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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.

Thank you for electing me chairman of the Claims Section Committee. Our section is the largest special interest group of the CPCU Society, and we support nearly 1,400 members. It is an honor to serve all of you. Your comments, suggestions, or help will be greatly appreciated. Please feel free to contact me at any time—RobertMcHenry@westfieldgrp.com.

My career began in 1975, as an adjuster trainee. I've been fortunate to work for Grange, Progressive, Victoria, Federal Kemper, and now Westfield Group. The role is managing the Jacksonville, Florida, claim service office handling 39 counties in a mid-market commercial environment. Fishing is my sport, and swapping angling stories is a welcomed pastime. **Jim Slavens, CPCU,** provided the encouragement I needed to achieve the CPCU designation in 1997—Thanks, Jim! I also hold the AIC and AIS designations.

James D. Klauke, CPCU, AIC, RPA, is the immediate past chairman of the Claims Section Committee. He put his heart and soul into the position, and the Claims Section earned the "gold" for the section's Circle of Excellence every year during his three-year term. James also presented numerous seminars at the CPCU Society's Annual Meeting and Seminars, where he shared his personal experiences handling claims in the wake of September 11, 2001, and Hurricane Katrina. James, the committee and the CPCU Society thank you for your service.

Four, count them, four straight Circle of Excellence awards for our section. Committee member **Barbara Levine, J.D., CPCU,** wrote our 2005 submission, which included activities from many of you section members. Any member can submit an activity to the committee and help earn points toward the "gold." Keep in mind that many of the submissions will also qualify for your local chapter's quest for the gold in the chapter Circle of Excellence. We will be posting a submission form on the Claims Section web site, and encourage everyone to use it and get recognized for their contributions. The Circle of Excellence subcommittee team is **Barbara Levine, J.D., CPCU, Eric J. Sieber, CPCU,** and **Ray A. Rose, CPCU**. Barbara, thank you again for all the work you put into this project.

At the CPCU Society's Annual Meeting and Seminars in Atlanta, we had eight new members join our committee. They include **John Rodney Caudill, CPCU,** of Property Damage Appraisers, **William D. McCullough, CPCU, CLU, ChFC,** and **Ken Carmichael, CPCU,** of State Farm, **Kenneth R. Hoke, CPCU,** of North Carolina Farm Bureau Group, **Cecilia T. Foy-Johnson, CPCU,** of Senn-Dunn, **Robert M. Kelso, J.D., CPCU,** of Kightliner and Gray, **James J. Witkowsky, CPCU,** of Erie Insurance Group, and **Ray A. Rose, CPCU,** of Hastings Mutual Insurance Company.

Four other new section members joined us at the mid-year meeting in April 2005. They are **Michael Pizetoski, CPCU,** of Royal/Sun Alliance, **Ferd J. Lasinski, CPCU,** of Northern Adjusters, **Keithley D. Mulvihill, CPCU,** of Rawle and Henderson, and **James W. Beckley, CPCU,** of American Agricultural Insurance Company.

The Claims Section Committee's annual business meeting agenda and the minutes of the all-day meeting are being posted to the Claims Section web site. Please visit the web site and check out all the new material and the photos from Atlanta.

Part of my chairman's agenda for the committee includes succession planning and candidate development. Our committee currently has 25 members, seven subcommittees, and plans for two seminars at the Nashville Annual Meeting and Seminars. **Tony D. Nix, CPCU,** has agreed to serve the first, one-year term as assistant to the chairman and five of the subcommittees will report to him. This realignment will also give the committee a "free look" at three future potential committee chairman candidates as they serve a one-year term as assistant to the chairman.

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Chairman's Corner

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The Society's bylaws prohibit a section member from serving more than three consecutive terms, thus we had several members rotate off the committee this year. Many thanks to our outgoing members, **James D. Klauke, CPCU, AIC, RPA, Pat Jeremy, CPCU, Chris LaChance, CPCU, Brian Philbin CPCU,** and **Christine Sullivan, CPCU.** James and Pat have agreed to serve as leadership resources for the Claims Section.

My agenda and plans for 2005 through 2008 are as follows:

- Complete a vision and mission statement for the section.
- Implement succession planning and member development.
- Develop a Claims Section brochure to include:
  - benefits of membership
  - value added to members
  - what can we do for you?
- Program Development
  - create two new "canned" seminars
  - update current "canned" programs
  - produce at least one education seminar for each Annual Meeting and Seminars
  - partner with other interest sections for seminar presentations
  - produce at least one symposium per year
- Develop a speaker's bureau.
- Encourage all committee members to have an active role.
- Continue to be a resource for section and Society members.

I look forward to an active and productive three-year term and hope all 1,400 members of the Claims Section get involved and help us attain our goals of making the section a premier claims resource. ■

Immediate Past Chairman's Corner

by James D. Klauke, CPCU, AIC, RPA

This is my last chairman's article for the Claims Section's CQ newsletter. At the close of the CPCU Society's Annual Meeting and Seminars in Atlanta, my term as your chairman was completed. I now turn over the reigns to **Robert McHenry, CPCU, AIC, AIS,** manager in the Westfield Group. I hope you will give Bob the same energy and support you gave me during these past three years.

The role of the chairman is one of leadership. As a leader, the requirement is not so much to act as it is to lead. The task is to give direction and provide goals, allowing others to determine the means, and then complete the task. This is how projects were often completed by the Claims Section Committee. A suggestion is made by one of the leaders, and other members grow the suggestion into an idea. Still others take that idea and formulate a project that is brought to fruition by still others.

Tom Peters, a business writer, once said, "The best leaders . . . almost without exception and at every level, are master users of stories and symbols." My story comes from the November issue of "Leadership . . . with a human touch." The story is taken from former President John F. Kennedy; I was impressed with what he accomplished for space travel, mostly after his death.

In the early 1960s, Kennedy suggested that America should put a man on the moon by the end of the decade. There were lots of problems that needed to be solved—technical, political, and costs—but he did not try to solve them all at once. Instead, he set a timetable. He let others work out how it was going to be done. The result was Neil Armstrong making his "giant leap for mankind" before the decade was done.

No matter what your business or job, give your employees the leadership they need to get started, a goal or timetable, and you have a good chance of obtaining your objective. Like Neil taking his "giant leap" on the moon, tell them what they're aiming for and when it needs to be done. Then just let them get the job done. If you are not a leader in your work, become one by being there for your leaders.

One of our important goals during my term was to reach out to the members. We worked on numerous projects, several of which were successfully completed. Members pay dues each year and we believe you receive value for those dues in so many ways, yet, we also believe that there are additional opportunities to bring more to the Claims Section membership. I wish Bob McHenry success in his efforts to lead the section in this most important area.

Over the next three years, Bob and the Claims Section Committee will be reaching out to you to see what they can do for you and how they can encourage you to become more involved. Reaching out is a two-way street; you need to reach back as well as you did so often for me.

I want to thank the committee members in their commitment to the section and to all the members for your efforts and support during the past three years. I urge each of you to offer Bob and the Claims Section Committee your active participation. I leave you with my favorite quote:

"On the wall of my room when I was in rehab was a picture of the space shuttle blasting off, autographed by every astronaut now at NASA. On the top of the picture it says, 'We found nothing is impossible.' That should be our motto as well."

—Christopher Reeve

Katrina—One Nasty Lady

by James D. Klauke, CPCU, AIC, RPA

James D. Klauke, CPCU, AIC, RPA, is the immediate past chairman for the Claims Section Committee and is an executive general adjuster for Crawford Technical Services.

Let's begin with this excerpt from the *Mobile Register* editorial page on September 13, 2005:

> New Orleans was settled in 1718 at the present location of the French Quarter. Why? Because it was the highest and driest ground close to the river. As the city expanded, it moved upriver where the land was dry. At the turn of the 19th century, migrant workers and freed slaves built levees to add more dry ground. Since the new ground was below the level of the river and the lake, only the poor would move there.

Fifty years ago, no one understood hydrology, topography, and meteorology enough to understand that a 100-year storm like Katrina would do such incalculable damage. The poor sections were flooded the worst, and the residents suffered the most human misery not because they are poor, not because they are black, but because they were on lower ground. Some say there was neglect by government agencies in response to the storm. Tragic events should not be confused with evil intent or willful neglect. The last thing needed at a time of recovery is for politicians to use these events for partisan political purposes. Nature, and 287 years of New Orleans' own whimsical obstinacy, by far, caused the most damage.

There are many lessons to be learned from Katrina. FEMA has received a lot of undeserved criticism from the media and self-serving politicians. FEMA does a good job in conducting rescue operations, feeding the hungry, and providing shelter. That's part of its mission. It also provides funds to clean up the cities and towns and help with loans to rebuild. My only criticism is that FEMA and the other government agencies involved with the planning and implementation of the disaster response plans do not give consideration to the insurance and construction industries. These most important entities for the rebuilding process should be included in the response plan. Our industry and the construction industry should be members of the disaster response team.

