against **YOU** alleging that someone else should have won; however, this exclusion shall not apply to [insert exception here].

Here are some key words and phrases to look for in the Definitions and Exclusions: “including but not limited to”—very broad, “shall also include,” “does not include,” “provided however,” “but only when,” “but this does not apply to,” all of which will allow you to hone in on the actual coverage.

With any policy form there are always provisions you’ll want to check, including:

- duty to defend
- extended reporting
- hammer clause?

So while the prospect of reading through an entire policy might seem daunting, the reality is that you can quickly locate the actual coverage of any exotic (or other) form, by locating:

- covered persons
- covered acts
- key definitions
- key exclusions
- key provisions

Or you could just guess—and later find yourself appearing on “My Big Fat Obnoxious Claim Situation.”

And now, if you’ll excuse me, it’s time for “The Amazing Regulatory Race.” Tonight *Paul v Virginia* is going to square off against McCarran-Ferguson, and I can’t wait to see how it’ll turn out. ■

Poor Writing Skills: The Insurance Industry's \$1 Billion Headache

by Gary Blake, Ph.D.

■ **Gary Blake, Ph.D.**, is director of The Communication Workshop and presents claims and SIU writing seminars at insurance companies across North America. Among his clients are Blue Cross/Blue Shield of Tennessee, AIG, FCCI, Foremost Insurance, and SAFECO. Blake is the author of *The Elements of Business Writing* (Macmillan, 1993), a text used at more than 100 insurance companies.

He may be reached at garyblake@aol.com, (516) 767-9590. His web site is www.writingworkshop.com.

The number will not appear on a ledger or in an insurance company's glossy annual report.

Like that ever-increasing national debt figure that can be seen on a digital billboard in midtown Manhattan, the number of dollars lost because of poor writing skills keeps increasing, unseen, minute by minute, day by day. It may seem far-fetched to estimate that about \$1 billion is the annual loss attributable to problematic writing, but let's do some number crunching and see exactly how the loss occurs and whether reasonable estimates are attainable.

To make approximations, let's assume (conservatively) that there are about 2,000 major insurance companies (property and casualty, life/health), including HMOs but not counting TPAs, independent adjusters, public adjusters, risk managers at private and public companies, or captive insurance companies. If we estimate that about 200 people work for each of these 2,000 companies (a low estimate), we have a workforce of about 400,000. This figure must be considered very low because there have been estimates that there are a half-million people in claims alone in the United States.

Bad-Faith Lawsuits

First, there are the lost millions in bad-faith lawsuits attributable directly or indirectly to writing problems caused by insurance people whose writing is careless, inaccurate, vague, hedgy, or arrogant. Let's estimate that each one of our 2,000 companies had only one bad-faith lawsuit a year that was attributable to some aspect of poor writing (sexism, ageism, racism, conclusory statements, etc.); that would be 2,000 lawsuits. If the settlement were only \$500,000 for each (a low estimate) that would be \$1 billion in lost productivity alone:

2,000	Major Insurance Companies
x \$500,000	Average Loss
\$1,000,000,000	Estimated loss resulting from the effects of careless writing on bad-faith lawsuits.

This figure, by the way, does not even take into account the productivity losses resulting from writing issues that exist in the IT Department or in sales or in marketing, loss control, underwriting, or advertising!

Still, you may not accept these figures, believing that I am at least a few hundred million dollars off in my calculations! Then, let's explore other writing issues beyond the realm of bad-faith lawsuits to see if we can arrive at reasonable estimates for additional types of wasted productivity and profitability attributable to poor writing skills at insurance companies.

Poor Tone

In addition to the careless writing that plays a part in some bad-faith lawsuits, there are other lawsuits engendered by letters that alienate insureds and provoke them to initiate a lawsuit. These are issues of stodgy, negative, nasty tone that may prompt an insured

to call an attorney instead of settling. If only 10 letters per company per year are of this type and each one results in a suit involving attorneys, corporate time, settlements dragging on, and lost productivity amounting to 50 hours . . . and assuming time is worth \$50 and hour . . . that would equal a \$50,000,000 loss.

