



Chairman's Corner

by Robert McHenry, CPCU, AIC, AIS



■ **Robert McHenry, CPCU, AIC, AIS,** is a claims manager with the Westfield Group in Jacksonville, Florida. He earned a bachelor's degree from the University of Akron in 1973, and has served on the Board of Directors of the CPCU Society's Akron-Canton Chapter. He is currently a member of the North Florida Chapter, and in November 2005 began a three-year term as chairman of the Claims Section Committee.

The National Leadership Institute, special interest sections, and various board and task force meetings were held in Phoenix this past April 27–29. The Squaw Peak Hilton Resort was an excellent location for these meetings but we must now say goodbye to that facility and staff, as we will be moving to Orlando for the 2007 Leadership Summit.

The *Claims Quarterly* is still being lauded by Society members as the best special interest section newsletter. Marcia Sweeney's editorial team will have produced four excellent publications this past year. She will stay on through October 2007 when her committee term

expires. Two candidates on the committee have expressed interest in the editor role. This will give Marcia the opportunity to mentor and tutor these committee members over the next year during the transition.

The Circle of Excellence subcommittee has already sent two e-blasts asking for COE submissions. Many of you have responded and we are confident we will achieve our fourth straight "Gold." The problem faced is how to categorize all of the submissions in order to submit it to the review committee. Please note that your individual submissions count for the Claims Section and for your individual chapters in their quest for the Chapter Circle of Excellent Recognition Program.

The web site subcommittee has continually upgraded the section's web site with articles, links, Circle of Excellence submission forms, Annual Meeting seminar information, and the minutes from our mid-year meeting. Please visit your web site and feel free to make comments on any of our section's activities.

The committee is directly involved in three Annual Meeting seminars. We have partnered with CLEW, Regulatory & Legislative, and the Reinsurance Section Committees to put on three of the sessions. Included are "Mega Catastrophes: Industry and Government Collaboration," "Dealing with Catastrophic Verdicts: An Excess Verdict Program Can Save the Day!," and "Mock Trial: Ring of Fire." The committee is supplying actors for two of these classes. We also agreed to sponsor the "ACE Insura, Claims Detective" for the Society.

Please visit the Society's web site at www.cpcusociety.org for seminar information and descriptions.

Succession planning is one of the hottest topics for all sections. We began this process back in 2005 at the Annual Meeting and Seminars in Atlanta. Here are our present plans:

- Create an assistant chairman position to help manage the committee, which allows a "free look" for one year at a potential future chairman.
- Solicit two candidates to assume the editor's role in 2007 as co-editors, or editor, assistant editor.
- Communicate to committee members that they are on a subcommittee.

We brainstormed seminar ideas for the 2007 Annual Meeting and Seminars in Hawaii. Topic suggestions include:

- litigation seminar including what happens when information changes from the initial investigation through and to the trial
- privacy issues
- hawaiian Hurricane Fund
- new Hawaiian island being formed by volcanic activity

Although we had a great dinner in Old Scottsdale, you can see we really did a lot of work. All of the section committee members welcome your feedback, ideas, and suggestions for future topics and seminars. We also want to know how we can serve you personally and create more value to your membership. Please feel free to send your comments to Robertmchenry@westfieldgrp.com. ■

"It is easier to go down a hill than up, but the view is best from the top."

—Arnold Bennett

Who Is Mary Carter?

by Jon Michael Dumont and Analisa Sondergaard



■ Jon Michael Dumont

is a partner in Rawle & Henderson LLP's Commercial Motor Vehicle Section and his practice focuses on the transportation industry and its insurers. He is admitted to practice in all the state and federal courts of Pennsylvania, New York, and New Jersey.

Dumont graduated, magna cum laude, from Boston University in 1989 with a bachelor and master of arts degree in economics. He received his law degree from Villanova University School of Law in 1993.

Dumont is a frequent speaker and author on transportation issues. He has spoken at the ABA Megaconference sponsored by the Commercial Transportation Litigation Committee of the American Bar Association and at the Trucking Industry Defense Association (TIDA) Annual Seminar.



■ Analisa Sondergaard

is an associate in Rawle & Henderson LLP's Commercial Motor Vehicle Section. She graduated summa cum laude from Christian Brothers University in Memphis, Tennessee with a bachelor of arts degree in 1991. She received her law degree, cum laude, from Temple University School of Law in 1994. Her practice focuses on the defense of the transportation industry and its insurers.

Sondergaard is a former assistant district attorney for the City of Philadelphia. She is admitted to practice in all the state courts of Pennsylvania and New Jersey as well as the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania and the U.S. District Court for New Jersey.

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The term "Mary Carter" agreement is derived from the case of *Booth v Mary Carter Paint Co.*, 202 So.2d 8 (Fla. Dist. Ct. App. 1967). In *Booth*, the plaintiff brought an action against Mary Carter Paint Company (hereinafter "Mary Carter"), Wallace Tompkins, Crofford Hancock, B.C. Willoughby, and Harry Lee Sutton for the negligent operation of their motor vehicles, which resulted in the death of his wife. Prior to trial, the plaintiff entered into a secret agreement with defendants Willoughby and Sutton, which limited their maximum liability, regardless of the jury's verdict, to \$12,500. Willoughby and Sutton agreed to participate in the trial as "active defendants," and in the event of a verdict against all defendants, the plaintiff would seek to collect any judgment from only Mary Carter. Pursuant to the agreement, the plaintiff agreed to enforce any judgment against Mary Carter, with no additional contribution from the settling defendants. The terms of the agreement were upheld by the Florida appellate court.

Not all jurisdictions permit the use of Mary Carter agreements. In Pennsylvania, Mary Carter agreements allow a defendant to settle with a plaintiff and maintain an interest in the plaintiff's recovery from the other defendants so that the settling defendant may recover some or all of its settlement payment to the plaintiff. Although no two Mary Carter agreements are alike, they typically include the following elements:

1. The settling defendant guarantees the plaintiff a minimum payment.
2. The plaintiff agrees not to enforce any subsequent judgment against the settling defendant.
3. The settling defendant remains in the lawsuit, and its payment to the plaintiff is reduced if money is

recovered by settlement or judgment from the other defendants.

4. The agreement is confidential and disclosed only as required by the rules of court.

In Pennsylvania, the rule on disclosure of a Mary Carter agreement was established in *Hatfield v Continental Imports, Inc.*, 530 Pa. 551 (1992). The Pennsylvania Supreme Court ruled that the existence of a Mary Carter agreement is admissible at trial to show “a bias to the (settling) defendants’ interest in the case which is contrary to what would be perceived as their ‘normal’ interest.” The court explained its ruling as follows:

This is not to say that agreements such as these should be admitted into evidence in toto. The court, as with all proffered evidence, should review the agreement, balance the relevancy of it against the potential prejudice, and exercising judicial discretion, admit or exclude as much as it deems appropriate. However, where an agreement clearly allies two or more parties against another, such that a clear potential for bias exists which would not otherwise be apparent to the factfinder, that part of the agreement or at least the existence of the reason for the potential bias, must be conveyed to the factfinder.

We recently used a Mary Carter agreement in *Yancy v Marten Transport Ltd., et al.*, CCP Philadelphia, July Term, 2002 No. 3884, to limit the trucking company’s exposure at trial. We subsequently recovered the majority of the settlement proceeds paid to the plaintiff by the co-defendants that we had joined in the litigation.

On January 24, 2002, the 20-year-old plaintiff, Gladys Yancy, was a passenger in a car driven by the defendant, Rovell Johnson, on I-95 in Bucks County, Pennsylvania. According to the plaintiff, a tractor trailer owned by Marten Transport, Ltd. collided with the car driven by Johnson as the tractor trailer moved from the left lane into the center lane of I-95. As a result of the collision,



the car spun in front of the tractor, and the car was pushed down the roadway for more than 1,000 feet. As the car was being pushed by the tractor trailer, portions of the plaintiff’s body went out the passenger door, and her right leg was dragged along the highway. The plaintiff sustained severe injuries to the right leg, including a fracture of the right femur and abrasions, which resulted in significant loss of soft tissue and scarring. The plaintiff had several surgeries to save the right leg, but since she lost the majority of the tissue, muscle, and bone from her right knee, the right leg became ankylosed, or stuck, in full extension. The plaintiff claimed that she was in constant pain, severely depressed, and permanently disabled as a result of her injuries.