In the Katrina area, all of the hotel rooms for 200 miles around were occupied by FEMA and government agency workers for security and victim response. Naturally, the victims were there as well. Unfortunately, that left little room for the thousands of adjusters, industry vendors, and construction workers needed for the rebuilding process to begin.

I was fortunate and was staying only 100 miles from Ocean Springs, Mississippi. I averaged 300 miles round-trip daily to drive to my losses. However, my travel situation was worsened by the fact that I had to cross a damaged bridge on the only east-west interstate in the area. Traffic was reduced to one lane in each direction. Because of the bridge situation, it took three hours to travel to my losses if I left at 6 a.m. Leaving at 7 a.m. would have required an additional hour to make the trip. I cannot be efficient handling claims if I have to spend five to six hours each day driving.

> ***". . .FEMA and the other government agencies involved with the planning and implementation of the disaster response plans do not give consideration to the insurance and construction industries."***

People in general, and that includes adjusters, were kept out of the heaviest damaged areas for up to two weeks. The authorities cited safety reasons and used the time for their damage evaluations and rescue operations. I suggest that we adjusters do not get in their way and that we operate under acceptable risk the same as they do. Additionally, a quick response is vital to salvage operations. I suggest that a lot of salvage value was lost in those first two weeks during which we were denied access. We need to have more immediate access to the area and local hotel rooms available for our adjusters.

The insurance industry can also put financial assets into the region faster than the government in order to start the rebuilding process. We already have the network in place to evaluate losses, hire construction crews, and provide payment to the insureds. Since it is evident that the insurance industry is part of the solution in catastrophes, it needs to be included in the planning and implementation of the disaster response.

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Katrina—One Nasty Lady

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A message to the management of insurance companies is also in order. Your adjuster on catastrophe duty becomes as much a victim of the disaster as those in the affected area. We leave our homes and families to live in a damaged area for long periods of time. We suffer the same supply shortages as the victims. It is difficult to get gasoline, food, and water. The hotels offer spotty electricity and air conditioning, and often-rudimentary Internet and telephone access.

There are tremendous traffic problems. I mentioned the situation with the damaged bridge. Then there are the two-lane roads that are now down to one lane or simply closed due to debris or downed power lines. An even greater problem is the lack of street signs. Providing detailed directions to the adjuster is now crucial. One morning with only an address, I had to ask seven people living in Ocean Springs for the location of the street. I finally found the street by getting directions from an army guy from Montana.

The adjuster must also deal with unique problems. Insureds are irritable and emotional. The adjuster himself is dealing with his own irritations caused by traffic and the frustrations of finding loss locations. Communication is limited to cell phones, and contacting insureds becomes a difficult process.

For example, I had a loss where the insured's wife stated that the location was between two cities on a certain road. At the end of a 600-mile day that included looking at four losses, I called the insured to advise that I was en route. I again received directions from the insured's wife that sent me 30 miles in the wrong direction. By the time I arrived at the loss, both the insured and myself were in a bad mood. I was upset for having had to drive an additional 60 miles, and the insured was upset that he had lost everything in the storm. In the end, I spent a good deal more time than is usual with the insured because he really needed the help and support.

Adjusters work 24/7 during catastrophe duty. There are no weekends or holidays. Travel problems necessitate very long days in order to visit several new losses each day. Most days start before 5 a.m. and seldom end before 10 p.m. You visit the losses during daylight hours and try to catch up with reports and telephone calls in the evening. No one can maintain this schedule for long without suffering from burnout.

There is no time for proper paperwork. Insurance companies must understand that reports must be abbreviated and reserves cannot be as accurate or as timely. What can be accomplished in hours or days under normal circumstances now take weeks in a catastrophe area. Estimates are hard to get, and multiple estimates are impossible. On larger losses, the adjuster must rely on consultants or perhaps only his own good judgment.

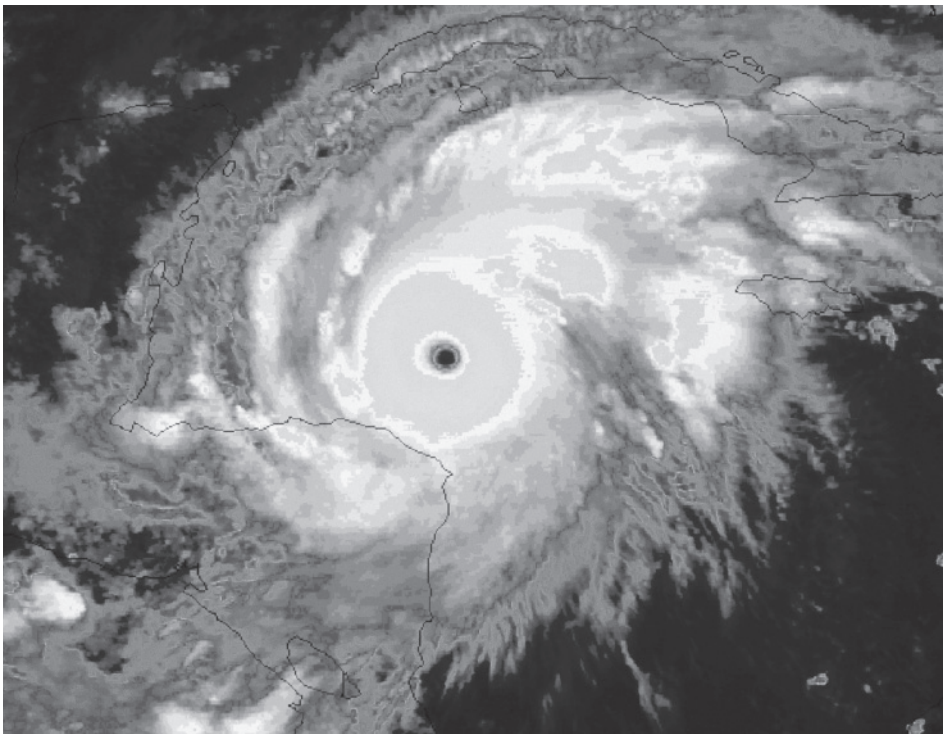
Communications are strained at best. Cell phones have helped but even they do not always work. Most calls require dialing four to six times before you are successful in getting the call through. Cell towers are damaged, and everyone is trying to call someone. It was common for a typical phone call to be cut off more than once during a five-minute conversation.

Insureds cannot generally be called since landlines are not operational. Though most insureds have cell phones, it can take days just to get a call through.

E-mail access is inconsistent. Some days the Internet worked well, and on others the lines just went dead. Remember, those lines were damaged as well as the power lines. Several people told me that the only thing that worked well after the storm was text messaging.

Fax machines are similarly affected. My hotel fax did not work inbound during the first week. Between limited fax availability and inconsistent e-mail, it was difficult just receiving losses, not to mention attempting to send reports.

Under these circumstances, the importance of receiving the loss notice form becomes crucial. The information contained on the ACORD Form Loss Notice is often the sole source from which



the adjuster has to work. Agents must recognize that the information on the form must be accurate and complete.

Often, the form did not contain the agent's name, address, or telephone number. There is only a company code. That means the carrier knows who the agent is but I do not. This form should not only include the name, address, and telephone numbers of the agent, but the e-mail address as well. I am constantly asked by agents for the status of a claim. With an e-mail address, I can send a status every time I send a letter or e-mail to the insured. Additionally, when it is difficult to contact the insured, I can attempt to contact the agent to request directions or to assist me in contacting the insured.

The form is typed with an 8- or 10-point font. That size is used because the information easily fits into the small spaces on the ACORD form. Unfortunately, when the form is faxed more than once, it becomes unreadable. Most loss notices sent to me had been faxed three times. By then, most of the information was so blurred it was unreadable. This is the high-speed information age. Therefore, it is requested that agents send their loss notices by e-mail. E-mail does not deteriorate no matter how often it is forwarded, and usually arrives totally readable.

Receiving complete addresses for the insured is vital. A PO box number will not help me locate the loss location. If I am unable to immediately reach the insured or the agent, the loss is put on the bottom of the stack until a day when I have time to deal with it. Or another option is to simply send the loss back with no action taken.

Providing complete and accurate coverage information is also vital. I was sent on several claims where the policy excluded the peril of "wind" and "flood." There are not a lot of reasons to look at a risk damaged by Hurricane Katrina, or any other hurricane, that excludes these perils.

Often, there was no information on the limits or deductible. Limits tell me the size of the risk and the values that may be damaged. The deductible is most important and is the first question asked by the insured. If the loss is small and there is a big deductible, I can move on more quickly.

Finally, there is rarely information about the damage. Agents must request information from the insured when the claim is reported about what is damaged and the extent of that damage. I was sent several times on losses that were less than the deductible. These are claims that should have been stopped by the agency. If it is apparent that the loss is small, have your insured get an estimate prior to reporting the claim to the carrier. When agents do not do this, they waste my time and make it impossible for me to visit their other clients who really need help.