Getting Started

It may not be obvious, but writer's block may be the most widespread drain on insurance industry productivity. The block is experienced by numerous insurance people who are skittish about their writing and put it off as often as possible.



In my claims writing seminars, hundreds of adjusters have told me that their principle writing problem is "getting started" and that it is not unusual for them to stare at the terminal for a half hour trying to figure out how they will organize and phrase a document. Let's say that there are 50,000 "writing avoiders" in insurance who are procrastinating, some of whom are part of the more radical "I hate to write!" sect. And let's posit that each of these 50,000 people wastes just 10 hours a year in needless procrastination and worry about what they write. Assume that each hour of time is valued at \$50. That's \$25,000,000 lost. Many of these people are in the habit of showing their writing to colleagues for corrections, thus wasting even more corporate time—time that would not

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Poor Writing Skills: The Insurance Industry's \$1 Billion Headache

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have been wasted if each person was a trained and confident writer.

Vagueness and Inaccuracy

When a piece of writing is so vague as to provoke the reader to call the writer for further explanation, it is like one domino toppling over many more. There's a game of phone tag, time taken to explain, time taken to redo correspondence. This is a frequent occurrence because vague writers tend to be vague in whatever they write. They will remain vague until they are trained to write more specifically and precisely. Let's say that there are about 50,000 vague writers in the industry—a very low estimate—and that each of them writes only 10 letters a year that are so vague as to cause a reader to query them. If each of those occurrences results in a mere \$100 loss, the total bill for this problem would be **\$50 million** annually!

Not Following Up

Still need convincing?

Almost every major insurance company has a Special Investigations Unit (SIU). These people are given information by claims people and others about possible fraudulent behavior. Fraud cuts across property/casualty, life/health, and HMO categories. In property/casualty, fraud may involve arson, auto theft, or mold; in life/health and HMO SIUs, there may be issues of "upcoding," "unnecessary medical procedures," and suspicious soft tissue injuries. In all, fraud costs the insurance industry about \$100 billion a year. Some SIU investigators tell me that they are not able to pursue obvious cases of fraud because an adjuster or other colleague has put questionable conclusions or inappropriate comments that have wound up in the file. Does this happen often? Perhaps not. But if an SIU or other fraud investigating unit has to drop a fraud investigation because the file was tainted with inappropriate remarks (which probably traces back to a lack of training), that's \$1 billion right there!

\$100,000,000,000 Total Insurance
Fraud
x 1 Percent

\$1,000,000,000,000

If you talk to SIU people, you'll find that they are inclined not pursue litigation for another reason: the investigative reports are not compelling enough to move a prosecutor to take a case to court. This could be because the report has not been clear about what has taken place, not dramatized for the reader why the behaviors described are fraudulent. If this is the case even 1 percent of the time, we have another \$1 billion loss attributable to the lack of writing skills within SIUs.

So, if writing skills have not been on the front burner of your training agenda, perhaps you need to re-think the subtle impact poor writing skills has on the industry, your company, and your department. To quote the late Illinois Senator, Everett Dirksen: "A billion dollars here, a billion dollars there, and pretty soon we're talking about real money!"

And, here are some examples of where it all starts to add up!

The 2005 Cappie Award Winners



The "Cappie" awards are given annually to sentences from insurance documents that are either vague, jargon-ridden, incomprehensible, embarrassing, or just plain funny.

Their purpose is to remind claims and other insurance executives that writing skills training is a high priority because effective writing helps settle claims quickly—and that's money in the bank. The name "Cappie" is taken from the stodgy phrase "above-captioned claim."