During the early stages of discovery, we learned that Johnson did not own the car and did not have permission from the car’s owner to drive it at the time of the accident. Thus, the owner’s insurance carrier denied coverage, and the defendant Johnson had no other insurance. At the time of the accident, Pennsylvania applied the law of joint and several liability. Under joint and several liability, each defendant is responsible for its proportionate share of liability with respect to the payment of damages. However, a plaintiff may recover all damages from any tortfeasor found negligent, with a right of contribution

among tortfeasors. Thus, if Marten Transport’s driver was only 1 percent at fault, the plaintiff would be able to recover all of her damages from Marten Transport. Due to defendant Johnson’s financial status, a claim for contribution against him appeared pointless. Based on “the 1 percent rule” of joint and several liability, Marten Transport was faced with the possibility of sole responsibility for payment of the plaintiff’s damages and was clearly the target, “deep-pocket” defendant.

Marten Transport’s driver reported that she was driving in the center lane and Johnson was driving in the right lane. Johnson swerved in front of the tractor trailer when a box truck owned by Courier Systems Inc. merged from the right shoulder into the right travel lane in front of Johnson’s car at 25 to 35 mph. Marten Transport retained Steven Rickard, an accident reconstructionist, who specializes in reconstructing accidents involving tractor trailers, to evaluate this accident for the defense. Rickard relied upon the police investigation and photographs of the accident scene, and he concluded that Johnson’s car moved from the right lane into the center lane and struck the Marten Transport tractor. The truck driver’s description of the accident was also supported by three separate statements from the Courier Systems driver wherein

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he admitted that he had merged from the right shoulder into the right travel lane at a slow speed.

Rickard concluded that the Courier Systems driver created a danger by stopping on the right shoulder for a non-emergency and then re-entered the right travel lane at a very slow speed in front of Johnson's car. Since the plaintiff had not named Courier Systems or its driver as defendants in the case, we moved the court for permission to join them as additional defendants. After the motion was granted, we joined Courier Systems and its driver as additional defendants and demanded indemnity or contribution for the plaintiff's damages.

At the close of discovery, despite the application of "the 1 percent rule," Courier Systems maintained that it had no responsibility for the accident and it asserted its belief that it was not at risk for bearing the financial burden of any award of damages for Johnson's negligence. At a court-mandated settlement conference, Courier Systems only offered to contribute \$25,000 toward a settlement with the plaintiff, and at a subsequent private mediation, Courier Systems only increased its offer to \$100,000. Courier Systems had \$1,000,000 in liability insurance coverage, but it was unwilling to make a meaningful contribution toward settlement with the plaintiff.

Due to the risk of significant exposure to Marten Transport, we entered into a Mary Carter agreement with the plaintiff to cap the maximum exposure of Marten Transport, provide for the possibility of recovering all or some of the settlement paid to the plaintiff, prevent the plaintiff from pursuing her theory of liability against Marten Transport at trial, and provide us with control over any settlement negotiations with Courier Systems.

After reaching an agreement with the plaintiff seven days before trial, we disclosed the existence of the Mary Carter agreement to counsel for Courier Systems. Since we included a confidentiality clause

in the agreement, Courier Systems was not informed of the settlement amount or the terms of Marten Transport's potential reimbursement after a settlement with, or jury verdict against, Courier Systems.

The Mary Carter agreement had a dramatic effect on how the case was tried. At trial, the plaintiff's counsel had no interest in establishing the liability of Marten Transport and instead, focused on the liability of Johnson and Courier Systems. Marten Transport had no interest in disputing the plaintiff's alleged injuries and damages. Rather, Marten Transport's entire defense focused on the liability of Johnson and Courier Systems.

After several days of testimony about the plaintiff's injuries and damages, Courier Systems renewed settlement discussions. At that time, we demanded \$900,000 from Courier Systems to settle the case and left the demand open until the Courier Systems' driver took the stand to testify the following morning.

The next morning, on the sixth day of trial, Courier Systems agreed to pay \$900,000 to settle the case. Once the

reimbursement provisions of the Mary Carter agreement were considered, Marten Transport paid only a small fraction of the total settlement with the plaintiff.

In addition to limiting Marten Transport's exposure prior to trial, our use of a Mary Carter agreement significantly reduced Marten Transport's ultimate contribution to the settlement with the plaintiff and dramatically increased Courier System's contribution to the settlement.

The use of a Mary Carter agreement provides a settling defendant with a wide variety of options, from limiting its maximum liability to allowing for the recovery of part, or even all, of the agreed-upon settlement amount based upon the plaintiff's ultimate success at trial. Thus, the effect of a Mary Carter agreement is to align the settling defendant with the plaintiff since the settling defendant stands to gain from the plaintiff's success at trial. In some jurisdictions, the non-settling defendants are not even aware of the change in the alignment of interests until required by the court, which may be on the first day of trial or not at all.

Mary Carter agreements should be considered whenever the circumstances of the case place you or your insured at a risk of significant exposure, and a co-defendant has failed to recognize its own risk of exposure. However, since Mary Carter agreements are not accepted in all jurisdictions and the extent of admissibility of the agreements also varies from jurisdiction to jurisdiction, your counsel should research the issue before this option is considered. ■



United States Longshore & Harbor Workers Compensation Act

by Chris Conti, CPCU, CSP, ALCM, ARM

Editor's Note: The following article is based upon research by Chris Conti, who is the founder and owner of RiskWise, a risk management, loss control, and injury management firm in Prairieville, LA. In addition to the CPCU designation, he is also a CSP, ALCM, and an ARM, as well as a certified instructor for OSHA General Industry and Construction training classes. A frequent contributor to the LCQ and CQ, Conti can be reached at Chris@riskwise.biz, or by telephone at (225) 413-7542.

The United States Longshore & Harbor Workers Compensation Act (LHWCA) is a federal statute that dictates the benefits that will be provided by the employer (or insurance carrier) in the event the injured worker is deemed to be a longshoreman. To be considered a longshoreman, the injured worker must have **situs and status**. The law is invoked in workplaces that provide services on, near, or adjacent to navigable waters of the United States. Workers that are injured on the Outer Continental Shelf have automatic situs and status. Workers injured in federal waters usually enjoy this coverage. Workers in shipyards are deemed longshoreman. Workers injured in other areas have to look to the location and circumstances of the work to enjoy longshoreman classification.

Situs

The site or location where the accident occurred must be on, over, or adjacent to or otherwise near navigable water. The situs may include any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area commonly used in the loading, unloading, repairing, or building of vessels. Situs has also been found a few miles from navigable water when that was the only suitable land for the longshoreman's employer's purpose.

Status

Traditionally, longshoreman status involves employees who load or unload vessels, build or repair ships, or engage in stevedoring, ship breaking, and related services. Office and clerical workers (who are employed exclusively as such), individuals employed by a club, camp recreational operation, restaurant, museum, or retail outlet fall outside of the act and would probably be covered by state workers compensation. However, courts have found other occupations to be covered when the work is "integral" to the longshoreman business and is performed regularly. Examples include security guards performing safety functions, maintenance and repair personnel, and carpenters.

The Outer Continental Shelf Lands Act (OCSLA)

Under this act, employees who work in the Gulf of Mexico on the Outer Continental Shelf (beyond three miles of the Louisiana coasts) are specifically covered under the Longshore Act, provided they do not qualify as seamen under the Jones Act.

The benefits for LHWCA coverage are significantly higher than land act (state act) rates and, therefore, the premiums paid for such are much higher. For that reason, injured workers often pursue legal action to enjoy the determination of being a longshoreman and the corresponding federal higher benefit levels.

Note that unlike state workers compensation, corporate officers cannot be excluded from longshoreman coverage.

Waiting Period

The waiting period is three days commencing on the first day of disability. It is paid to the employee after the fourteenth day after the employer has knowledge of the injury (33 U.S.C. § 906(a) & 4(b)).



Average Weekly Wage (AWW)

The Average Weekly Wage is determined in one of three ways: (1) if the employee worked in the same employment substantially the whole year (37 weeks), his or her average annual earnings shall consist of 300 times the average daily wage or salary for a six-day worker or 260 times the average daily wage or salary for a five-day worker (33 U.S.C. § 910(a)); (2) if the employee worked in the same employment substantially less than the whole year (or one day hired for permanent position), the AWW is based on the wages of an employee of the same classification, computed in the same manner as stated above (33 U.S.C. § 910(b)); (3) if the employee's work is seasonal (part time), or if there is insufficient wage information for a calculation by either of the two previously stated methods, the AWW takes the actual earnings for one year prior to the injury and divides them by 52 weeks. Periods in which the employee was laid off, disabled, or on strike are deducted from initial 52-week divisor (33 U.S.C. § 910 (c) & (d)).