The importance of receiving loss notice forms that are complete and accurate cannot be overemphasized. Every field of information is vital to members of the adjusting team. The catastrophe manager must assign the claim to the proper adjuster, one who is qualified for the level of the loss, thereby fully utilizing his staff. And the adjuster must have complete information in order to determine the correct coverage for settlement of the loss.

Additionally, we suggest that it is time to design a new ACORD form. The one currently in use is old. It is time for a new form that supplies more useful information. The whole process starts in the agent's office with the loss notice. This form is the crucial communication tool during catastrophes. We share the agent's goal of providing the proper adjuster in a timely manner to provide the service your client expects for the premium he or she paid to the agent.

If all parties work together to learn "the lessons of Katrina," we can be better prepared to provide better service during the next catastrophe. And, there will be more. ■

"We are the Universe in manifest, here to study itself."

—Jon Klauke

Insurance Coverage Litigation in the Aftermath of Hurricane Katrina

by Daniel F. Sullivan, Esq., Gregory P. Varga, Esq., and Christopher F. Girard, Esq.

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Daniel F. Sullivan, Esq., and **Gregory P. Varga, Esq.,** are partners, and **Christopher F. Girard, Esq.,** is an associate, in the Insurance Practice Group of Hartford-based Robinson & Cole, LLP, where they specialize in the representation of insurance companies nationally in complex litigation involving coverage disputes, extra-contractual liability claims, and large loss subrogation.

The heartbreaking images of the devastation wrought by Hurricane Katrina are embedded in our collective memory: the massive flooding of the great city of New Orleans; the destruction of entire communities along Mississippi's Gulf Coast; casinos transported miles from their moorings by a mammoth storm surge. While Katrina's toll in human terms is incalculable, the insured property losses left in her wake have been variously estimated in the tens of billions of dollars. Indeed, some estimates range as high as $60 billion, far in excess of the damage wrought by Hurricane Andrew, once considered the costliest storm in American history.

Because so much of Katrina's devastation was caused by storm surge and flooding—perils excluded by most homeowners and all-risk property insurance policies—the storm has spawned an array of coverage lawsuits in the state and federal courts of Louisiana and Mississippi. This article provides an overview of the most significant actions and introduces the key coverage issues that they raise.

Louisiana Litigation

In the weeks since Katrina ravaged the Gulf Coast, Louisiana residents have launched two class actions against the insurance industry. The first was *Gladys Chehardy, et al. v Louisiana Ins. Comm'r J. Robert Wooley, et al.* The *Chehardy* case was filed on September 18, 2005, in Baton Rouge, Louisiana. It has since been removed to the federal district court in Baton Rouge. The putative class of plaintiffs consists of homeowners in Orleans and Jefferson Parishes who suffered damage to their property due to water entering the city of New Orleans in Katrina's aftermath. The named defendants included Louisiana Insurance Commissioner J. Robert Wooley and a host of property insurers.

In their petition, the *Chehardy* plaintiffs ask the court to issue a declaration that:

> the damage caused by water entering the City of New Orleans on August 29, 2005, due to breaches in the flood walls along the 17th Street Canal and the London Avenue Canal does not fall within the exclusion of "rising water," and "act of God," standard excluded perils in the defendants' homeowner's insurance policies, and a further declaration … that the dominant and efficient cause of the losses due to water entering the City of New Orleans beginning on August 29, 2005, from the breaches in the flood walls along the 17th Street Canal and the London Avenue Canal was acts of negligence and "windstorm," standard covered perils in the defendants' homeowners insurance policies.

The acts of negligence alleged in the petition consist of improper design, construction, and maintenance of the levee system surrounding New Orleans. Plaintiffs further allege that due to the city's systems of flood walls and levees, most homeowners did not avail themselves of federal flood insurance, so that to deny them coverage under homeowners' policies would be to "contravene the very purpose" of those policies. The *Chehardy* plaintiffs also seek an order of mandamus compelling Insurance Commissioner Wooley to interpret the defendants' homeowner policies in a way that would grant coverage for their losses.

As of the time of publication, a number of motions are pending before the federal district court. Plaintiffs have moved to remand the case back to the Louisiana state court system. In addition, most of the insurer defendants have independently filed motions for judgment on the pleadings requesting the court to dismiss the claims against them based on a variety of policy exclusions, including the "Water Damage/Flood" exclusion and the exclusion of loss caused by faulty planning, design, workmanship, and materials. None of the motions has been scheduled for argument.

In September 2005, another group of Louisiana homeowners commenced a class action against 17 homeowners' insurers. The case is entitled, *Urban M. Craddock, Sr., et al. v Safeco Ins. Co., et al.*, and is pending in the Louisiana district court in the parish of St. Tammany. The putative class is characterized as all Louisiana homeowners who "suffered damages due to loss of trees" on their property caused by Hurricane Katrina. The terms "loss of trees" is defined in the Class Action Petition to include:

a. The cost to complete the cutting of the damaged tree.

b. The cost to mitigate damages incurred, including, but not limited to, costs associated with preventing partially destroyed or damaged trees from harming persons and/or other structures.

c. The loss of use of said trees, including, but not limited to, the loss of an insured's ability to use and/or sell said trees.

d. The loss of trees, which results in diminished property value of said covered premises or tangible property on said covered premises.

In *Craddock*, the plaintiffs contend that their homeowners' insurers have wrongfully "classified said *loss of trees* as debris and thereby are only paying a nominal amount for debris removal and/or removal of trees on a covered structure under said policies of insurance rather than compensating plaintiff's [sic] for the full value of the *loss of trees* as covered property." The *Craddock* plaintiffs seek several remedies in this lawsuit. First, they have asked the court to issue a declaratory judgment that, "damaged and/or destroyed trees are covered property under said policies . . . and that Defendant's [sic] must pay the value of said loss of trees as covered property in addition to any insured amount for debris removal." Second, they have asked for an award of money damages resulting from the insurers' "denial of claims and/or limitation of benefits for loss of trees. . . ."

Mississippi Litigation

Hurricane Katrina has also given rise to significant coverage litigation in the state of Mississippi. There, however, it is the Mississippi attorney general who has led the charge. On September 15, 2005—scarcely two weeks after Katrina came ashore—Attorney General Jim Hood filed an action against a number of insurance companies. The case is entitled, *Jim Hood, Attorney General for the State of Mississippi ex. rel. State of Mississippi v Mississippi Farm Bureau Ins.*, and is pending in Chancery Court of Hinds County, Mississippi. In this case, Hood challenges the validity of exclusions "attempting to exclude coverage for hurricane loss and damage if the loss and/or damage included, directly or indirectly, loss or damage resulting from water, whether or not driven by wind." The exclusion in question is typically expressed in the following language:

> We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
>
> g. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.

In his four-count complaint, Hood argues that this type of exclusion violates the public policy of Mississippi because "attempt[s] to alter, abrogate or invalidate longstanding Mississippi law . . . governing the issue of proximate causation and attempts to immunize the Defendants from contractual liability on insured perils which may be a proximate or contributing cause of loss. . . ." Hood also challenges the exclusion on the ground that it is ambiguous, violates the Mississippi consumer protection act, and is contained in an adhesion contract that is unreasonably complex and difficult for the average homeowner to understand. Hood seeks a declaratory judgment that the water damage exclusion is void and unenforceable and an injunction prohibiting the insurers from disclaiming coverage based on the exclusion.

The attorney general's lawsuit was followed on September 20 by a parallel civil action styled, *Joseph Cox, et al. v Nationwide Mutual Ins. Co., et al.* This putative class action was filed in the United States District Court for the Southern District of Mississippi. The purported class consists of homeowners in Mississippi who experienced property damage as a result of Katrina. The arguments and allegations advanced and the relief requested in the *Cox* case is substantially similar to the attorney general's action.

Unlike the attorney general, however, the *Cox* plaintiffs have included as defendants in their action major oil companies, including Shell, Chevron/Texaco, and Exxon Mobil. According to the complaint, the byproducts of the oil production process of those defendants caused global warming, which, in turn, helped to create the environmental and atmospheric conditions that made Katrina inevitable. Accordingly, the *Cox* plaintiffs seek compensatory and punitive damages against the oil company defendants.

On the heels of the *Cox* class action came an individual lawsuit filed on behalf of Mississippi Gulf Coast resident Paul Leonard. The case is entitled, *Paul Leonard, et al. v Nationwide Mut. Ins. Co.*, and is pending in the Chancery Court of Pascagoula, Mississippi. The *Leonard* lawsuit seeks to secure coverage for property losses caused by the powerful storm surge that wiped out much of the Gulf Coast on August 29. Plaintiffs allege that the insurers issued policies with hurricane coverage, but then dishonored the contracts by relying on intentionally ambiguous policy exclusions for flooding and water damage. The complaint asserts that the insurers were unjustly enriched and committed fraud.

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Insurance Coverage Litigation in the Aftermath of Hurricane Katrina

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Texas Litigation

Just as the Gulf Coast began to pick up the pieces in Katrina's wake, Hurricane Rita, which also reached category five status, made her presence known in the Gulf of Mexico. Fortunately for Louisiana and Mississippi, the majority of those states were spared from Rita's wrath. Texas was not so fortunate, however.