1. The first Cappie is awarded for the best "Slip of the Pen:"
"He reported that the van was being operated in an unsafe manor."
—W.A., *claims adjuster, Omaha, NE*
2. The second Cappie is awarded for the best "Double-Edged Sentence:"
"This is to confirm that ABC insurance company has received your notice of loss regarding the theft of your tools, and our conversation of December 29, 2004."
—P.V., *claims manager, Denver, CO*
3. The third Cappie, "Say What?!" goes to:
"According to the National Burglar and Fire Alarm Association, the best home security system should be customized to suit your schedule and that of your children, pets, and valuables."
—T.F., *underwriter, Portland, ME*
4. The fourth Cappie, "LawyerSpeak," is awarded to:
"The defendants are vicariously liable for any and all damages caused by their tortuous conduct of their employees."
—B.P., *Attorney, Des Moines, IA*
5. This year's "That's Not What I Meant" Cappie goes to:
"He had been driving for 40 years before he had this accident."
—W.B., *claims rep, Atlanta, GA*
6. The "What's In It for Me" Cappie this year goes to:
"We want to settle your claim as expediently as possible."
—J.L., *claims VP, Columbus, OH*
7. This year's Cappie for "(Almost) Authoritative Writing" goes to:
"While a decision on our liability for this claim must of course await the completion of the investigation, it appears conceivable that some policy defenses may be applicable with respect to this matter in which case litigation would be a distinct possibility."
—C.C., *claims adjuster, Wichita, KS*

8. The "Bad-Faith Lawsuit Here We Come!" Cattie goes to:
"We can only hope that the plaintiff's condition continues to deteriorate . . . We think this person will die of cancer and we will be off the hook."

—O.W., *claims supervisor, written in log note, Seattle, WA*

9. The "Not My Typo" Cattie goes to:
"At this time, we are making a claim under your insured unsure motorist provisions of there policy."

—G.R., *claims manager, Houston, TX*

10. The Final Cattie is for "Best Inadvertent Image" in a sentence:
"At this time, I am enclosing our relative to the above referenced lawsuit."

—K.L., *regional VP, claims, Overland Park, KS*

This year's runners-up for Cattles include:

1. "As discovered, your property sustained water damage. It was also discussed and discovers that the damaged is old from a pre-existing problem. The room in question has been paid for on two other prior claims. Since you have not proofed that you have corrected the pre-existing problem or completed the damaged that was a result of that problem."

2. "During a recent review of our records, it has come to our attention that your mode of payment is out of synch. Your policy effective date is September 20, 1999, showing an annual mode of payment, paying the policy to October 20, 2003. An annual mode of payment must coincide with the effective date of our policy. Therefore, your annual mode must show a date of September 20, 2003."

3. "The Customer Advocates express genuine apathy and research every resource to provide good customer service." ■

Put Your CPCU to Work for You!

by Donna J. Popow, J.D., CPCU, AIC



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One of the experiences shared by every CPCU is the exhilaration felt when that last grade report is received advising the candidate that the designation is complete. Who among us can forget all of the effort we put into the CPCU designation? Well now, it is your turn to make the CPCU designation work for you. The Society of Registered

Professional Adjusters (RPA) invites you to join it in its continuing effort to professionalize a career in claims.

The Society of Registered Professional Adjusters is a non-profit organization created in the mid-1990s by six independent adjusters in California. The purpose of the RPA is to provide a professional designation for those who exhibit significant experience, expertise, ethics, and knowledge while engaged in the business of insurance loss/claim adjustments. In 1998, the Society was formalized with the election of a Board of Directors and the adoption of bylaws. Today, the RPA is the only designation that is specific to the claim/loss adjuster, which requires yearly continuing education credits to maintain the designation.

Candidates for the RPA designation must (1) work as a claim professional, manager, or educator in the insurance industry; (2) complete an application; (3) pass a credentials check carried out by the Society; (4) hold the CPCU, AIC, SCLA, or similar designation or have 10 years of claims experience; (5) pass the RPA's ethics exam; and (6) pass the RPA's line of business exam. The Institutes have partnered with the Society of Registered

Professional Adjusters to administer these exams for them. To maintain the designation, holders must fulfill annual continuing education requirements as specified by the Society and abide by the Society's Code of Ethics. Information about the examinations, Code of Ethics, and the Society in general can be found at www.rpa-adjuster.com.