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Compensation Rate

Temporary Total Disability (TTD or TT Rate)

The TTD rate is $66\frac{2}{3}$ percent of the employee's AWW subject to the annual maximum rate (33 U.S.C. § 908 (b)). The compensation is paid based on a seven-day week. At the time of the first payment, form LS 206 Payment of Compensation without Award is sent to the DOL with a copy with the payment to the employee (33 U.S.C. § 914(c)). If any changes are made in the AWW, an amended form LS 206 is sent (33 U.S.C. § 914 (c)). Failure to pay compensation as it becomes due adds 10 percent to the amount of the installment due (33 U.S.C. § 914(e)). Compensation payments should be made every two weeks unless the DOL directs otherwise (33 U.S.C. § 914(b)). Minimum rate is 50 percent of the national AWW; the exception is if an employee's AWW is less than 50 percent of the national AWW, then the employee receives the actual AWW (33 U.S.C. § 906 (b)(2)). The maximum compensation is 200 percent of the national AWW (33 U.S.C. § 906 (b)(1)). Employer/carrier must file a form each time that TTD is ceased LS-208 Notice of Final Payment or Suspension (33 U.S.C. § 914 (c)). Within 16 days

after the final payment of compensation, the employer/carrier must notify the deputy commissioner of the date of final payment, total amount of compensation paid, date of injury and/or death, and name of employee via form LS-208 Notice of Final Payment or Suspension (33 U.S.C. § 914(g)).

Temporary Partial Disability (TP or TPD)

This is a partial reduction, of $66\frac{2}{3}$ percent of the difference between the employee's pre-injury AWW and current AWW, not to exceed five years or 260 weeks of actual paid benefits (33 U.S.C. § 908 (e)).

Death Benefits

Widows/widowers receive 50 percent of the decedent's AWW, and each child receives an additional $16\frac{2}{3}$ of the AWW, (33 U.S.C. § 909(b)). Various dependent family members are defined in the act and might be entitled to varying amounts (33 U.S.C. § 909 (c)(d)). The total death benefit cannot exceed $66\frac{2}{3}$ percent of the decedent's AWW. If the widow/widower remarries, he/she receives a lump sum payment equal to two years of benefits. Upon remarriage by or death of a widow/widower, the children of the decedent would then share in equal parts $66\frac{2}{3}$ percent of the decedent's AWW. The minimum compensation will not be less than the AWW of the deceased (33 U.S.C. § 909 (e)). The maximum compensation for death is 200 percent of the national AWW figured on 10/1 annually (33 U.S.C. § 906 (b)(1)). If death is caused by a combination of pre-existing permanent disability and an injury causing death, the Special Fund assumes responsibility for payments on the 105th week (33 U.S.C. § 908 (f) & 44 (1) (2)). If an employee, receiving scheduled PPD per Section 8 (c) (1)-(22) but not including Section 8 (c) (21), dies from causes unrelated to his or her work injury, his or her dependents will receive the balance of his or her award (33 U.S.C. § 908 (d)).

However, deaths before 9/28/84 unrelated to a work-related injury for which the

decedent was receiving PPD per Section 8 (a) or 8 (c) (21) will be compensable, and survivors can file a claim for death benefits. If there are no survivors, the Special Fund receives (1) death following injury, \$5,000 will be paid (33 U.S.C. § 944 (c)(1)); or (2) death unrelated to injury while receiving a scheduled PPD, the balance of the award will be paid (33 U.S.C. § 908 (d)(3)).

Funeral Benefits

The law calls for reasonable expenses not to exceed \$3,000 upon receipt of a certified statement for services. The dependent may submit a form LS-265 Certification of Funeral Director's Burial Expenses. The funeral expenses for all deaths before 9/28/84 are \$1,000 (33 U.S.C. § 909(a)).

Medical Treatment

The employer must furnish the employee with the form LS-1 Request for Examination and/or Treatment, authorizing the employee to seek treatment as required and reasonable costs of travel (33 U.S.C. § 907(a), #20 CFR 702.401, 402, 412 (b)). The employee has free choice of initial physician in all cases, except he or she may not select from a list of debarred doctors, as listed by the Secretary of Labor. The employer/carrier or employee may thereafter request a change of physician; however, the employee must seek the prior consent of the employer, carrier, or deputy commissioner (33 U.S.C. § 907(b) (c), #20 CFR 702.406). If an employee obtains medical care for an injury without requesting such from the employer/carrier and the employer has no knowledge of the injury, it is considered self-procured and the sole responsibility of the employee (33 U.S.C. § 907 (d)). Special exams—an employer/carrier may request an exam by a physician of its choice at reasonable intervals (33 U.S.C. § 907(d)). If an employee refuses to submit to a special exam requested by the employer/carrier or deputy commissioner or surgery, the employer/carrier may petition the deputy commissioner to request issuance of an order suspending further compensation and treatment until

the employee becomes available for the exam or treatment (33 U.S.C. §907(d), (k)(2)). IME—may be appointed by the deputy commissioner, and the cost is charged to the employer/carrier. If any party is dissatisfied with the IME results, another exam may be ordered by the deputy commissioner (33 U.S.C. §907 (e)(f)(g), #20CFR 702.408, 409, 410, 411, 412).

Medical Records

If the employer/carrier authorizes medical care and the physician fails to submit a medical report to the deputy commissioner and the employer/carrier within 10 days following first treatment, this will act as a bar to the enforcement of any claim for treatment made against the employer/carrier, unless the directorate excuses this in the interest of justice (33 U.S.C. §907(d)(2), §20 CFR 702.422).

Vocational Rehabilitation

Voluntary, if started, the employer/carrier is obligated to file form LS-222 Carriers Report of Rehabilitation accompanied by medical reports (20 CFR §702.502). If rehabilitation is recommended by the treating physician, employee requests it, or employer/carrier believes it will restore the employee to meaningful employment, the case may be referred to the OWCP rehabilitation specialist or a private vendor. If the OWCP specialist refers the employee to a vendor, all costs of the exam will be paid by the Special Fund. If a training program is approved by the OWCP specialist, the costs will be paid by the Special Fund (33 U.S.C. §939(c)(1)(2), #20 CFR 702.502.503, 504, 505). Ongoing payments to the employee should continue while in rehabilitation.

Permanent Partial Disability (PPD)

Scheduled injuries—when the employee is compensated for the loss of or the loss of use of an affected body part. The employee receives 66 ⅔ percent of AWW for a number of weeks not to exceed the entitlement listed below next to each member (33 U.S.C. §908(c) (1)-(20)). There are other details in the act about partial amputation of body parts, vision loss, total loss of use but not

amputation, amputation or loss of use of more than one member. Reduction in scheduled permanent disability is allowed if the employee has been previously compensated by the LHWCA for disability to the same member. However, benefits paid by any other jurisdiction will not be deducted. See Table 1.

Non-scheduled injuries—for any member or condition not listed in the schedule.

It is computed on the basis of loss of wage-earning capacity and is 66 ⅔ of the difference between the AWW and his wage-earning capacity after his RTW in the same or other employment (33 U.S.C. §908(c)(21)).

Permanent Total Disability (PTD)

This is defined as the inability to earn any wages possibly for life until there is an improvement in the medical impairment or until alternative employment can be found, entitling the employee to 66 ⅔ percent of the AWW. Claims for PTD may be based on a scheduled injury (33 U.S.C. §908(c)(1)-(20)), unscheduled (33 U.S.C. §908(c)(21)), or any combination of injuries that render the employee unable to work in any suitable

and gainful employment. There is an annual cost of living allowance every 10/1, which is limited to the lesser of the (1) percentage equal to the difference between the national AWW and the national AWW for the preceding year; or (2) five (5) (33U.S.C § 910 (f)). The employee must show his or her inability to earn any wages in his or her “usual employment.”

Once the employee has met this burden of proof, the burden shifts to the employer/carrier to prove that the employee can return to his or her job or another job with the same employer or other suitable alternate employment.

Second Injury Fund

Generally limits the employer/carrier's liability to 104 weeks, for PPD, PTD, and death (33 U.S.C § 908(f)). Employer submits LS-141 Notice of Informal Conference and shows (1) pre-existing PPD; (2) the existing PPD must contribute to the subsequent PPD; and (3) the existing PPI must be manifest to the employer. The employer/carrier remains liable for reasonable, necessary related medical.