In the immediate aftermath of Rita, the Texas commissioner of insurance brought an action against various Allstate entities in the state court of Travis County. In that case, the commissioner sought an injunction preventing Allstate from denying coverage for additional living expenses (ALE) under the Texas homeowners' policies where the only loss to property was the loss of electrical power. At issue was the following provision: "If a loss caused by a Peril Insurance Against under Section I makes the residence premises wholly or partially untenantable, we cover: (a) additional living expenses. . . . " The court concluded that the term "loss" in that coverage was not restricted to physical loss or damage but could also include a loss of electrical power. On October 21, 2005, the trial court granted the preliminary injunction and restrained Allstate from denying ALE claims based on the absence of any direct *physical* loss to its insureds' "residence premises." Allstate has appealed the injunction, and the Court of Appeals has stayed it while the ruling is under review.

In conclusion, while the coverage issues presented in the litigation discussed in this article are not particularly new, it is fair to say that they have never before been debated on such a grand stage. Whatever the outcomes of these cases, they are certain to have a dramatic effect on insurers and policyholders alike. Future editions of this newsletter will include updates on the status of these cases, as well as reports on newly filed actions. ■

Molestation Claims—Legislative and Judicial Developments Regarding the Statute of Limitations

by Lloyd Gura, Esq., and Douglas Eisenstein, Esq.

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While the multitude of sexual abuse claims filed against Roman Catholic Archdioceses across the country have recently garnered considerable attention in the media, molestation claims arise in numerous settings including school districts, day-care facilities, summer camps, other religious orders, and just about any place where children are placed in a supervised environment. In the area of molestation claims handling, an important assessment is whether the claim is barred by the applicable statute of limitations.

One of the few bright lines in the law, equitable relief is generally unavailable to revive a time-barred claim. The analysis of whether a claim is time barred, however, is often difficult in the context of molestation claims, as highlighted by the clergy abuse cases that have been filed across the country during the past decade. A variety of factors, including revival statutes and delayed discovery rules, complicate the evaluation.

Indeed, while it may have appeared that these types of claims against the Catholic Church were coming to an end, recent developments in the area of time limitations indicate that additional molestation claims may be on the horizon. The reach of these developments may not be confined to molestation claims against the Catholic Church, but could expand to the other entities listed above as well.

Revival Statutes

A revival statute can resurrect previously time-barred claims. For example, in 2002, California amended its statute of limitations for civil actions based on an organization's failure to take reasonable steps to prevent abuse by its employees, e.g., negligent supervision.[1] The statute of limitations was waived for a one-year period that commenced on January 1, 2003, which allowed any individual with a claim that was time barred under the existing statute of limitations to file suit. While the statute was arguably motivated by the California legislature's desire to provide recourse to alleged victims of sexual abuse by members of the clergy whose claims would otherwise be time

barred, the statute applied generally to all victims of abuse where an organization negligently supervised its members or employees. The statute resulted in the filing of hundreds of claims against the Catholic Church and other organizations.

Although nearly 30 states have lengthened or removed the statute of limitations for criminal prosecution relating to sex abuse,[2] to date, California is the only state that has enacted a civil revival statute. Other states have extended the civil statute of limitations or enacted discovery rules that toll the statute of limitations until the abuse is recalled or "discovered" by the victim, but they do not revive time-barred claims. Several states, however, including New York and Ohio, have revival legislation pending.[3] National advocacy groups for the victims of sexual abuse by Roman Catholic priests and other clergy have been actively lobbying for the passage of similar statutes for time-barred claims as well as the abolition of the statute of limitations regarding future abuse. For example, the Pennsylvania legislature is being pressured to enact such a provision in the wake of a report by a Philadelphia grand jury that investigated allegations of sex abuse by members of the Philadelphia Archdiocese.[4] The grand jury concluded that dozens of priests sexually abused hundreds of children and that the evidence:

> established that Archdiocese officials at the highest levels received reports of abuse; that they chose not to conduct any meaningful investigation of those reports; that they left dangerous priests in place or transferred them to different parishes as a means of concealment; that they never alerted parents of the dangers posed by these offenders … that they intimidated and retaliated against victims and witnesses who came forward about abuse … and that they did many of these things in a conscious effort simply to avoid civil liability.[5]

Findings like these are fueling support for revival statutes and are pressuring legislators to provide the alleged victims of abuse with civil recourse against the perpetrators.

Revival statutes, however, are not without legal challenges. For example, the constitutionality of California's "revival" statute continues to be an issue. In *Bishop of Oakland*, the Catholic Church, which was sued based on allegations that would be time barred without the revival statute, i.e., molestation of a minor by a priest during 1980 and 1981, challenged the constitutionality of the statute on the basis that it violated the "ex post facto" clause of the United States and California constitutions. The "ex post facto" clause provides that "the Legislatures of the several states, shall not pass laws, after a fact done by a subject, or citizen, which shall have relation to such fact, and shall punish him for having done it."[6] In other words, no law can be passed that renders a prior legal act a crime.

On appeal of the trial court's denial of the Church's application, the California Court of Appeals held that the law was constitutional. The Court of Appeals cited numerous United States Supreme Court decisions holding that the "ex post facto" clause applies only to criminal cases. The court explained that although the "ex post facto" clause may be implicated where a newly passed law, even though classified as a civil statute, may have the effect of imposing punishment, the California revival statute does not impose any kind of criminal punishment.

The *Bishop of Oakland* case has not resolved the issue, however. Currently, California's revival statute is being challenged by the Diocese of San Diego in an action in the United States District Court in San Diego, *Melanie H. v Sisters of the Precious Blood*. There, one of the Church's principal arguments is that although the law on its face may not identify the Catholic Church by name, comments from legislators and certain provisions of the statute (e.g., the statute states that providing counseling to employees—a common response to abuse allegations by the Catholic Church—is not a sufficient safeguard to prevent abuse) demonstrate that the Catholic Church was the target. Accordingly, the court will have to weigh the alleged intent of the statute with the fact that it is applicable to all institutions. A deciding factor will probably be whether the revival statute substantially burdens religious practice.

It should also be noted that while the California statute has withstood constitutional scrutiny—at least to date—future revival statutes might be challenged on constitutional grounds depending on the manner in which they are worded. Indeed, certain provisions in state constitutions could provide other bases for constitutional challenges to revival statutes than those pursued by the Catholic Church in California. The United States Supreme Court may ultimately have to decide the issue.

Judicial Interpretation of Statute of Limitations

Even if state legislatures do not intervene by passing revival statutes, recent developments in the courts may provide other avenues to pursue time-barred claims.

Notably, New York's Court of Appeals recently granted leave to appeal in two separate clergy molestation cases, *Zumpano v Quinn*[7] and *Boyle v Smith*,[8] in which the courts upheld the Catholic Church's statute of limitations defense. As a result, New York's highest court will now address the issue of statute of limitations in molestation cases.

The *Zumpano* case is particularly noteworthy in view of the fact that the New York Court of Appeals initially denied the plaintiffs' motion for leave to appeal. Just a few weeks later, however, the Court of Appeals granted the *Boyle* plaintiffs leave to appeal the dismissal of their action as time barred. In a rare move, the Court of Appeals then granted Zumpano's motion to reargue his request for leave to appeal (in the last five years the Court of Appeals granted only five of 275 applications for reargument of a motion for leave to appeal)[9] and, upon reargument, reversed its decision.[10]

The *Zumpano* and *Boyle* cases could establish precedent for sex abuse victims to "revive" their claims in New York and possibly other jurisdictions absent a revival statute. A closer look at these cases demonstrates the complicated issues often confronted when addressing statute of limitations questions in molestation claims.

Continued on page 10

Molestation Claims—Legislative and Judicial Developments Regarding the Statute of Limitations

Continued from page 9

Plaintiff John Zumpano commenced a personal injury action against a pastor of a Catholic school in Syracuse, the bishop of the Catholic Diocese of Syracuse and Diocese itself alleging that the pastor had sexually abused him from 1963, when he was 13 years old, through 1970. Similarly, in *Boyle*, 42 plaintiffs filed suit against the Roman Catholic Diocese of Brooklyn (RCAB) and a bishop and monsignor of the RCAB.[11] The plaintiffs sued the RCAB for various acts of sexual battery committed against them by priests employed by the RCAB between 1960 and 1985. The *Boyle* plaintiffs also claimed that the bishop and monsignor were liable for, among other things, negligent retention and supervision of the abusive priests and breach of the fiduciary duties owed to the plaintiffs. The trial courts dismissed both cases because the statute of limitations had run, and the appellate courts affirmed.

In both actions, plaintiffs argued that the defendants should be equitably estopped from relying on the statute of limitations because their delay in bringing the action was the result of defendants' own wrongdoing. In other words, plaintiffs argued that where a party causes the disability that allegedly prevents a claimant from filing a timely lawsuit, the doctrine of equitable estoppel should preclude the application of the statute of limitations.