The RPA designation sets the adjuster apart from all other adjusters without the designation. The Society is the one place that potential clients and employers can access to see if the adjuster has the qualifications necessary to handle a particular loss.

Since you receive this newsletter you already have the first and fourth criteria completed. And you are already getting CE credits to qualify for CPD or for your adjuster license so there is not much additional work for you to do, other than fill out the application and take the exams. And how hard can two more exams be after you have gone through the CPCU designation?

Experience the thrill of seeing another passing examination grade and join the RPA today! ■

Where Has All the *Professional Adjuster* Training Gone?

Business Writing Skills are Practically Non-Existent

by Jonathan Stein, J.D., CPCU



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Stein earned his B.A. in economics from California State University, Sacramento in 1995. He then began his adjusting career with Prudential Insurance. While at Prudential, Stein began the CPCU program and completed it in 1998. At that time, he was employed by CIGNA. Subsequently, Stein worked as an adjuster at Crawford & Company. In 2002, he earned his J.D. from McGeorge School of Law with distinction.

Stein now is the principal of the Law Offices of Jonathan G. Stein where he also does expert witness work.

The famous, or infamous, (depending on your perspective) Bobby Knight once said "All of us learn to write in the second grade. Most of us go on to greater things." Sadly, this attitude seems to be more prevalent these days. As a follow-up to prior articles about training, this article focuses on a very narrow area—writing for adjusters.

Let's face it. When someone becomes an adjuster these days, the insurance carriers do not spend a lot of time on training. But, even when they do train, how many

of them train adjusters how to write? Sure, we all have high school degrees, and some, if not most, adjusters have college degrees. However, unless you were an English major, you probably did not take a lot of classes on writing. Since writing is one of the most basic skills of an adjuster, adjusters need some basics.

What's the Problem with the Way Adjusters Write?

Sometimes, absolutely nothing is wrong with the way an adjuster writes. Sometimes the results of bad writing are funny. In a denial letter, an adjuster wrote, "Furthermore, the incident in question did not occur on or about the martial premises." The recipient is still trying to locate the martial premises, although he is familiar with the marital premises. Additionally, one adjuster wrote "Thus, the correspondence was not sent to your client and you do not need to be of concern." Huh?

More seriously, Frank Kautz, an attorney in Massachusetts, once gave the perfect answer: "While a reader of a bad letter may understand it, if the file ever ends up in an attorney's hands, especially in a bad-faith case, the attorney's job may become much easier due to poor letter writing." Even if none of your cases ever reach this stage, poor writing reflects on you—the writer. At the very least, one should care about the impression one makes on others.

Some Writing Basics . . .

It's very important to write well. However, most people think it's important to write well. A very small difference, but a complete difference in meaning. Its is possessive while it's means it is. Therefore, in the first sentence, it is important whereas in the second sentence important now belongs to its. Similarly, you're a great reader for getting this far, but your not a writing expert if you do not see a difference in this

sentence. You're should be used only if you are would make sense in the sentence. To save all of the hassle that you have been through six times since high school, the entire discussion of their, there, and they're will be excluded. (Although, there is a place, "their" is for people, and they're is for they are.) Of course, all of the adjusters who are reading this want to learn to write better, which is why they know that all of the adjusters who are reading this is correct.

Whew, that was a lot to get into a paragraph. Beyond the basic uses of grammar, the following rules should apply—do not be wordy, redundant, or imprecise.

Imprecision is a big problem. Mark Twain once said, "The difference between the right word and the almost right word is the difference between the lightning and the lightning bug." Similarly, one should, as Twain said, "use the right word, not its second cousin." There is a difference between a named insured and an insured. The fender is not the bumper, and the wheel is not the tire. While the author may know what the meaning is, the reader may not.