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Table 1

Lost Member	Weeks
Arm	312
Leg	288
Hand	244
Foot	205
Eye	160
Thumb	75
First (index) finger lost	46
Great toe	38
Second (middle) finger	30
Third (ring) finger	25
Toe, other than great toe	16
Fourth (little) finger	15
Loss of Hearing	
1 ear	52
2 ears	200
Disfigurement	up to \$7,500

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LHWCA Workers Compensation Forms

- LS-1 Request for Exam and/or Treatment
- LS-18 Pre-Hearing Statement
- LS-33 Approval of Compromise of Third Person Cause of Action
- LS-141 Notice of Informal Conference
- LS-200 Report of Earnings
- LS-201 Notice of Employee's Injury or Death
- LS-202 Employers' First Report of Injury or Occupational Illness
- LS-203 Employee's Claim for Compensation
- LS-204 Attending Physician's Supplementary Report
- LS-206 Payment of Compensation Without Award
- LS-207 Notice of Controversy of Right to Compensation
- LS-208 Notice of Final Payment or Suspension of Compensation Benefits
- LS-210 Employer's Supplementary Report of Accident or Occupational Illness
- LS-215a Notice to Employer and Insurance Carrier that Claim Has Been Filed
- LS-222 Carrier's or Self Insurer's Report on Rehabilitation to Deputy Commissioner
- LS-262 Widow's, Widower's, &/or Children's Claim for Death Benefits
- LS-263 Other Dependents' Claim for Death Benefits
- LS-265 Certification of Funeral Director's Burial Expense
- LS-266 Application for Continuation of Death Benefit for Student
- LS-280 Memorandum of Informal Conference
- LS-462 Stipulation of Facts
- LS-464 Compensation Order/Award of Compensation
- LS-465 Compensation Order-Approval of Agreed Settlement-Section 8(1)
- LS-521 Notice to Insurance Carrier or Self-Insured Employer
- LS-226a Subpoena Duces Tecum
- SSA-7050 Request for Social Earnings Information
- RS-4506 Request for Copy of Tax Form ■

Join Us!

Claims Section Activities at the 2006 Annual Meeting and Seminars

by Jim Beckley, CPCU

We look forward to seeing you at the CPCU Society's showcase event, the 2006 Annual Meeting and Seminars in Nashville, Tennessee. The dates are September 9–12, 2006. The Claims Section will proudly be contributing to the event with a special lunch/program and several quality seminars.

Join Us at One or All of the Following

Monday, September 11

11:30 a.m. – 1:00 p.m.

The Claims Section Luncheon will include lunch and an interesting educational program. Nashville attorneys Derek Crownover and Karl Braun of Hall, Booth, Smith & Slover will talk about insurance issues facing the Nashville music scene.

Tuesday, September 12

8 – 10 a.m.

Dealing with Catastrophic Verdicts: An Excess Verdict Program Can Save the Day!—Hear experts present ideas for responding to the surprise cases that somehow exceed the worst-case scenario. **Note:** This seminar will be a good follow-up to a mock trial seminar on Monday.

Tuesday, September 12

10:15 a.m. – 12:15 p.m.

Ace Insura, Claims Detective—An informative and entertaining presentation illustrating real claims and court cases and the value of being able to properly interpret policy coverage. Applying these ideas can improve customer service and retention and reduce E&O claims.

Tuesday, September 12

1:30 – 3:30 p.m.

Mega-Catastrophes: Industry and Government Collaboration—A timely topic for issues related to the impact of national catastrophes. Collaboration and tension between industry and regulators will be explored. **Note:** This is a session developed jointly between the Regulatory & Legislative, Reinsurance, and Claims Sections.

Register today at www.cpcusociety.org. See you Nashville! ■



CPCU Society • Annual Meeting & Seminars • September 9-12, 2006 • Nashville, TN

Q&A with Don Malecki, CPCU

by Donald S. Malecki, CPCU



■ **Donald S. Malecki, CPCU**, is a principal at Malecki Deimling Nielander & Associates L.L.C., based in Erlanger, KY. During his 45-year career, he has worked as a broker, consultant, archivist-historian, teacher, underwriter, and insurance company claims consultant; and as publisher of *Malecki on Insurance*, a highly regarded monthly newsletter. Malecki is the author of 10 books, including three textbooks used in the CPCU curriculum. He is past president of the CPCU Society's Cincinnati Chapter; a member of the American Institute for CPCU examination committee; an active member of the Society of Risk Management Consultants; on the Consulting, Litigation, & Expert Witness Section Committee of the CPCU Society; and a past member of the Commercial Lines Industry Liaison Panel of the Insurance Services Office, Inc.

We are in the termite and inspection business. Recently, a claim was filed against us alleging negligence in failing to detect the presence of termites in a residence. Coverage under our commercial general liability (CGL) policy was flatly denied on the basis of the “damage to your work” exclusion (l), and impaired property exclusion (m).

We do not feel that exclusion (l) applies, because we did not perform any work. By merely inspecting the premises, we performed a service. We did nothing that could be construed as work, because nothing was added, altered, removed, or repaired. The CGL policy definition of “your work” suggests that the work or operation in question is going to produce some kind of tangible result. Such is not the case with termite inspection services.

We also feel that the impaired property exclusion likewise does not apply based on the explanation of this exclusion in an article that appeared in the 1994 issue of Claims magazine entitled “Impaired Property Exclusion: Using Discretion to Make It Work.” Your opinion would be appreciated.

You are correct that the “damage to your work” exclusion has no application in your circumstances, because failure to detect the infestation of termites is not work as defined in the policy. This is reinforced by subpart (b) of the definition of “your work,” which encompasses “materials, parts, or equipment furnished in connection with such work or operations.” This wording clearly refers to work or operations that go beyond a service.

It also should be mentioned that there is a tendency for some people to refer to exclusion (l) as the faulty workmanship exclusion. There is a distinct difference,

however, between faulty work and faulty workmanship. In fact, these two terms generate a considerable amount of dialogue with respect to builder's risk and other property insurance forms. Briefly, and generally speaking, faulty work, for purposes of insurance coverage, refers to the process of the work itself. Faulty workmanship, on the other hand, refers to the quality of the finished work or product itself. Thus, if one were able to say that exclusion (l) applies to the faulty workmanship of the insured, rather than the faulty work itself, there may be wider application of the exclusion.

The impaired property exclusion likewise is inapplicable. The fact there was physical injury to the residence premises stemming from your failure to detect termites is sufficient to nullify the application of this exclusion. Impaired property is defined to mean tangible property other than the named insured's work (the residence premises) that cannot be used or is less useful because the residence premises incorporates the named insured's work that is known or thought to be defective, deficient, inadequate, or dangerous. It would be difficult to argue the applicability of this part of the definition, because nothing you did was incorporated into the residence premises. Also the repair, replacement, or adjustment of your service will not restore the use of the property. Once the termites cause damage, only repair of the premises can do that.

The second criterion of the impaired property exclusion is that the residence cannot be used or is less useful because the named insured failed to fulfill the terms of a contract or agreement. Let's assume for sake of argument that you did warrant that if there were to be an infestation, it would be found. This contractual assumption, onto itself, also is not sufficient to trigger the impaired property exclusion, for the same reason as discussed above. Replacing the service

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Q&A with Don Malecki, CPCU

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you provided, i.e., fulfilling the terms of the contract or agreement will not restore the use of the residence premises. Only repairing or replacing the damaged property can do that. Since the services you performed cannot be repaired, replaced, adjusted, or removed, the impaired property (residence premises) cannot be restored to use.

Fortunately, there are some cases that have involved termite inspection services companies that might be of some assistance to you. In *Isle of Palms Pest Control Company v Monticello Insurance Co.*, 459 S.E.2d 318 (Ct.App. S.C. 1995), an insured exterminator sought coverage for a claim alleging that negligent preparation of a termite inspection report resulted in continued termite damage from active infestation.

The insurer argued against coverage in part on the basis that what the insured did was faulty workmanship, which was not covered by the policy. In doing so, the insurer relied heavily on the case of *Western Exterminating Company v Hartford Accident and Indemnity Co.*, 479 A.2d 872 (D.C. 1984). The court here held that the insurer had no duty to defend a claim brought against the insured as a result of an inaccurate termite inspection letter. In this case, however, the complaint contained no allegation that the insured's negligence caused an accident resulting in damage to tangible property. The claim was limited solely to economic damages. For this reason this case was not relied on by the court in the *Isle of Palms* case.