Both New York appellate courts recognized that they had the power to "bar the assertion of the affirmative defense of the statute of limitations" where the defendants' affirmative wrongdoing caused the delay in commencing the legal proceeding. Nevertheless, the intermediate appellate court considering the *Zumpano* appeal determined that equitable estoppel was not applicable "[b]ecause plaintiff fails to allege any acts on the part of defendants that were separate from and subsequent to the acts of abuse and concealment that are the basis of [plaintiff's] tort claims."[12] Although this holding is consistent with New York law on equitable estoppel regarding the statute of limitations, it remains to be seen whether, in the context of molestation claims, the New York Court of Appeals will require an affirmative subsequent act of concealment. The court could also find that constructive concealment is sufficient, i.e., the consequences of defendants' actions—the molestation—prevented plaintiff from appreciating the nature of defendants' acts and accordingly the basis of a claim.

In *Boyle*, the appellate court held that "due diligence on the part of plaintiffs in bringing an action was an essential element of equitable estoppel."[13] The *Boyle* court found that plaintiffs possessed knowledge of the facts underlying their intentional tort claims from the time of the offense, and consequently they unreasonably delayed the pursuit of their claims. On their appeal before the New York Court of Appeals, plaintiffs likely will have to overcome the fact that they had not been under the defendants' direct influence or control since the end of the abuse, and had not been exposed to any activity by the defendants that would have prevented the filing of their claims.

Another argument was proffered by Zumpano, but not the *Boyle* plaintiffs, who contended that New York's Civil Practice Rule 208 applies, which tolls the statute of limitations until a legal disability—whether due to infancy or insanity—is removed for up to 10 years from the time the action accrued. The plaintiff presented medical evidence and affidavits in support of his contention that he was insane within the meaning of the rule, and therefore was unable to protect his legal rights. In holding that Rule 208's tolling provision did not apply, the appellate court noted that:

> the tolling provisions as presently existing in New York are of limited practical use to the victim of childhood sexual abuse litigating as an adult. Nevertheless, the legislature intended the toll for insanity to be narrowly interpreted.…[14]

It is unclear, however, whether the appellate court in affirming the dismissal of the action based its decision on Zumpano's inability to meet his burden of proving "insanity" or that he failed to bring his action within the period proscribed by CPLR 208. As the last incidence of abuse was 1970, CPLR 208 arguably required that plaintiff's action be instituted no later than 1980. This does not account for the allegedly continuing nature of the mental distress caused by the abuse. In deciding these cases, the Court of Appeals will likely address both the issue of whether the mental injury allegedly sustained by the victim of abuse rises to "insanity" as the term is used in CPLR 208 and when a cause of action accrues in the context of molestation cases under that section.

While it would be unwise to draw any conclusions from the apparent "about face" by the New York Court of Appeals with respect to its initial refusal to accept these cases for review, the court's action is nonetheless noteworthy. It is impossible to predict how the court will decide the cases, but the impact of the decision may be felt well outside of New York. If the Court of Appeals permits the cases to proceed despite the statute of limitations defenses, other alleged victims of sexual abuse who would otherwise have time-barred claims may be emboldened to file suit. Indeed, many states have provisions similar to those at issue in *Zumpano* and *Boyle*. In the same vein, an adverse decision may be used in other jurisdictions to limit the application of the equitable estoppel theory.

Whether by way of revival statutes or modified interpretations of the existing statute of limitations and tolling provisions, insureds may soon be confronted with molestation claims that were previously considered time barred. As molestation cases against Archdioceses around the country

continue to gain national attention, the landscape becomes more fertile for either legislative action or judicial permissiveness in respect of what would otherwise be time-barred claims. The ability of the victims of sex abuse to pursue otherwise time-barred molestation claims will depend on the passage of proposed revival statutes, as well as the New York Court of Appeals' decision in *Zumpano* and *Boyle*. ■

Endnotes

1. See *Bishop of Oakland v Superior Ct.*, 128 Cal. App. 4th 1159-60 (Ca. Ct. App. 2005).
2. "Abuses by Clergy Become New Focus for Prosecutors," Sam Dillon, *The New York Times*, April 5, 2002.
3. "Advocates urge lifting time limits on child sex abuse cases," Joann Loviglio, *Associated Press*, September 22, 2005.
4. "Group Asks for Change in Pennsylvania Sex Abuse Law," Angela Couloumbis, *Philadelphia Inquirer*, October 20, 2005.
5. "Report of The Grand Jury," In Re: County Investigating Grand Jury, Misc. No. 03-00-239, September 17, 2003, http://www.realcities.com/multimedia/philly/inquirer/KRT_packages/archive/slideshow/grand_jury_report.pdf.
6. Bishop of Oakland at 1161 (quoting *Calder v Bull*, 3 U.S. 360, 390 (1798)).
7. Mo. No. 208, 2005 N.Y. LEXIS 1104 (May 5, 2005).
8. Mo. No. 299, 2005 N.Y. LEXIS 1412 (June 16, 2005).
9. "Clergy Sex-Abuse Cases Make Their Way Onto Court Docket Next Term," John Caher, *New York Law Journal*, July 15, 2005, pg. 2.
10. *Zumpano v Quinn*, Mo. No. 665, 2005 N.Y. LEXIS 1579 (July 6, 2005).
11. *Boyle v Smith,* 15 A.D.3d 338 (2d Dep't 2005).
12. Id. citing *General Stencils v Chiappa*, 18 N.Y.2d 125 (1966).
13. *Boyle*, 15 A.D.3d at 339.
14. *Zumpano*, 12 A.D.3d at 1097 (citations and internal quotation marks omitted).

Toxic Tort Litigation—Where Is It Going?

by Keithley D. Mulvihill J.D., CPCU

■ **Keithley D. Mulvihill, J.D., CPCU,** is a resident partner in the Pittsburgh, Pennsylvania office of Rawle & Henderson LLP, a regional defense firm headquartered in Philadelphia. Mulvihill graduated from the University of Pittsburgh School of Law in 1981. He obtained his CPCU in 2000. Mulvihill's practice focuses on defense of product liability matters, including toxic tort cases, insurance coverage, and general defense matters including professional liability. He is active in the CPCU Society's Allegheny Chapter and regularly provides an update on recent developments in insurance law for the chapter's newsletter. He was recently appointed to the CPCU Society's Claims Section Committee.

For claim professionals and their lawyers who regularly defend toxic tort cases, there are many sources of frustration. Some are understandable—overwhelming caseloads, inability to obtain evidence regarding events that may have taken place years or even decades ago—and some are less so. One of the things that is perhaps most frustrating and least understandable for those on the defense side has been the way in which courts have often put the goal of expediting cases ahead of due process.

In an effort to deal with the huge numbers of cases, many jurisdictions have adopted special, streamlined procedural rules for asbestos, silica, and other types of toxic tort cases. (See e.g., Pennsylvania Rule of Civil Procedure 1041.1 Asbestos Litigation. Special Provisions.) Special toxic tort rules undoubtedly can benefit defendants by reducing defense costs, but too often such rules promote efficiency at the expense of due process and limit the ability of defendants to draw attention to abuses in the system. If nothing else, in mass cases handled under special rules there is substantial pressure on defendants to pay something (nuisance value or cost of defense) in settlement so as to move the cases along regardless of the merit of each individual case. Over the years, defendants and their carriers have often found that it is easier to give in to that pressure rather than to aggressively litigate each case.

Recently, however, a growing number of defendants have decided to take a much more aggressive approach to the defense of toxic tort cases, particularly in alleged claims of silicosis. As a result, concerted and determined efforts by the defense community to bring to light and remedy abuses in the system have started to gain traction.

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Toxic Tort Litigation—Where Is It Going?

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The most notable victory for the defense was an opinion issued earlier this year by Federal District Court Judge Janis Graham Jack of the Southern District of Texas in a mass silica case pending in Corpus Christi, Texas. *In Re Silica Products Liability Litigation*, MDL No. 1553, United States District Court, S.D. Tex., June 30, 2005. In her opinion, Judge Jack sanctioned one of the nation's most prominent and prolific toxic tort plaintiff law firms and, more importantly, excoriated the process by which plaintiffs obtained medical evidence to support their claims.

The litigation in which Judge Jack entered her ruling involved 111 cases and more than 10,000 individual plaintiffs. The defendants in the cases challenged the medical evidence underlying the plaintiffs' claims based on the Supreme Court's opinion in *Daubert v Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993), in which the Supreme Court directed trial courts to assess whether proffered expert testimony is scientifically valid.