Keep It Simple

Redundancy is a big problem in many ways. (There is some irony to that statement!) Adjusters like to say the same thing over and over. For instance, California requires that an adjuster advise a claimant of the statute of limitations. Most letters start with "The statute of limitations for your claim is two years from the date of loss listed above." After some further writing, the letter usually continues "Your statute of limitations is March 31, 2007." Finally, the letter concludes "You must resolve your claim prior to the statute of limitations which is two years after the date of loss." While one can appreciate the desire to make sure the claimant is aware of the statute of limitations, three times in a one-page

letter is probably too much. Tell someone something once and leave it at that.

Adjusters like to use a lot of words to convey a simple point that could be conveyed much simpler if the adjuster used fewer words. Fewer words can make the same point! Since this is not the SAT or the SAT II, you do not get bonus points for using words. People like to read things that are concise.

While redundancy and wordiness are problems, do not leave out necessary details. For instance, you do not need three sentences to tell someone when the statute of limitations expires. However, you do need to tell him or her the exact date. Thus, tell the claimant "Your statute of limitations is March 31, 2005." It's not wordy, not redundant, and gives him or her all of the necessary details.

ID the Letter Content

Additionally, just as the insurance companies like to receive claim numbers,

everyone else likes to receive identifying information. The number of letters mailed out, especially to attorneys, without claimant information, is astounding. Similarly, it is amazing the number of letters sent out addressed to an attorney and starting with a salutation of "Dear Mrs. Claimant." These are two instances of laziness in writing that could be corrected with some very basic steps, especially following the methods below.

A few ideas to work with. . . .

Cheryl Stephens, a self-described muse/mentor, talks about using the TSO system—think, simplify, organize. (More information can be found at www.cherylstephens.com.) Basically, Stephens emphasizes giving thought to your purpose, the readers' needs, and your constraints. Next, organize your thoughts including a big-picture organization, paragraphs, and sentences. Finally, simplify everything including your sentence structure and your words.

Learn to use an editing system and write actively. Reading the passive voice is very boring. Readers enjoy reading active writing. In order to learn how to write this way, write your letters and then proofread. Most grammar-checking programs check for this as well. Even if the letter has to be sent out today, it's important to spend the extra time making sure it is well written.

Conclusion

Adjusters need many skills. Among these skills, writing is a top priority. The main method of communication between adjusters and the public is written. As insurance companies bring more adjusters out of the field, face-to-face contact diminishes. Thus, writing's importance increases. Adjusters need the proper skills to communicate effectively. ■

Attend the Personal Lines and Senior Resource Sections' Seminar at the Annual Meeting in Atlanta to Learn More About "Senior Boom" Drivers!

Sunday, October 23, 1-3 p.m.

"Starting in 2012, nearly 10,000 Americans will turn 65 every day. The total number of Americans over age 65 and eligible for Medicare will double to over 70 million within this generation, while the population over age 85 will increase nearly five-fold, to almost 19 million, by mid-century. Obviously, the 'baby boom' will soon become the 'senior boom.'"
—The Chrysalis Corporation, May 2005

"Senior Boom" Drivers: Powerful Solutions

As the "senior boom" continues to grow, we must find ways to reduce the frequency and severity of elderly drivers' automobile accidents. At the same time, insurers must also better manage their relationship

with this ever-increasing demographic of drivers, since categorically denying coverage to those over age 75 is no longer a viable option.

This seminar will summarize these key issues, and provide recommendations to address one of the most important transportation and safety issues the U.S. is facing, and will continue to face.

Seminar presenters will be **Dr. Karlene Ball**, Professor, University of Alabama—Birmingham; **James L. Kirschbaum, CPCU**, AARP Driver Safety Program; and **Robin K. Olson, CPCU, ARM, ARP**, International Risk Management Institute.