The court in the *Isle of Palms* case, instead, held that, while a general liability policy typically does not cover claims of faulty workmanship only, it does cover claims of faulty workmanship that cause an accident, as the court found in this case; that is, the improperly performed inspection that resulted in continued termite damage. Had there been pre-existing termite damage without active termite infestation at the time of the inspection, the plaintiff's claim against the insured would have been one

for faulty workmanship resulting in only economic damages. Under that scenario, there would be no possibility of coverage, the court went on to say, because *Isle of Palms'* improper inspection would not have caused the pre-existing property damage. Because the claimant in this case did allege that *Isle of Palms'* negligence resulted in property damage, the policy did provide coverage.

Not to be outdone, the insurer also maintained that the policy's professional services exclusion applied. The insurer's position, with respect to this exclusion, was contradictory. The insurer argued that even though "professional services" was not a defined term, the inspecting of homes and the issuance of termite letters were professional services excluded from coverage, whereas the actual process of exterminating is not a professional service. The court rightfully reasoned that if the process of inspection is a professional service, then the subsequent extermination would also be a professional service—given that the same specialized knowledge would be required to properly perform both acts, and given that any extermination would involve an inspection as well.

The court also explained that there was no policy language supporting an inspection/extermination distinction, nor could it find any principled reason to label "inspection" a professional service, while labeling "extermination" something other than a professional service.

In the words of the court, "[T]o give effect to the professional liability exclusion would render the policy virtually meaningless, because it would exclude coverage for all claims arising from *Isle of Palms'* exterminating services, the very risk contemplated by the parties."

Other jurisdictions have likewise determined that damage caused by the negligence of a termite inspector is within the scope of a general liability policy. Consider *Del Posing d/b/a Del's*



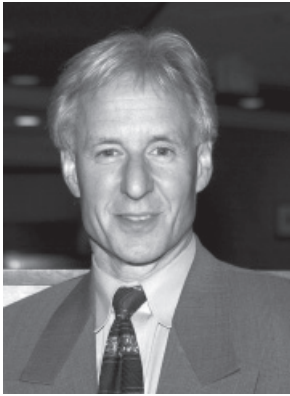
Pest Control v Merit Insurance Co., 629 N.E.2d 1179 (Ill. App. 1994), where an exterminator was sued alleging it negligently conducted improper inspections and failed to discover termite infestations. The court held that the termite infestation constituted an occurrence, and the damage caused by the termites was property damage, within the meaning of the policy.

The case of *Fowler Pest Control & Insulation, Inc. v Hartford Insurance Co.*, of Alabama, 512 So.2d 88 (Ala. 1987), held that an insurer had a duty to defend an exterminator against claims of fraud in connection with the issuance of a termite letter. Coverage also was held to apply for property damage in the case of *Hurtig v Terminix Wood Treating & Contracting Co.*, 692 P.2d 1153 (Hawaii 1984), where an exterminator improperly performed a contract to inspect and treat a house for termites.

To be frank, exterminators who perform services to detect termites are fortunate insofar as commercial general liability insurance is concerned. Short of the exterminators' making any physical changes to tangible property of others, there do not appear to be any exclusions in the standard ISO CGL forms and many umbrella liability policies, that can be relied on by insurers. (The same cannot be said of policies written in the excess and surplus lines market.) This opinion is not necessarily limited to termite inspection companies. Any business that performs services, rather than producing a tangible piece of work or a product—a general contractor whose sole role is to read plans and specifications and supervise construction work, for example, may fall into this same category as termite inspection companies. ■

Life After Job Loss

by Jon Gice, CPCU, ARM



■ **Jon Gice, CPCU, ARM,** is now the second vice president of the workers compensation major case unit at St. Paul Travelers. An insurance executive with 25 years' experience, Gice previously held senior leadership positions at Royal & Sun Alliance, Managed Comp, EBI Companies, and the St. Paul Companies. In addition to having built and managed workers compensation claims and managed care programs, he has worked in workplace health, safety, and underwriting. He is a frequent author and speaker in national forums on industry trends and topics.

The Bad News of Job Loss

Job loss in the claims world is a cold, hard reality. The Bureau of Labor Statistics (BLS) has made it painfully clear that the insurance industry has not been immune to downturns in our economy. The BLS reported that during 2004 there were 95 mass layoffs (mass is defined as 50 or more employees) in the insurance industry. During 2005, another 75 mass layoffs occurred once again in the insurance world. At least half of these mass layoffs affected claims personnel.

There are many names given to job loss that disguise what is really happening. Take these terms: "outsourcing," "expense management," "right sizing," or "reduction in force"—that sounds like some type of peace accord. Behind the terminology disguise, the cold, hard reality of losing a job is very apparent to the effected person.

The Holmes Rahe Scale is a fairly well known tool in the profession that ranks some 40 life events and their impact on a person. The events are ranked in terms of the most to least difficult to handle. Most of the life events involve a loss of some type. At number one of the scale is the loss of a spouse/partner to death. At number eight comes job loss.

Psychosocial research has also clearly shown that any loss provokes a grief process. The process consists of experiencing several emotional responses that occur in the following order:

1. **Denial**—trying to ignore that the event took place.
2. **Anger**—blaming others for the loss.
3. **Depression**—blaming one's self for the loss.
4. **Sadness**—accepting the loss and allowing yourself to mourn and move on.

Ask anyone who has lost a job and he or she will likely confess to these emotions (unless the person wanted his or her job to end or knew that another job awaited him or her). For most people job loss is stressful and provokes major questions regarding self-worth. Questions like "Will anyone ever hire me again?" arise and provoke terrible stress. Stress is the involuntary response to a life event. Research has well documented that we can't completely control the increase in heart rate, blood pressure, muscle tension, and lack of mental focus that arise from a stressful event. Prolonged stress can lead to terrible physical and psychological outcomes.

■ ***A person has to be ready emotionally to start looking for work again as the first step to the life after.***

So with this grief and stress, how does a claims person start on the road to life after job loss? First, the claims professional has to acknowledge the issues discussed above. A person who is angry or depressed is going to fail when convincing a new employer to hire him or her, only making the situation worse. A person has to be ready emotionally to start looking for work again as the first step to the life after. It's at that point that the person has the energy and focus to take advantage of the opportunity presented by a job loss.

The Opportunity of Job Loss

For most claims professionals, the number-one complaint while employed is not having enough time. Once unemployed, the number-one complaint quickly reverses and people suddenly start complaining about having too much time! Yet time is the opportunity of job loss that simply can't be squandered. Having too much time is a rare gift and taking advantage of this gift puts a claims person on the road to a new job.

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Life After Job Loss

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Time allows a claims professional to take a number of concrete steps that perhaps were never taken before:

- Assess value to a new employer.
- Build a résumé and cover letters.
- Identify job leads.
- Prepare for interviews.
- Prepare for an offer.

Assess Value

Every claims person has value in terms of unique skills and accomplishments to offer in the workplace. Clearly understanding this personal value is critical in order to sell this value to a new employer. No one should assume that prior work experience will speak for itself. Being a claim representative for 10 years doesn't mean much to a new employer that knows there are plenty of claim representatives with 10 years of experience to choose from. What specific skills were used and what specifically was accomplished during this prior 10 years of work experience must be defined. Equally important, a person has to want to keep doing the work that he or she has done. Success in finding and keeping the new job is diminished if the interest and skill doesn't align.

Being unemployed allows the time to put interests, skills, and accomplishments on paper. There are numerous self-help books and resources available on the Internet to make this happen. People who receive outplacement services can take advantage of that resource to help; state employment services, also offer similar assistance.

Build a Résumé

A résumé is both a screening tool and/or admission ticket to a potential new employer. Putting the wrong or vague information on a résumé will result in being screened out of a potential opportunity. Putting the right information on a résumé will result in holding an admission ticket to an interview.

The right information is clearly stating the skills and accomplishments defined above. The specific skills and accomplishments in each prior job have to be concisely outlined in the résumé. This should be an easy process if the step of assessing value was done carefully.

■ *Being unemployed allows the time to put interests, skills, and accomplishments on paper.*

The format of the résumé is equally important to the listing of the skills and accomplishments. There are numerous resources available that suggest résumé formats. Type "résumé" into any Internet search engine, and lists of free web sites are revealed. Book stores are filled with résumé guides for those who would rather use that alternative. People with outplacement assistance again have this advantage, and the state employment services can also offer this assistance.