In the Corpus Christi cases, the defendants filed motions asking Judge Jack to hold *Daubert* hearings on the validity of the plaintiffs' medical evidence. In response to the motions filed by the defendants, Judge Jack held a number of hearings. Judge Jack summarized the need for the hearings as follows:

> In total, the more than 9,000 plaintiffs who submitted Fact Sheets listed the names of approximately 8,000 different doctors. And yet, when it came to isolating the doctors who diagnosed plaintiffs with silicosis, the same handful of names kept repeating. **All told, the over 9,000 plaintiffs who submitted Fact Sheets were diagnosed with silicosis by only 12 doctors.** In virtually every case, these doctors were not the plaintiffs' treating physicians, did not work in the same city or even state as the plaintiffs, and did not otherwise have any obvious connection to the plaintiffs. **Rather than being connected to the plaintiffs, these doctors instead were affiliated with a handful of law firms and mobile x-ray screening companies.** (Emphasis added.)

Judge Jack conducted hearings and allowed the defense lawyers to take depositions, which revealed many startling facts. Virtually all of the claims in the cases before Judge Jack relied upon x-rays obtained by so-called "screening companies" which, for a fee, provided medical review and opinions to plaintiff's law firms. The hearings showed that law firms and screening companies advertised widely for plaintiffs to attend mass screenings. Advertisements directed potential plaintiffs to call the screening company, and a receptionist, with typically no medical training whatsoever, would take a brief occupational history. A mobile x-ray van would then be set up in the parking lot of a retail establishment to take chest x-rays of anyone who responded to the advertisement and reported any history of exposure to silica. The screening companies were typically paid based on the number of plaintiffs signed up as clients by the law firm and fees often ran into the millions.

Once x-rays were obtained, they were passed along to one or more of the "diagnosing doctors" who completed forms giving their opinions that "to a reasonable degree of medical certainty" (magic words for legal purposes), the plaintiffs in question suffered from silicosis. More than one of the doctors conceded under oath that their "legal diagnoses," which were used to form the basis of thousands of lawsuits, were not, in fact, true medical diagnoses. Indeed, one six-page section of Judge Jack's opinion is entitled "Lawyers Practicing Medicine and Doctors Practicing Law."

In awarding sanctions against one of the law firms representing the plaintiffs, Judge Jack concluded:

> The clear motivation for O'Quinn's micro-management of the diagnostic process was to inflate the number of plaintiffs and claims in order to overwhelm the defendants and the judicial system. This is apparently done in the hopes of extracting mass nuisance-value settlements because the defendants and the judicial system are financially incapable of examining the merits of each individual claim in the usual manner.

One of the more startling revelations from Judge Jack's opinion (and one of the primary facts that initiated and motivated the defense efforts) was the impossibly high number of plaintiffs who were found to have both asbestosis and silicosis. Although they have some similar symptoms, asbestosis and silicosis are very different disease processes, and the medical community has long recognized that it is highly unusual for one person to have both diseases. However, in the cases before Judge Jack, it was common. One of the screening companies in the cases before Judge Jack had identified more than 4,000 plaintiffs who were also identified as having made asbestosis claims. Judge Jack stated:

> The magnitude of this feat becomes evident when one considers that many pulmonologists, pathologists and B-readers go their entire careers without encountering a single patient with both silicosis and asbestosis. Stated differently, a golfer is more likely to hit a hole-in-one than an occupational medicine specialist is to find a single case of both silicosis and asbestosis. N&M parked a van in some parking lots and found over 4,000 such cases.

Judge Jack's lengthy opinion (250 pages) documents many similar problems.

In summarizing the "medical evidence" presented by the plaintiffs, Judge Jack stated:

> It is apparent that truth and justice had very little to do with these diagnoses—otherwise more effort would have been devoted to ensuring they were accurate. These diagnoses were driven by neither health nor justice: they were manufactured for money. The record does not reveal who originally devised this scheme,

but it is clear that the lawyers, doctors and screening companies were all willing participants.

To anyone who has worked in asbestos or silica defense for any length of time, many of the practices outlined in Judge Jack's opinion are not very surprising. Advertised mass screenings have been common in asbestos litigation for years, and plaintiffs have always relied on certain doctors who make a business of providing causation opinions in such cases. What is surprising is the extent of such practices and the degree to which the system has allowed the process to become divorced from any real effort to reach a just result. It is also surprising that the defendants were able to get a judge to take action on these practices.

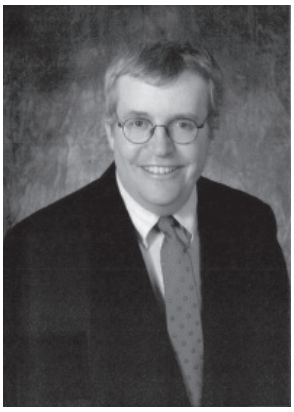
Judge Jack's opinion has been widely publicized. (See e.g., J. Glater, "The Tort Wars, at a Turning Point," *N.Y. Times*, October 9, 2005, which notes that "aftershocks are still spreading.") (R. Parloff, "Silicosis: Diagnosing for Dollars", *Fortune*, June 13, 2005.) Potentially, one of the most significant aftershocks is a grand jury investigation into asbestos and silica litigation underway in New York. (See J. Glater, "Civil Suits Over Silica in Texas Become a Criminal Matter in New York," *N.Y. Times*, May 18, 2005). Defense lawyers in other jurisdictions have relied upon Judge Jack's ruling and the evidence produced in the hearings in Texas to push similar arguments with renewed vigor. Judge Jack's opinion and the practices documented in her opinion are also certain to become an important part of the seemingly stalled discussions in Congress over a bill to attempt to find a non-litigation solution to the ongoing asbestos crisis.

Conclusion

There is no doubt that toxic substances such as asbestos and silica have caused real and serious injuries, and those who are genuinely injured from exposure to toxic substances deserve to be compensated. What should be most troubling about abuses such as those identified in Judge Jack's ruling in Texas, however, is that our system makes it far too easy for those who are not truly sick and their lawyers to cash in at the expense of the truly sick. We need to continue to seek a comprehensive solution that provides prompt and fair compensation to those who truly merit it at a reasonable cost. ■

Boost Your Productivity by Taming the E-Mail Beast!

by Kevin Quinley, CPCU



■ **Kevin Quinley, CPCU,** is an insurance executive and business writer. He is an expert and trainer on personal productivity and the author of *Time Management for Claim Professionals* (www.nuco.com). You can reach him at kquinley@cox.net.

Insurance claim professionals—like most businesspeople—are drowning in a tsunami of e-mail. They get e-mails from agents, brokers, co-workers, underwriters, defense attorneys, policyholders, and vendors. Staying on top of e-mail without becoming its slave is a key skill for professional productivity. To tame the e-mail "beast," consider the following nine steps:

Liberally use the "DEL" key! Do you need to do anything in response to the e-mail? Does it contain a task you must delegate to someone else? If the answer to these questions is "no," hit DEL. Were you copied in just as a "CYA" gesture? Press DEL. Put your e-mail inbox on Slim-Fast by adopting the maxim, "When in doubt, delete it out."

Observe the three D's—do, delegate, or ditch. For each e-mail you get, decide quickly whether to do it, delegate it, or discard it. Let's look at each in turn.

- ***Do.*** Does the e-mail include an action item—a request for you to do something? Issue the settlement check. Mail out a Release or Medical Authorization form. Call the underwriter to clarify a coverage endorsement. Contact the agent to answer a question about a reserve. Reply to a request for conference call, or meeting dates. If the e-mail includes something you need to do, drag it over in Outlook and make it a task. Assign a due date. Discard the e-mail.

- ***Delegate.*** Maybe the e-mail includes a task, but you need not be the one doing it. If so, delegate and assign the task to someone else. If the task can be done competently by someone at a lower pay grade, delegate it. This is not "dumping." Call it . . . employee development! Quick-hit requests for information, status updates, loss runs,

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Boost Your Productivity by Taming the E-Mail Beast!

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numbers, etc. lend themselves well to this. Forward the e-mail request to CSRs or assistants. Have them handle it. Ask them to "cc" you on the reply and/or e-mail you when the task is done. Additionally, create a file titled **"waiting for"** and drag a copy of your e-mail delegation request over to this or drag it over into **tasks** and assign a date for follow-up.

- ***Ditch.*** If the e-mail contains no next action for you and nothing you need to delegate, then delete it.

Use spam blockers and other features, which automatically delete junk. If you're like me, about 15 percent of the day's e-mail concerns mail enhancement products and cures for pattern baldness. (Are they trying to tell me something?) Or an ex-government official from Nigeria wants to wire transfer $15 million to me if I will give him my banking information. (This is not part of my retirement plan.) Install spam filter software. Tag each piece of junk e-mail so that it will divert straight to the electronic trash bin next time you're pinged.

Work from "zero base." This means that at the end of each workday, you try to leave with zero e-mails in your Inbox. Where are you now? If your e-mail Inbox fills up more than one computer screen, this is a sign you need help in managing e-mail. Keeping the Inbox empty is like trying to bail out the ocean with a bucket, but you will feel so much better seeing the blank space. Trust me—it's liberating!

Use your auto-response to boost productivity. When you are out of the office due to meetings, claims work, other business travel, or vacation, turn on your "Out of Office" message. Include when you will return and the name, phone extension, and e-mail address of your backup. Your backup should be able to help field calls or questions in your absence, lightening your load when you return to the office. The more such items that get knocked out this way while you are gone, the clearer launch pad you have for quick takeoff when you return to the office.