**For more information or to register for the Annual Meeting and Seminars,
visit www.cpcusociety.org.**

Once Again—A Career Change Is Good

by Kathleen J. Robison, CPCU, CPIW



■ **Kathleen J. Robison, CPCU, CPIW,** has more than 30 years of experience with leading claims organizations, and possesses a wide range of commercial and personal insurance coverage knowledge and applicability. K. Robi & Associates, LLC, which she founded in 2004, provides customized consultant services in the property and casualty insurance fields, including expert witness testimony, litigation management, claims and underwriting best practices reviews/audits, coverage analysis, and interim claims management. She can be reached at (423) 884-3226 or (423) 404-3538; or at info@krobiconsult.com.

Ten years ago I faced a major change in my professional life (which also greatly impacted my personal life when you really think about it). My company had been sold, and I realized that I would not make the transfer and would have to find a new job. With diligent efforts, help from my CPCU colleagues, and a little bit of luck, I was able to transition to a new position in a new company in a new state.

And life was good once again for a number of years. Then once again change paid a visit. It started slowly with a change in executive management and a significant redirection concerning the insurance company's book of business. Managing downsizing became a part of my responsibilities. In doing the analysis, I realized that sooner or later my position would be eliminated and/or drastically altered to a lower level with possible differing skill sets.

It was time to begin the career change journey. I would remain with my current position until I could qualify for early retirement or the position was eliminated, whichever came first. Our budget was reviewed and adapted to maximize the capital available for the transition. Nonessential purchases were reviewed in detail before buying. I was pleasantly surprised at how many things we really did not need but just wanted and how not having them did not impact adversely our lifestyle. Cash is always king.

Various possible future employment options were considered. Yet after working in the property and casualty insurance industry for 33 years with multiple companies, I decided that it was time to do something a bit different. Instead of seeking a position with an insurance company, I would create my own consultant firm at another location. The location would have a warmer climate, a reasonable cost of living, close to an airport, and easy driving distance to major cities. It was time to plan.

Events never quite play out as one anticipates. On the day I was informed by HR that my position was being eliminated and I could opt for early retirement, the plan was still more of a high-level vision. Tomorrow's vision suddenly became today's reality.

Luckily for me, the CPCU Society's Mid-Year meeting was only three weeks after I had been notified. This gave me the chance to talk to colleagues about what I wanted to do and get advice from those who had been there and done just that successfully. One of the great benefits of being involved in the CPCU Society is the ability to network with qualified professionals. Their advice was extremely valuable and allowed me to quickly focus my efforts.

One must consider the legal structure of the business. There are numerous options with varying tax considerations. The applicable statutes and regulations vary by state. I opted not to begin the business until I had relocated. This avoided duplicate costs. By enlisting the right real estate agent and implementing an aggressive marketing plan, relocation occurred within 60 days.

Once settled in, it was time to sign on an attorney and an accountant. Due to the tax considerations, I learned that the accountant can be more important than the attorney. Had I to do it all over again, I would have found the accountant first. It is very important to have a good fit with the accountant because you deal with the accountant a lot more than the attorney. It took me two tries to find the right "accountant fit." The lesson learned is to interview accountants first and in depth. Look for definitive answers for the vast majority of the questions asked. There was no longer easy access to corporate accountants. Time is always money.

Creating a business plan is important. Putting your vision in writing with the details forces one to focus and face reality. I had to decide just exactly what services I would offer. Instinctively, I began by

focusing on the types of things I enjoyed doing during my career. However, what one enjoys doing may not be what others are willing to pay to have done. Nor may there be a sufficient need for the service to sustain a business. Again, conversations and advice from my colleagues were extremely important. But equally important is having the flexibility to alter, add, or drop services based upon the market demands and clients' needs. I found that my business plan is more of a guide to be updated frequently.