Some people build different résumés to match a specific job they are pursuing. While this can be done in the claims world, it would likely be the exception rather than the rule. The rule would be building a unique cover letter that matches the position being pursued. The secret to a unique cover letter is securing the position description and information on the company where the position exists. Taking key facts about the position and the company and matching them to the claims person's skills and accomplishments work the magic in a cover letter. Examples of cover letters are available on the Internet, book stores, outplacement services, and/or state employment services.

Identify Job Leads

Twenty years ago, newspaper want ads and the state employment office were considered the "gold standard" for finding a job. Today the Internet has become the gold standard for many job

seekers. But there are two other key resources that every claims person should take the opportunity of time to explore thoroughly—**recruiters and networking**.

Want Ads

Newspaper want ads continue to be a source of job leads. If that was not true, the Sunday paper would be a bit thinner. There are also want ads published in trade and professional journals. So despite the growth of the Internet, print is not dead yet.

The Internet

It was a published fact more than five years ago that 500 of the largest public companies were posting their job openings on the Internet. Today virtually every company with a web site includes job postings for its open positions. These company-specific web sites are perhaps the most direct job leads on the Internet as a person is communicating directly with the potential new employer. But a claims person has to bear in mind that the ease of the Internet is taken advantage of by hundreds of job applicants. So the expectation that an e-mail reply to a job posting will produce a job is a false hope at best. And the odds of finding a job on the non-company-specific web sites like Monster.com are even more remote. Web sites like Monster use key word screening devices that knock hundreds if not thousands of résumés out of contention. Monster reportedly posts more than 350,000 jobs at any given day, so there is a lot of traffic on that road to a new job!

Recruiters

It is ironic that the term "head hunter" has been associated with these professionals. Certainly there are some aggressive types that perhaps reinforce this negative label, but for the most part recruiters are an important source of job leads. A company looking for a job candidate would be motivated to hire a recruiter as this is the resource that spends the time-screening résumés and doing initial screening interviews. These steps are time-consuming for a company. Experienced recruiters build an incredibly large network of candidates who they feel are best in class. That is a very good network to participate in as a member.

There are huge international recruiting firms like Korn Ferry, Hiedrick & Struggles, and Spencer Stuart that have robust insurance practices. There are other insurance-industry-specific recruiters like Jacobsen & Associates and Gail Audibert Associates. And, there are Internet search resources like the Riley Guide on which recruiters of all sizes, expertise, and location can be found.

Networking

The race is on when a job is posted in a want ad, on the Internet, or handed to a recruiter. It behooves a person to try and anticipate the race by learning of a job opportunity before the race actually begins. In other words, secure a pole position on the starting line. The only way that will happen is through the process known as networking.

Networking involves a planned process of identifying and meeting with people who may be aware of potential job opportunities that align with the skills and achievements of the job seeker. The starting point of the process is to identify people to contact. Every business card in the Rolodex is a part of the network. But personal friends and family are also in the network. The second step is to prepare a concise one-page "ad" highlighting the skills and accomplishments that can be shared with people in the network. Some Internet contacts will prefer to read and use this more abbreviated ad rather than a detailed résumé. Tips on preparing this one page document are available from the same sources noted above on résumé and cover letter building. The third step is to make phone contact, which is highly preferable to e-mail. The phone contact allows an opportunity to solidify a relationship and to clarify exactly what type of job is being sought. The wrong question to ask during the phone contact is "Do you know of anything out there?" The right question is "Do you know of a senior property adjuster position?" The fourth step is to ask for other specific people that your initial contact may know that you can add to your network. It is critical to get permission to use that initial contact's name when talking

to the next person. There is instant credibility with this approach. Next, all calls must be followed up with a thank you (e-mail or letter) along with either the one-page ad, the résumé, or both. Finally, all contacts must be made again at least every 30 days until the new job is found. Assuming that the network will remember you when an opportunity comes up is a big assumption.

Networking done properly is hard work as it should involve talking to at least 200 people! But the hard work pays off as informal surveys of outplacement professionals have concluded that 70 percent of job seekers found their next job through networking!

■ ***Networking involves a planned process of identifying and meeting with people who may be aware of potential job opportunities that align with the skills and achievements of the job seeker.***

Prepare for Interviews

Interviewing can be very threatening for those who haven't done so in many years. There are three steps to prepare for an interview. First, practice with someone to assure that dress, eye contact, posture, and body language are working right. Here is where outplacement services are helpful again, and the state job service will assist in this step. Second, thoroughly research the company where the position exists and prepare a script that will match skills and accomplishments to the needs of the company. Third, be ready to send a thank-you letter immediately after the interview to assure the best possible impression.

Prepare for an Offer

The job seeker has to be prepared for that wonderful day when that job offer comes. Preparing requires being certain about the compensation package that will work. Compensation may involve more than salary. An up-front sign-on bonus, or performance-based bonus potential may also be involved. At times, company stock options or restricted stock may also be offered. The dollar value of the total compensation package must be given consideration. The norm when receiving an offer is to ask for a day to consider it allowing time to review the offer with a spouse or partner.

The Finish Line

The new job is the finish line in the life after a job loss. It's a wonderful day when the realization sinks in that those questions that haunted a claims person when first losing his or her job were based on fear and not fact. Skilled and accomplished claims people find new jobs and it's not a matter of luck. Getting over the bad news of job loss and taking advantage of the opportunity of time are the secrets in the life after job loss. And the return on the investment (new job) can't be beat! ■

How Come I Never Heard About That Job?

by Gail Audibert



■ **Gail Audibert**, founder and president of Gail Audibert Associates, began her recruiting career after receiving her B.S. in marketing from the University of Connecticut. While her firm specializes in the areas of administration, human resources, legal services, and marketing, Audibert's main focus is the placement of insurance professionals. Her expertise in the insurance industry has made her a popular and sought-after speaker and author on the subject.

Audibert is on the boards of the Connecticut Association of Personnel Services and the National Insurance Recruiters Association. She is also past president of Insurance National Search.

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Sound familiar? Ever ask yourself that when a colleague or friend snagged a great opportunity that he or she heard about through the grapevine? How come you never get those calls? It seems like some people have all the luck—but what makes them lucky?

Here are a few questions you should quiz yourself on to see if the good job karma will start to flow in your direction.

1. **Is your résumé ready?** How long have you been claiming that you are going to find and dust the old résumé off just so you will have it in case something good comes up. Forget finding it. Start from scratch and rewrite the whole thing. Who you were two or 10 years ago and the job you are looking for now are both probably vastly different. Take the time and put the effort into putting down something you would be proud to show anyone including your current boss.
 2. **If you had to give a 60-second commercial about yourself to someone at a cocktail party, do you know what you would say?** And would it be any good? The opportunities to meet people who may eventually be a part of your informal network occur at the least expected times. It could be at your friend's son's bar mitzvah or while waiting at the dentist office. Be ready to tell everyone you meet what you do, and present yourself in the best possible way. Not everyone will be asking or care, but you should always have a professional, clear, and compelling response ready.
 3. **Do you know what companies would be most interested in someone with your background, and have you done anything to make contacts within that organization?** This is self-explanatory. Networking your way into a company always makes sense.
- Make it your business to know what goes on at your competitors and who is working there. Look for opportunities to get to know people in that organization so they know you and what you have to offer if they should ever need it.
4. **Are you nice to other people looking for a job?** When someone else calls you looking for a job, give him or her a hand, especially when he or she is unemployed. Those minutes you spend with someone on the phone at a time of need will not be forgotten, and you will have taken the first major step in building a group of professional acquaintances who will be watching out for you.
 5. **Do you belong to and participate in any professional organizations to expand the number of people you know in your industry?** The more people you meet, the better off you are. If anyone remembers the old Breck commercial . . . “then she tells two friends and she tells two friends”—this really holds true. When a really good job opens up, it goes out to who knows who first. And all the people who know you are multiplied by all the people those people know. Get the picture?
 6. **Have you learned anything new in the past year to improve your current skills?** Before you say you don't have the time, have you seen the last episode of “American Idol”? Do you know the whole weekday prime time lineup? If you have the time for TV, you have the time. Improve yourself in some area, whether it is a specific job-related skill or even just something as simple such as keyboarding, or time management. When you get better at anything, people take notice. Strive to improve at something that will better your performance at work each year. Companies want to hire people who are moving ahead.

7. **Do you dress nicely everyday?**

Over 20 years ago the book *Dress for Success* became a bestseller but now dressing down is the norm. What you wear creates an impression to co-workers and anyone else you come in contact with about who you are. What is your daily wardrobe telling people about you? Are you making a memorable impression on others and is it the kind you want to be making?