Turn off the chimes. Many people set up their Outlook or e-mail program to emit a sound or chime when a new e-mail arrives. This is very distracting. It heightens the temptation to drop everything to check e-mail. When you check it, you get engrossed in it. Maybe you start composing a reply and—before you know it—you are completely off track from what you wanted to accomplish today. Solution: turn off the chime or noise that alerts you to an e-mail's arrival! Western civilization will not grind to a halt because you fail to respond to an e-mail in two minutes.

Only check e-mail at certain times of day. Many adjusters and other claim professionals are tempted to drop everything when they get a new e-mail. (They are not alone, so we are not picking on them.) This makes for an interruption-plagued workday. Discipline yourself to set aside specific times of day to check e-mail and to handle it. Say, 10 a.m. and 3:30 p.m. Exit out of Outlook or whatever e-mail manager you use so that you won't be distracted. Chances are, the e-mail can wait. Set aside specific time blocks during the day to focus on e-mail and do nothing else during that time.

Use the subject caption wisely. When sending e-mail, flag your message with labels such as reply requested, urgent, action requested, FYI, humor, etc. This helps receivers triage your e-mail better and gets to the point. This is much better than receiving an e-mail with the caption, "Re: Re: Re: re: . . ." Coach your staff and service vendors—law firms, rehab vendors, etc.—to improve captions to help you triage your incoming e-mail more efficiently.

Switch media—pick up the damn phone! Know when e-mail is not the best way to communicate. Sensitive or touchy discussions or areas of disagreement have no place being addressed in e-mail. E-mail has the advantage of time-efficiency. It has the drawback, though, of brusqueness and the inability to convey tone, nuance, and mood. Misunderstandings and antagonisms can quickly ignite over e-mail. Have the good sense to know when it's time to pick up the phone or walk down the office corridor to say, "Can we talk?"

Love it or hate it, e-mail is not going away as an eternal feature of claim professionals' business lives. Read and heed these tips to boost your productivity, and tame the e-mail beast! ■

Claims Section Web Site Annual Report

by Art Beckman, CPCU

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

- 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
Claims Section Members
Claims Section—Meeting Minutes
Calendar of Events
Circle of Excellence
Claim Articles
***CQ* Section Newsletter**
Related Links
Seminars
Photo Gallery

- Historical information added to pages (Circle of Excellence, Articles written by members).
- Counter added to track usage of web site. Current statistics indicate we have had 2,617 hits. Based on reports, we can pull the following statistics:
  - Busiest day of week is Wednesday.
  - Most active time is 9 a.m. to 2 p.m.
  - We get more first-time visitors than return visitors.
  - Most visitors look at multiple pages within the site.

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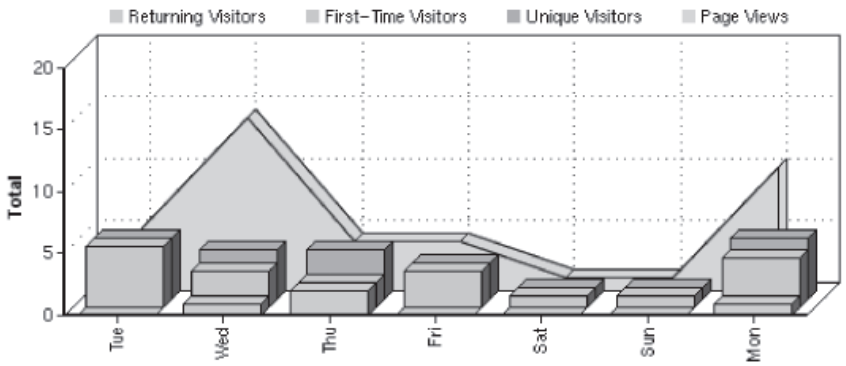
General Overview



Visitors by Day of Week

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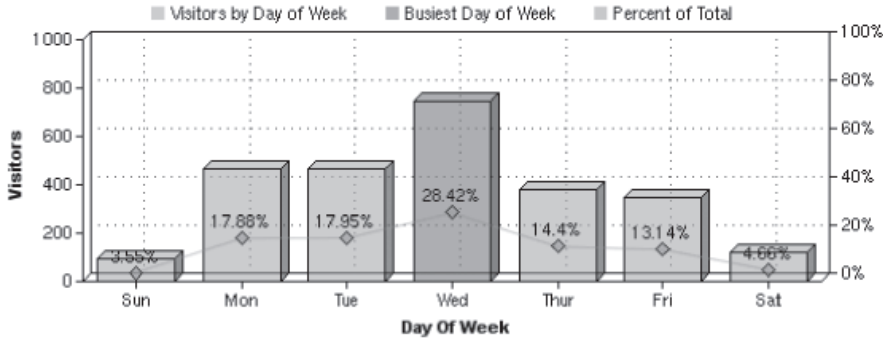

Visitors by Hour of Day

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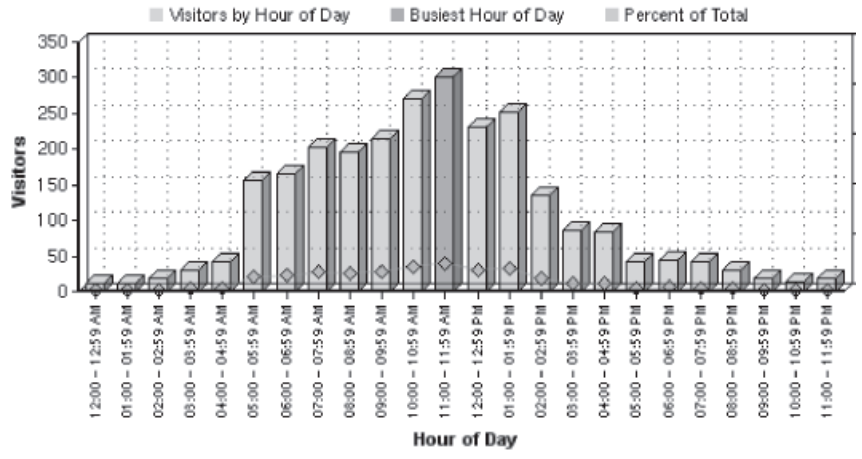

Claims Section Web Site Annual Report

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We have done several e-blasts over the past year. We did this in an attempt to drive people to the site (*Claims Quarterly* online, information for Circle of Excellence). I do not know how effective these are because we cannot pull that level of statistical detail. To gather more detailed statistics, we would have to upgrade to a higher level of Bravenet software than the free version.

The Society has made it easier to send e-blasts. We can now pull a new member file and attach a message fairly easily. This is then sent out with a return message to my home AOL account. On each e-blast (1,400), you then get return messages of "out of office," "message received," "person no longer with this company," etc. We had to configure it to protect against viruses and our firewall at work, which would not allow some messages to filter through.

One of the web developers on the web site team attended a one-day training session at the Society on the maintenance of the web site. This has allowed us to now have an expert who can help maintain or enhance the site.

Areas to Improve

In order to make this site more effective, we will be improving the following:

- How we add more current information to the site (authors).
- Determine what information is old and remove it (at 12, 18, or 24 months).
- Monthly e-blast to members highlighting a topic that drives them to the site for more details.
- Try not to overpopulate any screen that makes it too hard to navigate (either up/down or left/right).
- Members will need to be involved in populating the calendar. If it is not used, consider deleting it. ■

AICPCU/IIA Report to the CPCU Society—October 2005

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

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The following information was reported to the CPCU Society at the Society's Annual Meeting and Seminars in Atlanta, October 22–25, 2005. The 2005 class of new CPCU designees totals 885. This figure, which is lower than that for 2004, reflects both the large number of automatic completers in 2003 (when the completion rules changed) and the fact that a significant number of students may be adjusting their completion schedules to attend the 2007 conferment in Hawaii.

The number of first-time CPCU exam takers for the first half of 2005 is slightly higher than the number for the first half of 2004:

- January–June 2004: 2,109 exams administered
- January–June 2005: 2,175 exams administered

The total CPCU exam activity is comparable to 2004:

- January–June 2004: 9,727 exams administered
- January–June 2005: 9,755 exams administered

It is anticipated that exam activity in the second half of 2005 will be adversely affected by Hurricanes Katrina, Rita, and Wilma, just as the activity was adversely impacted in 2004 by the four hurricanes in Florida.

In an effort to continually improve the CPCU curriculum, the CPCU Advisory Committee met on September 15–16, 2005. The committee is comprised of insurance industry professionals and academicians. This group meets with the members of the Institutes' Curriculum Department to analyze the characteristics of potential and current CPCU candidates and the implications of those characteristics on the CPCU curriculum, as well as to obtain input on the educational needs of potential and current CPCU candidates and evaluate the content and presentation of the curriculum in light of those needs.