The business plan also includes the financial plan. How much will it cost to start up the business? The first rule is that everything costs money. Small things I took for granted at the office like long-distance telephone calls, stamps, overnight mail, printer ink, etc. were now coming out of my pocket. Then there was the laptop, printer, LCD projector, reference materials, etc. Not to mention business cards and business stationery. Web sites require design, domain name, registration, and server space rental. I had to evaluate how much I could do myself and where hiring the experts were most cost-effective. One must consider the value of one's own time and ability to do the task professionally.

And then there is insurance to consider: health insurance, business owners insurance, professional liability insurance, business auto insurance, life insurance, disability insurance. In my past life, some of this was provided by my employers, some by me, and some were a new experience. As a small business owner, I experienced firsthand "minimum premiums." For example, my coverages, limits, and exposures remained the same for my business owner's policy from year one to year two. Yet because the insurance company raised the minimum as its cost of producing a policy had increased, the cost of my policy went up by 21.4 percent. And it added two more exclusions.

Besides the cash outgo, the business plan projects the cash inflow. A second rule is that finalizing an actual engagement for a project always takes longer than

anticipated. The preliminary discussions can take months and all are non-billable hours. The third rule is that there is a time delay from the time the invoice is submitted until the check is received. The cash flow time table became extremely important.

In real estate it is location, location, location. In the consulting business it is marketing, marketing, marketing. In the claims profession one really did not have to market. For some reason there always seemed to be more than enough claims to handle each day. I never had to go out looking for claim business. I have learned that one's marketing plan makes the business plan a reality. One colleague told me that in the beginning, I should plan to spend more time on marketing than on actually doing the work. And once I was established, to remain successful, plan to spend 20 percent of the work week on marketing. He was so right. I am continually working to acquire and improve my marketing skills. And all those years at the company level, I thought the marketing people just did lunches, dinners, and golf. I do apologize.

At my last position, I had been blessed with one of the best administrative assistants. Now I am my own administrative assistant. What a come down. I never realized just how long it takes to book a flight, car rental, and hotel for a business trip. I found out it pays to have an organized filing system with standard tabs that one can quickly remember. My computer skills have improved considerably particularly on PowerPoint. I used to be able to sit down with my assistant, give her a broad outline and within a short period of time receive an almost finished product needing just a bit of editing. Now I sit down with me and me creates the presentation.

No longer do I have to go through numerous layers of approval for my department budget each year, to purchase equipment and/or attend educational sessions such as the CPCU Society's Annual Meeting and Seminars. All is approved quickly provided there is

enough revenue to match the outgo. I also get to pay the bills, file all the receipts, and track it all in an accounting system. When the numbers in the various columns balance, I experience an accountant high. My electronic accounting system allowed me to further enhance my computer skills. While this takes time on my part, it does beat the shoe box full of receipts method.

One of my major concerns when I began was how to stay in touch with the changing trends, patterns, practices, issues, and concerns within the insurance industry. A number of the national organizations in which I had been very actively involved were based on company membership. Leaving company employment meant leaving those organizations. I am grateful that the CPCU Society membership is based upon the individual. Over the years I have been privileged to develop friendships with many CPCUs who have done what I am now doing. Their willingness to provide guidance and share information has smoothed my transition and allowed me to avoid some pitfalls. Being an active member of the CPCU Society has helped me stay connected to the industry.

I have now spent one exciting, enjoyable year as an independent consultant. The positives have outweighed the negatives. I am learning new skills every day. The 10-second commute from my bedroom to my office is great. My boss is also great as she totally appreciates and understands my efforts. My performance review is now automatic at the end of each month when the revenue is matched with the outflow giving a new understanding to the rating "exceeding expectations." Now, that is incentive. ■

CPCU Society Claims Section Committee

Who We Are and What We Do

by Marcia A. Sweeney, CPCU, AIC, AR, ARM, AIS



■ **Marcia A. Sweeney, CPCU, AIC, AR, ARM, AIS**, serves on the Claims Section Committee and is editor of the CQ. Sweeney is a reinsurance claims manager for Horizon Management Group, a division of The Hartford Financial Services and specializes in run-off claims management.