8. **How often do you keep in contact with people you no longer work with?**

Even if you have stayed in the same company your whole career, many people around you most likely have moved on. The Internet makes it easy to keep in touch with people you once shared a cup of coffee with in the break room. Keep in touch and see how they are as well as letting them know how you are doing. It is a nice thing to do and five years from now you may both be able to help each other.

9. **If you are ready to find a job, do you spend most of your time surfing the net and e-mailing your résumé?**

The Wall Street Journal said in a recent article that only 7 percent of all jobs are filled by the Internet. The Internet is a great resource of information to know where the jobs are and which companies are hiring, but not the best way to make contact. Even if that statistic of 7 percent is off by a lot . . . obviously, openings are being filled in other ways and most common is by people referring people. Is anyone referring you?

10. **How nice were you to the last recruiter who called?**

Maybe the job he or she talked to you about wasn't a fit, or perhaps you were busy that day. Does it make sense to not be nice to a person who is in the business of telling you about jobs he or she knows are open? If you don't return the call or spend

60 seconds on the phone when they are networking to recruit a person for their opening, will they call you again with the next job? Or will they call another person first who was more helpful last time?

The list can go on but the message is the same. You need to pay attention to who you are, the image you have developed for yourself, and who knows you. This will undoubtedly increase your odds of hearing about jobs when you don't need one. Maybe then you will never have to look. ■

Write a Claims Article and Earn CPD Points

by Marcia Sweeney, CPCU, AIC, ARé, ARM, AIS



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

Claim professionals with the CPCU designation can earn up to 15 Continuing Professional Development (CPD) points by writing an article for publication in the CQ (or any other CPCU Society section newsletter).

One of the goals of the CPCU Society's Claims Section is to provide the opportunity and the platform for section members to hone their writing skills. If you have a hidden desire to write and to see your name on a byline in an industry periodical, think about writing an article for publication in the CQ.

Write an article on what you know best—claims. It can be on technical claim handling within a particular line of business, it can be on claim management issues, claim operations, claim service, claim training and development, or anything else related to the topic of

claims. You are the author; chose a topic that would be of interest to our 1,400 Claims Section members. If the topic interests you, most likely it will interest the majority of the CQ readers. It can be short; 400 words is about a half page, or it can be longer and up to four pages and about 3,000 words.

The article on page 16 is written by one of your peers in the industry and a CPCU Society Claims Section member, **Brian N. Marx, CPCU**. "Technical Writing: Don't Let It Be Your Nemesis" is reprinted from our December 2003 issue of the CQ and is a very helpful guide that is intended to provide you with an outline to jumpstart you on your writing. Feel free to contact me if you need any assistance in choosing a topic, or would like to know when the next deadline is; marcia.sweeney@thehartford.com. ■

Technical Writing: “Don’t Let It Be Your Nemesis”

by Brian N. Marx, CPCU

Expressing your thoughts on paper can be a daunting task, even for those writers who are familiar with the topic. The art of communicating the written word in a clear, logical, and cohesive manner can be intimidating, as well as mentally challenging. That’s why the focus of this article is not about writing style or grammar, but rather a suggested method that can help ease the anxiety and break the psychological barriers you may have about writing a technical article.

Why is this kind of writing so difficult?

- One plausible explanation is the lack of time to sit down and patiently draft your thoughts and ideas on paper.
- Another probable, and perhaps more accurate, reason is the lack of practice.

No matter what the reason, this article will:

- Offer suggestions to assist those who would like to write technical articles.
- Help future authors develop a method for writing technical articles.
- Identify the benefits one can reap from sharing his or her ideas with the insurance community.

I will set three ground rules before discussing a simple methodology for technical writing:

Rule #1: You do not have to be a grammarian to be a good technical writer. Each writer has his or her own technique and style of writing.

Rule #2: Intuition, creativity, and motivation are three things you need to get started.

Rule #3: To be effective, each article should contain the following four characteristics: creativity, clarity, cohesiveness, and consequentiality. I call these the four Cs of writing.

Creativity means the article’s content is original (i.e. one’s own work), has insight,

and the reader says, “Gee, I did not realize that relation existed” or “I didn’t know it could be analyzed or done that way.”

Clarity means that anyone who is only slightly familiar with the topic can understand the message or purpose being conveyed by the author.

Cohesiveness means that the article is focused and the ideas are tied together and presented in a logical manner. Cohesiveness greatly supports clarity.

Consequentiality means the article has significance to the industry, practical application to the readers’ job performance, or personal application outside of work. Writing about an emerging issue, how a recent landmark case affects a line of insurance, or methods on how to save money in claim handling are good examples of consequential topics.

The following five sections are the stages of developing, drafting, and putting the finishing touches on an article. These are presented in the order in which I prefer to do them. However, the order really depends on the technique and preference you choose.

1. **Selecting a topic:** As mentioned, the topic should be one of interest and significance to the insurance industry as a whole or a large segment of it. Audiences usually identify with recent and emerging topics, since these subjects have an immediate effect on them. The topic should be one you’re both interested in and knowledgeable about. Sharing your unique, on-the-job experiences and lessons learned from them add tremendous value to a piece of writing.
2. **Selecting a title:** A title should be eloquent, eye-catching, and accurately convey the meaning of the article in a short, concise manner. The length and content of the title are important, since



the title is the first thing potential readers come in contact with. If the title is not interesting, the article, even if well written, may never get read. All that time and effort wasted!

3. **Writing the introducing paragraph and conclusion:** These two segments of the article are written before the main body of the article, because it forces the author to focus on the message he or she is going to convey to his or her readers. The introduction briefly, but concisely and effectively, articulates what the article is going to be about (expanding on the meaning of the title), its purpose, and what the reader can expect to glean from it. Like the title, it must peak the readers’ interest so that they will continue to the main body of the article. The conclusion summarizes and integrates the salient points into the meaning and purpose of the article.
4. **Writing the main body:** The best way to tackle the main body of a paper is to write an outline on the major points you want to make and how each is going to prove or reinforce the main theme. Before

including an argument or idea, make sure it does not introduce a new idea or concept that could potentially cause your article to lose cohesiveness or, even worse, your audience to become confused and lose interest. Once you have provided enough different ideas, perspectives, examples, or arguments, each as concisely as possible to support your main theme, stop! Too often authors, in an effort to impress their readers, try to include every last copious detail about the topic in their writing. This is counterproductive, ineffective, and usually causes the reader to lose interest. Good authors will say just enough to maintain and, hopefully pique, the readers' interest, provide them with enough information about the subject, and, if they wish, how and where they can procure additional information.

5. **Polishing up the article:** Even though the main components of the article are now complete, this does not mean that the article is finished. You should always wait at least a few days before scrutinizing the article. It should be reviewed by examining each of the following aspects separately: typographical and grammatical accuracy, technical accuracy, and to make sure it accurately and effectively conveys its meaning and purpose. In other words, does it say what you want it to say and meet the four "Cs?" One method of accomplishing the latter aspect is to have a peer (preferably one who is knowledgeable about the subject and painfully honest) review the article.

Writing technical articles can be a very rewarding experience and provides the following benefits to the writer:

- **Enhances confidence:** Once an author demonstrates that he is able to effectively articulate his ideas on paper, he can be considered a resource to others. In doing so, he creates a forum for himself, develops

a reputation as an expert, and establishes a rapport between himself and his peers.

- **Enhances knowledge about the subject matter:** Additional ideas, relationships, and the application of concepts already known to the writer can come to mind when she puts her ideas on paper. Simply knowing a topic, working with it on the job, or explaining it to others are a lot different than putting it down on paper in an understandable and informative format.
- **Creates networking opportunities:** You never know who may be reading your article. Readers may contact you for additional insight, to advise of an upcoming event where you may be able to present this or related subject matter, about an employment opportunity or, if self-employed, about a potential marketing opportunity or assignment.
- **Documents your knowledge:** Publications add prestige to any curriculum vitae—there's no doubt about it. Writing is a very powerful tool. And, most clients, employers, and prospective employers admire those who get their work published. Your portfolio of writings demonstrates and even legitimizes to others the purview and scope of your knowledge, as well as manifests a seal of approval



from those organizations that published your work.

- **Provides a sense of accomplishment:** Let's face it, writing is a skill as much as it is an art. And, it is not easy. A good writing technique takes a long time to develop and requires a lot of practice. It feels great when you are satisfied with your work and others compliment you on a job well done.