The Institutes continue to pursue several international initiatives that offer

significant growth potential. In 2005, the Institutes established the CPCU Institute of Greater China and created a new designation, the Professional General Insurance Certificate (PGIC) specifically for the Chinese market. The PGIC is comprised of several introductory courses, which have been translated in both traditional and simplified Chinese.

In addition to the long-standing agreements for translations of Institutes' texts in to French and Portuguese, the Institutes recently established relationships with organizations to translate study materials into Japanese and Russian.

The Institutes also continue to look for opportunities to partner with colleges and universities to accept CPCU and IIA credits toward certificate programs and associate, bachelor's, and master's degrees. The Institutes have articulation agreements with the following educational institutions:

- Salve Regina University
- Calella University
- Boston University
- Drexel University
- Excelsior College
- Franklin University
- New England College of Finance
- New York University's School of Continuing and Professional Studies
- University of California's Berkeley Extension
- University of Maryland University College
- Walden University

Information about how CPCU credits may be applied to degree programs at these institutions can be found on the Institutes' web site.

In 2004, the Institutes administered 18,046 CPCU exams and 58,779 IIA exams, for a total of 76,825 exams administered. While this number represents an overall 0.2 percent decrease from exams administered in 2003, note in Table 1 that CPCU exams were down, and IIA exams were up.

Table 1

	Exam Activity 2003	Exam Activity 2004	Difference
CPCU	19,221	18,046	-6.1%
IIA*	57,776	58,779	+1.7%
Exam Total	76,997	76,825	-0.2%

Table 2

	Exam Activity January–June 2004	Exam Activity January–June 2005	Difference
CPCU	9,727	9,755	0.3%
IIA*	31,198	26,730	-14.3%
Exam Total	40,925	36,485	-10.8%

**Includes new AAI segment exams.*

For the first six months of 2005, the number of CPCU exams delivered is up ever so slightly, but overall exam activity is behind 2004, primarily in IIA programs. The largest decreases in exam activity have been in the Program in General Insurance, the Associate in Claims program, and the introductory-level programs. See Table 2.

In January 2005, the Institutes began offering exams in four two-month testing windows:

- January 15–March 15
- April 15–June 15
- July 15–September 15
- October 15–December 15

In response to anticipated exam cancellations and transfers resulting from hurricane-related activity, the Institutes decided to make selected 2005 exams available to students in the first testing window of 2006. The selected exams are those where new exams, based on newly released materials, are being given.

Details of this can now be accessed on the Institutes' web site at http://www.aicpcu.org/doc/2005Hurricane.htm.

It is important to note that all requests for transfers must be made through customer service directly; these special exams are not available via web registration.

In addition to the Prometric testing centers, the Institutes have established 727 approved employer-testing sites where students can take CPCU and IIA exams.

Additionally, the Institutes' online class enrollments continue to grow, reaching 1,500 in 2004.

In June 2005, the Insurance Research Council (IRC) released *Analysis of Auto Injury Insurance Claims From Four Tort States*. This IRC report examines auto injury claims in the tort and add-on states of California, Illinois, Texas, and Washington, exploring state differences in reported injuries, medical treatment, losses and payment, and attorney involvement.

Other research projects underway for publication in 2005 include the following:

- *Public Attitude Monitor Series, 2005. Issue 1* concerns public perceptions about homeowners insurers' profitability. *Issue 2* is about public knowledge of homeowners insurance.
- *Analysis of Auto Injury Claims From Choice States*. This IRC report examines auto injury claim statistics in the choice states of New Jersey and Pennsylvania.

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- *Auto Injury Claims in New York: Differences Within the State*. The New York City metropolitan area yields significantly different auto injury claim trends compared with surrounding regions of the state. Claim abuse in New York, and how this phenomenon interacts with other aspects of claiming behavior, is also examined in this report.
- *Fraud and Buildup in California Auto Injury Claims*. As part of the IRC's 2002 auto injury study, file reviewers assessed claims for the presence of indicators of fraud and buildup. This report examines the prevalence of these indicators among California auto injury claims.

The IRC is a division of the Institutes. IRC is supported by leading property and casualty insurance organizations and provides timely and reliable research on public policy issues that affect insurers, their customers, and the general public. IRC does not lobby or take legislative positions.

IRC Members in 2005

- Allstate Insurance Company
- American Family Insurance Group
- Farmers Insurance Group
- The Hartford Financial Services Group, Inc.
- Liberty Mutual Group
- Nationwide Insurance
- Safeco Insurance Companies
- State Farm Insurance Companies
- United Services Automobile Association ■

Claims Section Activities in Atlanta

2005 CPCU Society's Annual Meeting and Seminars, October 2005

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

■ **Marcia A. Sweeney, CPCU, AIC, ARe, 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 was very active in providing educational and networking opportunities for its members at the CPCU Society's Annual Meeting and Seminars in Atlanta. The Annual Meeting is a time to learn, a time to meet up with old friends, and a time to greet new ones. It is a time to strengthen leadership skills, networking skills, and to enhance your technical insurance knowledge.

The Claims Section had two dinners together, a whole-day business meeting, won the Gold Award for the Sections Circle of Excellence, participated in the special seminar on Katrina, held a claims luncheon with 59 claims people in attendance, and presented an excellent, well-attended three-and-one-half hour interactive workshop on financial investigations. Claims Section people were everywhere: at the Sections booth, the New Designee Open House, the Expo, and at many of the other seminars.

Friday night opened with a Hospitality Reception for the Society's volunteer leadership group, committee members, section members, NLI attendees, governors, officers, directors, and the staff attending from the CPCU Society's headquarters in Malvern. After the reception, 20 Claims Section Committee members walked over to Azios restaurant for a fine Italian dinner.

Saturday, the Claims Section Committee met from 8 a.m. to 3 p.m. with a break for all to attend the Leadership Luncheon with CPCU Society President **Donald J. Hurzeler, CPCU, CLU,** and Executive Vice President **James R. Marks, CAE, CPCU, AIM**. The agenda for the Claims Section Committee meeting and the minutes from our all-day claims business meeting are now posted on the Claims Section web site, and can be read by all Claims Section members.

At this meeting the Claims Committee members presented the annual reports for their subcommittees and discussed their plans and objectives for the upcoming year. We heard from the claims webmaster, the *CQ* editor, the Annual Meeting and Seminars coordinators, the Claims Section lunch coordinator, the Circle of Excellence coordinator, and the liaison with the Institutes. We thanked those rotating off the committee for their service and we welcomed new members and immediately got them involved in Claims Section initiatives.

Later on that day, the 14 interest section newsletter editors had their annual

■ *Claims Section Committee meeting*

■ *Claims Section lunch*

business meeting that **James W. Beckley, CPCU,** and I attended representing the Claims Section. Then, everyone was off to various receptions and dinners. The Claims Section committee of 22 went off to dinner at Pitty Pat's Porch, which served great southern cuisine and was decorated with *Gone with the Wind* memorabilia.

On **Sunday** at 8 a.m. the seminars began—we were provided with a schedule of numerous technical insurance seminars as well as many others on leadership and self-development topics. The Claims Section Luncheon was held at noon on Sunday, and 59 claims people attended. **James D. Klauke, CPCU, AIC, RPA,** our section's past chairman, is an executive general adjuster with Crawford & Co., and shared his Hurricane Katrina photos and stories with us. Also, **Gary Kerney** from ISO spoke to us regarding other hurricane issues, coverages, and statistics.

At 4 p.m. we all were invited to the grand ballroom for the conferment of the new designees and to hear keynote speaker **George Will**.

Monday began at 8 a.m. with a general session open to all, with keynote speaker **Lou Dobbs** from CNN. The CPCU Society's annual business meeting immediately followed, then the "View from the Top" panel discussion. Seminars again ran all day and people were moving from seminar to seminar up and down the escalators all day. Many attendees were stopping for a Starbucks and a gourmet breakfast or lunch at the Atrium café, and to sit for a moment and chat with friends.

The Claims Section seminar "Perspectives in Financial Investigations" was an excellent, interactive workshop which ran from 1:30 to 5 p.m. **Christian J. LaChance, CPCU, CLU,** a Claims Section committee member, was the moderator, and **Tony D. Nix, CPCU,** also a Claims Section committee member led the workshop. Also participating was a forensic accountant and a coverage defense attorney.

Immediately following the Claims seminar, we all went to the Expo reception for fun, food, and prize drawings.

Tuesday, after four days of meetings, workshops, and seminars, the CPCU Society provides a Final Night Gala dinner party for all. This year's theme was "Welcome to the Peach Tree Supper Club, 1946." Great food and entertainment were enjoyed by all.

If you've never gone to a CPCU Society Annual Meeting and Seminars, it is a "must do." The seminars are of outstanding quality and the variety cannot be matched, there is something for everyone, and CPD and CE credits are available on the majority of the sessions being offered. The 2006 CPCU Society's Annual Meeting and Seminars will be held September 9–12 in Nashville, TN. ■

■ *The Claims Section seminar "Perspectives in Financial Investigations"*

What's In This Issue

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