The Claims Section is the largest of the CPCU Society's 14 interest sections with more than 1,300 members. The Claims Section Committee is one of the largest with 20 committee members from across the country and has been around since 1982. I hope you caught the CQ article "Claims Section Pioneers—A Short History of the Claims Section." If not, you can find Vol. 22, No. 1, March 2003, at the Society's online library at www.cpcusociety.org.

The Claims Section Committee meets twice a year, at the Annual Meeting in October and at the Leadership Summit in April, to discuss the Claim Section's business and activity plans for the year. The Claims Section Committee is a very active committee and works all year long to bring numerous claim programs to the Claims Section members. We are appointed to serve the Claims Section membership. We want to hear from you! Call or write any one of us to share your thoughts, comments, ideas, criticisms, or you can even post a message to the Claims Section message board on our web site at www.claims.cpcusociety.org.

For 2004–2005, the Claims Section Committee has committed to producing local seminars, seminars at the Annual Meeting, publishing four CQ newsletters, creating additional focus seminars for the membership, and expanding the number of chapter claims liaisons. We have a lot on our plate and could use your help. The Claims Section continues to be a great resource for technical, functional, and personal development information for the claims professional. We are dedicated to the enhancement and recognition of the claims profession through continuing education, research and publication, and the promoting of ethical behavior.

The CPCU Society's Claims Section Committee is here to serve the members of the Claims Section:

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A Benefit of Claims Section Membership

by a Claims Section Committee member

The reasons for joining a professional society are numerous, but nothing strikes home more than the discovery of practical application to one's work. Belonging to the CPCU Society's Claims Section has helped me several times in my career, and when the latest opportunity to share an experience arose, I decided to "just do it."

Recently, (it may still be posted at www.claims.cpcusociety.org), I faced a dilemma when a customer inquired as to a denial of coverage. While the denial was proper and correct due to specific policy language and the unusual circumstances involved, I was troubled because it left the policyholder in a position where he could not secure coverage for his personal contents under the scenario that existed. It was an ethical issue for me. How to convince people with decision-making authority to reconsider a position that was correct as to the "letter of the law" but perhaps not in the intended "spirit" of what the specific exclusionary language was supposed to accomplish.

I wrote to fellow CPCU Society members to request an understanding of how other policies are written and interpreted. Each of the large number of responses was professional and well thought out.

In brief, the claim involved a situation where the insured had bikes and other personal items stored at his commercial business, which he owned. The claim had been denied under his Personal and Commercial policies.

One Claims Section member responded on the discussion board that the insured might own the business renting space, but may do so as a sole proprietorship, DBA, LLC, etc.; and that

the Homeowner exclusion may not apply. The "contents coverage away from the premises" would provide coverage for the loss. A claims person from the midwest replied that she has learned never to answer questions without having policy forms and endorsements at hand—a very good practice in this case!

Many of the responses quoted specific policies wherein the HO exclusion addressed "property at another residence occupied or owned by or rented to any insured." It was generally opined that since the business area was not a "residence," the HO exclusion did not apply. Another respondent wrote that personal property is covered anywhere in the world, that the exclusion in his HO policy does not apply, and that no theft peril limitation applies. Therefore, coverage needs to be extended. One respondent collected policies from four different insurance carriers and came to the same coverage decision as those suggested above. In all, more than 30 responses were received from around the country to one simple question posted on the CPCU Society's Claims Section discussion board.

The story has a happy ending: with the support of the information provided, the company did reconsider and extend coverage for the claim! Thus, a correct decision was made, a customer was satisfied, and company and insurance industry integrity was maintained. I believe that the information provided by CPCU Society claims professionals had a significant impact in the decision-making process. Thank you to all who provided such valuable information.

So . . . should you belong to the CPCU Society's Claims Section? I say "Just do it!" ■

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