Before closing, I would like to make two very important comments to all those who are considering writing an article or who write less due to the amount of time and effort to complete one. First, don't try to say too much in one article. If you have a comprehensive topic that you want to cover like a blanket, divide it up and advise the reader of the sequels. It will keep your readers interested and create additional marketing opportunities for you, either in the labor market or to prospective clients. Second, give credit where credit is due. If you are using another author's words or ideas, remember to properly footnote the references so that you avoid any potential allegations of plagiarism.

In closing, I would like to say that the more you write, the easier and more enjoyable it will get. The Claims Section invites its members to submit articles for consideration to be published in the CQ. The committee will gladly assist you on any topic you wish to write on so that you to can reap the rewards mentioned.

So . . . good luck and keep those ideas and articles coming. Our phone and fax lines, web site, and e-mail addresses are open and waiting to hear from you. ■

CPCU Claims Section—Web Site Activity

by Art Beckman, CPCU



Several changes have been made to the Claims Section web site (<http://claims.cpcusociety.org>) during the last six months.

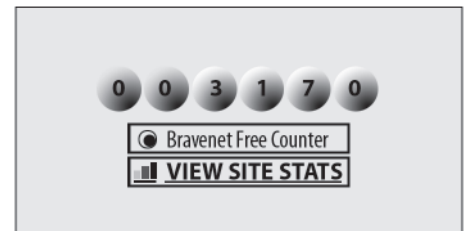
Information has been reorganized to group information into more logical page layouts. The home page should show key information we want to highlight. The subpages will contain details related to the page topic. Current page layout is:

Message from the Chairman
Claim Section Members
Claims Section—Meeting Minutes
Calendar of Events
Circle of Excellence
Claim Articles
CQ Section Newsletter
Related Links
Seminars
Photo Gallery

Historical Claims Section information has been added to several pages.

New articles are being added each month. We encourage the entire membership to send in articles and to use the message board and calendar.

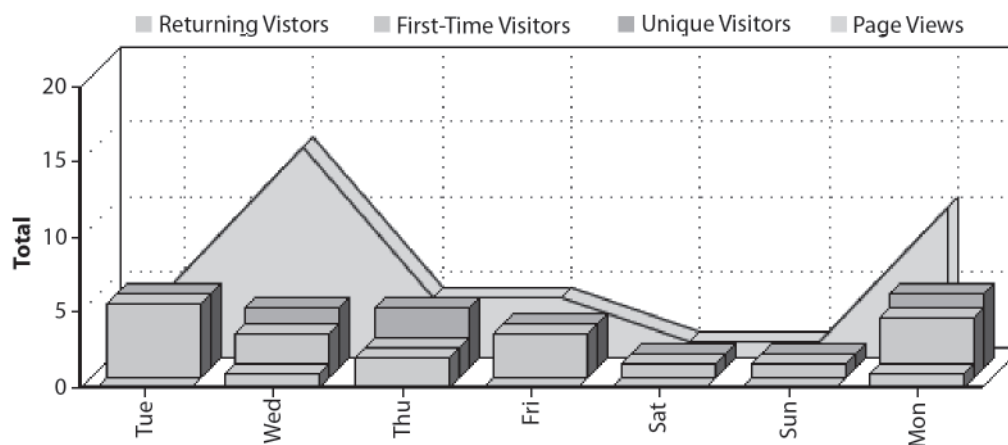
The counters that track usage of our web site have been busy!



The following figures show mid-year statistics, which indicate we have had 3,170 hits. Based on these reports, we can pull the following statistics:

- The busiest day of week is Wednesday.
- The most active time is 8 a.m. to 2 p.m.
- We get more first-time visitors (unique hits) than return visitors.
- Most visitors look at multiple pages within the site.

Figure 1

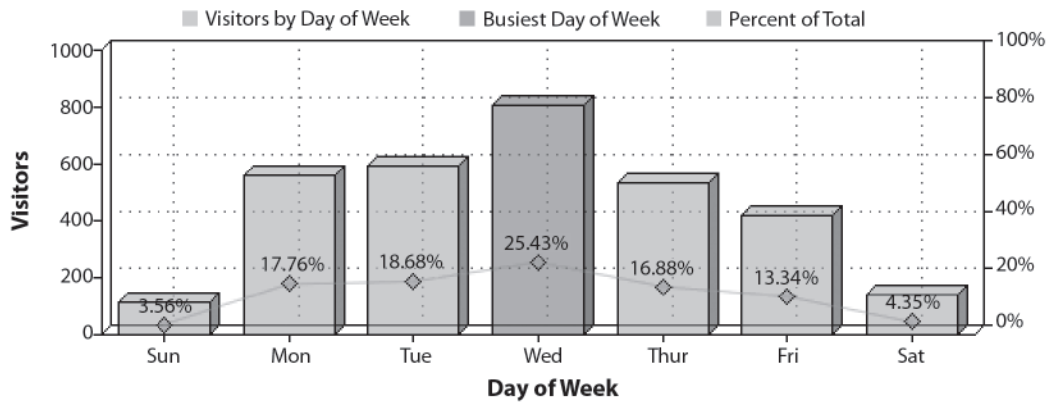


<http://claims.cpcusociety.org>

Figure 2: Visitors by Day of Week

Counter Name: **BNC405**

Page Name: **claims.cpcusociety.org/**

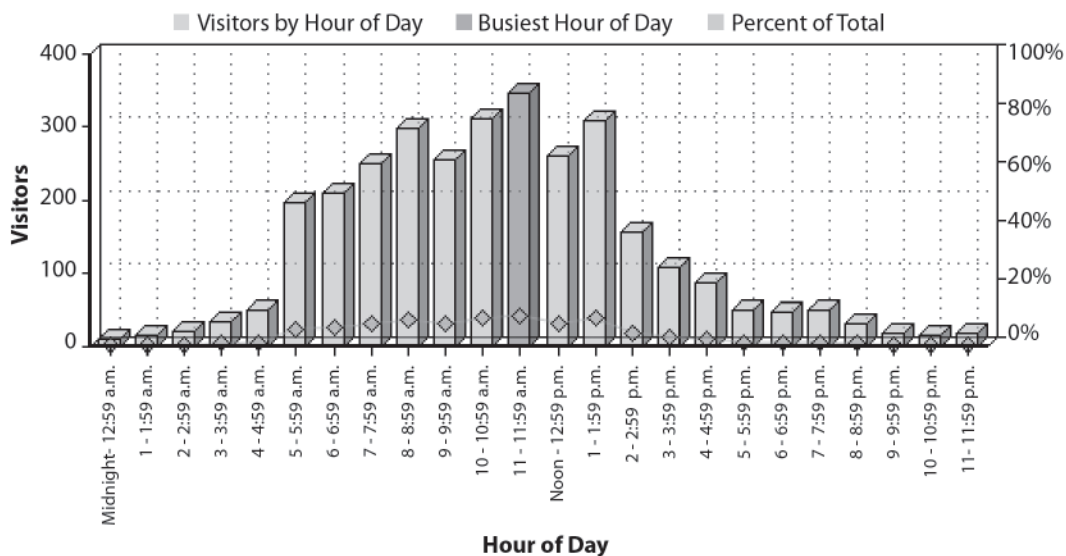


Day of Week	Visitors	% Total
Sunday	113	3.56%
Monday	563	17.76%
Tuesday	592	18.68%
Wednesday	806	25.43%
Thursday	535	16.88%
Friday	423	13.34%
Saturday	138	4.35%

Figure 3: Visitors by Hour of Day

Counter Name: **BNC405**

Page Name: **claims.cpcusociety.org/**



Continued on page 20

CPCU Claims Section—Web Site Activity

Continued from page 19

Figure 4: Top Statistics

Busiest Time	11 a.m.		Busiest Day	Wednesday	
Screen Resolution	1024x768		Color Depth	16.7M Colors	
Operating System	Windows XP		Web Browser	Internet Explorer 6.x	

Figure 5: Cumulative Statistics Since

Total Page Views	3,170	
Total Uniques	1,632	
Uniques/Page Views	51%	
Counter Start Date	November 2, 2004	



We added pictures to the Gallery from the 2005 Annual Meeting and Seminars. If you have not viewed, I suggest you browse the site.



Areas for Improvement that Are Being Developed

We want to make this site more effective, and will be considering the following:

- Continue to add more current information to the site (authors).
- Continue to update the message from the chairman and others.
- Determine what information is old and remove (12-18-24 months).
- Use more frequent e-blasts to members highlighting a topic that drives them to the site for more details.
- Don't over-populate any screen that makes it too hard to navigate (either up/down or left/right).
- Encourage members to be involved in populating the calendar. ■

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